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CRP.No.4894 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 27.06.2025

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

CRP.No.4894 of 2023
and CMP.No.28898 of 2023

D.Umamaheswari

... Petitioner

Vs.

1.The General Manager

Vellore District Central Co-operative Bank Ltd.,
Officer Line
Vellore - 632 001.

2.The Deputy Registrar of Cooperative Societies

Vellore.

... Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India praying to set aside the surcharge order No.02 of 2021-2022 Sa.Pa. in Na.Ka.No.1415/2021 Sa.Pa. dated 28.02.2022 and consequential decree passed by the Principal District Judge/Cooperative Tribunal, Vellore, in C.M.A.(Coop) No.13 of 2022 dated 28.11.2023.

For Petitioner : Mr.L.P.Shanmugasundaram
for Mr.K.Rajendran

For Respondents : Mr.V.Jeevagiridharan



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Additional Government Pleader for R1

Mr.D.Gopal

Government Advocate for R2

ORDER

Challenging the order of the the Principal District Court Co-operative Tribunal, Vellore in CMA(Co-op) No.13 of 2022, dated 28.11.2023, in and by which the Surcharge Order of the Deputy Registrar of Co-operative Societies, Vellore in Surcharge No.02 of 2021-22 Sa.Pa. dated 28.02.2022 was confirmed, the present revision is filed.

2. The facts are as below :

- a) The petitioner was appointed as a clerk in the first respondent Bank on 26.06.2008 and was subsequently promoted as Assistant Manager on 26.09.2013, and was further promoted as Manager on 19.04.2018.
- b) On the same date (19.04.2018), she had been deputed to work as Manager in Gudiyatham Branch of the first respondent-Bank from 19.04.2018 till 14.03.2019 i.e., for a period of 11 months.
- c) During her tenure in the Gudiyatham Branch, she had sanctioned various loans including loans to Women Self Help Groups



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(hereafter referred to as 'SHG' in short). It is alleged that while granting loans to SHGs in the Gudiyatham branch, certain funds were misappropriated, owing to which, the second respondent had ordered an enquiry under Section 81 of the Tamil Nadu Co-operative Societies Act 1983 (hereinafter called 'the Act') vide his proceedings dated 18.06.2020 to enquire into the same.

- d) Two enquiry officers had been appointed for the said purpose, who had conducted their enquiry and submitted their report on 22.01.2021, stating that the petitioner had issued loans to 79 SHGs during her tenure at Gudiyatham, which would be repaid within 36 months. The enquiry officers had conducted the enquiry in the year 2021, and by that time, the tenure of loans were not completed. It is also alleged that the records were not properly maintained. However, no follow up action was taken by the staff of the Gudiyatham Branch for the reason that the staff members were loaded with work by the Management. Though the lapses were pointed out by the enquiry officers, they had not made recommendations to initiate surcharge proceedings against the petitioner nor to take action against the staff members of



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Gudiyatham Branch, however, they recommended to initiate disciplinary action against them. Further it is also reported that the date for recovery of loan from the beneficiaries had not fallen due. The findings of the enquiry officers dated 22.01.2021 was submitted to the first respondent, which also lists out the details of 79 SHG loans.

- e) Though the report of the enquiry officers did not recommend initiation of surcharge proceedings against the petitioner, the second respondent proceeded to initiate surcharge action and ordered enquiry under Section 81 of the Act, through another enquiry officer, for the very same cause of action, against which the earlier report was received.
- f) The subsequent enquiry officer had submitted his report dated 28.06.2021. On the basis of the second enquiry report dated 28.06.2021, surcharge proceedings were initiated against the petitioner in respect of 33 loans out of 79 loans sanctioned by her. According to the petitioner, this action of the second respondent is purely vindictive in nature.
- g) Not stopping with this, the third enquiry under Section 81 of the



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Act was ordered by the second respondent vide proceedings dated 01.7.2022 by appointing three enquiry officers, in order to intensify the coercive action against the petitioner. These enquiry officers had submitted the report on 09.01.2023, and recommended to initiate surcharge action in respect of 20 SHG loans amounting to Rs.64,22,592/-.

- h) The petitioner would contend that pursuant to the second enquiry report dated 28.06.2021, a show cause notice was issued to her on 13.07.2021, to which, she had submitted her explanation on 15.09.2021.
- i) Without considering her explanation, the second respondent had initiated surcharge proceedings under Section 87 of the Act. The petitioner would contend that without providing her a copy of 81 Enquiry report, its related documents, deposition of witnesses before the enquiry officer, the second respondent had proceeded to issue this Section 87 surcharge proceedings, by violating the provisions of Sec.87(4) of the Act and also the guidelines issued to the Registrar of Co-operative Societies vide Circular No.3/2018 dated 25.04.2018.



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- j) The petitioner would submit that non-furnishing of enquiry report and related documents by the second respondent was challenged by the petitioner herein in W.P.No.17222 of 2021 and by reason of the orders of this Court in the said writ petition, the second respondent had submitted the enquiry report alone, but not the related documents and deposition of witnesses.
- k) The entire surcharge proceedings was merely a lip service as the petitioner was unable to cross-examine the witnesses on the side of the first respondent and non-furnishing of related documents and deposition of witnesses in the enquiry report, made it impossible for her to defend herself from the charges framed against her.
- l) Further upon threat and coercion, the second respondent had forcefully obtained a deposition from the petitioner holding that she was guilty of charges and dictated the terms against her, which is in violation of Section 87(4) of the Act.
- m) Thereafter, the second respondent had levied the charges and ordered surcharge for Rs.97,37,070/- vide proceedings No. Na.Ka.1415/2021/SF and Surcharge No.02/2021-2022 dated 28.02.2022.



