



C.R.P(MD)No.1175 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 30.07.2024

CORAM

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

C.R.P(MD)No.1175 of 2022

and

C.M.P(MD)No.4816 of 2022

E.S.Sundaramahalingam (Died)

**... Petitioner/Appellant/
1st Defendant**

Vs.

**1.The Deputy Registrar of Co-operative Societies,
Cheranmahadevi,
Tirunelveli District.**

Ayyankutti @ Manoharan (Died)

2.A.Shanthi

3.A.Natarajan

4.Minor.A.M.Saravanan

5.Minor.Suganya

**... Respondents/Respondents
1, 3-6/Plaintiffs**

(R4 & R5 are represented by their mother and guardian R2)



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C.R.P(MD)No.1175 of 2022

6.S.Ponniah

... Respondent/2nd Appellant/
2nd Defendant

PRAYER : Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the judgment and decree, dated 20.02.2003 in C.M.A(C.S)No.109 of 1999 passed by the learned Principal District Judge, Tirunelveli.

For Petitioner : Mr.R.Sreedhar

For R1 : Mr.S.R.A.Ramachandran
Additional Government Pleader

For R2-R6 : No Appearance

ORDER

This civil revision petition is directed against the fair and decreetal order of the Co-operative Appellate Tribunal, dated 20.02.2003 in C.M.S(C.S)No.109 of 1999.

2. The brief facts relevant to the disposal of the civil revision petition are that the petitioner E.S.Sundaramahalingam was working as the Secretary to Valliyoor Cooperative Primary Agricultural Rural Development Bank, Panagudi, Tirunelveli District. While so, upon an
2/15



C.R.P(MD)No.1175 of 2022

enquiry conducted under Section 81 of the Co-operative Societies Act, it was found that the petitioner herein being the Secretary of the Society and Ponniah being the Supervisor of the Society and one Ayyakutti @ Manoharan as the Jewel Appraiser of the Society have conspired together and created records as if jewel loans were distributed in respect of 56 individuals who are the members of the Bank and by fictitiously creating records and arranging for fake jewels and caused loss to the Society to the tune of Rs.12,75,400/-.

3. In the background of the said finding in the enquiry under Section 81 of the Co-operative Societies Act, show cause notices were issued as against all the three employees and proceedings were initiated to recover the loss from them by way of surcharge proceedings under Section 87 of the Tamil Nadu Co-operative Societies Act. After a detailed inquiry, an order was passed by the Deputy Registrar of Co-operative Societies on 21.06.1999 holding all the three of the employees are responsible for the loss and ordering the said sum be recovered jointly and severally from them with further interest at the rate of 21% per annum. A criminal case was also lodged against all the three persons.



C.R.P(MD)No.1175 of 2022

It is seen that even in the inquiry proceedings, the said Ayyakutti @ Manoharan, who is the Jewel Loan Appraiser has admitted that he is the person who has arranged for all the fake jewels and he is the beneficiary of the fake loans and had undertaken to repay the amount. In that backdrop, originally by a judgment in C.C.No.1 of 2002, the Criminal Court convicted the petitioner and the other employee who is the Superintendent and since the Ayyakutti @ Manoharan died pending the criminal case, the charges against him stood abated. As against the same, the petitioner as well as the other employee filed Criminal Appeal No. 119 of 2005 and 126 of 2005 and by a judgment dated, 18.01.2006, the said appeal was allowed on the ground that if at all any person who has to be held responsible, it should only be the Jewel Appraiser and the prosecution has failed to prove the conspiracy with reference to the appellants and the appeal was allowed and the conviction and sentence were set aside. In this background, when the surcharge order was passed holding all the three employees as jointly and severally responsible for the loss to the society, the petitioner herein preferred the present appeal in C.M.A(C.S)No.109 of 1999 and the same was dismissed by the tribunal by an order dated 20.02.2003. Originally, the petitioner filed writ



C.R.P(MD)No.1175 of 2022

petition and in the writ appeal arising out of the writ petition, the order was set aside and the matter was remanded back. However, on review, ultimately it was held that the orders could not have passed under Article 226 of the Constitution of India and therefore, once again the present civil revision petition is filed challenging the said judgment and decree, dated 20.02.2003.

4. Heard Mr.Sreedhar, learned counsel for the petitioner and the learned Additional Government Leader appearing on behalf of the 1st respondent.

