(2012) 10 P&H CK 0199

In the Punjab And Haryana At Chandigarh

Case No : CWP No. 18479 of 2011

Gurmukh Singh and Others APPELLANT

Vs

State of Punjab and Others RESPONDENT

Date of Decision : 15-10-2012

Acts Referred:
Punjab Co-operative Societies Act, 1961 — Section 54

Citation : (2013) 169 PLR 199 : (2013) 2 RCR(Civil) 588

Hon'ble Judges : Ranjit Singh, J

Bench : Single Bench

Advocate : M.K. Singla, for the Appellant; B.B.S. Teji, Addl. A.G., Punjab for the State and Mr. S.S. Dinarpur, for the Respondent

Judgement

Ranjit Singh, J.—The issue arising for consideration in this case is whether the petitioners can be vicariously held liable to pay the amount embezzled by Peon working in the society of which the petitioners were managing members. Teja Singh, Ex. Secretary, and Bansi Lal, Ex. Peon-cum-Watchman, allegedly have embezzled total amount of Rs. 11,55,455/- belonging to the Society. They have respectively been fastened with the liability of Rs. 8,20,800/- and Rs. 3,34,655/-. The Ex. Secretary Teja Singh is no more but the liability standing against him has been discharged by his legal heirs. It is the remaining liability imposed on Bansi Lal, Ex. Peon-cum-Watchman, for which the petitioners have been made liable on the ground that they had appointed the said Peon with the Society and this appointment was in violation of the Rules. On this count, the petitioners have been made liable to pay the embezzled amount if it is not realised from Peon Bansi Lal.

2. The petitioners, on the other hand, would oppose the liability and would submit that they had unearthed this scam and with their hard labour, they could effect recovery from Teja Singh/his legal heirs but still they have been held liable alongwith Bansi Lal on the ground that they had appointed the said Peon illegally. Even the land of the petitioners has been attached despite the fact that they

themselves also stand cheated.

3. Bansi Lal Peon was appointed by Administrative Committee of the Society on temporary basis at D.C. rate. A communication was addressed to Deputy Registrar (respondent No. 4) for granting permission for the said post, so that the work in the society could be done in a proper manner. Though the permission had not been received, but Bansi Lal continued to work as a Peon-cum-Watchman. Even Inspector Nachhattar Singh was aware of this and had seen Bansi Lal performing the duties in the society while depositing cash etc. with Bank. Bansi Lal was also making recoveries from the members of the society against the receipts and depositing the said amount in the Bank. He was also distributing fertilizers.

4. Moment the petitioners learnt about the act of embezzlement, the matter was reported to respondent No. 2 which led to recovery of amount from late Teja Singh, Secretary or from his legal representatives. Even FIR was also lodged against Bansi Lal Peon. It is thereafter that Deputy Registrar had made an enquiry on the complaint made by the members of the Administrative Committee holding Teja Singh responsible for embalmment of Rs. 8,20,800/- and Bansi Lal for doing away with the amount of Rs. 3,34,655/-. Inspector and the Assistant Registrar, who were working in the society during the period this embezzlement took place, were also found guilty for not performing their duties sincerely and for being negligent in performance of their duties. As per the petitioners, in order to protect the officials, respondent No. 5 has passed this impugned order at the back of the petitioners and had passed the impugned order directing recovery of this amount of Rs. 3,34,655/- from Bansi Lal and 12 committee members.

5. The petitioners filed an appeal against this order. The petitioners have also obtained information under the RTI Act to ascertain the action taken against Nachhattar Singh Inspector. Respondent No. 5 has supplied information that final decision against said persons is yet to be taken by the Registrar. Respondent No. 3 on 30.9.2010 while partly accepting the appeal has ordered that land of the petitioners shall remain attached till recovery and land of the other members was released from attachment. In this background, the petitioners have impugned this order through the present writ petition.

6. Replies on behalf of the State as well as respondent No. 6-Society have been filed. In the preliminary objections raised, State has urged that the petitioners were elected as members and President of the Society and they appointed Bansi Lal against the rules and without getting permission from the Registrar. Because of his illegal appointment, Bansi Lal started receiving the recovery of loan from the members and, thus, had received amount of Rs. 3,34,655/- as recoveries, but did not deposit the same in the accounts of the society. Bansi Lal Peon is having no property against which this amount can be recovered. Since this loss has been caused to the society on account of the appointment made by the petitioners of Peon Bansi Lal illegally and without permission, they have been held liable for recovery of the loss.

