IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.10.2024

CORAM

THE HONOURABLE MS.JUSTICE R.N.MANJULA

C.R.P.No.2119 of 2022
and
C.M.P.No.10935 of 2022

1.The Deputy Registrar of Co-operative Societies,
Thulasingam Pillai Street,
Sankarampalayam, Vellore.

2.Kavanoor Primary Agricultural Co-operative Bank,
Rep. by its Secretary, Kavanoor, Arakonam Taluk,
Vellore District. ... Petitioners

Vs.

S.Muthu ...
Respondent

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, praying to set aside the order passed by the Principal District Judge, Vellore dated 31.03.2015 in C.T.A.No.16 of 2010 against the surcharge order passed in proceedings No.08/2006-2007 dated 31.10.2006.

For Petitioners : Mr.L.P.Shanmugasundaram

For Respondent : Mr.G.Jeremiah

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ORDER

The Civil Revision Petition has been filed challenging the orders of the learned Principal District Judge, Vellore/ Special Tribunal for Cooperative Cases dated 31.03.2015 made in C.T.A.No.16 of 2010.

2. The respondent has filed the above appeal before the Tribunal challenging the surcharge proceedings initiated against him by holding that he had caused a loss of Rs.1,07,888/- to the petitioner Bank. The above appeal has been allowed in favour of the respondent and aggrieved over that, this civil revision petition has been filed by the petitioners/ Co-operative Society.

3. The learned counsel for the petitioners submitted that the order of the Tribunal is erratic, as it has omitted to note that the respondent is also a party to the surcharge proceedings and that the order has been passed on an assumption that only the former Secretary Monoharan alone was a party to the surcharge proceedings.

4. On a complete reading of paragraph No.6 of the impugned order of the Tribunal dated 31.03.2015 it is seen that the Tribunal has not misunderstood the fact that the respondent is also a party to the surcharge proceedings. In fact, an explicit reference has been made in the above paragraph that the surcharge order has been passed against both the persons, denoting the respondent and the former Secretary Manoharan. There is no quarrel on the point that the mis-appropriation has been committed only by Manoharan and not by the respondent. Even in the surcharge proceedings the above fact has been recorded in a crystal clear manner. So far as this respondent is concerned, he invited the surcharge order against him in view of his failure to recover 21% interest on the amount liable to be paid by Manoharan and he had chosen to recover only 6% interest. The Tribunal has also recorded the above fact in its order. However it has rendered a finding that the respondent did not commit any mis-appropriation, but, only by abundant caution the surcharge order binding the respondent to the tune of Rs.1,07,888/- has been passed.

5. The learned counsel for the respondent submitted that the surcharge order cannot be passed against an employee for a mere negligence and the petitioners ought to have made out that the party concerned has committed wilful negligence. In support of his above contention, he relied on the decision of the Division Bench of this Court in ***S.Ramadevi Vs. Special Officer, Ambur Co-operative Sugar Mills*** reported in ***2016 SCC OnLine Madras 11328.*** In the said judgment it is held that in order to pass surcharge order by initiating surcharge proceedings under Section 87 of the Act, it has to be proved that the loss has been caused due to wilful negligence and it is not sufficient to prove that there is mere loss.

6. Admittedly, the respondent has not benefited himself by committing any mis-appropriation. Even by awarding lesser interest than the mandatory rate, the respondent did not get any personal benefit.

The surcharge order does not stated that the respondent had acted with premeditation or in a wilful manner. It is neither the case of the petitioners that the respondent has entered into conspiracy with Manoharan in order to levy lesser interest at 6%.

7. So far as the '*wilful negligence*' is concerned, the said phrase has not been defined in the Tamil Nadu Co-operative Societies Act. In the earlier judgments of the Division Benches of this Court in ***K.Ajay Kumar Gosh Vs. Tribunal for Co-operative Cases*** reported in ***(2009) 4 MLJ 992*** and ***S.Subraanian Vs. The Deputy Registrar of Co-operative Societies (Housing), Cuddalore*** reported in ***2002 (3) LW 185*** it has been held that mere negligence cannot be a ground for surcharge and it should be wilful negligence or intentional negligence and not mere carelessness or intention or inadvertence or a single lapse by oversight. In fact, the order has also extracted a portion of another judgment reported in ***Sathyamangalam Co-operative Urban Bank Ltd. Vs. Deputy Registrar of Co-operative Society (1980) 2 MLJ 17,*** where it is held as under:

"The degree of negligence that is contemplated

under Section 71(1) of the Tamil Nadu Cooperative Societies Act is not mere negligence, but wilful negligence. The word 'wilful' has not been defined in the Act. 'Wilfulness' or 'wantonness' imports pre-meditation or knowledge and consciousness that an injury or loss is likely to result from the act done or from the omission to act. It imports a constructive intention as to the consequences which, entering into the wilful act, the law imputes to the offender and in this way a charge, which otherwise would be mere negligence, becomes by reason of a reckless disregard of probable consequences, a wilful wrong. 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. In examining whether there is wilful negligence, it has to be seen first whether the person concerned is guilty of negligence and if so, whether the said wilful negligence is the proximate cause of the injury or loss sustained."

