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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 21.03.2024

CORAM:

THE HON'BLE Mr. JUSTICE K.K.RAMAKRISHNAN

C.R.P.(MD).No.1429 of 2016
and
C.M.P.(MD).No.6993 of 2016

M.Arockiasamy ... Petitioner

Vs.

1.The Deputy Registrar of Cooperative Society,
Tirunelveli.
2.L.Saravanan
Siva.Murugiah (died) ... Respondents

Prayer : Civil Revision Petition has been filed under Article 115 of C.P.C., praying to allow the Civil Revision Petition and set aside the order passed in C.M.A.(CS).No.22 of 2009, dated 28.10.2014 on the file of the learned Principal District Judge, Tirunelveli, confirming the Surcharge Proceedings in S.C.No.2 of 2008-2009 on the file of the first respondent, dated

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19.01.2009.

For Petitioner : Mr.K.R.Laxman
For Respondents : Mr.A.K.Manikkam (for R1)
Special Government Pleader
R3 died

ORDER

This civil revision petition has been filed to set aside the order passed in C.M.A.(CS).No.22 of 2009, dated 28.10.2014 by the learned Principal District Judge, Tirunelveli, confirming the Surcharge Proceedings in S.C.No.2 of 2008-2009 on the file of the first respondent, dated 19.01.2009.

2.The petitioner is the second defendant in the Surcharge Proceedings initiated before the Deputy Registrar, Cooperative Society, Tirunelveli. According to the allegation, the petitioner and other two persons were working in the Sevalkulam Primary Agricultural Cooperative Society and they jointly misappropriated the fund of cooperative society and thereafter, enquriy under Section 81 of the Tamil Nadu Cooperative Societies Act was conducted. After the said enquiry, the Deputy Registrar of Cooperative

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Societies, Tirunelveli, initiated Surcharge proceedings under Section 87 of Tamil Nadu Cooperative Societies Act, against the petitioner and in the said proceedings, he also participated and after hearing, the joint liability was fixed upon the petitioner and two other persons. Challenging the said 87 proceedings, the petitioner filed an appeal in C.M.A.(CS).No.22 of 2009 before the learned Principal District Judge, Tirunelveli. The appellate tribunal also confirmed the same stating that they are also responsible for the misappropriation and further, modified the liablility amount payable by the petitioner and others. Challenging the same, the petitioner filed this revision.

3.The learned counsel appearing for the petitioner submitted that on perusal of the Surcharge proceedings order and alsoC.M.A.(CS).No.22 of 2009, it is found that there was no discussion about willful negligence on the part of the appellant. Further, he submitted that the petitioner is not responsible for any of the act alleged in the occurrence. It is specifically contended that he was never in charge of disbursement of cash. Hence, the first respondent has no jurisdiction to invoke Surcharge Proceedings against him. He further submitted that he was not involved in any of the

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misappropriation and he was only a clerk and he prepared chitta, challan and day book and the alleged misappropriation was committed only by other persons. Hence, he seeks to allow this petition.

4.The learned Special Government Pleader appearing for the first respondent on instructions, submitted that the petitioner and other persons actively participated and colluded and misappropriated the fund of the society and they also are involved in the act forgery and falsification of the account. The same was properly enquired as per Tamil Nadu Cooperative Societies Act under Section 81 proceedings and thereafter, surcharge proceedings were initiated under Section 87 of Tamil Nadu Cooperative Societies Act. In the surcharge proceedings, he was provided adequate opportunity and all the defence was considered by the authority namely, the first respondent and the same was appreciated by the Tribunal constituted under the Act. The learned Tribunal Judge even though reduced the amount payable by the defendant, confirmed the finding rendered in the surcharge proceedings. Hence, he seeks for dismissal of the revision. He further submitted that the power of this Court under Article 227 is very much limited. This Court has no power look into the contention of the petitioner,

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which will amount to re-appreciation of the evidence.

5.This Court considered the rival submissions made by the learned counsel appearing for petitioner and the learned Special Government Pleader and also perused the materials available on record and the documents filed by the petitioner before the tribunal and also before the enquiry officer.

6.According to the submission of the petitioner's counsel, he was not responsible for the misappropriation of the fund and he was only a clerk. He has no authority to disburse the cash. Hence, he was not liable under Tamil Nadu Cooperative Societies Act Section 81 proceedings or 87 Surcharge proceedings. He further submitted that there was no finding by the authority/first respondent and also the tribunal that the petitioner committed any illegal act wilfully. This Court is not inclined to accept the said submission on the ground that the proceeding was initiated under Tamil Nadu Cooperative Societies Act under Section 81 proceedings against the petitioner and other persons that they conspired and misappropriated the fund. The basic duty is maintaining of the account and preparation of chitta,

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challan day book. The petitioner was concentrating only on these duties. During this the other persons misappropriated the fund. In the said circumstances, both the enquiry officer and tribunal gave a finding against all the parties. There was total negligence on the part of the petitioner in preparing the day book and challan without any authority. Further, they all manipulated the record. On the basis of the manipulation, the misappropriation was done. In the said circumstances, the learned tribunal also clearly gave a finding that the petitioner made entry in the ledger on the direction of the second respondent and colluded with him and committed loss to the society.

7.Hence, this Court finds no reason to interfere with the same. So far as the modification of the amount by the learned Tribunal Judge in Paragraph No.14 in C.M.A.(CS).No.22 of 2009, dated 28.10.2014 is concerned, the first respondent has not preferred any revision. Hence, there is no need to interfere with the modification relating to the quantum alone as stated in Paragraph No.14 in C.M.A.(CS).No.22 of 2009, dated 28.10.2014.

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8.Accordingly, this civil revision petition is dismissed. No costs. Consequently, the connected civil miscellaneous petition is closed.

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

1.The learned Principal District Judge,
Tirunelveli.

2.The Deputy Registrar of Cooperative Society,
Tirunelveli.

3.The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.

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K.K.RAMAKRISHNAN, J.,

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