



C.R.P.(MD).Nos.217 & 218 of 2019 and 550 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

Reserved on : 08.12.2023

Delivered on: 20.12.2023

CORAM:

THE HONOURABLE MR.JUSTICE P.B.BALAJI

C.R.P.(MD)Nos.217 & 218 of 2019 and 550 of 2023

and

C.M.P.(MD)No.2607 of 2023

C.R.P.(MD)No.217 of 2019

G.N.Antony Raj

... Petitioner / Appellant

Vs.

1.The Deputy Registrar of Co-operative Societies,
Deputy Registrar of Co-operative Society office,
Cheranmahadevi.

2.O.1917, Ramakrishnapuram Agriculture
Co-operative Credit Society,
rep. through its Vice President.

3.S.Lakshmanan

4.K.Thangapandian

... Respondents / Respondents

Prayer:-Civil Revision Petition filed under Article 227 of the Constitution of India, against the common order, dated 03.10.2018 passed by the Principal District Judge, Tirunelveli, made in C.M.A.(CS)No.12 of 2016.



C.R.P.(MD).Nos.217 & 218 of 2019 and 550 of 2023

For Petitioner : Mr.M.Muthugeethayan
For Respondents : Mr.A.Baskaran,
Additional Government Pleader for R1
: Mr.D.Shanmugaraja Sethupathy for R2
: No appearance for R3 & R4

C.R.P.(MD)No.218 of 2019

G.N.Antony Raj ... Petitioner / Appellant

Vs.

1.The Deputy Registrar of Co-operative Societies,
Deputy Registrar of Co-operative Society office,
Cheranmahadevi.

2.O.1917, Ramakrishnapuram Agriculture
Co-operative Credit Society,
rep. through its Vice President.

3.S.Lakshmanan ... Respondents / Respondents

Prayer:-Civil Revision Petition filed under Article 227 of the Constitution of India, against the common order, dated 03.10.2018 passed by the Principal District Judge, Tirunelveli, made in C.M.A.(CS)No.18 of 2017.

For Petitioner : Mr.M.Muthugeethayan
For Respondents : Mr.A.Baskaran,
Additional Government Pleader for R1
: Mr.D.Shanmugaraja Sethupathy for R2



C.R.P.(MD).Nos.217 & 218 of 2019 and 550 of 2023

: No appearance for R3

WEB C **C.R.P.(MD)No.550 of 2023**

O.1917, Ramakrishnapuram Primary Agriculture

Co-operative Credit Society,

rep. through its Vice President.

... Petitioner / Appellant

Vs.

1.G.N.Antony Raj

... 1st Respondent / Appellant

2. The Deputy Registrar of Co-operative Societies,

O/o. The Deputy Registrar of Co-operative Societies,

Cheranmahadevi.

... 2nd Respondent / 1st Respondent

3.S.Lakshmanan

... 3rd Respondent / 3rd Respondent

Prayer:- Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the judgment and decree passed in C.M.A.(CS)No.18 of 2017, dated 03.10.2018, by the Principal District Judge, Tirunelveli, sofar as the finding in respect of Item Nos.1, 2 and 6 of the irregularities as mentioned in the surcharge award dated 05.07.2016.

For Petitioner : Mr.D.Shanmugaraja Sethupathy

For Respondents : Mr.M.Muthugeethayan for R1
: Mr.A.Baskaran,
Additional Government Pleader for R2

: No appearance for R3



C.R.P.(MD).Nos.217 & 218 of 2019 and 550 of 2023

WEB COPY

COMMON ORDER

The revision petitioner in C.R.P.(MD)Nos.217 and 218 of 2019 has preferred the said revisions challenging the common order dated 03.10.2018, on the file of the Principal District Judge, Tirunelveli, confirming the order of the Deputy Registrar of Co-operative Societies, insofar as the charges 3, 4 and 5, out of 6 charges framed.

2. C.R.P.(MD)No.550 of 2023 has been preferred by the Ramakrishnapuram Primary Agriculture Co-operative Credit Society (O.1917), represented by its Vice President, as against the very same common order dated 03.10.2018, in and whereby charges 1, 2 and 6 were set aside by the Principal District Judge, Tirunelveli, while confirming the charges 3, 4 and 5.

3. The revision petitioner in C.R.P.(MD)Nos.217 & 218 of 2019 is referred to as “revision petitioner” and the revision petitioner in C.R.P. (MD)No.550 of 2023 is referred to as “respondent”, for the sake of convenience.



