
(1999) 123 PLR 824 : (2000) 1 RCR(Civil) 476

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Writ Petition No. 13909 of 1997

Jai Chand

APPELLANT

Vs

State of Haryana and
Others

RESPONDENT

Date of Decision: Aug. 13, 1998

Acts Referred:

Punjab Co-operative Societies Act, 1961 " Section 54

Citation: (1999) 123 PLR 824 : (2000) 1 RCR(Civil) 476

Hon'ble Judges: V.K. Bali, J; M.L. Singhal, J

Bench: Division Bench

Advocate: Mani Ram, for the Appellant; Madan Dev, for Respondent Nos. 1 to 3, C.R. Dahiya, for Respondent No. 5, S.S. Dalal and K.K. Saini, for the Respondent

Final Decision: Allowed

Judgement

M.L. Singhal, J.

This is a petition filed under Articles 226/227 of the Constitution of India by one Jai Chand, Development Officer, Central

Co-operative Bank, Sirsa whereby he has prayed for the issuing of writ of certiorari quashing the order of the Deputy Registrar Co-operative

Societies, Hisar dated 2.2.1985 (Annexure P-3), order dated 18.10.1994 passed by the Additional Registrar, Cooperative Societies, Haryana

(Annexure P-4) and order dated 20.1.1997 passed by the Commissioner and Secretary to Government Cooperative Department Haryana

(Annexure P-5). The case projected by him in this petition is as follows:-

On 28.3.1973, Rs. 017,000/- were withdrawn from the current account of one Bhagat Singh through Gurdarshan Singh. Said Bhagat Singh had

died before 28.3.1973. Petitioner was acting as Branch Manager while Balwant Singh was acting as clerk and Om Parkash was acting as cashier.

Petitioner acted as Branch . Manager in the absence of Wazir Singh, Branch Manager on 28.3.1973. He was given the charge of cash only. It was

a loose cheque thumb marked by Bhagat Singh, Gurdarshan Singh and one Subhash Kumar account holder No. 382 and also signed by Balwant

Singh clerk. The matter was referred to the police. Case FIR No. 81 of 1973 was registered at Police Station, Tohana in which petitioner,

Balwant Singh, and Om Parkash were tried under Sections 420/468 and 471 of the Indian Penal Code. As there was no incriminating evidence

against them, they all were acquitted by the Judicial Magistrate Ist Class, Hisar vide order dated 18.11.1978 Annexure P-1. Matter was referred

to the arbitration of Chand Singh Yadav, Assistant Registrar, Cooperative Societies, Hisar. Vide Annexure P-2 dated 11.8.1981 Sh. Chand Singh

Yadav, dismissed the reference. The case was placed before the Board of the Directors in their meeting held on 30.9.1981 for filing an appeal

against the order dated 11.8.1981. The Board of Directors of the Bank took decision that surcharge case be prepared against the employees

involved. The Bank failed to initiate proceedings u/s 54 of the Punjab " Co-operative Societies Act, 1961 as the loss had not been detected during

the course of audit inspection, inquiry or even winding up of the society. The Managing Director of the Bank wrote to Deputy Registrar in

September, 1984 to enquire into the matter of surcharge or to appoint an Enquiry Officer. Since no case of surcharge had been made out in terms

of Section 54 of the Punjab Cooperative Societies Act and Section 101 of the Haryana Co-operative Societies Act, 1984, petitioner filed

objections against the illegal and without jurisdiction proceedings. Bank through Sh. Surjit Singh, Managing Director filed claim statement though

there is no provision in Section 101 for such statement. Respondent No. 3 did not allow the petitioner to look into the enquiry report submitted by

the Assistant Registrar Co-operative Societies, Fatehabad. On 2.2.1985, order Annexure P-3 was passed by the Deputy Registrar, Co-operative

Societies, Hisar. It was an illegal order. Order Annexure P-3 was also without jurisdiction. His appeal to the Registrar which was heard by the

