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C.R.P. No.2022 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.08.2024

CORAM

THE HONOURABLE Mr. JUSTICE P.DHANABAL

CRP. No.2022 of 2022
and C.M.P. No.10355 of 2022

The Management of
Sri Natesar Mills Employees
and the Erode District Medical
Employees' Co-op. Stores Limited,
represented by its President ... Petitioner / 2nd Respondent /
Surcharge Officer..
Vs.

1. R. Mohankumaran S/o. N. Rajan ... 1st Respondent / Appellant /
Defendant

2. The Deputy Registrar of Co-op. Societies
Erode Circle. 2nd Respondent / 1st Respondent.

PRAYER: Civil Revision Petition is filed under Article 227 of Constitution of India to set aside the judgment and decree dated 21.01.2014 made in CMA (CS) No.35 of 2013 on the file of Principal District and Sessions Court, Erode reversing the surcharge order dated 07.02.2013 in Na. Ka. No.69/2012 Sa.Pa passed by the 2nd respondent and direct the 1st respondent to pay the liability found due under the surcharge proceedings.

For Petitioner : Mr. K.V. Ananthakrishnan
For Respondents : Mr. L.P. Shanmuga Sundaram,
[for R1]
R2 - Left.

ORDER



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The Civil Revision Petition is filed as against the order passed in CMA (CS) No.35 of 2013 on the file of Principal District and Sessions Court, Erode, wherein the 1st respondent herein has filed the said Civil Miscellaneous Appeal challenging the proceedings of Na. Ka. No.69/2012 Sa.Pa on the file of the Deputy Registrar of Co-op. Societies, Erode Circle. The said Civil miscellaneous appeal was allowed and the order passed by the Deputy Registrar, Co-operative Societies, Erode was set aside. Against which, the present civil revision petition is filed.

2. The short facts necessary to dispose this petition are as follows:-

The 1st respondent was working as Special Officer of Chennimalai Urban Co-operative Bank and at the relevant point, he was given additional charge of Special Officer of 6 co-operative Societies. An enquiry under Section 81 of Tamil Nadu Co-operative Societies Act was conducted and during 01.08.2007 to 03.08.2010, various irregularities were committed in the Society and the 1st respondent along with others, caused loss to the tune of Rs.32,12,918.88 with regard to the expiry of essential commodities, purchase of oil, causing deficit stock, sale of old gunny bags, deficit of empty kerosene barrels, not taking any action for recovery of loan and for creating false bills with regard to the purchase of cooking oil. The enquiry report reveals that



there was a loss of Rs.32,12,918.88 caused to the Society. Thereafter, based on the enquiry report under Section 81 of Tamilnadu Co-operative Societies Act, the proceedings, under Section 87 of Tamilnadu Co-operative Societies Act was initiated against the delinquents. The enquiry officer fixed the liability on the 1st respondent, the Special Officer who was holding the additional charge in respect of the petitioner co-operative Society at the relevant time along with other delinquents. Challenging the said order, he filed a Civil miscellaneous appeal and the same was allowed by holding that the 1st respondent was only a supervisory authority and he had additional incharge of 6 Societies and there was no any willful negligence on the part of the 1st respondent.

3. The learned counsel appearing for the petitioner would contend that though the 1st respondent was holding additional charges between 01.08.2007 and 03.08.2010, he was negligent in his duty and he committed grave illegality within the purview of Section 87 of Tamil Nadu Co-operative Societies Act. The District Court has rendered its findings that since all the Societies are situated with the radius of 30 kms, it was not possible for the 1st respondent to look after the administration of the co-operative stores is totally against the provisions of the Act. The 1st respondent was given full



opportunity by following the principles of natural justice and enquiry was concluded. As per the enquiry report, loss caused to the tune of Rs.1,73,000/- due to his non-verification of accounts. The learned District Judge has held that misappropriations were done only by the Secretary and not by the Special Officer, but failed to consider that he certified the false accounts created by other Staff and thereby allowing them to misappropriate the amount, that amounts to deliberate and willful negligence. Rule 8 of The Tamil Nadu Co-operative Societies Rules and guidelines issued thereunder will not over ride the provisions of the main Act. Mainly because of holding additional charges, he cannot escape from the liability after fraudulent transactions. Therefore, the appellate Court failed to consider the above said aspects and passed judgment by setting aside the surcharge proceedings as against the 1st respondent. Therefore, the judgment and decree passed by the appellate Court are liable to be set aside by allowing this revision petition.

