
(2011) 08 KL CK 0034
In the High Court Of Kerala
Case No : R.P. No. 1059 of 2010

A. Balakrishnan

APPELLANT

Vs

State Bank of Travancore and Another

RESPONDENT

Date of Decision : 20-08-2011

Acts Referred:

Penal Code, 1860 (IPC) — Section 409

Citation : (2011) 4 KLJ 258

Hon'ble Judges : P.S. Gopinathan, J; C.N. Ramachandran Nair, J

Bench : Division Bench

Advocate : Kaleswaram Raj, for the Appellant; P. Ramakrishnan (SC), for the Respondent

Final Decision : Dismissed

Judgement

P.S. Gopinathan. J.

1. The review petition is preferred against the judgment dated 7.9.2009 in W.A. 536 of 2009 dismissing the appeal filed by the petitioner. The writ petition is also filed by him mainly assailing the findings in a disciplinary proceedings which has become final by the judgment in W.A. 536/2009. Parties and dispute being common, we are disposing both the petitions by this common judgment. The documents are referred to as appended in the writ petition. The petitioner was working as cashier - clerk under the contesting respondent/ Bank (hereinafter referred to as the respondent, unless otherwise required) in its branch at Manjeri. While so, departmental and criminal actions were initiated against the petitioner alleging breach of trust and misappropriation of funds. Ext. P1 is the charge memo in the disciplinary proceedings. After due enquiry, on finding that charge was proved, by Ext. P2 order, the respondent dismissed the petitioner from service. Ext. P2 order was assailed before the Labour Court, Kozhikode who is the 2nd respondent in the revision petition, in I.D.(C) 1/2004. By Ext. P3 award, the Labour Court concurred with the finding of guilt. But it was further found that the penalty imposed was shockingly disproportionate. Therefore, the

penalty imposed was set aside and the petitioner was ordered to be reinstated without back wages and seniority.

2. Respondent assailed Ext. P3 award before this Court in W.P.(C) 28815 of 2006. By Ext. P4 judgment dated 13.9.2008, the learned Single Judge found that having due regard to the gravity of the misconduct committed by the petitioner, the conclusion in Ext. P3 award that the punishment imposed was shockingly disproportionate is totally unacceptable. Therefore, the learned Single Judge, after setting aside Ext. P3, confirmed Ext. P2. Aggrieved by Ext. P4 judgment, the petitioner preferred the appeal W.A. 536 of 2009. By Ext. P5 judgment dated 7.9.2009, the Division Bench found that the petitioner, being a cashier in the Bank, was expected to act with absolute integrity and honesty in handling the funds of the customers and that the petitioner had not only misappropriated the amount, but also used forgery as a weapon to commit the act and therefore, there was no ground to show any mercy to the petitioner. Consequently, the appeal was dismissed.

3. In criminal action, the Chief Judicial Magistrate Court, Manjeri, by its judgment dated 15.1.2006, in C.C. 175 of 2001, found the petitioner guilty for offence u/s 409 IPC. Consequently, he was convicted and sentenced to rigorous imprisonment for one year u/s 409 I.P.C. Aggrieved by the conviction and sentence he preferred Criminal Appeal 42 of 2006. The Additional Sessions Judge (Ad hoc) No. II, Manjeri, by Ext. P6 judgment dated 25.2.2010 arrived at a finding that the prosecution had not succeeded to establish the offence beyond the shadow of reasonable doubt. Consequently, the appeal was allowed and the petitioner was acquitted.

4. Alleging that under Ext. P7 Bipartite settlement dated 10.4.2002, in the event an employee who was convicted in a criminal case is later acquitted he is entitled to be reinstated, the petitioner moved Ext. P8 representation before the respondent requesting to reinstate him in service after reviewing Ext. P2 order. The respondent did not need to the demand. With these pleadings, the review petition as well as the writ petition was filed. In filing the review petition, there is delay of 400 days, C.M. Appln. 180/2010 was filed seeking an order to condone delay with a plea that the delay occurred due to poverty. Allowing that petition, delay is condoned. In the review petition, the prayer is to review Ext. P5 judgment on the basis of Ext. P6 judgment in Criminal Appeal, to recall Ext. P5 and to clarify that Ext. P5 judgment would not stand in the way the petitioner making a request for recalling the punishment imposed by the respondent and also directing the respondent to reinstate the petitioner in service or to reduce the punishment imposed on him. In the writ petition, the prayer is to issue a writ of mandamus directing the respondent to reinstate the petitioner in service after reviewing the punishment awarded to the petitioner by Ext. P2 order and to recall and cancel the same. An alternate prayer was also sought for directing the respondent to take a decision in Ext. P8 representation in the light of Ext. P6 judgment.

5. The respondent filed a counter affidavit in the writ petition stating that Ext. P6 judgment was passed without considering all material facts in proper perspective which resulted in the court giving benefit of doubt to the petitioner and that the petitioner was not given an honorable acquittal and that the disciplinary proceedings which had become final is not liable to be reopened in the light of Ext. P6 and that the petitioner lacks integrity and if he is permitted to function in a bank it would adversely affect the functioning of the bank as well as the interest of the customers and prayed for dismissal of the petition.