Additional Registrar was dismissed vide order dated 18.10.1994 Annexure P-4. Additional Registrar dismissed the appeal without discussing the

points raised before him. He dismissed the appeal through cryptic order, putting his seal on the order of the Deputy Registrar without applying his

mind. His revision filed before the Commissioner and Secretary to Government, Cooperative Department also met the same fate. He too did not

discuss the material points raised before him. The surcharge case is prepared u/s 54 of the Punjab Cooperative Societies Act, 1961. No case is

surcharge was made out and enquired into in terms of Section 54 of the said Act. u/s 54 of the said Act finding is required that the act was done by

an employee with wilful negligence. It was not the case of the respondent-Bank in the claim statement filed by Sh. Surjit Singh, Managing Director

that the loss had been caused to the Bank by wilful negligence of the petitioner. There is clear distinction between negligence and wilful negligence.

There is no proof that the petitioner was wilfully negligent in passing the disputed cheque. Cheque was presented before the clerk who also

identified the signatures of Subhash Kumar and entry was made in the ledger. There was no note on the ledger regarding death of Bhagat Singh.

Petitioner after perusing the cheque and seeing that the clerk of the Bank had also identified the account holder's cheque passed the cheque. He

worked only for a day as Branch Manager. As such, there was no possibility of his collusion with the cashier or the clerk in passing the cheque.

There is no finding in any of the impugned orders that the pre-requisites of the proceedings u/s 54 of the said Act had been satisfied. Registrar did

not pass any order directing Assistant Registrar, Cooperative Societies, Fatehabad to enquire into the matter or that he himself will enquire into the

matter. Sh. Phool Singh Yadav, Assistant Registrar Cooperative Societies in departmental proceedings did not find the petitioner guilty of any

lapses and the enquiry u/s 54 of the said Act would do not better. The Deputy Registrar while proceeding with the matter did not supply the copy

of the enquiry report of the Assistant Registrar, Cooperative Societies, Fatehabad to the petitioner. In the absence of the enquiry report, petitioner

could not be expected to defend himself properly. As per Section 54 Sub-section (2) the Registrar, after affording personal opportunity of being

heard has to pass the order. What to talk of personal hearing, petitioner was not even supplied with the copy of the report. The Assistant Registrar

Cooperative Societies, Fatehabad held the petitioner liable as per the discussion by the Deputy Registrar for the disputed amount. Assistant

Registrar has held Om Parkash also liable for the disputed amount. The Deputy Registrar has given no reason as to why the petitioner alone is

responsible and as to how Om Parkash and Balwant Singh could be absolved of their liability.

The Additional Registrar, Cooperative Societies has not taken this fact into account that the petitioner was not guilty of wilful negligence in passing

the cheque. He has given no finding that petitioner was wilfully negligent while passing the cheque. He has given no finding that petitioner was

wilfully negligent while passing the cheque. The observations of the Additional Registrar that the Manager should have examined the account ledger

and should have been vigilant, that does not tantamount to saying that petitioner was wilfully negligent in performing his duty. Petitioner believed the

clerk of the Bank and there was no note on the ledger. Had there been any entry on the ledger, the clerk would have noticed and brought the fact

to the notice of the petitioner. The Secretary to Government Department of Cooperative, Haryana also failed to give finding that the petitioner was

wilfully negligent in performing his duty while passing the cheque. She did not agree that the signatures and thumb impressions were to be

compared by the clerk. The Secretary further erred in law while observing that death report could have been erased by the petitioner or somebody

else under his command. Had there been any entry of death of Bhagat Singh or any erasing on the page that could have been first noticed by the

clerk concerned and how the petitioner could manage under his command some body to make any erasing when he was Manager only for a day.