C.R.P.(MD).Nos.217 & 218 of 2019 and 550 of 2023

WEB COPY

4. The revision petitioner was the President of the Society. The Deputy Registrar of Co-operative Societies, for alleged misappropriation of funds between the period 01.04.2014 to 13.08.2015, ordered an enquiry under Section 81 of the Tamil Nadu Co-operative Societies Act, 1983 (herein after called as 'the Act'). In furtherance of an enquiry report submitted by the enquiry officer on 27.11.2015, surcharge proceedings were initiated under Section 87 of the Act against the revision petitioner, the Secretary of the Society and also one of the borrowers. In the said surcharge proceedings, six charges were levelled against the revision petitioner as well as the Secretary. The charges were that (i) the Secretary and the President misappropriated a sum of Rs.6,90,168/- (ii) Rs.6,00,000/- was misappropriated by awarding bogus loans (iii) Misappropriation of a sum of Rs.87,140/- in respect of a jewel loan repaid by a borrower (iv) Misappropriation of a sum of Rs.59,118/- in respect of another jewel loan repaid by the borrower (v) shortage of fertilizers to the tune of Rs.86,923/- (vi) Misappropriation of Rs.29,600/- by creating false accounts relating to



C.R.P.(MD).Nos.217 & 218 of 2019 and 550 of 2023

sale of fertilizers.

WEB COPY

5. In the surcharge proceedings, the Secretary of the Society did not participate and the surcharge officer passed an order dated 05.07.2016, holding that all the above said 6 charges were proved and the petitioner and the Secretary were liable to make good the losses to the Society.

6. Aggrieved by the said order, the revision petitioner has preferred C.M.A.(CS)No.18 of 2017. The Tribunal, namely, Principal District Judge, Tirunelveli, exonerated the revision petitioner insofar as the charges 1, 2 and 6. However, charges 3, 4 and 5, were upheld, confirming the order passed by the Deputy Registrar of Co-operative Societies. Challenging the order of the Tribunal, confirming 3 charges levelled against him, C.R.P.(MD)No.218 of 2019 has been filed by the revision petitioner.

7. In the meantime, the Deputy Registrar of Co-operative Societies, also proceeded to pass an order of attachment, attaching the



C.R.P.(MD).Nos.217 & 218 of 2019 and 550 of 2023

personal property of the revision petitioner in and by order dated 21.01.2016. Aggrieved by the same, the revision petitioner has preferred C.R.P.(MD)No.217 of 2019.

8. C.R.P.(MD)No.550 of 2023 has been preferred by the Society, aggrieved by the order of the Tribunal setting aside 3 of the 6 charges levelled against the revision petitioner.

9. I have heard the learned counsel for the revision petitioner, learned counsel for the second respondent and the learned Additional Government Pleader for the first respondent.

10. The case of the revision petitioner is that though admittedly he was the President of the Society, he did not have control over the day-to-day administration of the Society and it was the Secretary who was having direct control over all accounts, jewel loans and the day-to-day management of the Society. The bye-laws of the Society also clearly indicates that it is only the Secretary who is responsible for the same.



C.R.P.(MD).Nos.217 & 218 of 2019 and 550 of 2023

Further, it is specifically contended by the revision petitioner that when he was the President, he found the activity of the Secretary to be suspicious and lodged a complaint against the Secretary for the illegalities committed by him and therefore, the President, by no stretch of imagination, can be linked with the illegal activities of the Secretary and be proceeded against. The resolution dated 30.03.2015 which is exhibited before the authorities below, states that the Secretary alone was responsible for maintaining registers and he was in-charge of the cash available and he was also responsible for issuing receipts, besides also maintaining accounts, including day book ledger and cash book. Even transactions relating to jewels loans were also dealt with only by the Secretary. However, the enquiry officer as well as the Tribunal have held that both the revision petitioner and the Secretary are liable stating that the revision petitioner was having an overall supervising power of the Society and therefore, he could not be exonerated, even though the duties were that of the Secretary.

11. The learned counsel for the revision petitioner would invite my attention to the enquiry report and the discussion with regard to the six issues and contend that despite the discussions and findings, the report



C.R.P.(MD).Nos.217 & 218 of 2019 and 550 of 2023

WEB COPY

clearly held that it was only the Secretary, who was responsible for the various losses. The enquiry officer also recorded that the Secretary had absconded and only the revision petitioner appeared and the finding of the enquiry report is also that the Secretary had misappropriated the funds of the Society to the tune of Rs.15,53,219/-. There was no adverse finding as against the revision petitioner in the said enquiry report. However, the first respondent after discussing the findings in the enquiry report, proceeded to hold that the revision petitioner was jointly and severally liable for the losses and held that all the 6 charges were proved against the revision petitioner.

