



*C.R.P(MD)No.433 of 2022*

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**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

**DATED : 31.07.2024**

**CORAM:**

**THE HONOURABLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY**

**C.R.P(MD)No.433 of 2022**

A.1216, Dindigul Agricultural Producers

Marketing Society Ltd.,

Represented through its

Managing Director,

No.1, Chellandi Amman Koil 1<sup>st</sup> Street,

Palani Road,

Dindigul-624 001.

... Petitioner/2<sup>nd</sup> Respondent/3<sup>rd</sup> Party

vs.

1.The Surcharge Proceedings Officer,

(Circle Deputy Registrar of Co-operative Societies)

No.11, State Bank Colony,

Nehruji Nagar,

Dindigul-624 001.

... 1<sup>st</sup> Respondent/1<sup>st</sup> Respondent/Competent Authority

2.C.Irudhayaraj

... 2<sup>nd</sup> Respondent/Appellant/Respondent

**Prayer:-** Civil Revision Petition filed under Article 227 of the Constitution of India, to call for the records pertaining to the impugned Judgment and decree made in CMA (CS)No.35 of 2018 on the file of the Co-operative Appellate Tribunal/Principal District Court, Dindigul and set aside the same and confirm the surcharge order in Tha.Va.No.5/2017 dated 06.12.2017 on the file of the first respondent.



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For Petitioner : Mr.P.R.Prithiviraj

For Respondents : Mr.M.Senthil Ayyanar  
Government Advocate for R1

**ORDER**

The Civil Revision Petition is filed challenging the judgment and decree made in CMA(CS)No.35 of 2018 on the file of the Co-operative Appellate Tribunal/Principal District Court, Dindigul, and to consequently confirmed the surcharge order dated 06.12.2017.

2.Heard the learned counsel for the petitioner.

3.When the matter came up for hearing on the last occasion, the learned counsel for the petitioner alone was present and he argued the matter. The learned counsel for the second respondent was absent. Therefore, so as to give one more opportunity to the learned counsel for the second respondent, the matter is adjourned today, ie., on 31.07.2024. Today also, the learned counsel for the second respondent is not present and the matter was passed over. Eventhough the matter was taken up in the second session, since there is no representation on behalf the learned



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counsel for the second respondent. As such, this Court proceeded to consider the civil revision petition on merits.

4.The case of the petitioner Co-operative Society is that the second respondent, namely, C.Irudhayaraj was the Manager in-charge of the Society during the relevant period from 01.12.2010. Upon an enquiry under Section 81 of the Tamil Nadu Cooperative Societies Act, 1983, it was found that the said person had sold seeds to the members of the Society as well as to the other Primary Co-operative Societies and Dindigul Agricultural Producers Marketing Society and has not accounted for the said payments received by him and misappropriated and caused loss to the tune of Rs.1,15,504/-. Further, he has also not brought the medicine stock to the retail medical shop run by the Society and caused loss to the tune of Rs.25,138/- and therefore, stating that he has caused loss totally to a sum of Rs.1,40,652/-, the order under Section 87 of the Tamil Nadu Cooperative Societies Act, 1983 was passed on 06.12.2017 imposing the surcharge on the second respondent. As against the same, the second respondent filed an appeal in CMA(CS)No.35 of 2018 before the Tribunal.



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5.By the judgment assailed in the present civil revision petition, the Appellate Tribunal, framed one point as to whether the order passed by the Deputy Registrar is sustainable or not. On the point, it has extracted the loss as alleged by the Deputy Registrar from paragraph Nos.6 to 12 and in paragraph No.13, it relied upon the Judgments of this Court to the effect that unless willful negligence is alleged on the part of the employee, surcharge proceedings cannot be initiated and on the sole ground, the appeal was allowed.

6.It is the finding of the Appellate Tribunal that in the absence of such a categorical finding by the respondents that there was reckless callousness and supine indifference, surcharge proceedings cannot be initiated. I am afraid that the said reasoning is correct. The question as to the willful negligence will come into play if only the charge is based on the overall responsibility or mere negligence. Even as per the extractions made by the Tribunal, it has been mentioned in almost every paragraph that the amount has been misappropriated by the petitioner in respect of many of the items. The Appellate Court did not even consider the said statement. Therefore, in this case, the reasoning of the Appellate Tribunal solely on



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the basis as if the willful negligence is not proved is on the face of it unacceptable.

7.It can be seen that in paragraph 6.1, when the Deficit in Bhemma Maize seed is mentioned, it is the contention of the employee that the amount is outstanding from Vadukampadi PACB. But however, the audit report mentioned that no amount is due from Vadukampadi PACB and therefore, when there is a deficit stock, it is only the petitioner is responsible, this is the finding of the Deputy Registrar and accordingly, a sum of Rs.7,004/- is found to be a loss to the Society.

8.In the next item, when the product has to be sold at the rate of Rs.630/-, he has sold it at the rate of Rs.575/- and therefore, caused a financial loss. In the next item with reference to Hycel maize seed, even misappropriation is alleged and when he has misappropriated a sum of Rs.11,600/-, it cannot be said that it is a case of negligence. In respect of the next item in Kanagadurga maize stock deficit, it is the averment that there is discrepancy in the stock as well as the amount which is entered as sold. There also it was not on the basis of negligence. Similarly, it can be



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seen that in respect of each and every item, in respect of the sale of seeds either there is a stock deficit or misappropriation or selling it for a lower price and therefore, it cannot be said that the surcharge is on the question of mere negligence. As far as item No.2, that is a sum of Rs.25,138/-, with reference to the medical shop alone, the reasoning of the Appellate Court may apply because the stock of the medicine has to be properly utilized by the pharmacist and the appellant being a Manager cannot be said to be willfully negligent when it comes to the medicines, for which, there is a loss on account of the stock being not properly brought to the retail shop. As far as the stocks of individual medicines, it is for the person, who is handling the stock and in that case, it can be said that the liability is fixed only on account of negligence and not willful negligence. Therefore, I am of the view that the Civil Revision petition be partly allowed.

9.In view thereof, the Civil Revision Petition is partly allowed on the following terms:

(i)The order of the learned Co-operative Appellate Tribunal/ Principal District Court, Dindigul, dated 09.02.2021 made in CMA(CS)No. 35 of 2018 is set aside;



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(ii) The surcharge order passed against the second respondent on 06.12.2017 is confirmed in respect of surcharge No.1 to the tune of Rs.1,15,514/- and is set aside in respect of surcharge No.2 to the tune of 25,138/-.

No costs.

**31.07.2024**

NCC : Yes / No  
sjj

To

1.The Co-operative Appellate Tribunal/Principal District Court,  
Dindigul.

2.The Surcharge Proceedings Officer,  
(Circle Deputy Registrar of Co-operative Societies)  
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**D.BHARATHA CHAKRAVARTHY, J.**

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