His counsel pointed out before the authorities that dealing clerk sent the cheque and Om Parkash took thumb impression on the rokar bahi and

entry of the thumb is marked twice. The current account of Bhagat Singh does not bear any interest. No interest as such can be awarded on the

disputed amount as the Bank has suffered no loss by way of interest.

2. Respondents No. 1 to 3 contested the petition, urging that the petitioner being Incharge of the Tohana Branch of the Hisar District Central Co-

operative Bank Ltd., Hisar was negligent in the performance of his duty as Rs. 17,000/- was withdrawn from the account of a dead person

through loose cheque by one Gurcharan Singh. According to the Banking Law, it was the responsibility of the Branch Manager to see that no

wrong payment is made from any account. Bank had suffered loss due to the negligence and carelessness of the petitioner. Account of deceased-

Bhagat Singh was a dead account and note to this effect was made in the ledger. The words ""dead account"" were torn out from the ledger and

payment was made through loose cheque. It was the duty of the petitioner to see that payment was being made through loose cheque and from the

dead account. Petitioner with ulterior motive passed the cheque and allowed the amount to be withdrawn from the dead account. This action of the

petitioner was not the act of a vigilant, prudent and efficient Manager. Either the petitioner connived with the wrong doers or he was negligent in the

performance of the duty in that misdeed was committed under his nose. Initially the case was referred u/s 55/56 of the Punjab Cooperative

Societies Act, 1961 for arbitration. Arbitrator dismissed the arbitration application on the objection of the counsel for the petitioner and other

employees that this case could not be heard u/s 55/56 for the said Act. After dismissal of the arbitration application, the Bank referred the case for

surcharge u/s 54 of the said Act as the arbitrator had held that Bank had suffered a loss of Rs. 17,000/- due to the negligence of the employees. A

clear cut case of surcharge was made out against the petitioner as the Bank had suffered loss due to the negligence and carelessness of the

petitioner. It was denied that respondent No. 3 was influenced by respondent No. 4. It was also denied that petitioner was not allowed to inspect

the enquiry report. Each and every point raised by the petitioner was discussed by the Additional Registrar, Cooperative Societies, Haryana. He

dismissed the appeal on merits. Similarly decision of the Commissioner and Secretary to Government, Department of Cooperative, Haryana is

legal and valid. When the payment was being made, petitioner ought to have been extra careful and vigilant and examined all the relevant

documents.

3. Respondent No. 5 and respondents No. 7 and 8 also filed separate written statements contesting the writ petition.

4. We have heard learned counsel for the parties and have gone through the record.

5. Petitioner and two others were tried under Sections 420/468 and 471 of the Indian Penal Code. They were acquitted by the Judicial

Magistrate, 1st Class, Hisar vide order Annexure P-1. Learned Magistrate observed that there is absolutely no evidence on the record so as to

connect the accused persons with the crime alleged or to incriminate them in any manner. Sh. Som Nath, Sub Inspector, who investigated the case

stated that he did not find out during investigation as to who had forged the cheque and had obtained the payment. Shri Shamsher Singh, who

conducted the enquiry stated that on enquiry it could not be known as to who were the persons who had taken the payment from the Bank. Sh.

Balbair Singh SI/SHO who investigated the case stated he could not find out during investigation as to who were the persons who had forged the

cheque and taken away the amount. Learned Magistrate did not feel that there was any evidence against the accused so that it could be put to

them in their statements u/s 313 of the Code of Criminal Procedure. Learned Magistrate acquitted them without putting any incriminating

circumstance to them. Shri Chand Singh Yadav, Assistant Registrar Cooperative Societies, Hisar did not hold the petitioner, Om Parkash and

Balwant Singh liable for this amount. It was a reference to him u/s 56 of the Punjab Co-operative Societies Act, 1961 for arbitration. Shri Jai

