



C.R.P.No.4907 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.06.2024

CORAM

THE HON'BLE MR.JUSTICE V. LAKSHMINARAYANAN

C.R.P.No.4907 of 2023
and C.M.P.No.28925 of 2023

R.Moorthy

... Petitioner

-Vs-

1.The Deputy Registrar of Cooperative Societies
Tiruvannamalai.

2.The Secretary
The Thiruvannamalai District Police Employees
Cooperative Credit and Thrift ociety
Gandhi Nagar 6th Street, Tiruvannamalai.

... Respondents

Prayer : Civil Revision Petition under Article 227 of the Constitution of India to set aside Judgment and Decree passed by the Cooperative Tribunal cum Principal District Judge Tiruvannamalai dated 29-01-2019 in CMA-CS No.07/2019.

For Petitioner : Mr.L.P.Shanmugasundaram

For Respondents : Mr.A.Anandan
Government Advocate – for R1
Mr.K.Ashok Kumar
for Mr.Jeevagiridharan – for R2

ORDER

This Civil Revision Petition arises against the order passed in C.M.A.(CS) No.7 of 2018 on the file of the Cooperative Appellate Tribunal-cum-Principal District Judge at Tiruvannamalai dated 29.01.2019 in confirming the order of the Deputy



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Registrar of Cooperative Societies, Tiruvannamalai in Tha.Thi.No.5/2005/2006
(Na.Ka.No.4464/2004) dated 28.08.2006.

2. The facts leading to this revision are, the second respondent before me was formed for the purpose of welfare of the employees of the Police Department in the District of Tiruvannamalai. It was serving employees by giving loans with or without security in the form of jewels, purchase of consumer items etc. The civil revision petitioner was working as a writer/clerk in the second respondent society. He was initially appointed with effect from 31.12.1997. During the relevant time ie., between 1999 to 2001, the Society was in the management and control of one G.Ravichandran, the President of the Society and one Mr.A.K.Ravi, the Secretary.

3. Section 81 proceedings were undertaken by the Deputy Registrar of Cooperative Societies and a report was received stating that due to malversation of funds in the management of the Society, loss had occasioned to the same. Taking note of the report, the Secretary viz., A.K.Ravi was suspended on 08.02.2001. During the course of the inquiry, it was found that the accounts had not been updated and payments had been made without the same being entered in the books of accounts. As the Society was then under the control of the Special Officer and since it required updating of the books, he appointed the civil revision petitioner as the Secretary on a temporary basis. This was on the basis of the resolution passed by the Society in Resolution No.1 dated 10.06.2001. A clarification



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notification was also passed in resolution No.1 on the very next day ie., 11.06.2001 directing that Clerk Moorthy shall hold the additional charge of Secretary.

4. Thereafter, the report having been received under Section 81 of the Tamil Nadu Cooperative Societies Act (hereinafter referred to as 'the Act') and being satisfied that the loss had been occasioned to the Society on account of the mismanagement by those who had the control of the Society, proceedings were initiated under Section 87 for surcharge. Show cause notice was issued not only to Ravichandran and Ravi, but also to the civil revision petitioner. During the course of Section 87 proceedings, all three who have been charged in the surcharge proceedings were served with the inquiry report on 19.06.2006. On that date, the civil revision petitioner sought permission to peruse the records and the first respondent Deputy Registrar also granted the said permission. He submitted a report stating the following:

(a) That he is a mere clerk and does not have any entrustment or dominion over the assets of the Society.

(b) That he had not acted in willful or negligent manner and the persons responsible for issuance of the cheque and the accounts during the relevant time ie., from 1999 to 2001 were Ravichandran and Ravi, the President and Secretary of the Society respectively.



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5. Subsequently, after the inquiry the first respondent came to a conclusion that all three were responsible for the loss caused to the Society and therefore passed an order directing recovery of a sum of Rs.9,95,427.65/- from all three. This was apart from the sum of Rs.11,58,900/- with respect to the payments made under the cheques said to have been issued by the Society. A report of the Section 87 inquiry shows that as many as 31 charges had been framed. Charge Nos.4 to 26 of Charge 1 and Charge Nos.30 and 31 of Charge 3 were held against the civil revision petitioner and two others. Insofar as Charge Nos.27 to 39 of Charge 2 is concerned, the Secretary alone was held responsible.