20. In the light of the decisions referred to above, it is clear that to pass surcharge order under Section 87 of the Act, appellants should have done an actionable wrong either by commission or omission in a deliberate *and reprehensible manner with reckless callousness and with a 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 appellants with the loss caused to the society."*

8. As per the above interpretation, for the phrase '*wilful negligence*' the petitioners ought to have established that the respondent had pre-meditation or knowledge and consciousness that an injury or loss is likely to result by the act done by him and that it is a wilful wrong. In order to support an allegation that the respondent has caused loss to the Society by acting in a wilful negligent manner, it has to be established that the respondent had acted in a careless and selfish motive for gain and as such there is no such motive has been attributed against the respondent.

9. For a better understanding of the above legal principles concerning '*wilful negligence*', I feel it is appropriate to extract the following paragraph of the judgment of the Division Bench of this Court in ***S.Ramadevi*** case (cited *supra*)

26. *We are, thus, of the view that as the legal principles are quite settled, we have to only look into the application of the same in the facts of the present case. We are of the view that the appellate authority was right in coming to the conclusion that there is no willful negligence in the case of the appellant and this aspect has really not even been seriously touched upon by the learned Single Judge. Merely because loss is caused would not suffice. The appellant is not the beneficiary. There is no such willful negligence attributed to her. This is apparent from even the enquiry report, which we have referred to aforesaid. Mere use of the words "negligence and careless with selfish motive for gain" would not suffice when actually the facts do not make out such a case. Thus, the surcharge officer certainly fell into an error in imposing the liability on the appellant. The enquiry report discussed aforesaid itself shows that it is the third respondent who is found to have taken advantage of the situation in seeking to obtain illegal gain for himself. The pay bill was prepared by the third respondent in the computer and the abstract of the department wise pay bill alone used to be furnished to* *the Accountant and the Chief Accountant (appellant) and signatures obtained. Thus, both of them had been signing on the department wise pay bill abstract without seeing the pay bills. The third respondent/Mr. A. Kabali, thus, took advantage of the fact that it was not possible for others to verify the cheques and test the salary list which was running into 300 pages. It is in these circumstances that the fourth respondent has been exonerated of the liability even though the abstract pay bill was required to be verified by him as an Accountant and he alone was supervising each and every matter. The cheques signed by the appellant are actually in the nature of counter-signature and the Accountant himself had been exonerated. Merely because the appellant was the head of the department, the liability could not be fastened on her as no case of willful negligence is made out.*

10. In fact, the above order would further clarify that even while stating that there is negligence and carelessness with selfish motive for gain, it should not be a mere statement or words, but, there should be material to substantiate the same. In the instant case, the appropriate authority in his order made during the surcharge proceedings has not mentioned even by words that the respondent has acted in a wilful negligent manner with some ulterior motive for gain or neither any finding had been rendered in this regard.

11. In the absence of establishing any wilful negligence against the respondent, it is not right on the part of the appropriate Authority to pass any surcharge orders against the respondent. As the appellate Tribunal has rightly appreciated the matter and rendered a finding that the surcharge order binding the respondent has been issued only by abundant caution and not by establishing the actual wilful negligence, I feel that the impugned order does not require any interference.

12. It is needless to state that the respondent is entitled to get the entire terminal benefits without any deduction in terms of the surcharge order passed against him and that it is obligatory on the part of the petitioners to release full/ part of the terminal benefits withheld in view of the earlier surcharge order.

13. Accordingly, this Civil Revision Petition is **dismissed**. No costs. Consequently, connected miscellaneous petition is closed.

18.10.2024

Index : Yes /No
Neutral Citation : Yes / No
Speaking / Non-speaking

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To

1.The Principal District Judge,
Vellore.

2.The Deputy Registrar of Co-operative Societies,
Thulasingam Pillai Street,
Sankarampalayam, Vellore.

3.The Secretary,
Kavanoor Primary Agricultural Co-operative Bank,
Kavanoor, Arakonam Taluk,
Vellore District.

R.N.MANJULA, J.

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