Chand petitioner was working as Debt Incharge on 23.3.1973. Om Parkash was working as cashier from January, 1973 and Shri Balwant Singh

was appointed on deposit seat on 26.3.1973. Cheque through which payment was made was a loose cheque. Somehow the cheque was stolen

from the Bank. He observed that it was not proper to appoint a person on deposit seat having no training because in the Co-operative Banks

generally the clerks are doing work of passing cheques and comparing signatures. The Branch Manager is not having any specimen signatures and

he believes the clerk. There was no system to see the photographs of illiterate account holders. The account is at Page 49 and it was written dead

account but that page was cut off from there. Nobody came to know that it was a dead account and theft of the cheque from the Bank and

payment made through the cheque cannot be done on the same day. It could not be proved that this work was done by these employees. He held

that case could not be heard under Sections 55/56 of the Punjab Co-operative Societies Act because this case does not pertain to the recovery of

debt. These employees have not taken any loan. He, therefore, dismissed the arbitration reference but observed that payment was made due to

negligence of the employees and the Bank had suffered a loss of Rs. 17,000/-.

Thereafter, Managing Director, Hisar Central Co-operative Bank

Limited, Hisar framed surcharge of Rs. 17,000/- against Jai Chand, Om Parkash and Balwant Singh u/s 101 of the Haryana Co-operative

Societies Act, 1984 for Rs. 17,000/-. Assistant Registrar, Co-operative Societies, Fatehabad was appointed as Enquiry Officer u/s 54 of the

Punjab Co-operative Societies Act, 1961. In the enquiry report, Enquiry Officer concluded that Rs. 17,000/- was paid illegally by Jai Chand.

Branch Incharge and Om Parkash in collusion with each other. Both were held responsible for the loss to the Bank. Deputy Registrar, Co-

operative Societies, Haryana heard the appeal. Vide Annexure P-4, he dismissed the appeal. He found that Branch Manager before is-suing the

loose cheque and thereafter after passing the cheque should have examined the account ledger which he did not. As far as the responsibility of Shri

Om Parkash cashier is concerned, as per banking procedure, the cashier is to make payment on the basis of passing/clearance of the cheque and

he has no business to verify the signatures/thumb impression or ledger account. Revision was dismissed vide order Annexure P-5 by the

Commissioner and Secretary to Government, Haryana, Co-operative Department, Chandigarh.

6. It was submitted by the learned counsel for the petitioner that it could not be a case of surcharge when there is no finding that there was any

wilful negligence on the part of the one who was entrusted with the organisation or management of the society and had made payment contrary to

this Act, Rules or Bye-laws.

7. Section 54 of the Punjab Cooperative Societies Act, reads as follows:-

54. Surcharge.- (1) If in the course of an audit inquiry, inspection or the winding up of a cooperative society it is found that any person who is or

was entrusted with the organisation or management of such society or who is or has at any time been an officer or an employee of the society, has

made any payment contrary to this Act, the rules or the bye-laws or has caused any deficiency in the assets of the society by breach of trust or

wilful negligence or has mis-appropriated or fraudulently retained any money or other property belonging to such society, the Registrar may on his

own motion or on the application of the committee liquidator or any creditor, enquire himself or direct any person authorised by him . by an order

in writing in this behalf, to inquire into the conduct of such person:

Provided that no such inquiry shall be held after the expiry of six years from the date of any act or omission referred to in this sub-section.

(2) Where an inquiry is made under Sub-section (1), the Registrar may, after giving the person concerned, an opportunity of being heard, make an

order requiring him to repay or restore the money or property or any part thereof, with interest at such rate, or to pay contribution and costs or

compensation to such extent, as the Registrar may consider just and equitable.

