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**(2011) 06 MAD CK 0462**

**In the Madras High Court**

**Case No : Writ Petition (MD) No. 10729 of 2005**

Mohammed Mustafa

APPELLANT

Vs

The Principal District Judge (Co-operative Tribunal) Nagercoil  
and The Deputy Registrar of Co-op Societies

RESPONDENT

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**Date of Decision : 29-06-2011**

**Acts Referred:**

**Citation : (2011) 06 MAD CK 0462**

**Hon'ble Judges : D. Hariparanthaman, J**

**Bench : Single Bench**

**Advocate : S. Mohandass and P. Subbaraj, for the Appellant; S. Bharathi, G.A.,  
for the Respondent**

**Final Decision : Allowed**

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## **Judgement**

D. Hariparanthaman, J.—The Petitioner was employed as a Peon in Manakavilai Primary Agricultural Co-operative Bank Limited, Kanyakumari District. On 17.11.1997, the 2nd Respondent directed the Extension Officer, Thiruvattar to enquire into the irregularities u/s 81 of the Tamil Nadu Co-operative Societies Act, 1983 (shortly as "the Act"). The Extension Officer looked into various accounts and also examined the concerned parties and submitted a report dated 21.08.1998, alleging that loss was caused to the Society by the employees of the Bank including the Petitioner.

2. According to the Extension Officer, loss was caused in six heads and the Petitioner was responsible for the loss in some of the transactions under Head Nos. 2,3 and 6. The Extension Officer found in his enquiry that the Petitioner was responsible for causing loss to the tune of Rs. 84,788/-. Based on the said report, the 2nd Respondent issued a show cause notice dated 24.03.1999 u/s 87 of the Act, as to why the aforesaid amount could not be realised from the Petitioner. The aforesaid show cause notice was issued to 7 employees including the Petitioner. All the employees starting from Secretary to Peon were issued show cause notice. After getting explanation from the Petitioner, the 2nd

Respondent passed the impugned order dated 03.09.1999 u/s 87 of the Act, stating that the Petitioner caused loss to the tune of Rs. 84,788/- and he was directed to pay the same with interest. The 2nd Respondent did not examine any witness and his order is only based on the report of the Extension Officer submitted u/s 81 of the Act.

3. The Petitioner preferred appeal in C.M.A.CS. No. 28 of 2000 to the 1st Respondent u/s 152 of the Act. The 1st Respondent rejected the appeal and upheld the order of the 2nd Respondent in its order dated 16.12.2003. The Petitioner has sought to quash the order dated 16.12.2003 made in C.M.A. Cs. No. 28 of 2000 and also to quash the order dated 03.09.1999 of the 2nd Respondent.

4. The 2nd Respondent filed counter affidavit refuting the allegations. It is stated in the counter affidavit that the Petitioner was also responsible for the loss caused to the Society and hence, there is no infirmity in the impugned orders.

5. Heard the learned Counsel appearing for the Petitioner and the learned Government Advocate appearing for the Respondents.

6. The learned Counsel appearing for the Petitioner submits that the Petitioner was employed as a Peon. His duty as per the order dated 03.03.1997 of the Special Officer was to take the records from one table to other table and also to carry out the duty assigned by the Secretary. Hence, no responsibility could be fixed for any irregularity in the grant of loan, etc.

7. It is further submitted that none of the parties examined by the Extension Officer during 81 Enquiry implicated that the Petitioner committed any irregularity/misconduct. None of the parties examined by the Extension Officer mentioned the name of the Petitioner. Just because, he filled certain chalans and made certain entries in the records as directed by the Secretary, the Petitioner could not be held responsible for the loss. In any event, neither the 2nd Respondent nor the 1st Respondent has stated that the loss was due to the wilful negligence on the part of the Petitioner.

8. It is also pointed out that even in the counter affidavit filed by the Respondent, nowhere, it is stated that the loss was due to the willful negligence of the Petitioner. Even mere negligence is not sufficient to attract surcharge proceedings u/s 87 of the Act and there should be an element of willfulness to attract Section 87 of the Act.

9. On the other hand, the learned Government Advocate has strenuously sought to sustain the impugned orders. She relied on the counter affidavit filed by the Respondents.

10. I have heard the submissions made on either side.

11. The Petitioner was employed as a Peon in Manakavilai Primary Agricultural Co-operative Bank. He was the only peon in the Bank. There was a Secretary,

two cashiers, two clerks and one Jewel Appraiser employed the Society.

12. The Extention Officer, Thiruvattar submitted a report u/s 81 of the Act at the instance of the 2nd Respondent. The Extention Officer noticed that irregularities were found in so many accounts. He classified the same under six heads. As far as this case is concerned, Head Nos. 2,3 and 6 are relevant. In every head, irregularities are said to be committed in various accounts and the Petitioner is concerned with some of the accounts in each Head viz., Head Nos. 2,3 and 6.

13. Under the Head No. 2, it was alleged that there was a loss to the Society as 20 jewel loans were given without there being jewels and there by, there was a fraud committed against the Society to the tune of Rs. 4,04,800/- and Rs. 1,15,573/- was repaid. The balance of Rs. 2,89,227/- was to be recovered. The Petitioner and 5 others were responsible for the aforesaid loss. Among the 20 jewel loans, the Petitioner was jointly held responsible with others in relation to two accounts viz., the account of C. Thulasi and A. Mohammed. It is stated that Rs. 22,500/- and Rs. 39,000/- were loss in the jewel loan given to C. Thulasi and A. Mohammed respectively.