6. Feeling aggrieved by the surcharge order, a statutory appeal had been presented under the provisions of Section 152 of the Act before the appellate authority-cum-Principal District Judge at Tiruvannamalai. The appeal was taken on file and thereafter numbered as CMA (CS) No.7 of 2018. The appeal seems to have been languishing before the learned appellate Tribunal for a period of 13 years and finally came to be dismissed on 29.01.2019. Aggrieved by the same, the present civil revision petition has been presented.

7. Heard Mr.L.P.Shanmugasundaram for the petitioner, Mr.K.Ashok Kumar for Mr.Jeevagiridharan for the Society / second respondent and Mr.A.Anandan, Government Advocate for the first respondent.



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8. Mr.L.P.Shanmugasundaram would submit the following to set aside the order of the authorities below.

- (a) He would state that Section 81 inquiry report had not been served along with the show cause notice as required in terms of the Circular of the Registrar of the Cooperative Societies in Circular No.3/18 dated 25.04.2018.
- (b)He invited the attention of the Court to Section 87(4) of the Act and would state that the first respondent should have acted like a Civil Court in recording the evidence, marking documents and thereafter pronouncing judgment on the same.
- (c)He would then submit that insofar as the petitioner is concerned, the order does not satisfy the requirements of the judgment of this Court in **Sathymangalam Cooperative Urban Bank Limited -vs- The Deputy Registrar of Cooperative Societies (1980) 2 MLJ Page 17.**
- (d)He would vehemently contend that since the petitioner was only a clerk and he did not have any control over the assets of the Society during the relevant point of time, he cannot be proceeded against under Section 87 of the Act.
- (e)He would submit that if at all anyone is responsible, it is Ravichandran and Ravi who were the President and Secretary of the Society, and to mulct the clerk with



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huge liability is not only contrary to the Statute but also against the principles of equity.

9. In response, Mr.Ashok Kumar would submit that the argument that a copy of Section 81 inquiry report was not served is false and he would state that the civil revision petitioner and the other delinquents were given a copy thereof on 19.06.2006 itself and therefore, the first two arguments of Mr.L.P.Shanmugasundaram is unfounded. He would state that having assumed charge of the Society on 10.06.2001, the duty fell on the civil revision petitioner to give an intimation regarding the fraudulent activities that have been done by the Secretary and the President of the second respondent Society and having failed to do so, he would have to suffer an order under Section 87 of the Act as he is treated as an accomplice to the act of mismanagement and swindling of funds. Learned counsel would further submit that the Deputy Registrar had strictly complied with the provisions of Section 87 of the Act and no fault can be found on him.

10. I have carefully gone through the records and analyzed the submissions of the learned counsel on either side.

11. With respect to the first argument of non-service of the report under Section 81 of the Act that had been submitted on 08.04.2002 is concerned, I am not in sync with the arguments of Mr.L.P.Shanmugasundaram. An audit under



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Section 80 or an inquiry under Section 81 or an inspection and investigation under Section 82 are proceedings initiated by the Registrar of Cooperative Societies in order to see that the Society is functioning in terms of the provisions of the Act. The report submitted by the inquiry officer or the audit officer is a fact finding exercise. It is submitted to the Deputy Registrar or Registrar, as the case may be, in order to bring to his notice the state of affairs in that Society which had undergone an audit or inspection. The procedure contemplated under Sections 80 to 82 does not bring to its fold an adjudicatory mechanism or an order which will affect the civil rights of any parties. In those proceedings, the question of a person having a right of cross examination or a right to peruse the records does not arise at all. The authority peruses the records and submits his fact finding report to his superior. This issue is no longer *res integra* and has been considered in detail by Justice S.Nagamuthu (as his Lordship then was) in **D.Sathyamurthy -vs- Deputy Registrar of Cooperative Societies, Udhagamandalam (2014) 2 CWC 615 (Madras)**. Therefore, the argument of Mr.L.P.Shanmugasundaram that he is entitled to a report deserves only an order of rejection.