6. We have heard Adv. Sri. Kaleeswaram Raj, the learned counsel appearing for the petitioner and Adv. Ms. Preethi Ramakrishnan, on behalf of the Standing Counsel for the respondent. We were also taken through the documents especially through Ext. P6. Going by Ext. P6, we find that the learned Additional Sessions Judge acquitted the petitioner by giving the benefit of doubt. There is no finding that the charge against the petitioner is baseless. It was brought in evidence that the petitioner had remitted the misappropriated amount when the fraud was detected. In acquitting the petitioner, the Additional Sessions Judge had also observed that the prosecution had not succeeded to establish that the remittance was made by the petitioner himself. We notice from Ext. P2 as well as from Ext. P6 that the petitioner was booked not for solitary instance but for repeated instances of misappropriation. Whatever it be, going by Ext. P6, we are unable to accept the arguments of the learned counsel for the petitioner that in Ext. P6 there is an honorable acquittal. Whereas going by Exts. P2, P3 and P4, we find that the misconduct alleged against the petitioner is well established. Standard of proof in criminal prosecution is entirely different from the standard of proof in disciplinary proceedings.

Therefore, on same set of facts and evidence, findings may vary. Even preponderance of probability in favour of the accused may lead to acquittal. In disciplinary proceedings, the findings against the delinquent may be on the basis of preponderance of probability. So also, statement of delinquent officer may be admissible in departmental proceedings. In criminal case, burden of proof is fully on the prosecution. Irrespective of the statement of the accused, prosecution must prove the case. Therefore, acquittal in criminal case would not unsettle or invalidate the disciplinary proceedings which has become final basing upon independent set of evidence. Suppose disciplinary proceedings were initiated on the basis of a conviction by the trial court, acquittal in criminal appeal is sufficient to unsettle the disciplinary proceedings because, by the acquittal the very foundation of the disciplinary proceeding would stand collapsed. Here, the position is entirely different. Canvassing our attention to the decision reported in *G.M. Tank Vs. State of Gujarat and Another*, and the decision in *The Managing Director State Bank of Hyderabad and Another Vs. P. Kata Rao*, learned counsel for the petitioner submitted that the acquittal by a criminal court is a strong ground to hold that the punishment of dismissal imposed by the disciplinary authority is improper. Having gone through the facts relating to the above decisions, we find that the decisions rendered were on different set of facts and it

has no application to the case on hand because the accused in those cases were acquitted for no evidence. In this case, acquittal is on benefit of doubt.

Per contra, Ms. Preethi Ramakrishnan canvassed our attention to the decision reported in *Ajit Kumar Nag Vs. General Manager (P.J.), Indian Oil Corporation Ltd., Haldia and Others*, and the decision in *Union of India (UOI) and Others Vs. S.K. Kapoor*, . In *Ajit Kumar's* case (*supra*), at para 11, the apex Court has held as follows:

As far as acquittal of the appellant by a criminal court is concerned, in our opinion, the said order does not preclude the Corporation from taking an action if it is otherwise permissible. In our judgment, the law is fairly well settled. Acquittal by a criminal court would not debar an employer from exercising power in accordance with the rules and Regulations in force. The two proceedings, criminal and departmental, are entirely different. They operate in different fields and have different objectives. Whereas the object of criminal trial is to inflict appropriate punishment on the offender, the purpose of enquiry proceedings is to deal with the delinquent departmentally and to impose penalty in accordance with the service rules. In a criminal trial, incriminating statement made by the accused in certain circumstances or before certain officers is totally inadmissible in evidence. Such strict rules of evidence and procedure would not apply to departmental proceedings. The degree of proof which is necessary to order a conviction is different from the degree of proof necessary to record the commission of delinquency. The rule relating to appreciation of evidence in the two proceedings is also not similar. In criminal law, burden of proof is on the prosecution and unless the prosecution is able to prove the guilt of the accused "beyond reasonable doubt", he cannot be convicted by a court of law. In a departmental enquiry, on the other hand, penalty can be imposed on the delinquent officer on a finding recorded on the basis of "preponderance of probability". Acquittal of the appellant by a Judicial Magistrate, therefore, does not ipso facto absolve him from the liability under the disciplinary jurisdiction of the Corporation.

In the latter case, at Para 10 it is held as follows:

The fact that the criminal court subsequently acquitted the respondent by giving him the benefit of doubt, will not in any way render a completed disciplinary proceedings invalid nor affect the validity of the finding of guilt or consequential punishment. The standard of proof required in criminal proceedings being different from the standard of proof required in departmental enquiries, the same charges and evidence may lead to different results in the two proceedings, that is, finding of guilt in departmental proceedings and an acquittal by giving benefit of doubt in the criminal proceedings. This is more so when the departmental proceedings are more proximate to the incident, in point of time, when compared to the criminal proceedings. This is more so, when the departmental proceedings are more proximate to the incident, in point of time, when compared to the criminal proceedings. The findings by the criminal court will have no effect on

previously concluded domestic enquiry.

The ratio of the above decisions is squarely applicable to the case on hand. Our finding is fortified by the ratio in the above decisions. For the foregoing reasons, we find no ground for review of Ext. P5 judgment. Neither is there any ground for issuing any writ as sought for in the writ petition. Accordingly, both the petitions are dismissed. This judgment will be maintained in the writ petition and a copy would be maintained in the review petition.