



C.R.P.Nos.1652 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.08.2024

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

C.R.P.Nos.1652 of 2024

K.Muthusamy

... Petitioner

Vs.

1.The Principal District Judge/
Cooperative Tribunal,
Namakkal.

2.The Deputy Registrar,
O/o.Deputy Registrar of Co.Operative Societies,
Thiruchengodu Circle,
Thiruchengodu – 637 211,
Thiruchengodu Taluk,
Namakkal District.

3.The Special Officer,
S.1078 Punjai Edaiyurkilmugham,
Primary Agricultural Cooperative Bank Ltd.,
Olapalayam (Post) – 638 182,
Paramathivelur (Post),
Namakkal District.

4.K.Thangavelu

5.R.Marappan

6.R.Subramaniam

7.R.Pugalendhi

8.M.Uthirakumar

... Respondents



C.R.P.Nos.1652 of 2024

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the judgment and decree dated 30.10.2010 passed in CMA CS.No.48/2002 on the file of the Principal District Judge/Cooperative Tribunal, Namakkal confirming the surcharge order, dated 8.10.2001 passed in Na.Ka.No.8009/2000 SAPA on the file of the Registrar of Co.op Societies, Tiruchengode Circle, Tiruchengode, Namakkal District.

For Petitioner : Ms.Ganthimathi for Ms.S.Girija
For R1 to R3 : Mr.T.Arunkumar,
Additional Government Pleader

ORDER

The petitioner/7th defendant filed the present civil revision petition challenging the impugned judgment, dated 30.10.2010 in C.M.A(CS)No.48 of 2002 passed by the learned Principal District Judge, Namakkal.

2.Gist of the case is that Punjai Idaiyar Keezhmugam Primary Agricultural Cooperative Bank Limited (In short 'Bank') is registered under the Tamil Nadu Cooperative Societies Act, 1983 (In short 'The Act'). The Bank is administered by the Board of Directors under the President. When the Board of Directors were superseded by a Special Officer has been



appointed to administer the Bank. The Board took charge of the Bank on 31.10.1996 from the Special Officer and later the Board was superseded on 25.05.2001 and the Special Officer took charge of the Bank. The 2nd respondent initiated surcharge proceedings on the basis of the enquiry ordered under Section 81 of the Act *vide* proceedings in Na.Ka.7400/99 PACB, dated 08.09.1999. A report was submitted on 16.06.2000 and thereafter, show cause notice issued under Section 87(1) of the Act on the basis of the enquiry report for the irregularities committed by the employees of the Bank. The explanation of the Bank employees rejected and surcharge proceedings under Section 87 of the Act ordered in Na.Ka.No.8009/2000 SA.PA, dated 08.10.2001. The surcharge proceedings were against the Employees *viz.*, Thangavel, Clerk; Marappan, Assistant Secretary R.Subramaniam, Secretary; R.Pugalenth, Cashier; M.Uthirakumar; President and against the members *viz.*, M.Palanisamy, K.Muthusamy/petitioner and K.Kandasamy. In the year 1996-1997 and 1999-2000, certain irregularities committed in the savings bank account by the above said persons and caused loss to the Society to the tune of Rs.8,07,037/- and interest of Rs.3,47,989/-. The Society account was reconciled with the Central Cooperative Bank and found misappropriation of



Rs.2,15,500/- and there was difference in individual savings account which was committed by Thangavel, Clerk, Marappan and Assistant Secretary.

The said Thangavel, Clerk and Marappan, Assistant Secretary admitted misappropriation committed by them and paid the amount to the Bank of Rs.9,72,893/- and the balance amount remains to be paid is Rs.6,75,420/-. Hence, the surcharge proceedings ordered against the Members viz., M.Palanisamy, K.Muthusamy/petitioner and K.Kandasamy. The said three Members preferred an appeal in C.M.S(CS)No.48 of 2002 before the learned Principal District Judge, Namakkal which came to be dismissed *vide* impugned judgment, dated 30.10.2010. Against which, the present civil revision petition filed.

3.The learned counsel for the petitioner submitted that the surcharge proceedings passed by the 2nd respondent is not maintainable which is against the evidence and probabilities of the case. The order of surcharge passed by the 2nd respondent is based on the enquiry report under Section 81 of the Act and further the surcharge proceedings does not contain essential ingredients of Section 87 of the Act. The learned counsel further submitted that the entire amount remitted to the Bank by the employees of the Society.



While that being so, the petitioner is not liable to pay any accrued interest.

