

(2003) 08 KAR CK 0109
In the Karnataka High Court
Case No : Writ Petition No. 19406 of 1996

S. Seetharama Rao

APPELLANT

Vs

The Secretary and Others

RESPONDENT

Date of Decision : 04-08-2003

Acts Referred:

Karnataka Co-operative Societies Act, 1959 — Section 111, 69

Citation : (2004) ILR (Kar) 2181 : (2003) 4 KCCR 302 SN

Hon'ble Judges : N.K. Patil, J

Bench : Single Bench

Advocate : R.S. Ravi, for the Appellant; M. Keshava Reddy, HCGP for R2 and R3 and Deshraj, for R-1, for the Respondent

Final Decision : Dismissed

Judgement

Patil, J.—The petitioner, questioning the legality and validity of the order dated 18th February 1991 in Surcharge Case No. 5/84-85 on the file of the Assistant Registrar of Co-operative Societies - the second respondent herein, and the order passed by the Karnataka Appellate Tribunal ("Tribunal" for short) dated 25th March 1996 in Appeal No. 128/1991 vide Annexures A and B respectively, has presented this Writ Petition.

2. The petitioner was working as Secretary in the first respondent - Society. The first respondent Society raised the surcharge proceedings u/s 69 of the Karnataka Co-operative Societies Act ("Act" for short) before the second respondent for recovery of a sum of Rs. 45,433.44 with interest at the rate of 18% for the loss caused to the first respondent - Society as per the audit report for the years 1967-68 and 1968-69. During the relevant period, the petitioner was working as a Secretary of the first respondent Society. The second respondent, after considering the oral and documentary evidence and other materials available on file, exercising his power u/s 69 of the Act, has passed the order holding that the petitioner is liable to pay the said loss incurred by the said first respondent Society by its order dated 18th February 1991. Assailing the

correctness of the said order passed by the second respondent, petitioner herein has filed an Appeal in No. 128/1991 on the file of the Karnataka Appellate Tribunal Bangalore. The Tribunal after going through the order passed by the second respondent, the submissions of the respective counsel appearing for the parties, and after careful perusal of the lower Court records, held that it does not find any reasons to interfere with the order passed by the second respondent and also held that the impugned order passed by the second respondent is sustainable in law. In the result, the appeal filed by the petitioner stood dismissed by its order dated 25th March 1996. Feeling aggrieved by the impugned order passed by both the authorities below the petitioner has present this Writ Petition.

3. The principal submission canvassed by the learned Counsel appearing for the petitioner is that, the proceedings initiated by the second respondent on an application filed by the Secretary is one without jurisdiction. He contended that as per- Section 111 of the Act, the proceedings cannot be initiated against the petitioner he being an honorary secretary and when another secretary also was present. Further, he vehemently submitted that if at all there is any misappropriation of funds; the petitioner alone cannot be held responsible for the same. The entire committee members are responsible for disbursing the said loan to one of the Directors of the first respondent - Society. He further submitted that he has taken specific ground before the Appellate Tribunal that the Arbitrator has, inspite of a request made by the petitioner that the auditor should be examined, has not considered the said request nor examined the auditor. He further submitted that the said loan was disbursed by the petitioner in view of the endorsement and the memo issued by the then president of the Society. Therefore he alone should not be held liable or responsible for misappropriation of the funds as pointed out by the Audit Department at the time of auditing the Accounts of the first respondent - Society for the year 1967-68 and 1968-69. This specific grounds urged before the Tribunal have not been taken into consideration and the Tribunal has dismissed the appeal filed by the petitioner holding that there are no good grounds calling for interference in the impugned order passed by the second respondent. He submitted that both the authorities have committed an error and dismissed the stand taken by the petitioner contrary to the mandatory provisions of the Act and Rules. Hence, both the impugned orders passed by both the authorities are liable to be set aside.

4. Per contra, the learned Counsel appearing for the first respondent Society, inter alia, contended and submitted that the impugned order passed by both the authorities are in consonance with the mandatory provisions of the Act and Rules. Further, he submitted that the petitioner while he was working as Secretary of the first respondent Society, at the request of one of the Directors has suo-motu sanctioned the loan without placing the matter before the Committee nor taking approval from the Committee by way of bringing a resolution. Even the submission of the learned Counsel appearing for the petitioner that the then President has issued an endorsement and memo, it was