4. In support of his contention, the learned counsel appearing for the petitioner has relied upon the following judgments:-

1. Sathyamangalam Cooperative Urban Bank vs. Deputy Registrar of Co-operative Societies reported in MANU/TN/0699/1979.

2. S. Subramanian vs. Deputy Registrar of Co-operative Societies



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(Housing), Cuddalore & others made in W.A. 707 of 1994.

3. C. Kamaraj vs. The Registrar of Co-operative Societies reported in 2017(1) CTC 258.

4. M. Karuppannan vs. The Special Tribunal for Co-op.cases and others made in W.P. 30481 of 2014.

5. The learned counsel appearing for the 2nd respondent would contend that the findings of the enquiry report and the surcharge proceedings under Section 87 of the Act as against this respondent are all against law. There was no any wilful negligence on his part and he was holding additional incharge of 6 Societies and due to his workload, he was unable to supervise effectively and the 1st respondent was not directly participating in the alleged misappropriation of funds. Already the Society has also given guidelines to take action against the supervisory authorities. As per the guidelines, mere failure to supervise the Society when holding additional charge, they cannot be brought under the purview of surcharge proceedings and at the most, they can be dealt with only departmental proceedings. Therefore, the appellate Court, after considering his case, has correctly allowed the appeal and set aside the surcharge proceedings. Therefore, the present civil revision petition is liable to be dismissed.

6. Heard both sides and perused the entire materials available on



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7. In this case, 6 charges have been framed as against the 1st respondent. Even as per the enquiry report, the 1st respondent has not supervised the bank papers effectively and it is also an admitted fact that the 1st respondent was holding 6 additional charges at the relevant point of time. As per the surcharge proceedings, the 1st charge for causing loss in respect of the expiry of goods, the 1st respondent was absolved from the liability. The next charge for causing loss to the tune of Rs.7,25,142.50 in respect of deficit stock of empty gunny bags also, he was absolved from the liability. The charge in respect of causing loss of Rs.1,73,000.80 for deficit of empty kerosene barrels, the 1st respondent along with the Manager, were found guilty.

8. The allegations as against the 1st respondent is that if proper inspection was made by the 1st respondent, such loss could have been prevented. There is no willful negligence on the part of the 1st respondent and there is no evidence to prove that there was wilful negligence. As far as charge in respect of non-taking action for recovery of money, the 1st respondent was not properly inspected the Society and thereby, the liability



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was fixed against him. In all the proved charges, the liability was fixed as against the 1st respondent for his non-effective supervision. A criminal case was also registered as against the Secretary of the Society for misappropriation of funds and this 1st respondent is not an accused in the criminal case.

9. A careful perusal of the enquiry report and the order passed by the I Appellate Court, there is no any wilful negligence on the part of the 1st respondent. In the absence of any material to show that the 1st respondent had wilfully acted, he cannot be made liable for surcharge. The failure on the part of the 1st respondent to inspect the Society at the relevant point of time, he cannot be made liable for misappropriation and the loss was caused by the other Staff of the Society. The only allegation as against the 1st respondent is that he has not supervised the Society properly. Therefore, the 1st respondent cannot be fastened with liability in the absence of any willful negligence on his part. Moreover, the petitioner Society also issued guidelines in respect in initiating surcharge proceedings, wherein it is stated that no proceedings could be commenced as against the persons, who are holding additional charges, particularly in Rule 8 of the Tamil Nadu Cooperative Manual and Guidelines. Rule 8 of the Tamil Nadu Co-operative Manual and Guidelines is extracted hereunder:-



