

IN THE HIGH COURT OF TRIPURA
AGARTALA

W.P.(C) No.362 Of 2013

Sri Goutam Sengupta,
son of Late Nalini Ranjan Sengupta,
resident of Pandit Kali Prasanna Sarani,
Banamalipur, Agartala,
P.S. East Agartala, District West Tripura.

..... Petitioner

- Vs -

1. The Registrar of Co-operative Societies,
Palace Compound, P.O. Agartala, West Tripura.
2. Tripura Apex Fisheries Coop. Society Ltd.,
Represented by its Chairman,
College Tilla Fishery Office Complex,
P.O. Agartala College, Agartala, West Tripura.
3. The Executive Officer,
Tripura Apex Fisheries Coop. Society Ltd.,
College Tilla Fishery Office Complex,
P.O. Agartala College, Agartala, West Tripura.

.....Respondents

4. The Director,
Directorate of Fisheries,
Govt. of Tripura, Agartala, West Tripura.

.....Proforma Respondents

B E F O R E
THE HON'BLE MR. JUSTICE S. TALAPATRA

For the petitioner : Mr. B.N. Majumder, Advocate

For the respondents : Mr. T.D. Majumder,
Mr. P. Datta,
Mr. D.P. Ghosh,
Advocates

Date of hearing & order : 30.04.2014

Whether fit for reporting :

Yes	No
	√

JUDGMENT & ORDER (ORAL)

Heard Mr. B.N. Majumder, learned counsel appearing for the petitioner as well as Mr. T.D. Majumder, learned counsel appearing for the respondent No.1, Mr. P. Datta, learned counsel appearing for the respondents No. 2 & 3 as well as Mr. D.P. Ghosh, learned counsel appearing for the respondent No.4.

2. In terms of the order dated 23.04.2014, Mr. P. Datta, learned counsel appearing for the respondents No. 2 and 3 has produced the written instruction given in the form of a note vide Note No.2 in the case brief, which reads as follows :

"Received the order of the Hon'ble High Court dated 23.04.2014 passed in W.P.(C) No.362 of 2013. It is revealed that the claim submitted before the respondent No.1 is/was related to the claim as involved in the criminal case vide No.GR.1518/1992, W.P.(C) No.160 of 2008 and W.A. No.31 of 2009. The above is related with the President for his kind information and proper direction. So the matter is placed for approval pl."

3. In view of the factual aspect that has revealed from the said Note No.2, Mr. Datta has submitted that necessary order may be passed by this court. The reference as made to the Registrar of Cooperative Societies for purpose of realization of the amount is related to the cases which have been by now decided by the respective courts.

4. Mr. B.N. Majumder, learned counsel appearing for the petitioner has submitted that based on a complaint filed by the Executive Officer, Tripura Apex Fishery Co-operative Society Ltd.

(TAFCS Ltd.), a criminal investigation had been initiated against the petitioner and one Madan Chakraborty, the cashier of TAFCS Ltd. and that investigation culminated in filing of the chargesheet.

5. After the full-fledged trial, the finding of conviction has been returned against other accused Madan Chakraborty, but the petitioner was acquitted from the charge of misappropriating the fund of the TAFCS Ltd. For purpose of elucidation, the relevant paragraph of the judgment and order dated 22.12.2011, delivered in G.R. No.1518/1992 by the Addl. Chief Judicial Magistrate, West Tripura, Agartala is extracted hereunder :

"13. Now in order to establish the charge of criminal breach of trust by a public servant u/s 409 of IPC, it is sine qua non to prove that the property in question was entrusted to the accused persons. Here in the case at hand although the total amount of defalcation according to the prosecution was Rs.5,15,617.34 and accordingly charge was framed under two distinct heads but during trial of this case prosecution both by oral and documentary evidence on record has failed to prove the charge of entrustment of cash Rs.4,30,542.34 to both the accused persons and also the prosecution both by oral or documentary evidence on record failed to prove the charge of misappropriation of the aforesaid amount, by both the accused persons."

Thereafter, it has been observed in para Nos. 17, 19 and 19 of the said judgment as under :

"17. Now from the evidence of PWs 12 & 13 and the exhibited documents relied upon by the prosecution as Exbt. 34 & 35 it appears to me that in their presence accused Madan Chakraborty received an amount of Rs.85,075/- from Gautam Sengupta the then CEO and Exbt. D-2 & D-3 relied upon by the accused Goutam Sengupta also confirmed the said fact. Further on perusal of Exbt.6 i.e. the cash Book wherein prosecution proved the signature of cashier as Exbt. 6/3 on said Exbt.6 there is no entry of the said amount of Rs.85,075/- in the cash book and the accused Madan Chakraborty during cross examination of PWs 12 & 13

failed to discard their evidence and also failed to make any counter to disprove Exbt. 34 & 35 and also failed to satisfy the court regarding absence of entry in respect of Rs.85,075/- in the cash book and also failed to make any rebuttable evidence on record to disbelieve the fact of the prosecution. More so on perusal of Exbt.6 it appears that the accused Madan Chakraborty being a cashier used to maintain the said cash book in reckless manner and he as a cashier did not maintain the cash book properly which is confirmed by PW.11. Thus it appears to me that the accused being a cashier of TAFCS Ltd. College Tilla has misappropriated the said amount of Rs.85,075/- by not entering the amount in the cash book which was drawn by another accused Gautam Sengupta on 17.7.92 from the office of CEO, North Tripura FFDA, Kumarghat. Thus it appears to me that the prosecution has been able to prove that accused Madan Chakraborty being a cashier misappropriated an amount of Rs.85,075/- by not entering the said amount in the cash book of TAFCS Ltd. which was handed over to him by another accused Gautam Sengupta on 17.7.92 and misappropriated the said amount being a public servant.