duty cast on the Secretary to have placed the matter before the Committee. But in the instant case he submits that neither of them is coming forth from the records. Hence, both the authorities have rightly held that he alone is responsible for misappropriation of the funds of the first respondent - Society. Further, to substantiate his submissions, he placed reliance on the submissions canvassed by the learned Counsel appearing for the petitioner that as per Section 111A of the Act, he has taken a specific ground before the Tribunal and the same was not considered. The said submission made by the petitioner has no substance since the date of proceedings of misappropriation committed by the petitioner pertains to Co-operative years 1967-68 and 1968-69. The said Section 111A has been inserted by way of an amendment only in the year 1976. Therefore, he is not entitled to take any benefit as contended by the learned Counsel appearing for petitioner in view of the well settled law laid down by the Apex Court and this Court in series of matters. He submits that if both the authorities have recorded a concurrent finding of fact this Court cannot exercise its extra ordinary jurisdiction in a writ of certiorari, by sitting over the judgment and interfere in the well considered orders passed by the both the authorities based on oral and documentary evidence and the material available on the file, after appreciating and analyzing that they have recorded a concurrent finding of fact.

5. The learned Government Pleader appearing for the respondents 2 and 3, inter alia, contended and substantiated the well considered order passed by both the authorities. He was quick to point out that both the authorities have not committed any error or illegality as such. So far as the contention of the petitioner that the proceedings initiated u/s 69 is one without jurisdiction, he drew my attention to Section 69 of the Act, wherein the registrar has got power to initiate the proceedings of his own motion or on an application of the Committee, Liquidator or any creditor, by framing charges against such person or persons etc. Therefore, the submission of the learned Counsel appearing for the petitioner has no substance regarding initiation of the proceedings is concerned. Further, he submitted that in the instant case, both the authorities have concurrently recorded a finding of fact against the petitioner holding that he is the person solely responsible for the misappropriation of the funds of the first respondent - Society and being a custodian of the records and the accounts of the Society, it is his duty that if any body asks for loan by filing required applications upon receipt of the said applications, to place the matter before the Committee and only after approval by the Committee, he is supposed to release the loans to the applicants. But in the instant case, only on the basis of the endorsement made by the then President, the petitioner has released the loan in favour of one of the Directors. This aspect itself is suffice for this Court to hold that the petitioner has not at all followed the procedure prescribed under the relevant provisions of the Act and Rule and has committed an error. Therefore, he submits that both the authorities have rightly considered and recorded a concurrent finding of fact against the petitioner and the petitioner has not made out any case to interfere in the impugned orders passed by both the authorities

below.

6. I have heard the learned Counsel appearing for the petitioner, the learned Counsel appearing for the first respondent - Society and the learned Government Pleader appearing for respondents 2 and 3 and re-evaluated the entire material, with the assistance of the learned Counsel appearing for the parties. After careful perusal of the impugned orders passed by both the authorities, it is manifest on the face of records that the authorities have recorded a concurrent finding of fact against the petitioner after appreciating and evaluating the oral and documentary evidence. Therefore, I find no error of law, as such committed by the authorities below as contended by the learned Counsel appearing for the petitioner that the proceedings initiated u/s 69 of the Act at the request of the Secretary is not permissible. After careful perusal of Section 69 of the Act, it is seen that the Registrar, may, of his own motion or on an application of the Committee. Liquidator or any creditor, frame charges against such person or persons. In the instant case, the Secretary has brought to the notice of the concerned competent authority against the misappropriation and that does not mean that the Secretary alone has referred the matter u/s 69 of the Act. The Competent authority, viz. the Registrar, on his own motion, on the basis of the information gathered can initiate proceedings. Therefore, the submission made by the learned Counsel appearing for the petitioner has neither any substance nor any bearing on the facts and circumstances of the case. Further, it is the contention, of the petitioner that as per Section 111A of the Act, he has raised a specific ground before the appellate authority and the said defence placed on behalf of the petitioner has not at all been taken into consideration by the appellate Tribunal. The said submission made by the counsel is contrary to the relevant provisions of the Act due to the fact that the said Section has been inserted only in the year 1976 and the surcharge proceedings initiated for the misappropriation of the funds of the society pertains to Co-operative years 1967-68 and 1968-69 and that too, subsequently, the same has been omitted in the year 1998. Therefore, the reliance placed by the learned Counsel appearing for the petitioner has no base to stand and the same was rightly rejected by the Tribunal also. The Tribunal, after going through the order passed by the second respondent and after perusal of the lower court records, has held that the petitioner has failed to substantiate his case that he alone is not responsible for the misappropriation of the funds of the society in individual capacity. The Tribunal has held that he alone is responsible for the misappropriation of the funds as revealed from the submissions made by the respective counsel appearing for the parties during the course of their submission before the Tribunal. That the request of one of the Directors has been considered by the Secretary alone and he has sanctioned the loan without placing the same before the Committee and without getting the approval he has disbursed the loan in a sum of Rs. 45,000/-. Therefore, the petitioner being a secretary and a custodian of the records and the accounts is duty bound to have followed the procedure prescribed and when he has failed in his duty he cannot pass on his liability on