12. The learned counsel for the respondent would submit that the revision petitioner as President has acted negligently and in fact, he has handed over one of the 2 safety locker keys which was available with him to the Secretary and therefore, it is a clear case where the petitioner was hand-in-glove and therefore, the order passed in the surcharge proceedings under Section 87 of the Act has to be reversed and contended that the Tribunal erroneously exonerated the revision petitioner in respect of 3 charges.



C.R.P.(MD).Nos.217 & 218 of 2019 and 550 of 2023

WEB COPY

13. The learned counsel for the revision petitioner would also submit that the revision petition, at the instance of the respondent in C.R.P. (MD)No.550 of 2023 is belated and ought to be dismissed only on the ground of delay and laches, especially, having approached this Court under Article 227 of the Constitution of India. He would further state that the revision has been signed by the President of the Society, though in the cause title, it is mentioned that the revision petitioner is represented by its Vice President. On this ground also, the revision petitioner would pray for dismissal of the C.R.P.(MD)No.550 of 2023.

14. Meeting the above contentions, the learned counsel for the respondent would submit that the common order dated 03.10.2018 passed by the Surcharge officer as well as the Tribunal is any way being challenged by this Court in C.R.P.(MD)No.218 of 2019 and therefore, no prejudice should be caused to the revision petitioner, if the disallowed charges are also examined and tested by this Court. Insofar as the filing of the revision by the President, the learned counsel for the respondent would submit that it is only a technical plea and liable to be rejected summarily



C.R.P.(MD).Nos.217 & 218 of 2019 and 550 of 2023

for the simple reason that the action is sought to be taken against the former President and there is no impediment for the current President of the Society who stepped into his shoes to initiate action against the former President.

15. Before proceeding to deal with the charges on merits, in view of the technical plea taken by the revision petitioner, I proceed to adjudicate the same first. No doubt, there is a delay in filing C.R.P. (MD)No.550 of 2023 as against the disallowed charges. However, as rightly contended by the learned counsel for the respondent, no serious prejudice is caused to the revision petitioner, since the surcharge order was passed in and by a common order and the Tribunal also passed only a common order and when a part of the common order is being challenged before this Court, no serious prejudice will be caused to the revision petitioner, if the remaining part of the common order is also examined to see if it is in order or not.

16. With regard to the next contention regarding the President signing the revision papers, I do not see any merit in the said contention.



C.R.P.(MD).Nos.217 & 218 of 2019 and 550 of 2023

As rightly contended by the learned counsel for the respondent merely because, the delinquent officer is the Former President of the Society, it does not in any way render the subsequent President powerless to represent the Society and initiate action against a former Office bearers, namely, the President, in the facts of this case.

17. Now, coming to the 6 charges, I have already briefly enlisted the same hereinabove. The findings of the Enquiry Officer are clearly pointing against the Secretary alone and absolutely there is no element of involvement of the President having been indicated or found. However, the first respondent while passing the order under Section 87 of the Act, after factoring the findings of the Enquiry Officer has merely proceeded to hold that the revision petitioner is also negligent in discharging his duties and responsibilities and therefore, he is jointly and severally liable, along with the Secretary. The Tribunal has also concurred with the findings of the first respondent and insofar as the charges 1, 2 and 6, the Tribunal held that the order in surcharge proceedings was invalid and improper and liable to be set aside. However, insofar as charges 3,4 and 5, the Tribunal confirmed the surcharge order passed by the first respondent. The reasoning adopted



C.R.P.(MD).Nos.217 & 218 of 2019 and 550 of 2023

WEB COPY

by the first respondent as well as the Tribunal are that the President admitted to the fact that he had handed over the locker key to the Secretary and that the same would raise an adverse presumption against the revision petitioner. It has also been held that the petitioner was having custody of the godown key and by allowing the Secretary to take out the fertilizers and without verifying the stock, the petitioner had rendered himself liable, for having acted against the interest of the Society by joining the hands of the Secretary. Now, the law is settled that ground of dereliction of duty or negligence on the part of the delinquent would alone not be sufficient to attract surcharge proceedings and the mental element is necessarily to be proved before fixing liability on the delinquent officer. Thus, it has to be seen if the acts of the delinquent caused loss to the Society and whether the element of *mense rea* existed and rendered the acts wilful and not *bonafide*.