5. Mr.Sreedhar, learned counsel for the petitioner taking this Court through the by-laws of the Society, would point out to the relevant by-laws whereunder it is only the exclusive duties and responsibilities of the Jewel Appraiser with reference to the quality and the nature of the jewels. He would further submit that even with reference to the custody of the jewels, detailed rules are there and the said rules are not violated. Thereafter, by relying upon the findings in the enquiry under Section 87 before the Deputy Registrar, he would contend that even one



C.R.P(MD)No.1175 of 2022

Balasubramanian who was examined as the Estimator, has given an opinion that only the Jewel Appraisers could have alone unearthed the fraud. Taking this Court through the letter submitted by the said Ayyakutty @ Manoharan, he would contend that when the said employee has categorically undertaken that he is the one who committed the mischief and when he has undertaken to repay the entire amount, without recovering from the said employee, passing the order as against the petitioner also is erroneous in law. He would further submit that already the said Ayyakutty's lands were attached and they were sold by a public auction and a sum of Rs.6,06,400/- was recovered and the said information was furnished to him as early as on 03.04.2008. He would further submit that the findings of the Criminal Court are on the merits of the charge. When the self same charges are laid before the Criminal Court and Criminal Court gives a findings on merits, then the same would be by binding on the authorities during the conduct of an enquiry under Section 87 of the Tamil Nadu Co-operative Societies Act as well as on the tribunal. Therefore, when the said Ayyakutti @ Manoharan alone is responsible for the entire episode, the impugned orders are unsustainable. In support of his submissions, they learned counsel would



C.R.P(MD)No.1175 of 2022

first rely upon the judgment of this Court in ***Special Officer, Dharmapuri District, Central Co-operative Bank Vs. Kuppusamy and another*** reported in ***2019-2-L.W, 145***. More specifically, Paragraph No.9 to 11 to contend that when the certificate was issued by the Appraiser, liability cannot be fastened on the Manager of the Bank.

6. For the same proposition, the learned counsel would rely upon the judgment of this Court in ***T.Mohan Vs. The Joint Registrar of Co-operative Societies, Tiruchirappalli & others*** (W.P(MD)No.7492 of 2005). Further, the learned counsel would place reliance on the Hon'ble Division Bench judgment in ***A.Ramadevi Va. The Special Officer, Ambur Co-operative Sugar Mills*** W.A.No.1213 of , more specifically relying upon Paragraph Nos.25 and 26 of the said judgment to contend that unless and until willful negligence is proved as against the petitioner, for the mere fault of the Co-employee, no surcharge proceedings can be initiated against him. The learned counsel would also rely upon the judgment of the Hon'ble Division Bench of this Court in ***P.Elango Vs. The Administrator, M.R.K. Co-operative Sugar Mills, Sethiathope, Chidambaram Taluk, Cudalore District*** (W.A.No.1686 of



C.R.P(MD)No.1175 of 2022

2013) for the same proposition that unless there was a willful dereliction of duty, the surcharge liability cannot be fastened on the petitioner.

7. Per Contra, the learned Additional Government Pleader taking this Court through the surcharge order, would submit that all the 56 individuals in whose name the loan was disbursed were examined in the enquiry. All of them have given similar statements. They have categorically deposed that none of them obtained loan. Taking advantage of their acquaintance, their signatures were obtained in blank forms. Neither the loans were disbursed to them nor the installments were paid by them. They did not know that such an affair is going on in the Society. Only after seeing the advertisement in the newspaper, they came to know that loan has been disbursed in their names and some installments were also repaid in their names and the amounts are shown as balance in their name. They never pledged any jewels. The entire mischief was done only by the employees. Therefore, he would submit that this is not a case where the Appraiser arranged some fake jewels or had allowed loan on fake jewels without properly appraising the quality of the gold. This is a case where all the three employees of the Society colluded together and



C.R.P(MD)No.1175 of 2022

falsified the accounts of the Society as if the loan was disbursed to 56 individuals and shared the booty among them. Therefore, the original authority as well as the tribunal rightly dismissed the case of the petitioner and the entire amount is still not recovered from the employees and they are liable to pay the amount with interest.