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n) Challenging this order, the petitioner had preferred CMA.(Coop) No.13 of 2002 before the Cooperative Tribunal / Principal District Court. The Tribunal by order dated 28.11.2023, had partly allowed the appeal and had ordered that the petitioner is liable to pay a sum of Rs.88,84,207/-, as a sum of Rs.8,52,863/- had already been recovered by the petitioner.

Challenging the same, the petitioner has filed the above revision petition.

3. The learned counsel appearing for the petitioner would contend that the entire surcharge proceedings is in violation of the conditions stipulated under Section 87(4) of the Tamil Nadu Cooperative Societies Act, 1983. The petitioner was denied of her opportunity to test the credibility of the co-defendants and to cross-examine the witnesses. The petitioner had not been furnished with the copies of depositions of witnesses during enquiry by the enquiry Officer. The lower Court while passing the impugned order, had also failed to consider the factual positions and also had failed to verify the records properly.

4. Heard the learned counsel appearing on both sides.



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5. This Court perused the records in detail. There is no explanation from the second respondent as to why he had insisted to hold not one but two subsequent enquiries, though the first enquiry report had not recommended him to initiate surcharge proceedings against the petitioner. The action of the second respondent appears to be vindictive in nature. Further, the findings of the first enquiry report would throw light that the petitioner had recommended loans to 79 SHGs, but the surcharge proceedings were alleged to have initiated only in respect of 33 SHG loans and there is no whisper as to the details of the rest. The petitioner was the Manager of Gudiyatham branch for just 11 months from 19.04.2018 till 14.03.2019, and the findings of the first enquiry report would show that the closure period of some of the loans sanctioned by her would be completed only by Feb.2022. Admittedly, there is no proceedings against the successor of the petitioner, during whose tenure the loans ought to have been repaid.

6. The Appellate Court has merely relied on the statement made by the petitioner that she would endeavour to recover the loan amounts to hold

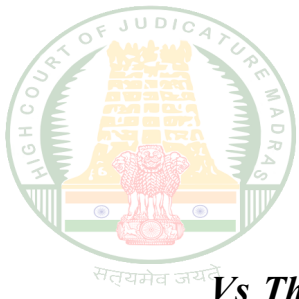


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her responsible. The learned Judge has totally overlooked the fact that dehors this statement which is clearly not an admission of guilt, there is no other evidence to prove the guilt of the petitioner.

7. That apart, the recovery as against the loans sanctioned by the petitioner have not been given credit to. There is no explanation as to how the second respondent had arrived at a conclusion that the petitioner would become liable to pay a sum of Rs.97,37,070/-. The entire surcharge proceedings appears to be malafide. The petitioner has also alleged that she had not been furnished with the documents relating to enquiry report, deposition of witnesses during enquiry before the enquiry officers etc., to defend herself from the charges levelled against her. However, she had been furnished with the enquiry report alone, that too, after the intervention of this Court in the W.P.No.17222 of 2021 filed by her. Admittedly, during the enquiry in the surcharge proceedings, the petitioner has not been permitted to cross-examine or let in her evidence. Further there is no finding that the loss was on account of the willful and deliberate negligence of the petitioner to cause loss to the respondent-Society.



8. A Division Bench of this Court in the judgment in ***S.Subramanian***

Vs The Deputy Registrar of Co-operative Societies (Housing), Cuddalore

& others reported in [2002-3-L.W.185] held as follows :

"12. In the present case it has to be pointed out that no finding has been recorded by the first respondent or by the third respondent to establish that the deficiency had been caused wilfully or deliberately or with a view to cause loss to the assets of the society. Nowhere a finding has been rendered either by the first respondent or by the third respondent in their proceedings that the petitioner is guilty of wilful negligence or wantonness, nor it has been recorded that omission or commission on the part of the petitioner is deliberate, reckless or callous or loss has been caused deliberately to the assets of the society.

13. In the absence of such a finding, as has been consistently held by this Court, that the petitioner is guilty of wilful or deliberate negligence or there is intention to cause loss to the assets of the society, it follows that the impugned surcharge proceedings in so far as the petitioner is concerned are liable to be quashed.

14. When the requirements of Section 87 had not been satisfied and when the basic requirement of Section 87 which warrants initiation of surcharge proceedings is not satisfied or established on mere assumptions the appellant cannot be fastened with the liability. It has to be pointed out that neither in the show cause notice, nor in the



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proceedings of the first or third respondent, it has been held that the appellant has acted wilfully or wantonly with premeditation with a view to cause loss to the assets of the society. Mere negligence cannot be a ground of surcharge and it must be a wilful negligence or intentional negligence and not mere carelessness or intension or inadvertence or a single lapse by oversight."

9. Admittedly, in the instant case, the petitioner has not been given an opportunity to present her case to prove that there is no negligence on her part. The fact that the respondents have held three enquiries only goes to prove malafides in the action undertaken by the respondents. The Appellate Court has also relied only on the statement of the petitioner that she will endeavour to recover the loan amounts and passed the impugned order.

10. The civil revision petition is allowed. The decree of the Principal District Judge / Co-operative Tribunal in C.M.A.(Coop) No.13 of 2022 dated 28.11.2023 confirming the surcharge order No.02 of 2021-2022 Sa.Pa. in Na.Ka.No.1415/2021 Sa.Pa. dated 28.02.2022, in part by reducing the amount from a sum of Rs.97,37,070/- to Rs.88,84,207/-, is set aside. No costs. Consequently, connected miscellaneous petition is closed.



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P.T. ASHA, J.

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