8. It was submitted by the learned counsel for the petitioner that incident was never found during the course of an audit, inquiry, inspection or the

winding up of the cooperative society and therefore, proceedings u/s 54 of the said Act could not be initiated against the petitioner, Om Parkash

and Balwant Singh. It was not the case of the respondent-Bank in the claim statement filed by the Managing Director that the loss was caused to

the Bank by wilful negligence of the petitioner. Negligence and wilful negligence stand on different footing. From the facts and circumstances of the

case it had not been proved that the petitioner was wilfully negligent in passing the disputed cheque. Cheque was presented before the clerk who

also identified the signatures of the account holder and entry was made in the ledger. There was no note on the ledger regarding the death of

Bhagat Singh account holder. Petitioner after perusing the cheque and seeing that the clerk of the Bank had also identified the account holder"s

cheque allowed the payment of the cheque. Petitioner worked only for a day as Branch Manager and therefore, there could be no collusion

between him, cashier and the clerk in passing the cheque. In this case no order was passed by the Registrar directing the Assistant Registrar,

Cooperative Societies, Fatehabad to inquire into the matter and therefore, the provisions of Section 54 remained unsatisfied. Shri Phool Singh

Yadav, Assistant Registrar, Cooperative Societies findings in departmental, proceedings are on no less footing than the findings in the enquiry

arrived at by Shri Chand Singh Yadav, Assistant Registrar, Cooperative Societies, Hisar. Shri Phool Singh Yadav had not found him guilty of any

lapse. Shri Chand Singh Yadav had not given any finding that they were wilfully negligent. He only found that the amount was paid illegally by Jai

Chand and Om Parkash in collusion with each other and accordingly they both were responsible for the loss. Section 101 of the Haryana

Cooperative Societies Act, 1984 is pari-materia with Section 54 of the Punjab Cooperative Societies Act, 1961. Additional Registrar,

Cooperative Societies concluded in his order Annexure P-4 that the Branch Manager before passing the cheque should have been vigilant and

verified the ledger of the account holder in whose name the cheque was issued. From the perusal of the order of the learned Deputy Registrar, it is

clear that account holder Bhagat Singh had died before the occurrence of embezzlement and there was a note. The Branch Manager before issuing

the loose cheque and thereafter passing the cheque should have examined the account ledger which he did not. As far as the responsibility of Shri

Om Parkash cashier is concerned as per banking procedure, the cashier is to make payment on the basis of passing/clearance of the cheque and

he has no business to verify the signatures/thumb impression or ledger account, it was submitted that he did not find that the Branch Manager was

wilfully negligent. As such, it could not be a case of surcharge.

9. Learned counsel for the respondents on the other hand submitted that cashier has only to make payment. He has nothing to do with the

signatures of the account holder because the same remains in the custody of the Branch Manager and the clerk. Cashier is not required to verify

the signatures/thumb impression when two persons have already passed the cheque. In the circumstances of the case wilful negligence on the part

of the petitioner is fully proved. Wilful negligence has been dealt in Nanhelal Vs. Asstt. Registrar, Co-operative Societies, Narsinghpur and Others

10. In our opinion there was no wilful negligence on the part of the petitioner. He may have been negligent. Negligence is want of proper care. It

does not include bad faith whereas wilful negligence is want of proper care altogether, may be suggestive of bad faith also. It was held by Division

Bench of the Madhya Pradesh High Court in Nanhelal Vs. Asstt. Registrar, Co-operative Societies, Narsinghpur and Others that, "liability u/s

63(1) arises when loss is caused by gross negligence and not merely ordinary negligence. Gross negligence connotes higher degree of negligence. It

is negligence not arising merely from want of foresight or mistake of judgment but from some culpable default". Additional Registrar, Co-operative

Societies, Haryana observed that "the Branch Manager while passing the cheque should have examined the account ledger which he did not. He

should have been vigilant and verified the ledger of the account holder in whose name the cheque was issued. Embezzlement took place due to the

negligence of Jai Chand petitioner, which is loss to the respondent-Bank. Had the petitioner been prudent in the matter, embezzlement would not

have taken place". This finding is not suggestive of wilful negligence.

11. In our opinion, this petition should succeed and is accordingly allowed and the orders Annexures P3 and P5 are quashed. No orders as to

costs.