12. He would then rely upon the circular of the Registrar of Cooperative Societies dated 25.04.2018 and argue that the petitioner is entitled to a copy of the same. The subject matter of revision arises between 1999 to 2001. The Registrar has issued a circular in 2018. The circular issued by the Registrar is at best to fill up the gaps that might have arisen in the working of the Statute. It cannot supplant or



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supplement the Statute. A circular issued by the Registrar would certainly be binding on the authorities who are subordinate to him and that is the hierarchial administrative power of the Registrar. But, it is certainly not binding on the Court. At best, it is an administrative instruction which cannot and will not have any retrospective effect. The report having been submitted in the year 2002, I am not willing to apply the circular issued in 2018 to nullify the same. When this Court in **D.Sathyamurthy's** case, after a detailed analysis of the provisions of the Cooperative Societies Act, has come to the conclusion that during the course of a fact finding inquiry or audit, a person who subsequently faces a charge under Section 87 is not entitled to cross examination or seek a copy thereof, I am not in a position to accept the argument of Mr.L.P.Shanmugasundaram.

13. The next point Mr.L.P.Shanmugasundaram would urge is that Section 87(4) contemplates that the Registrar conducting inquiry under Section 87 has the powers of a Civil Court and therefore he ought to have conducted the same in a judicial manner as is done by a learned Judge dealing with a civil suit. A careful perusal of Section 87(4) would show that the officer conducting a surcharge proceedings has been conferred certain powers of the civil court for summoning records, examining witnesses, etc. This does not convert him into a Civil Court. In fact, he is not even a Tribunal having trappings of a civil Court. It is only an administrative exercise carried on by the authority for fixing liability on persons in case they satisfy the requirements of Section 87. Therefore, the submission that



the authority should have received the documents and should have marked the same, does not comply in terms of a plain reading of Section 87(4).

14. Finally I turn to the argument of Mr.L.P.Shanmugasundaram on the lack of wilfulness or wantonness on the part of the petitioner in order to mulct him with the liability as done by the Registrar and by the learned Principal District Judge. As to what is the standard of liability that is required under the Act has been settled at least a four decades ago by **Hon'ble Mr.Justice S.Rathnavel Pandian** in **Sathymangalam Cooperative Urban Bank Limited -vs- The Deputy Registrar of Cooperative Societies (1980) 2 MLJ Page 17**. The learned Judge had dealt with Section 71(1) of the Tamil Nadu Cooperative Societies Act of 1961. This provision is in *pari materia* with Section 87 of the Tamil Nadu Cooperative Societies Act of 1983. For ready reference, the law that had been laid down by the learned Judge in 1980 is extracted hereunder:

"The degree of negligence that is contemplated under section 71(1) of the Act is not a mere negligence, but wilful negligence. The word 'wilful' has not been defined in the Act. The word 'wilfulness' or wantonness imports premeditation or knowledge and consciousness that an injury or loss is likely to result from the act done or from the omission to act. Thus, the term 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. In other words, the conduct of a person, to amount to wilful negligence, must be



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something more than ordinary negligence. To constitute wilful 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. The wilful or intentional negligence is something distinct from mere carelessness or inattention however gross, and consists of a wilful and intentional failure or neglect to perform a duty necessary to protect from harm or loss to any person or property of another. 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 that negligence is wilful and secondly, whether the said wilful negligence is the proximate cause of the injury or loss sustained.

Anantanarayanan C.J., in Durairaj v. Rathnabai (1967 (I) MLJ 324), pointed out that there is a sharp distinction between default and willful default quoted with approval the following observation made by Ramamurti, J., in Khivraj Chordia v. Maniklal Bhatted ([AIR 1966 Mad. 67](#)).

“The principle that emerges from the several decisions is that for default to be regarded as wilful default, the conduct of the tenant should be such as to lead to the inference that his omission was a conscious violation of his obligation to pay the rents or a reckless indifference.”