7. In support of this stand, reference is made to Section 54 of the Punjab Cooperative Societies Act, which provides that if any loss is caused to the funds of the society or if there is a deficiency in the assets of the society by breach of trust or willful negligence, the Registrar may make an order requiring him or them to repay the money of loss with interest. Since the appointment of Bansi Lal was made by the petitioners, they have been held responsible for the amount which was embezzled by him. The Society in its reply has taken stand on the lines as are pleaded by the respondent-State and, thus, it may not need be repeated here.

8. Whether the action of the respondents in holding the petitioners liable for this loss and recovery of the amount can be held legally justified or not, thus, is the issue directly arising for consideration in this case. Concededly, the loss has not been caused by the petitioners directly. They are being made responsible for this loss on the ground that they had appointed Bansi Lal without any authority and as such he was able to embezzle this amount, which is further attributed to the negligence on the part of the petitioners. The petitioners though not being directly responsible for this embezzlement or loss, are being held liable only vicariously that too on account of the fact that they were responsible for appointing the person committing embezzlement. The petitioners may be responsible for making this appointment illegally and can be made to answer the same and this appointment of Bansi Lal being totally unauthorised can be set-aside having been illegally made. The petitioners can certainly be hauled up for this illegality, but whether they can be made responsible for the embezzlement committed by Bansi Lal or not would be a different matter. Suppose Bansi Lal had committed any other offence, like theft in the society would it then was possible to hold the petitioners liable for his misconduct as they had appointed him illegally? Apparently, this may not have been legally possible. To make the petitioners responsible for the embezzlement done by Bansi Lal due to their negligence, even it may have to be first established that the negligence on their part has directly resulted into the embezzlement. It may have to be shown that this negligence alone was the direct cause of this embezzlement. To make a person responsible for pecuniary liability on account of negligence, such negligence is to be shown as causa-cousan, i.e., the last link in the chain of causation and not merely the causa sina-quo-non, which would not be enough. It is not the case here. Negligence may have facilitated Bansi Lal to embezzle this amount, but it does not appear to be the direct cause of this embezzlement. The negligence may even remotely be connected to this embezzlement but is not a direct cause or a reason for which Bansi Lal was able to embezzle the amount. The plea, in any case, is that the petitioners are responsible for this embezzlement because they had appointed Bansi Lal illegally and primarily not due to any negligence alone. If negligence had been the cause to hold the petitioners liable, obviously the other members of the society could not have been excused, which is done by the impugned order. To hold the petitioners liable for this embezzlement and to attach their landed property is apparently not

justified under law.

9. In support, the counsel for the petitioners has also relied upon a Division Bench decision of this court in Sujjon Cooperative Agriculture Service Society Ltd. v. State of Punjab, 2002(2) R.C.R. (Civil) 115. This court while dealing with the responsibility of Managing Committee where the members of the committee had impugned the order directed recovery of amount from them had approached this court. The revision petition filed by the members was accepted as the direction was to recover this amount from the members of the Managing Committee if it was not recovered from the defaulter. The plea raised on behalf of the society before this court was identical that the members were negligent in performance of their duties and as a result, the money could be recovered from them as it could not be recovered from the defaulter. This court held that when the respondent members have taken sufficient precaution and had made efforts, then they cannot be held to be negligent and order of the recovery could not be passed in the absence of proceedings initiated against them u/s 54 of the Cooperative Societies Act. Though in the present case, reference is made to the provisions of Section 54 of the Cooperative Societies Act and the responsibility is also being fastened on the basis of this provision, but there is no order placed on record to show that the action was initiated against the petitioners under this section. Rather, their plea is that they have been held liable without being heard. Somewhat similar was the position in the case of Sujjon Cooperative Agriculture Service Society (supra). Accordingly, the ratio of law emerging from this case would apparently be attracted to the facts of this case. In view of the detailed position noted above, the action of the respondents in holding the petitioners liable for recovery of this amount, if the same is not recovered from Bansi Lal is not legally sound and cannot be sustained. The same is set-aside. The writ petition is allowed. However, it is made clear that this order will not be a bar for the respondents to take any action against the petitioners and other members of the society for having appointed Bansi Lal in this illegal and arbitrary manner without taking any permission from the competent authority.

