



CRP.No.3018 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.04.2024

CORAM:

THE HONOURABLE Mr.JUSTICE V.LAKSHMINARAYANAN

CRP.No.3018 of 2022
and CMP.No.16298 of 2022

R.Varatharajan

... Petitioner

Vs

1.The Deputy Registrar of Co-operative Societies
No.55, Kosamada Street
Tiruvannamalai.

2.The Special Officer
H.H.143, Mallavadi Primary Agricultural
Co-operative Bank
Mallavadi Village & Post
Tiruvannamalai Taluk.

... Respondents

Prayer : Civil Revision Petition filed under Article 227 of the Constitution of India praying to set aside the fair and decretal order made in C.T.A.No.22 of 2018, dated 07.07.2022 on the file of the Appellate Co-operative Tribunal /



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Principal District Judge, Thiruvannamalai, Thiruvannamalai District, partly confirming the order passed by the first respondent in Surcharge No.5 of 2008-2009 dated 29.07.2009 and pass such further or other orders as this Court may deem fit and proper in the circumstances of the case.

For Petitioner : Mr.C.Prakasam

For Respondents : Dr.S.Suriya, Addl. Govt. Pleader

ORDER

This civil revision petition challenges the order passed in C.T.A.No.22 of 2018, dated 07.07.2022, partly confirming the order of the Deputy Registrar of Co-operative Societies in Surcharge No.05/2008-2009.

2.1 The petitioner was the Secretary incharge / Chief Executive Officer of H.H.143, Mallavadi Primary Agricultural Co-operative Bank. On receipt of information about the irregularities and misappropriation of funds by the petitioner in the Co-operative Bank, the Deputy Registrar of Co-operative Societies, Thiruvannamalai, commenced *suo motu* proceedings under Section 81 of the Tamil Nadu Co-operative Societies Act. An enquiry was conducted by the Enquiry Officer, who came to the conclusion that there



were misappropriation of funds in the Society by three staff members which also included the petitioner herein. Pursuant to the enquiry, an enquiry report was submitted. Based on the enquiry report, the Deputy Registrar of Co-operative Societies initiated proceedings under Section 87 of the Act. During the course of enquiry, summons were sent to the petitioner on 29.04.2009, 20.05.2009, 17.06.2009, and 30.06.2009. On none of these dates, the revision petitioner chose to appear or submit his statement of defence. Being left with no other option, the Deputy Registrar proceeded to pass an exparte surcharge order dated 29.07.2009, directing the petitioner to pay a sum of Rs.8,36,568/- together with interest at the rate of 8% per annum.

2.2 Challenging the said order, an appeal was preferred before the Appellate Co-operative Tribunal cum Principal District Judge, Tiruvannamalai in C.T.A.No.4 of 2009. The said appeal was subsequently renumbered as C.T.A.No.22/2018, and it came to be allowed in part, directing the petitioner herein to pay a sum of Rs.7,96,568/-, vide order dated 07.07.2022.

3. Aggrieved by the said order, the present revision petition has been



presented before this Court. Heard Mr.C.Prakasam for the petitioner and Dr.S.Suriya for the respondents.

4. Mr.C.Prakasam would submit that the petitioner had been acquitted in a criminal proceeding in CrI.A.No.101/2020 initiated before the I Additional District and Sessions Judge, Vellore, on 09.12.2014, and therefore, it should result in an automatic dropping of surcharge proceedings. In other words, the plea of Mr.C.Prakasam is that as the civil revision petitioner has not been found guilty in criminal proceedings, he is entitled for discharge in the surcharge proceedings also.

5.1 I have carefully gone through the records. The petitioner was charged on five heads, while he was the Secretary of the aforesaid Agricultural Bank. Of the five items, the Deputy Registrar in his surcharge proceedings confirmed only Item Nos.2,4, and 5, amounting to a sum of Rs.8,36,568/-. However, it is pertinent to note that the petitioner was able to convince the Co-operative Tribunal insofar as charges against him under Item No.2 are concerned. He had shown accounts for Rs.40,000/-, and to that extent, the appeal was allowed and that portion of charge has been set aside.