other members and say that he alone is not responsible for misappropriation of the funds of the society. The said stand taken by the petitioner before both the authorities is contrary to the relevant provisions of the Act and Rules and there is no substance in the said submission. So far as the submission made by the learned Counsel appearing for the petitioner that the President has endorsed on the memo for sanctioning the loan to one of the Directors of the society. I am of the view that in the normal course it is seen that if an application or a request is made by any member of the society the Secretary has to place the memo/application before the President and he in turn endorses on the said applications. After endorsement by the President, the Secretary is duty cast to place the matter before the Committee and until and unless the committee clears/approves the loan by way of resolution, he cannot disburse the amounts of the society as per his whims and fancies only on the basis of the endorsement of the President. Therefore, it is sheer callousness on the part of the Secretary that without following the procedure, and by taking the risk, has released the loan in favour of one of the Directors. Therefore, in my considered view, I do not find any error or illegality in the impugned orders passed by both the authorities below. Further, it is significant to note here itself that in similar circumstances, the Hon''ble Apex Court in the case of Lakshmi Precision Screws Ltd. Vs. Ram Bahagat, relying on the decision in the case of Syed Yakoob Vs. K.S. Radhakrishnan and Others, has categorically held that if concurrent finding of fact is recorded and if the parties fail to make out a case that there is an error of law, the writ of certiorari cannot be exercised by the High Court under Articles 226 and 227 of the Constitution of India. It is worthwhile to extract the observations made by the Hon''ble Supreme Court in the case of SYED YAKOOB v. KS. RADHAKRISHNAN, which reads as hereunder:-

7. The question about the limits of the jurisdiction of High Courts in issuing a writ of certiorari under Article 226 has been frequently considered by this Court and the true legal position in that behalf is no longer in doubt. A writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior Courts or tribunals:

"these are cases where orders are passed by inferior Courts or tribunals without jurisdiction, or is in excess of it, or as a result of failure to exercise jurisdiction. A writ can similarly be issued where in exercise of jurisdiction conferred on it the Court or Tribunal acts illegally or improperly, as for instance, it decides a question without giving an opportunity to be heard to the party affected by the order, or where the procedure adopted in dealing with the disputes is opposed to principles of natural justice. There is, however, no doubt that the jurisdiction to issue a writ of certiorari is a supervisory jurisdiction and the Court exercising it is not entitled to act as an appellate Court. This limitation necessarily means that findings of fact reached by the inferior Court or Tribunal as result of the appreciation of evidence cannot be reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however, grave it may appear to be. In regard to a

finding of fact recorded by the Tribunal, a writ of certiorari can be issued if it is shown that in recording the said finding the Tribunal had erroneously refused to admit admissible and material evidence or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Similarly, if a finding of fact is based on no evidence that would be regarded as an error of law which can be corrected by a writ of certiorari. In dealing with this category of cases, however, we must always bear in mind that a finding of fact recorded by the Tribunal cannot be challenged in proceedings for a writ of certiorari on the ground that the relevant and material evidence adduced before the Tribunal was insufficient or inadequate to sustain the impugned finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal and the said-points cannot be agitated before a Writ Court. It is within these limits that the jurisdiction conferred on the High Courts under Article 226 to issue a writ of certiorari can be legitimately exercised."

Therefore, if the ratio of law laid down by the Apex Court is taken into consideration, I do not find any justification to interfere with the orders passed by both the authorities. Accordingly, the Writ Petition filed by the petitioner is liable to be rejected.

7. Having regard to the facts and circumstances of the case, as stated above, I do not find any good grounds to interfere with the impugned orders passed by both the authorities below. Accordingly, the Writ Petition filed by the petitioner is dismissed. However, the dismissal of the Writ Petition will not come in the way of the petitioner making necessary application before the first respondent regarding waiving of interest and in case the petitioner makes an application to the first respondent, the first respondent is directed to consider the same and decide the same in accordance with law, having regard to the facts and circumstances of the case and taking into consideration the service rendered by the petitioner to the said Society.

8. Sri. M. Keshava Reddy learned Government Pleader is given four weeks" time to file his memo of appearance.