18. In this regard, the learned counsel for the revision petitioner would invite my attention to the decision in ***K.Ajay Kumar Gosh V. Tribunal for Co-operative Cases (District Judge of Kanyakumari District), Nagercoil*** reported in ***2009-4-MLJ-992***, where a Division Bench of this Court held that in order to pass a surcharge order under Section 87



C.R.P.(MD).Nos.217 & 218 of 2019 and 550 of 2023

WEB COPY

of the Act, the delinquent officer should have done an actionable wrong either by commission or omission in a deliberate and reprehensible manner, with reckless callousness and with supine indifference, without taking due care and caution ordinarily expected from a reasonable and prudent man under those existing circumstances. In the absence of such categorical finding by the respondents, it is not possible to mulct the delinquent officer with the loss caused to the Society.

19. The learned counsel for the revision petitioner would also rely upon a judgment of this Court in C.R.P.(NPD)No.428 & 429 of 2021 (*Mahalingam V. The Deputy Registrar of Co-operative Societies (Housing)*), dated 29.11.2021, where this Court held that unless wilful negligence or callous indifference is established, proceedings under Section 87 cannot be sustained.

20. The learned counsel for the revision petitioner would further rely upon another judgment of this Court in C.R.P.(MD)No.841 of 2012 (*V.Veeramani V. The Deputy Registrar, Co-operative (Housing Board)*), dated 08.10.2021, this Court held that proceedings under Section 87 of the



C.R.P.(MD).Nos.217 & 218 of 2019 and 550 of 2023

WEB COPY

Act cannot be initiated against the petitioner in the absence of any wilful negligence on his part.

21. The learned counsel for the revision petitioner would also rely upon the decision of this Court in W.P.(MD)No.13231 of 2020 (*Francis V. The Deputy Registrar of Co-operative Societies*), dated 25.04.2023, where this Court held that Section 87 of the Act can be deployed against a person only if the statutory requirements set out therein stand fulfilled and before fastening surcharge liability on a person, it must be demonstrated that he was guilty of breach of trust or wilful negligence. It was further stated that mere lapse in conducting inspection or oversight will not be sufficient to attract Section 87 of the Act.

22. Insofar as delay in filing C.R.P.(MD)No.550 of 2023, the learned counsel for the revision petitioner would refer to the decision of this Court in C.R.P.No.3030 of 2021 (*M.Rajagopal V. S.Manimala*), dated 05.01.2022, where this Court held that even though there is no limitation for invoking the constitutional remedy under Article 227 of the Constitution of India, the petitioner who seeks to invoke the supervisory



jurisdiction, must show that he is not guilty of laches.
WEB COPY

23. However, as already discussed in view of the peculiar facts of the present case that a common order was passed by the Deputy Registrar Cooperative Society, the same was challenged before the Tribunal and the Tribunal also passed a common order and one part of the common order being challenged at the instance of the revision petitioner, no serious prejudice being caused to the revision petitioner, if the said revision is also considered along with the other revisions.

24. Apart from the above, the learned counsel for the revision petitioner would also place strong reliance on the judgment of the Criminal Court in C.C. No. 1 of 2017, where the Criminal Court has acquitted the revision petitioner of all the charges and he would therefore submit that when the charges are the same in both the proceedings, the acquittal of the revision petitioner can be taken into account and surcharge proceedings also be decided on the basis of the said acquittal.

25. Per contra, the learned counsel for the respondent would



C.R.P.(MD).Nos.217 & 218 of 2019 and 550 of 2023

WEB COPY

submit that the criminal proceedings stand on an entirely different footing, where the burden of proof is much heavier contrary to surcharge proceedings, where preponderance of prohibition would be enough to prove the delinquent's guilty and he would therefore state that merely because the delinquent officer was acquitted in the criminal Court, that would have no bearing on the present proceedings.

