



C.R.P(MD)No.160 of 2018

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **31.07.2024**

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THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

C.R.P(MD)No.160 of 2018

The Deputy Registrar of Co-operative Societies,
Madurai. ... Petitioner/Respondent

Vs.

S.Ayyappan (Died) ... Respondent/Appellant

2.Sankarammal

3.Senthilkumar

4.Kesavan

5.Raman

6.Lakshmanan ... Respondents

(R2 to R6 are brought on record as Lrs of the deceased sole respondent vide Court order, dated 03.04.2024 made in C.M.P(MD)Nos.12093 to 12095 of 2023)

Prayer: Civil Revision Petition is filed under Article 227 of Constitution of India, to set aside the judgment and decree passed in C.M.A(CS)No.9 of 2011, dated 25.11.2016 on the file of Principal District Judge (FAC), Madurai reversing the order passed in surcharge proceedings in Tha.Thi.Vi.6/2009-10 Sa.Pa.Dated, 19.10.2010 by the Deputy Registrar



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of Co-operative Societies, Madurai.

For Petitioner : Mr.K.S.Selvaganesan
Additional Government Pleader

For R2 - R6 : Mr.D.Shanmugaraja Sethupathy

ORDER

The civil revision petition has been filed by the Deputy Registrar of Co-operative Society, Madurai challenging the order of the Co-operative Tribunal / Principal District Court, Madurai in C.M.A(CS)No.9 of 2011.

2. The respondent (deceased) herein is the Assistant Manager of Madurai District Central Co-operative Bank. Their duty was to oversee the affairs of all the Co-operative Societies within the district. Nagamalai Pudukottai Primary Agricultural Co-operative Society was having an account in the said Bank. It was alleged that the employees of the society has caused loss of Rs.9,63,584/- to the society in the banking transaction. Due to the said loss, surcharge proceedings were initiated as against the respondent herein and other officials of the society on the ground that cheques passed by the respondent herein were forged by the Secretary of the Society, namely P.Muthu and as such due to the passing of the cheques, loss was caused to the Co-operative Societies.



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3. Enquiry was initiated under Section 81 of the Tamil Nadu Co-operative Societies Act and based upon the enquiry report, surcharge proceedings were initiated and a report came to be filed on 19.10.2010. After the enquiry, an order of recovery to a tune about Rs.1,48,700/- was sought to be recovered along with the Secretary of the Society, namely P.Muthu. Aggrieved over the order passed in the surcharge proceedings, the respondent herein had filed C.M.A(CS)No.9 of 2011 before the Co-operative Tribunal, Madurai.

4. The tribunal after going through the enquiry report and the surcharge order, has arrived at a finding that there is no allegation whatsoever as against the respondent herein that he had misappropriated the amount belonging to the society. In fact, the Secretary of the Co-operative Society had forged the signature of the special officer of the society and he had presented the same before the Co-operative bank. The cheques have been honoured by the Assistant Manager who is arrayed as the respondent herein. The tribunal therefore found that no financial loss had incurred to the Co-operative Bank and as such the proceedings initiated as per Section 81 and 87 of the Tamil nadu Co-operative Societies Act are not maintainable. The appeal filed by the Assistant Manager of the Co-operative Bank was allowed by the tribunal.



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Challenging the same, the present revision petition has been filed by the Deputy Registrar of the Co-operative Society.

5. According to the learned counsel appearing for the appellant, the society was having an account in the Co-operative Bank. The Secretary of the society, namely one Muthu had forged the signature of the Special Officer of the concerned society. Several forged cheques were presented for encashment before the Co-operative Bank. The Assistant Manager of the Bank should have properly scrutinized the cheques before passing the same. Due to his gross negligence of duty, the forged cheques were encashed by the Secretary of the concerned society causing a huge loss to the society. Therefore, proceedings were initiated under Section 81 of the Tamil Nadu Co-operative Societies Act followed by proceedings under Section 87 of the Act. The tribunal was not right in exonerating the Assistant Manager on the ground that he has not misappropriated the amount. Even assuming that the Branch manager of the Co-operative Bank has not misappropriated, there is a gross dereliction of duty on his part in not properly scrutinizing the cheques presented by the Secretary of the society. Hence, he prayed for allowing the appeal.



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6. Per contra, the learned counsel for the respondent / Assistant Manager has relied upon the circular issued by the Registrar of Co-operative Society, dated 06.04.2009 and contended that whenever Co-operative Bank employees are found to be delinquent as per Section 81 enquiry report, separate 81 enquiry has to be conducted and an independent surcharge proceedings have to be initiated as against the Central Co-operative Bank staff. The learned counsel for the respondent had also relied upon the judgment of this Court in W.P.No.7825 of 2018, dated 10.09.2018 to contend that, relying upon the said circular, the writ Court was pleased to allow the writ petition and has quashed the surcharge order passed by the concerned Deputy Registrar. Hence, he prayed for sustaining the order passed by the Co-operative Tribunal.

7. I have carefully considered the submissions made on either side and perused the material records.

8. The facts narrated above will clearly indicate that the Secretary of Nagamalai Pudukkottai Primary Agricultural Co-operative Society, namely one Muthu had forged the signature of the special officer of the concerned society and presented cheques before the Madurai District



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Central Co-operative Bank where the present respondent was working as an Assistant Manager. The primary allegation as against the Assistant Manager of the Bank is that he has not properly scrutinized the cheques and he has permitted the Secretary of the concerned Society to encash the same. Therefore, it is clear that the allegation as against the present respondent is not relating to misappropriation, but only relating to gross negligence on his part.

9. Section 81 proceedings were initiated as against the present respondent also. In view of the Circular of Registrar of Co-operative Society in Rc.No.38614/2009 SF.2(2), dated 06.04.2009, it is clear that once it is found in the Section 81 enquiry that a particular staff or an employee of a Central Co-operative Bank is found to be responsible for the irregularities, an independent 81 enquiry and surcharge proceedings have to be conducted for the Co-operative Bank staffs / employees. The learned Single Judge of this Court has relied upon the said circular and has set aside the surcharge order in W.P.No.7825 of 2018, dated 10.09.2018.



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10. In the present case, in violation of the circular of the Registrar of Co-operative Societies which is referred supra, based upon the same Section 81 enquiry report, in which the Secretary of the Society was charged, the respondent was also found to be delinquent and a common Section 87 proceedings were initiated as against the present respondent as well as the Secretary of the Society. Therefore, it is clear that an entire Section 81 and 87 proceedings are clearly in violation of the circular issued by the Registrar of Co-operative Society as well as the orders passed by this Court in the writ petition referred to supra.

11. In view of the above said deliberations, the tribunal has rightly allowed the appeal and set aside the surcharge order passed by the appellant herein in respect of the the respondent. There are no merits in the appeal. Hence, this Civil Revision Petition stands dismissed. No costs.

31.07.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No

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To

WEB COPY

- 1.The Principal District Judge (FAC),
Madurai.
- 2.The Deputy Registrar of Co-operative Societies,
Madurai.
- 3.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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R.VIJAYAKUMAR,J.

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Judgment made in
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