

A

DEVI SINGH

v.

STATE OF HARYANA AND ORS.

MAY 2, 1997

B

[K. RAMASWAMY AND K.T. THOMAS, JJ.]

Cooperative Societies :

C

Cooperative Society—President—Liability of account for funds of society—Held, though under the bye-laws of the Society the responsibility is of the treasurer and the Secretary, the President bears the overall responsibility—He owes collective responsibility with the Treasurer and the Secretary for its accounting and is liable, alongwith the Treasurer and the Secretary, to make good the losses caused to the Society—Omission to have proper accounting done constitutes misappropriation.

D

CIVIL APPELLATE JURISDICTION : Review Petition (C) No. 1344 of 1996

IN

E

Civil Appeal No 204 of 1979.

From the Judgment and Order of the Punjab and Haryana High Court dated 19.4.1978 in Civil Writ Petition No. 1674 of 1978.

R.K. Maheshwari for the Appellant.

F

C.L. Sahu (NP) and Prem Malhotra for the Respondents.

The following Order of the Court was delivered :

G

Order dated 7.2.1996 is recalled. We have heard Shri Maheshwari, learned counsel for the Appellant.

H

The only question is; whether the appellant as President of the Sardarajanti Kalan Cooperative Agricultural Service Society along with other two persons, namely, the Secretary and Treasurer, is liable to account for a sum of Rs. 65,726.59. It is an admitted position that Tara Chand is Ex-Secretary, the appellant, the Ex-President and Sardara Singh is the

Ex-Cashier. The dispute arose from award proceedings under the Haryana Cooperative Societies Act. On a reference made to the Registrar, the matter was referred to the concerned officer for enquiry and necessary action. On the basis thereof, after notice to the parties and conduct of the due enquiry the award came to be passed wherein it was held that the three officers, namely, the appellant as President, Tara Chand as Secretary and Sardara Singh as Cashier were Jointly and individually responsible for the unaccounted sum of Rs. 65,726.59. The Secretary and the Cashier had allowed the award to become final. The appellant carried the matter in appeal, which was confirmed; the writ petition filed consequently, stood dismissed. Thus, this appeal by special leave granted by this Court.

Shri Maheshwari, learned counsel for the appellant, contends that the appellate authority proceeded on the premise that the appellant had admitted the misappropriation and accordingly it confirmed the award. This Court called for the record on perusal thereof, found that there was no such admission. Therefore, leave was granted. The appellant having not admitted the misappropriation, it must be proved that the appellant was a party thereto. It is argued that in the absence of such a proof, he cannot be saddled with any liability for the unaccounted money to the members of the Society. We find no force in the contention. It is true that the Registrar, who conducted the enquiry, had noted the admission. The admission was only in relation to the joint purchase of a tempo by the three persons for use as a public carrier and the income derived therefrom was required to be distributed to the members of the Society. That does not amount to admission by the appellant and others that they misappropriated the amount. It is seen from the evidence that certain amount, at the rate of Rs. 1500 to each of the members was credited towards purchase of tempo and there is an admission by the appellant and others that the tempo was purchased. Once it is proved that the tempo was actually purchased, the burden is on the said office bearers of the society to account for the profits derived by its use as public carriage. The finding is that they have not accounted for. It is true that under the bye-laws of the Society, as placed before us, the responsibility is of the Treasurer and the Secretary. But the appellant being the President bears the overall responsibility. Being the President of the Society, he owes the collective responsibility with the Treasurer and the Secretary for its accounting. In the absence of accounting of the funds, necessary inference is that there was improper management of the institution and thereby they are liable for making good the loss

A caused to the Society and the members. The crime registered against them is in respect of an offence; but the surcharge proceedings are for unaccounted money by the officers or the persons responsible therefor. Being the President of the Society, the appellant bears the collective responsibility to have the accounting properly done of the funds of the Society. The omission thereof constitutes misappropriation.

B
It is then contended that certain documents had not been supplied to the appellant and, therefore, it is violative of the principles of natural justice. We do not find any force in the contention at this distance of time for the reason that it involves investigation into the questions of facts.

C
The appeal is accordingly dismissed. No costs.

R.P.

Appeal dismissed.