She further submitted that the enquiry officer completed the enquiry without giving opportunity and not permitted the petitioner to examine or cross examine any witness. It is contended that the enquiry report under Section 81 of the Act not furnished to the petitioner which is mandatory under Section 87(4) of the Act. Hence, no surcharge proceedings can be initiated and no order can be passed against the petitioner. It is alleged that the petitioner having Membership No.1893 and savings bank account in No.955, gave explanation that he is not aware about the transactions from other bank accounts to his bank account. It is further alleged that as a Member the petitioner handed over signed cheques to the Clerk Thangavel, nothing more. The enquiry report itself is that it is only a Book Loss/Book Adjustment and there was no monetary gain or loss to the petitioner or to the Society or to the Central Cooperative Bank.

4.She further submitted that the petitioner was not served with any summon and no enquiry under Section 81 of the Act conducted against the petitioner. Without enquiry under Section 81 of the Act, no surcharge proceedings under Section 87 of the Act can be initiated. This being so, the



Lower Court not considered the petitioner's contention and dismissed C.M.A(CS)No.48 of 2002. In support of her submissions, the learned counsel for the petitioner relied on the decisions of this Court in the cases of ***“P.Elias Versus The Special Officer, Kumari District Tailoring Women Development Cottage, Cooperative Society Ltd., No.51, Nagercoil in W.P.No.23530 & 33127 of 2003, dated 26.07.2013”*** and ***“S.B.Nandagopalan Versus The Deputy Registrar/Surcharge Officer, Under the Tamil Nadu Cooperative Societies Act, Paramakudi in W.P.No.6974 of 2005, dated 06.11.2007”*** wherein this Court had held that mere reading of Section 87 of the Act, more specifically, the words and phrases would not include 'members'. Admittedly, in this case, the petitioner is a Member which is not in dispute, hence, no proceedings can be initiated. The relevant portion in ***P.Elias*** case is as follows:

“32.

(v) If the claim is based on an audit report under Section 80; or enquiry report under Section 81; or inspection or investigation under Section 82; or inspection of books under Section 83 of the Tamil Nadu Co-operative Societies Act ; or winding-up of the society, the claim shall be made only



WEB COPY



C.R.P.Nos.1652 of 2024

under Section 87 of the Tamil Nadu Co-operative Societies Act and the same shall not be made under Section 90 of the Tamil Nadu Co-operative Societies Act. To this extent, Section 90 shall stand excluded by Section 87 of the Tamil Nadu Co-operative Societies Act since Section 87 is a special provision whereas Section 90 is a general provision.

(vi) Depending upon the nature of the business of the society, the misappropriation or fraudulent retention of money or other property, or breach of trust, or loss caused to the society, may also constitute a dispute touching the business of the society in terms of Section 90 of the Act provided there is nexus between the business of the society and the act of the individual which resulted in loss.”

5.Mr.T.Arun Kumar, learned Additional Government Pleader appearing for the respondents 1 to 3 submitted that the petitioner is a Member having Membership No.1893 and saving bank account in No.955 in the Society for more than four years. The petitioner gave undertaking letter in surcharge proceedings that his account used for transfer of funds but he is not aware about what is the quantum and he gave undertaking that he would



make the payment for the loss of interest. After giving undertaking to repay of interest to the bank of Rs.97,461/-, the petitioner is liable to pay the said amount. He further submitted that in C.M.A(CS)No.48 of 2002, the same contention raised but rejected finding that during the year 1996-97 and 1999-2000 irregularities in the savings bank account committed by the officers of the Society namely K.Thangavel, Clerk; Marappan, Assistant Secretary; R.Subramaniam, Secretary; Pugalenth, Cashier, Uthirakumar, President and the Members of the Society viz., Palanisamy, Muthusamy/petitioner and Kandasamy and caused loss to the Bank. During reconciliation, the misappropriated amount in the individual savings bank account remitted by the Clerk Thangavel, Assistant Secretary Marappan, Secretary R.Subramaniam a sum of Rs.2,15,500/-. The Secretary of the Society R.Subramaniam confirmed that the amount misappropriated paid to the Clerk Thangavel and Assistant Secretary Marappan who are only liable to pay the amount. The contention of the petitioner is no enquiry report furnished to the petitioner. It is seen that the appellants in C.M.A(CS)No.48 of 2002 were given opportunity permitting them to pursue the accounts. Despite the same, the appellants failed to utilize such opportunity. Now making submission of non furnishing of enquiry report would vitiate the



surcharge proceedings is not sustainable.