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"...departmental Officers are working on foreign service in Prosecution against the Co-operative organization as Chief Executive Departmental Officers. Officers or otherwise and at times, in additions to their regular government post, they are also holding additional charge of the post of Special Officers In more than one cooperative society and functioning as such, they are holding supervisory posts also over such institution. The Act or the By law of the society do not differentiate a regular or additional charge Chief Executive Officer/Special Officer and both are the same in the eyes of law. These officers either in a regular capacity and more so in the additional capacity or in a supervisory capacity may not have the chance to scrutinise each and every transactions of the society. They would have failed to check and scrutinise the accounts and or exercise effective control over the subordinate staff resulting in the criminal irregularities, frauds and offences under IPC committed by the staff. Failure of such nature i.e., failure to discharge their duties properly or negligence, or omissions, unless the Inquiry, Inspection or Investigation officer finds it prima facie, that such officers with mala fide criminal intention committed criminal breach of trust and or criminal misappropriation and or aided and abetted such criminal offences by the subordinate staff, will not fasten criminal liability on such officers. On the other hand, the failure of this nature, will be failure to discharge their duties properly or negligence and this may be dealt with through disciplinary proceedings. Hence the departmental officers who are not directly involved in the frauds or misappropriations need not be included as delinquents, in a routine manner, in the inquiry reports or complaints filed with the police...."

10. On a careful perusal of the guidelines issued by the Government of Tamil Nadu, it is clear that mere failure to supervise the Society, when holding additional charges, they cannot be brought under the purview of Surcharge proceedings and at the most, they can be dealt with only the departmental proceedings.

11. Therefore, in view of the above said rule and in the absence of misappropriation, fraud or falsification of accounts, irregularities of omissions



by the 1st respondent and the misappropriations were committed only by the other Staff of the Society and the criminal case also initiated only against the Secretary, the 1st respondent cannot be fastened liability in the absence of willful negligence.

12. The learned counsel appearing for the petitioner has relied upon the following judgments:-

1. Sathyamangalam Cooperative Urban Bank vs. Deputy Registrar of Co-operative Societies reported in MANU/TN/0699/1979.

2. S. Subramanian vs. Deputy Registrar of Co-operative Societies (Housing), Cuddalore & others made in W.A. 707 of 1994.

3. C. Kamaraj vs. The Registrar of Co-operative Societies reported in 2017(1) CTC 258.

4. M. Karuppannan vs. The Special Tribunal for Co-op.cases and others made in W.P. 30481 of 2014.

On a careful perusal of the above said judgment, it is clear that the decree of negligence that is contemplated under Section 71(1) of the Tamil Nadu Co-operative Societies Act is not a mere negligence, but willful negligence. The conduct of a person, to amount to 'wilful negligence' must be something more than ordinary negligence. The act done or omitted to be done must be intended or must involve such reckless disregard of security and right



as to imply bad faith.

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13. Further, Section 87 of the Tamil Nadu Co-operative Societies Act, 1983 under which the surcharge proceedings are initiated, makes a person liable to repay or restore the money or property of a society, if it is found in an inquiry or investigation that he had (i) misappropriated any money or other property of the society, (ii) fraudulently retained any money or property of the society (iii) been guilty of breach of trust, or (iv) caused any deficiency in the assets of the society, by breach of trust or wilful negligence, or (v) made any payment not in accordance with the Act, the rules or bylaws.

14. In the case on hand, there is no sufficient material to establish that the 1st respondent was wilfully neglected or misappropriated any money and fraudulently retained any money or property and have been guilty of breach of trust or caused any deficiency in the assets of the society as discussed in the above said judgments. Therefore, the said case laws will not be applicable to the present facts of the case. Since there is no any material to fasten liability on the ground of willful negligence, the surcharge proceedings initiated against the 1st respondent are unsustainable.

15. In this context, the lower Appellate Court, after referring the



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judgments of Hon'ble Supreme Court as well as this Court and after elaborate discussions, correctly applied the law and allowed the appeal by setting aside the surcharge proceedings. The said order is a well reasoned order and no infirmity or perversity found in the order passed by the Appellate Court and does not warrant any interference by this Court.

16. In view of the above discussions, this Court is of the opinion that the civil revision petition has no merits and deserves to be dismissed.

17. Accordingly, the Civil Revision Petition is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

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Index : Yes/No
Speaking order/non-speaking order
mjs

To

1. The Principal District and Sessions Court, Erode.
2. The Deputy Registrar of Co-op. Societies, Erode Circle.



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