



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 28.07.2021

Delivered on : 11.08.2021

CORAM:

THE HONOURABLE **MRS. JUSTICE R. THARANI**

C.R.P. (MD) No. 2486 of 2018

WEB COPY

K.Sankaran

... Revision Petitioner/Respondent

Vs.

1.The General Manager,
Kanyakumari District Central Cooperative Bank,
Nagercoil.

2.The Deputy Registrar of
Kanyakumari Cooperative Societies,
Nagercoil, Kanyakumari District.

3.The Cooperative Tribunal
(Principal District Court),
Kanyakumari District.

... Respondents/Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, against the judgment and decree dated 06.08.2018, made in C.M.A.(CS)No.47 of 2004, on the file of the Cooperative Tribunal cum Principal District Judge, Kanyakumari District.

For Petitioner	: Mr.T.S.Mohamed Mohideen
For Respondents	: Mr.B.Saravanan
	Government Advocate

ORDER

This Civil Revision Petition is filed against the order, dated 06.08.2018, made in C.M.A.(CS)No.47 of 2004, on the file of the Cooperative Tribunal cum Principal District Judge, Kanyakumari District.

2.The revision petitioner herein is the appellant and the respondents herein are the respondents in C.M.A.(CS)No.47 of 2004. C.M.A.(CS)No.47 of 2004 was filed against the order passed under Section 87 of the Cooperative Societies Act (herein after referred as 'the Act') passed by the second respondent.

3.The first respondent herein has filed a petition before the second respondent in a proceedings numbered as இ.வா.எண் .16/2003-2004 and 29.04.2004, the second respondent passed an order under Section 87 of the Act. ordering the appellant to pay a sum of Rs.4,22,142/-.



4.The allegation against the petitioner in the proceedings is as follows:-

On 05.03.1999, as per the regular procedure followed by the Bank, the Assistant / Sankaran, and the Security / Prabhu were sent to collect money from Vadaseri Branch in a Jeep bearing Registration No.4318, and one Sudalaiyandi was the Driver of the Jeep. The said Sankaran and Prabhu withdrew Rs.12,00,000/- from Vadaseri Branch and they signed the cash entrustment register and the voucher. Instead of taking the cash with them, they left the cash in the Jeep and went to the Town Branch and collected Rs.11,00,000/- from the Town Branch and they remitted only Rs.11,00,000/- in the main Branch and they reported that Rs.12,00,000/- was stolen. Rs.7,77,858/- was received as Insurance and hence, the said Sankaran and Prabhu were liable to pay Rs.4,22,142/-.

5.The case of the respondents in the proceedings is as follows:-

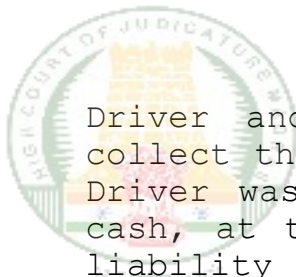
The statement of Sankaran is that on 05.03.1999, he along with one Prabhu collected Rs.12,00,000/- from Vadaseri Branch and locked that amount in the suitcase and they kept the box in the Jeep and travelled to the Town Branch. Only the Driver asked them to leave the suitcase in the Jeep and therefore, they left the suitcase in the Jeep and went into the Town Branch. Collecting amount is not the prescribed job of the Assistant. The Security is responsible for the safety of the amount.

6.The Jeep Driver / Sudalaiyandi has given a statement that he drove the Jeep and he has nothing to do with the missing of the amount. The Security/ Prabhu has given a statement that it is not his duty to collect money from the Branches and he is not responsible for the Security of the amount.

7.After considering both sides, the second respondent passed a sur-charge proceedings under Section 87 of the Act. Against the same, the appellant / first respondent in the proceedings has filed an appeal in C.M.A.(CS)No.47 of 2004, before the Principal District Judge, Kanyakumari.

8.After hearing both sides, the Principal District Judge, Kanyakumari, has dismissed the Appeal. Against the dismissal of the Appeal, the revision petitioner has approached this Court by way of this Civil Revision Petition.