Ramaprasada Rao, J., as he then was, in Rajagopal v. Saraswathi Ammal (1977 (2) MLJ 8) explained the above words wilful default occurring in the said Act, as follows:—

“Repeatedly the Courts here and elsewhere have taken the view that the expression wilful default is not an expression of art but a meaningful phraseology used by the statute with a definite purpose. The default committed by a tenant should be so telling and conspicuous that any reasonable person apprised of such circumstances and having the



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occasion to adjudicate upon such facts should come to the conclusion that the tenant was recalcitrant and supremely indifferent and purposely evading the performance of his legitimate obligation of sending the rents to the landlady in time. The wilfulness should be the result of recalcitrancy and deliberateness.

Having regard to the interpretations and discussions in respect of the term wilful appearing in various enactments, as found in the case-law decided by the learned English and Indian Judges, which serve as a guide to the construction of the term wilful used in section 7(1) of the Act, I am of the view that in order to pass a surcharge order under that section against a person entrusted with the organization and management or a cooperative society or an officer or servant thereof, such person should have done an actionable wrong, either by commission or omission, in the deliberate and reprehensible manner, with reckless callousness and with supine indifference (but not by accident or inadvertence), without taking due care and precaution ordinarily expected from a reasonable and prudent man under those existing circumstances, that is to say, not caring what the result of his carelessness would be. To make it explicit, it may be stated that he should have acted in breach of legal obligations or in conscious disregard of duty or with an intentional failure to perform the manifest duty, in the performance of which the public have an interest, and that such commission should be the proximate cause of the loss or deficiency in question.”

15. The test for wilfulness or wantonness mandates a premeditation or knowledge and consciousness that an injury or loss is likely to result from the act done or from the omission of the act. Under Section 87 of the Act, the failure to act as whistleblower does not attract the provisions of that Section. Here is a case where a clerk, the lowest grade employee of a Society, had updated the accounts



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on the directions of the Special Officer. During the course of updating the accounts, it is possible that Moorthy could have noticed the fraudulent activities of the President and the Secretary. For the fact that he does not report such fraudulent activities cannot make him an accomplice to the said act. The persons who had the control and management of the Society were Ravichandran and Ravi and they can certainly be proceeded against. To rope in a mere clerk along with the Chief Executive Officer of the Society and the elected President of the Society is an unfortunate act.

16. A perusal of the order under Section 87 nowhere shows that Moorthy had displayed acts of wilfulness or wantonness that it would result in loss to the Society. The *sine qua non* for passing an order under Section 87 against an employee under such circumstance as in the present case is the existence of the aforesaid conditions. This fact, though specifically raised before the Principal District Judge-cum-appellate authority under Section 152 of the Act, has escaped her notice. When the condition precedent had not been complied with, any order passed cannot be sustained. Unsustainable order, if confirmed on appeal, would render the order in appeal also perverse and hence open for correction in the revisional jurisdiction of this Court.

17. In the light of the discussion made above, the Civil Revision Petition stands allowed. The order passed in C.M.A.(CS) No.7 of 2018 on the file of the



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appellate authority-cum-Cooperative Tribunal viz., Principal District Judge at Tiruvannamalai dated 29.01.2019 in confirming the order in Tha.Thi.No.5/2005/2006 (Na.Ka.No.4464/2004) dated 28.08.2006 is set aside. The proceedings initiated against the civil revision petitioner alone would stand dismissed.

18. I have allowed this revision on the ground that, being a writer/clerk the petitioner did not have entrustment or dominion over the assets of the Society nor in his course of activities, he had acted in a willful or negligent manner. This order cannot be used for the benefit of the other delinquents Ravichandran and Ravi in C.R.P.Nos.548 and 568 of 2022 said to be pending before this Court.

18. In result, the Civil Revision Petition is allowed. No costs. Consequently, connected miscellaneous petitions are closed.

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Index : Yes/No

Neutral Citation : Yes/No

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To

1.The District Judge, Tiruvannamalai.

2.The Cooperative Tribunal-cum- Principal District Judge, Tiruvannamalai.



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V. LAKSHMINARAYANAN, J.

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