26. The learned counsel for the revision petitioner would also place reliance on the decision of the Hon'ble Supreme Court in Civil Appeal No.7935 of 2023 (**Ram Lal V. State of Rajasthan**), dated 04.12.2023. In the said decision, the Hon'ble Supreme Court has held as follows:

“25. Expressions like "benefit of doubt" and "honorably acquitted", used in judgments are not to be understood as magic incantations. A court of law will not be carried away by the mere use of such terminology. In the present case, the Appellate Judge has recorded that Ex. P-3, the original marksheet carries the date of birth as 21.04.1972 and the same has also been proved by the witnesses examined on behalf of the prosecution. The conclusion that the acquittal in the criminal proceeding was after full consideration of the



prosecution evidence and that the prosecution miserably failed to prove the charge can only be arrived at after a reading of the judgment in its entirety. The court in judicial review is obliged to examine the substance of the judgment and not go by the form of expression used.

27. We are additionally satisfied that in the teeth of the finding of the appellate Judge, the disciplinary proceedings and the orders passed thereon cannot be allowed to stand. The charges were not just similar but identical and the evidence, witnesses and circumstances were all the same. This is a case where in exercise of our discretion, we quash the orders of the disciplinary authority and the appellate authority as allowing them to stand will be unjust, unfair and oppressive. This case is very similar to the situation that arose in G.M. Tank (supra).”

27. Coming back to the facts of the present case, I find that the very same 6 charges were also subject matter of the criminal proceedings and the witnesses examined before the criminal Court were also the same witnesses and documents exhibited were also the same. In fact, the first respondent has been examined in the criminal Court as P.W.1 and the enquiry officer was also examined as P.W.7. On a reading of the judgment of the Criminal Court, I find that the criminal Court has concluded that the



C.R.P.(MD).Nos.217 & 218 of 2019 and 550 of 2023

revision petitioner was entitled to be acquitted and it is not a mere case of “benefit of doubt” or “honourable acquittal”. It is admitted that the said criminal Court proceedings have also attained finality. I had an occasion to deal with a similar issue in ***M.Ravi V. The Principal Security Commissioner & Disciplinary Authority*** reported in ***MANU/TN/4236/2023***, where I held as follows:

“24. This Court also finds force in the argument of the learned Senior counsel for the petitioner that when the charges were identical in the criminal case as well as the departmental proceedings, the documents relied also being one and the same and even the witnesses are also one and the same, then in such circumstances, as laid down by the Hon'ble Supreme Court as referred to herein supra, the departmental proceeding cannot take a different view, when the Criminal Court had acquitted the delinquent.”

28. The said view taken by me has been approved by the Hon'ble Supreme Court in ***Ram Lal's*** case, very recently. The said ratio is fully applicable to the facts of the present case. All the 6 charges were subject matter of the criminal proceedings and the nature of evidence let in and the witnesses examined were all the same in both the proceedings. Thus, I find



C.R.P.(MD).Nos.217 & 218 of 2019 and 550 of 2023

WEB COPY

force in the submission of the learned counsel for the revision petitioner that in view of the acquittal order passed by the criminal Court having attained finality, the revision petitioner is entitled to relief.

29. Insofar as the C.R.P.(MD)Nos.217 of 2019, in view of the findings in C.R.P.(MD)No.218 of 2019 and C.R.P.(MD)No.550 of 2023, I do not find any in merit in the impugned order passed by the Executing Court and the procedure followed is not in accordance with law and the order of attachment is improper. I find that Section 167 of the Act read with Rules 126 and 140 of the Tamil Nadu Co-operative Societies Rules, 1988, clearly contemplate an opportunity to furnish security before passing any order of attachment. The said procedure has not been followed. However, in view of the charges being set aside against the revision petitioner, the order of attachment cannot be sustained and therefore, the revision is to be allowed.

30. For all the above reasons, C.R.P.(MD)Nos.217 and 218 of 2019 are allowed and C.R.P.(MD)No.550 of 2023 is dismissed. There shall be no order as to costs. Consequently, connected miscellaneous petition is



C.R.P.(MD).Nos.217 & 218 of 2019 and 550 of 2023

closed.

WEB COPY

Internet : Yes
Index: Yes/No
Neutral Citation: Yes/No
Ls

20.12.2023

To

1. The Principal District Judge,
Tirunelveli,
2. The Deputy Registrar of Co-operative Societies,
Deputy Registrar of Co-operative Society office,
Cheranmahadevi.
3. The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



C.R.P.(MD).Nos.217 & 218 of 2019 and 550 of 2023



WEB COPY



C.R.P.(MD).Nos.217 & 218 of 2019 and 550 of 2023

P.B.BALAJI,J.

Ls

order in
C.R.P.(MD)Nos.217 & 218 of 2019
and 550 of 2023

20.12.2023