18. Thus the aforesaid points are decided with the said observation and partly in favour of the prosecution and partly in negative against the prosecution of this case.

19. In the result, the prosecution case partly succeeds and prosecution has been able to prove the charge as levelled against the accused Madan Chakraborty u/s 409 of IPC as such I do hereby convict the said accused under the aforesaid provision of law. But the prosecution has been failed to prove the charge levelled against the accused Goutam Sengupta u/s 409 of IPC. As such I do hereby acquit the said accused from the charge levelled against him and he is set at liberty. His surety if any accordingly sands discharged from the liability of bail bond."

6. It appears that the complaint against the petitioner was filed on 11.11.1992 and the disciplinary proceeding was initiated against the petitioner on 18.01.2006 i.e. almost after 14 years. On 19.01.2006 the suspension order of the petitioner was revoked and the entire period of his suspension was treated as on duty, but on 09.03.2006, the Director of Fisheries, Govt. of Tripura by issuing a corrigendum mentioned that the 'entire period of suspension of the petitioner treating him to be on duty' vide memorandum dated

19.01.2006 stands deleted. On conclusion of the departmental proceeding, the Inquiring Officer had filed his report on 25.11.2006, exonerating the petitioner from the charges. But, the Disciplinary Authority did not concur with the said findings of the inquiry report and had directed further inquiry by the order dated 04.09.2008. The said order of the Disciplinary Authority had been challenged by the petitioner by filing the writ petition, being W.P.(C) No. 160/2008. By the judgment and order dated 19.08.2009, the High Court had quashed the order dated 04.09.2008 as passed by the Disciplinary Authority as well as the impugned corrigendum dated 09.03.2006. Thereafter, against the said judgment and order dated 19.08.2009 passed by the learned Single Judge, the writ appeal, being W.A. No.31/2009 had been preferred by the respondents. While disposing the said writ appeal by the judgment and order dated 30.05.2013, this court has observed that :

"In the present case, the allegation against the writ petitioner was serious inasmuch as they related to defalcation of an amount of about Rs.4,00,000/-. Having said so, the fact is that the writ petitioner has already suffered enormously. He remained under suspension for 14 long years. He has been acquitted by the learned trial Court on 22.11.2011 after facing a trial for almost 20 years. This is itself a sufficient punishment which the accused has undergone. So, we feel that this is one of those cases where the learned Single Judge was right in not remanding the case back to the Inquiry Officer to start the proceedings afresh. Therefore, we find no merit in this appeal. Accordingly, the appeal is dismissed."

7. Apart that finding, what has surfaced is that the criminal court has given clean acquittal to the petitioner. By the communication dated 14.08.2013, a reference was made by the TAFCS Ltd. to the Registrar of Cooperative Societies for attachment

or recovery of the outstanding amount of ₹4,53,277.75 from the petitioner, Ex. Executive Officer, TAFCS Ltd. On the basis of that reference, a dispute has been registered by the Registrar of Cooperative Societies vide Case No.01/2013, for which, the summon/notice has been issued to the petitioner. The notice is available at page 55 of the writ petition.

8. Mr. Majumder, learned counsel appearing for the petitioner has submitted that the reference was made beyond the period of limitation. But without notice to the petitioner, the inordinate delay was condoned. According to Section 94 of the Tripura Cooperative Societies Act, any reference has to be made within six years from the date of determination of the liability, but such prayer has been made on 14.08.2013 whereas the determination was made on 10.11.1992 when the petitioner was asked to refund an amount of ₹4,53,277.75.

9. However, this court is not inclined to weigh the legality of the order regarding condonation of delay. No doubt, the procedure as followed for condoning the delay is absolutely illegal and in contrast to the rule of law. However, what is more important in the main-stay of the controversy is that on the face of the findings of the trial court and the High Court whether the respondents No. 2 and 3 can make a reference to the Registrar of Cooperative Societies under Section 92 of the Cooperative Societies Act for attachment or for realisation of the said amount. According to this court that will be an exercise for sitting on appeal on the judgments of the High Court as well as of the trial court and there

cannot be any doubt that the Registrar of Cooperative Societies within its authority does not have such power of appeal or review.

10. In view of this, the reference dated 14.08.2013 under No.109/TAFCS/90-91/1095, order dated 15.10.2013 as passed by the Registrar of Cooperative Societies in Case No.01/2013 in File No.F.9(50)/MISC/COOP/CRD/2013 and the summon/notice dated 15.10.2013 in Dispute Case No.01/2013 are hereby quashed.

11. In the result, this petition stands allowed. There shall be no order as to costs in the circumstances of the case.

JUDGE

ROY