8. I have considered the rival submissions made on either side and peruse the material records of the case.

9. At the outset, it can be seen from the surcharge order itself that the charge is not relating to grant of loan by accepting fake jewels. The charge is something very serious. In the name of 56 individuals who are the members of the Co-operative Societies, records were created by obtaining their signatures in blank forms and it was shown in the accounts of the Society as if jewel loans were disbursed to them in cash. However, it was not disbursed to them. After obtaining signatures in blank forms, 56 different loan accounts were created, maintained, and entries were made as if the amounts were disbursed to them. Further entries were also made as if they had deposited the jewels. All the jewels



C.R.P(MD)No.1175 of 2022

were fake jewels. Some of the entries were also made as if the said incumbents have repaid the instalments. So on the face of that charge, when the petitioner is the Secretary of the society, he is supposed to have disbursed the loan. Even though he may not be responsible for the jewel, whether it is gold or not, he is certainly responsible for the disbursement of the loan to the particular individual. Without his complicity and knowledge, the Ayyakutty @ Manoharan alone could not have stage managed the entire episode. It is one thing that the said employee has admitted that he is the beneficiary of the wrongdoing. As far as the Society is concerned, all the three employees were at fault and therefore, they will be jointly and severally responsible for the loss caused to the society. As a matter of fact, in the criminal case, originally the trial Court has convicted even the petitioner. However, the lower appellate Court held in Paragraph No.9 that the trial Court did not frame the charge of Section 120(B) as against the other accused. The appellate Court further found that the prosecution did not prove the charge of conspiracy. The appellate Court found that since the Appraiser will be responsible for the quality of the jewels, the other accused cannot be held responsible and therefore, set aside the conviction and sentence and allowed the appeal.



C.R.P(MD)No.1175 of 2022

WEB COPY

10. The mere proof or otherwise in respect of an offence under sections 120(B) and 477 (A) and 408 of the erstwhile Indian Penal Code by itself would not be fatal for the surcharge proceedings which is only initiated for making good of the loss of the Society. It is pertinent to state here that some of the findings of the appellate Court are absolutely perverse and shocking in nature. Be that as it may, the prosecution has not filed any further appeal as against the order of acquittal. In any event, as observed supra, it can be seen that with reference to the surcharge proceedings, as per Section 87 of the Tamil Nadu Co-operative Societies Act, it has to be seen whether the petitioner is responsible for the loss caused to the Society. Even assuming that there was no evidence for involvement in the criminal offences, as a Secretary of the Society, he is responsible for the disbursement of the loan, the findings of the original authority as well as the Appellate Tribunal that the petitioner is responsible for the loan cannot be found fault with and I am not in a position to accept the contentions of the learned counsel for the petitioner in this regard. The judgments relied upon by the learned counsel also would reiterate that if willful negligence is proved and if



C.R.P(MD)No.1175 of 2022

direct participation is proved, the surcharge proceedings would lie. In this case, all the 56 persons in whose name the loans were disbursed, have categorically deposed in the enquiry that they never received the loan and they never repaid the instalments. It can never be believed that the same can be done without the knowledge of the petitioner who is only the Secretary of the Society. Therefore, I am unable to sustain the contentions made by the learned counsel for the petitioner. However, while considering the order of surcharge passed on 21.06.1999, it is seen that without any details, the amount is ordered to be recovered with further interest at the rate of 21% per annum. The said rate of interest is on the higher side. The Appellate Tribunal also did not give any finding with a reference to the rate of interest. Normally with reference to rate of interest, the Co-operative Society gets loan from the Central Society and has a margin of 3% interest over and above the interest from which it gets loan from the Central Society and claims the interest.

11. Therefore, I am inclined to modify the rate of interest which is imposed in the surcharge order alone, from 21% to 12% per annum. In respect of other aspects, the orders of the original authority, dated

12/15



C.R.P(MD)No.1175 of 2022

21.06.1999 and the order of the Appellate Tribunal dismissing the appeal shall stand confirmed. It is stated that a sum of Rs.6,06,400/- was already recovered from the deceased Ayyakutti @ Manoharan. The respondent Society will be entitled to calculate the principal amount of Rs. 12,75,400/- along with subsequent interest at the rate of 12% per annum as stated above. However, the amount realized if any, shall be credited at the appropriate date and accordingly, the balance sum will be calculated. It is seen that by an interim order passed in the present proceedings, even the retirement benefits of the petitioner is also withheld. Apart from the same, the petitioner's house property is also attached. The respondent Society after adjusting the amount collected from the said Ayyakutti @ Manoharan and after adjusting the balance due, if any amount is balance from the retirement benefits, the same shall be released to the petitioner. If any amount is further due, the respondent Society can realize the same from all the three employees, including the petitioner as well as legal heirs of the said Ayyakutti @ Manoharan.



C.R.P(MD)No.1175 of 2022

12. With the above directions, this Civil Revision Petition stands disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.

30.07.2024

NCC : Yes
Index : Yes
Internet : Yes
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To

- 1.The Principal District Judge,
Tirunelveli.
- 2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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C.R.P(MD)No.1175 of 2022

D.BHARATHA CHAKRAVARTHY,J.

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Order made in
C.R.P(MD)No.1175 of 2022

30.07.2024