9.On the side of the revision petitioner, it is stated that the revision petitioner is only an Assistant, he was orally instructed to collect cash, without proper security arrangements. The duty and responsibility for collecting the cash is only with the Cashier. The Tribunal failed to consider that the cash was



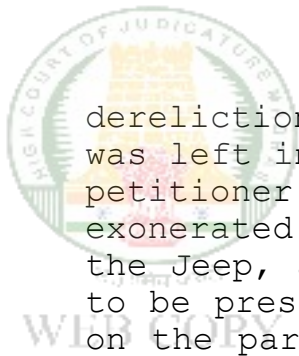
Driver and the revision petitioner went to the Town Branch to collect the cash. At the time of missing of the suitcase, only the Driver was available in the Jeep and he was the custodian of the cash, at that time. But, the second respondent failed to fix the liability on the Driver. On missing of the cash, the revision petitioner immediately informed his superior officer and lodged a complaint before the District Crime Branch. A case in Crime No.110 of 1999 was registered and the case was closed as "non-traceable" and a final report was filed on 01.09.2000. The Management of the Cooperative Bank has not filed any objection to the final report. The Management lodged an Insurance claim. There was no necessity to pass surcharge proceedings against the revision petitioner. When three persons were involved in the incident, only two persons were punished under the Sur-charge proceedings, which is colourable exercise of power. It is wrong on the part of the Management to accept only partial amount from the Insurance Company and recorded full satisfaction.

10.On the side of the respondents, it is stated that after collecting the Insurance amount, Sur-charge proceedings was initiated for the balance amount. It is not the duty of the driver to collect the amount. Hence, no surcharge order was passed against the driver.

11.It is admitted that the revision petitioner was working as an Assistant. Only on an oral instruction, the revision petitioner and one Prabhu were directed to collect amount from various Banks. Admittedly, the revision petitioner and that Prabhu went in a Jeep, driven by one Sudalaiyandi. The revision petitioner and other person, viz., Prabhu went into the Vadaseri Bank and they collected Rs.12,00,000/- and they left the amount in the Jeep and went into the Town Branch to collect amount from there. The claim of the revision petitioner was that the amount was left in the Jeep in a locked suitcase, but, when they return from the Town Branch, it was found missing.

12.The case of the revision petitioner is that it was the Driver, who asked them to leave the suitcase in the Jeep. The case of the Driver is that he is responsible only for the Jeep and he was not entrusted with any amount. The contention of the Driver was accepted by the second respondent and no surcharge order was passed against the Driver.

13.It is seen that when Rs.12,00,000/- amount was missing, the first respondent received only partial amount from the Insurance Company. The first respondent has not taken any action for collecting the entire amount from the Insurance Company. The reason for receiving lesser amount from the Insurance Company was not explained by the respondents. When the Cashier is available in the Bank, without a written order, the revision petitioner and another



dereliction of duty on the part of the first respondent. The amount was left in the Jeep and this fact was admitted by both the revision petitioner and the respondents. But, the second respondent exonerated the Driver of the Jeep. The Driver should not have left the Jeep, at the time of the incident. It is the duty of the Driver to be present in the Jeep at duty times. Hence, there is negligence on the part of the Driver of the Jeep also. There is no allegation of misappropriation against the revision petitioner. In the above circumstances, the surcharge order passed by the second respondent is devoid of merit.

14.Hence, this Civil Revision Petition is allowed and the order, dated 06.08.2018, made in C.M.A.(CS)No.47 of 2004, on the file of the Cooperative Tribunal cum Principal District Judge, Kanyakumari District is set aside, in turn, the sur-charge proceedings / order passed by the second respondent is also set aside. No costs.

Sd/-

Assistant Registrar (CS II)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

- 1.The General Manager,
Kanyakumari District Central Cooperative Bank,
Nagercoil.
- 2.The Deputy Registrar of
Kanyakumari Cooperative Societies,
Nagercoil, Kanyakumari District.
- 3.The Cooperative Tribunal
(Principal District Court),
Kanyakumari District.



4.The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai. (2 Copies)

+1 CC to M/s.T.S.MOHAMED MOHIDHEEN, Advocate (SR-25929[F] dated
11/08/2021)

Pre-delivery Order made in
C.R.P(MD)No.2486 of 2018
11.08.2021

_RS (13.09.2021) 5P 7C