WEB COPY

6.He further submitted that from the enquiry report, it is seen that the misappropriation and falsification of accounts not disputed but it is claimed that the misappropriation has been committed by the Clerk Thangavel and Assistant Secretary Marappan who paid the sum of Rs.16,48,313.26/- and made good the loss sustained by the Society. But the loss of interest to the Central Cooperative Bank for a sum of Rs.9,89,332/- is yet to be remitted. The Members of the Society admitted that they have handed over signed cheques having confidence over the Secretary in the Administration. In such circumstances, it is the petitioner who signed the cheque and handed over to face the consequences. Such being a position, the petitioner cannot feign ignorance. Hence, he strongly opposed the revision.

7.This Court considered the rival submissions and perused the materials available on record.

8.In this case, the enquiry under Section 81 of the Act conducted and report filed. Based on enquiry report under Section 81, surcharge



C.R.P.Nos.1652 of 2024

proceedings under Section 87 of the Act initiated. In the surcharge proceedings, it is recorded that the misappropriated amount of Rs.16,48,313.26/- repaid by the Clerk Thagavel Clerk and Assistant Secretary Marappan and also recorded that the Office Bearers of the Society viz., President, Secretary, Assistant Secretary, Accountant and Cashier are the persons who handled the society accounts and they were in-charge of the day to day affairs of the Society. From the enquiry report, it is seen that enquiry conducted with regard to loss committed in recovery of interest in jewel loans of nine numbers and with regard to title deeds deposit loan and recovery of the same within the stipulated period and not conducting proper auditing and inspection of the bank accounts by the Office Bearers of the Society. The finding of the enquiry report under Section 81 of the Act fixed the responsibility against the Clerk Thangavel, Assistant Secretary Marappan, Cashier Pugalenth, Secretary R.Subramanian and they would also recommended to be suspended from the Society. Likewise, recommendation was given to initiate disciplinary proceedings against the Bank Inspectors Malaiyappan, Duraisamy and Balasubramaniam for not conducting proper inspection and for suppression of fact. In this 81 enquiry report, dated 06.06.2000, there is no reference to the petitioner who is a



Member of the Society in any manner either as a defaulter in the jewel loan, title deposit loan or in the savings bank account. Further, no enquiry under Section 81 conducted against the petitioner neither called to give explanation nor as a witness. The petitioner not a party to the enquiry.

9.It is a precondition that 81 enquiry is the sole to fix the liability and following the same, 87 surcharge proceedings can be initiated. Without 81 enquiry, 87 surcharge proceedings can be proceeded. In the absence of any fixing of liability, the recovery proceedings is not permissible. The 87 report states that it is Book Loss and the petitioner/Member of the Society admitted handing over signed cheque to Senior Accountant Thangavel on his request. When the specific finding is only a Book Loss/Book Adjustment, no substantial loss or gain to the petitioner/Member. Holding the petitioner for recovery of interest under surcharge proceedings is not proper and permissible.

10.In the decisions referred by the learned counsel for the petitioner, it is held in the absence of 81 enquiry, no surcharge proceedings can be initiated. In this case, the admitted position is that no 81 enquiry conducted



C.R.P.Nos.1652 of 2024

against the petitioner. The foundational fact and requirement not proved and the petitioner was not entrusted with any amount and there is no loss suffered by the Bank at the instance of the petitioner. For breach of trust and misappropriation, entrustment is the primary requirement. Only after entrustment is proved, misappropriation would arise. In this case, admittedly, the petitioner is only a Member of the Society and no way connected to the day to day affairs and administration of Society. Such being a position, claiming interest from the petitioner for misappropriation would not arise. Added to it, no 81 enquiry against the petitioner. Hence, the impugned judgment, dated 30.10.2010 passed by the learned Principal District Judge, Namakkal in C.M.A(CS)No.48 of 2002 is not legally sustainable and the same is set aside. 11. Accordingly, this civil revision petition is allowed. No costs.

02.08.2024
($\frac{1}{2}$)

Speaking Order/Non Speaking Order
Neutral Citation: Yes/No
Index: Yes/No

vv2

To

1.The Principal District Judge/Cooperative Tribunal,



C.R.P.Nos.1652 of 2024

Namakkal.

2.The Deputy Registrar,
O/o.Deputy Registrar of Co.Operative Soceties,
Thiruchengodu Circle,
Thiruchengodu – 637 211,
Thiruchengodu Taluk,
Namakkal District.

3.The Special Officer,
S.1078 Punjai Edaiyurkilmugham,
Primary Agricultural Cooperative Bank Ltd.,
Olapalayam (Post) – 638 182,
Paramathivelur (Post),
Namakkal District.

M.NIRMAL KUMAR, J.

vv2

C.R.P.No.1652 of 2024



WEB COPY



C.R.P.Nos.1652 of 2024

02.08.2024
(¹/₂)