



C.R.P.(MD).No.350 of 2018

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 16.04.2024

DELIVERED ON: 23.04.2024

CORAM

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.R.P.(MD).No.350 of 2018

and

CMP(MD).No.1596 of 2018

K.R.Sethurajan

...Petitioner/Appellant

Vs

1.The Deputy Registrar of Co-operative Societies
Ramanathapuram

2.The Secretary
R.R.1492, Ramanathapuram
Taluk Agricultural Producers
Co-operative Society
Ramanathapuram

...Respondents/Respondents

PRAYER: The Civil Revision Petition has been filed under Article 227 of the Constitution of India, to call for the records pertaining to the surcharge proceeding No.3/2013-2014 Sa.Pa.dated 02.02.2015 passed by the first respondent which has been subsequently confirmed by the Principal District Court (Co-operative Tribunal), Ramanathapuram dated 17.11.2017 made in C.M.A(CS).No.3 of 2015 and set aside the same and thereby allow the revision petition.



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For Petitioner : Mr.P.R.Prithiviraj
For R1 : Mr.M.Senthil Ayyanar
For R2 : No appearance

ORDER

The present civil revision petition has been filed by the former Special Officer of Ramanathapuram Taluk Agricultural Producers Co-operative Marketing Society, Ramanathapuram challenging the order of Co-operative Tribunal wherein the order passed under Section 87 of the Tamil Nadu Co-operative Societies Act, 1983 has been confirmed.

2.The petitioner herein was working as a Special Officer in the above said Co-operative Society between 27.10.2007 and 22.05.2012. He was issued with a notice under Section 81 of the Tamil Nadu Co-operative Societies Act on 29.08.2013 on the charges that the salesman in two fair price shops have misappropriated the amount due to the fact that the petitioner as Special Officer has not regularly conducted stock verification and remittance of sales proceeds into the Society which has resulted in misappropriation to an extent of 5,12,078/-. An enquiry report was submitted on 05.12.2013. A copy of the said report was also furnished to him.



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3. Based upon the above said enquiry report, a notice under Section 87 of the Tamil Nadu Co-operative Societies Act, 1983 was issued to the petitioner on 04.02.2014. An award was passed as against the petitioner herein in 02.02.2015 fixing joint and several liability upon the petitioner and one Arumugam. Challenging the same, the revision petitioner had appellant filed CMA(CS).No.3 of 2015 before the Principal District Court/Co-operative Tribunal, Ramanathapuram.

4. The District Judge after considering the submissions made on either side, had dismissed the appeal confirming the award passed under surcharge proceedings. Challenging the same, the present revision petition has been filed.

5. According to the learned counsel appearing for the revision petition, Section 81 enquiry has not been completed within a period of three months and no extension of time was sought for. He had further contended that the surcharge proceedings were not completed within a period of six months and no extension was also sought for. He had further pointed out that he was relieved from the office of Special Officer on 22.05.2012, but the stock verification was conducted in both fair price shops only after one year namely on 31.03.2013. Therefore, the petitioner



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cannot be held liable.

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6.The learned counsel for the petitioner had further contended that at the time when he was relieved from the post of Special Officer, he had handed over charges to the succeeding officer only after verification of the stock. Hence, if any shortage or any misappropriation had happened, it would have happened only during the period of succeeding officer and the petitioner cannot be held liable. He had further contended that though the award points out some negligence on the part of the revision petitioner, there is no finding that the said negligence is wilful in nature so as to attract Section 87 of the Tamil Nadu Co-operative Societies Act. He further pointed out that apart from the surcharge proceedings, departmental proceedings were initiated which had resulted in stoppage of increment. Therefore, the question of mulcting the financial liability upon the petitioner would not arise. Hence, he prayed for allowing of the revision petition.

7.Per contra, the learned counsel appearing for the respondent herein had contended that there was no stock verification at the time when the petitioner has handed over the charge to the succeeding officer. After the succeeding officer had taken charge he has brought to the notice of the



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management about the shortage and misappropriation. Only thereafter an enquiry was ordered under Section 81 of the Tamil Nadu Co-operative Societies Act. Therefore, the contention of the revision petitioner that the stock verification were conducted at the time of handing over charge is not factually correct. He had further contended that the stock verifications were conducted for the first time only on 31.03.2013 in those fair price shops. In fact, one of the co-delinquent namely Arumugam has given a statement that the revision petitioner had received cash from the salesman of the fair price shop and therefore, the salesman could not deposit the sale amount to the society. Therefore, it is not only a case of wilful negligence but also the case of breach of duty and misappropriation. Hence, he prayed for sustaining the order passed by the Co-operative Tribunal.

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

9.As far as the non-completion of enquiry under Section 81 and under Section 87 of the Tamil Nadu Co-operative Societies Act are concerned this Court in various decisions has held that they are only directory in nature and not mandatory. Therefore, the order passed in the surcharge proceedings cannot be set aside on the said ground.



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10.Though the learned counsel for the petitioner had contended that stock verification was taken at the time of handing over charge on 22.05.2012, no records have been produced either before the original authority or before the Co-operative Tribunal. Therefore, this Court is constrained to arrive at a finding that first time stock verification was conducted only on 31.03.2013 by the succeeding officer and he had informed the management about the shortage of stock and misappropriation.

11.The salesman of two fair price shops have not remitted the sale amount to the credit of the Society. If the petitioner has properly supervised, the same this would not have taken place. Though the petitioner was in-charge of the Co-operative Society for nearly five years, he had not chosen to verify the stocks or looked into the misconduct of the concerned salesman. This has resulted in misappropriation of the money. Therefore, it is clear that it is not only a case of wilful negligence but also a case falling under the breach of duty. It has resulted in the financial loss to a tune of Rs.5,12,078/- to the Society. The original authority has conducted the enquiry after giving due opportunity to the revision



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petitioner and the enquiry report was also furnished to him and hence, there is no violation of principles of natural justice in conducting the enquiry or surcharge proceedings.

12.The Co-operative Tribunal has considered all the submissions of the revision petitioner herein and has arrived at a finding that the petitioner is liable for payment of the said amount. There is no illegality or irregularity in the said order warranting interference by this Court. There are no merits in this revision petition. This Civil Revision Petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

23.04.2024

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

1. The Principal District Judge (Co-operative Tribunal),
Ramanathapuram
2. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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R.VIJAYAKUMAR, J

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Pre-delivery order made in
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