14. The order of the 2nd Respondent does not give any reason as to how the Petitioner contributed for the loss. No reason was given for ordering surcharge proceeding against the Petitioner in the aforesaid two accounts. It is stated that the concerned persons, who deposed before the 81 Enquiry stated that they did not pledge jewel loans. But, they did not say anything against the Petitioner. There is no mentioning of the name of the Petitioner. It seems that the certain entries were made in those accounts by the Petitioner. Even that is not stated as a reason by the 2nd Respondent. It is fairly submitted by the learned Counsel appearing for the Petitioner that certain entries were made in the loan ledgers by the Petitioner as directed by the Secretary.

15. Likewise, the Head No. 3 relates to the loss caused to the Bank due to non bringing into the accounts of the amount remitted by the account holders. There were 26 accounts under Head No. 3. The Petitioner was held responsible for 4 accounts. In this case also, responsibility is based on filling up the chalans and making entries in the ledgers. As stated above, none of the 4 parties mentioned the name of the Petitioner during their evidence in the 81 Enquiry.

16. No reason is given by the 2nd Respondent for fixing the responsibility on the Petitioner as stated above. Here again, the learned Counsel appearing for the Petitioner alone has stated that the responsibility was fixed based on some entries were being made by the Petitioner in the loan registers as directed by the Secretary.

17. In the Head No. 6, the allegation was that interest was erroneously calculated in 7 accounts that resulted in a loss of Rs. 10,945.60 to the Society. The Petitioner was held responsible for the erroneous calculation of interest in two accounts to the tune of Rs. 15425/- and 26315/- respectively.

18. Here again, the 2nd Respondent does not give any reason as to how the Petitioner was responsible for the alleged loss.

19. The learned Counsel appearing for the Petitioner has

submitted that the interest as calculated by the Secretary was entered by the Petitioner in the concerned ledger as directed by the Secretary.

20. I have gone through the impugned order of the 2nd Respondent dated 03.09.1999 passed u/s 87 of the Act. Nowhere the order contains the reasons for fixing responsibility on the Petitioner. It is not stated as to how he came to the conclusion that the Petitioner caused loss to the Bank. Nobody was examined before the 2nd Respondent. Except, stating that the Petitioner along with others are responsible for causing loss in certain accounts, no reason is given for fixing liability on the Petitioner.

21. On the other hand, the Petitioner has categorically stated that being a Peon, he was not responsible and his duty was to take chalans, registers and other records from one table to another table as required by the employees and he was to carry out the duty as assigned by the Secretary. The order dated 03.03.1997 of the Special Officer, based on the resolution No. 48 of the Society is enclosed in the typed set. As per the said order, the duties of the peon are that he should take the papers from one place to another place and also to carry out the instructions of the Secretary.

22. Without taking into account the aforesaid facts and the fact that the Petitioner was a Peon, the 2nd Respondent passed the impugned order. Nowhere in the impugned order, the 2nd Respondent held that the loss was due to the wilful negligence of the Petitioner. To attract Section 87 of the Act, there should be willful negligence on the part of the Petitioner. Mere negligence is not sufficient.

23. While the matter was taken by appeal in C.M.A.CS. No. 28 of 2000, the 1st Respondent rejected the same. Paragraph Nos. 12 and 13 of the order of the 1st Respondent is extracted herein:

12. The Appellant in C.M.A.(C.S.) No. 28 of 2000 has been figured as the Peon. He has also been enquired and tried. The Appellant in C.M.A.(C.S.) No. 8 of 2001 has been tried as if he is a Cashier. After enquiry, the Arbitrator has fixed the responsibility for the alleged malpractices with all the Defendants except the 6th Defendant poulose, Senior Grade Clerk and passed an Award direction them to make the payment. The total amount of misappropriation is Rs. 4,95,282.35/-

13. Admittedly, the Appellant in C.M.A.(C.S.) No. 28 of 2000 is a Peon. Even according to him, he has written the chalans and handed over the same to the concerned members. there is no record to show that he has been authorised to fill up the chalans. Hence the Deputy Registrar was held that he is jointly and severally liable for the loss. Therefore, in my view, he cannot be construed that he is not responsible for the alleged misappropriation.

24. The 1st Respondent held in paragraph No. 12 that the Petitioner was enquired and tried. I am not able to understand as to what was the enquiry that is referred to by the 1st Respondent. The 2nd Respondent did not enquire any person. He acted merely based on the proceedings u/s 81 of the Act. Furthermore, in para 13 of the order, the 1st Respondent held that since he wrote the chalan and handed over to the account holder, he is also responsible as he was not authorised to fill the chalan. The specific case of the Petitioner is that he was instructed by the Secretary to fill the chalan. There is no reason to disbelieve the same. It is not the finding of the 2nd Respondent and the 1st Respondent that in spite of the direction from the Secretary, the Petitioner should not fill chalans and make entries in registers. Merely because, he wrote chalans as directed by his superior, he could not be penalised by the surcharge proceedings, particularly, when there is no finding that the loss was due to wilful negligence of the Petitioner. The impugned orders are thus liable to be quashed and accordingly, are quashed.

25. In the result, this writ petition is allowed. No costs.