Against the said order, the Deputy Registrar of Co-operative Societies has not preferred any revision and hence, that portion of the order has attained finality.

5.2 Insofar as Item Nos.4 and 5 are concerned, the charges relate to grant of loan to 14 Women Self-help Groups. In Charge Item No.4, the Deputy Registrar has categorically stated that receipts were produced by the petitioner for the loans issued to the tune of Rs.6,32,782/-, but in the ledger books, the amount outstanding was shown only as Rs.2,42,582/-, leaving other entries in the ledger as blank. Therefore, the lower Appellate Court has come to the conclusion that the appellant has caused a loss of Rs.6,32,782/- to the Society, and for the said alleged act, had sought an explanation from the appellant.

5.3 In respect of Item No.5, the charge framed was that, though there were no outstanding amounts in the savings accounts, as the Secretary, the petitioner had issued receipt for an excess sum of Rs.1,63,789/-, thereby committed misappropriation of the said amount.



5.4 Despite having given an opportunity to the petitioner to explain his situation, the petitioner did not avail the same. Therefore, the Deputy Registrar, the first respondent drew an inference that the petitioner is responsible for the acts committed and he is liable to the proceedings under Section 84 of the Tamil Nadu Co-operative Societies Act, and concluded that the petitioner is responsible for the loss incurred by the Society, amounting to a sum of Rs.7,96,568/-.

6. The argument of Mr.C.Prakasam is that since the petitioner was acquitted in the criminal proceedings, he should be discharged in the surcharge proceedings also. I am unfortunately not in tune with him. In any criminal proceedings, the burden of proof is on the prosecution and that the charges levied against the accused must be proved beyond reasonable doubt, but that standard is very high in comparison to preponderance of probability which arises in a civil or disciplinary proceedings.

7. Mr.C.Prakasam is correct in his submission that if a person is discharged in a civil or disciplinary proceedings initiated against him/her, as the case may be, he/she should normally be entitled to discharge of



surcharge proceedings. This is based on principle that if an accuser has been unable to prove the accused guilty of charges framed against him applying the principle of preponderance of probability, then it is well nigh for him to prove in a situation where reference requires a proof beyond a reasonable doubt. However, the principle cannot be vice-versa. Here Mr.C.Prakasam wants me to do so.

8. The learned Appellate District Judge cum Co-operative Tribunal has appreciated the facts correctly and on appreciation, all those facts which are found in favour of the petitioner, insofar as one charge is concerned, i.e., Item No.2 are taken into account and that portion of charge is accordingly set aside. And insofar as Item Nos.4 and 5 are concerned, the Appellate Tribunal confirmed the order of the Deputy Registrar of Co-operative Societies, Tiruvannamalai, dated 29.07.2009. I do not find any illegality or irregularity in the order of the learned Appellate Tribunal. I have no other option than to dismiss the revision.

9. The civil revision petition is accordingly dismissed and the order and decretal order of the Appellate Co-operative Tribunal cum Principal



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District Judge, Tiruvannamalai in C.T.A.No.22/2018, dated 07.07.2022, stands confirmed. No costs. Consequently, connected miscellaneous petition is closed.

04.04.2024

Index:Yes/No
Internet:Yes/No
Speaking order/Non-speaking order
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To:

- 1.The Appellate Tribunal / Co-operative Tribunal
Thiruvannamalai
Thiruvannamalai District.
- 2.The Deputy Registrar of Co-operative Societies
No.55, Kosamada Street
Tiruvannamalai.
- 3.The Special Officer
H.H.143, Mallavadi Primary Agricultural
Co-operative Bank
Mallavadi Village & Post
Tiruvannamalai Taluk.
- 4.The Section Officer
VR Section
High Court, Madras.



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V.LAKSHMINARAYANAN,J.

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