(2008) 09 MAD CK 0043

In the Madras High Court

Case No : Writ Petition No. 5384 of 2008 and M.P. No. 1 of 2008

Ammaiappan APPELLANT

Vs

General Manager, Canara Bank and Others RESPONDENT

Date of Decision : 16-09-2008

Acts Referred:

Constitution of India, 1950 — Article 21
Penal Code, 1860 (IPC) — Section 120B, 420, 468, 471
Prevention of Corruption Act, 1988 — Section 13(1), 13(2)

Citation : (2009) 1 LLJ 847

Hon'ble Judges : P. Jyothimani, J

Bench : Single Bench

Advocate : V.C. Suresh, for Sivanandh and Associates, for the Appellant; N. Chandrasekaran, (for CBI) takes notice C. Seethapathy, for the Respondent

Judgement

P. Jyothimani, J.—Heard the learned Counsel on either side. By consent, the writ petition itself is taken up for final disposal.

2. This writ petition is filed challenging the charge memo issued against the petitioner dated April 9, 2007 by the respondent Bank. The crux of the

charge in the departmental proceedings initiated against the petitioner is that the petitioner, in collusion with some middlemen, opened a Savings

Bank Account of prospective borrowers without actually knowing them and without ensuring their presence. In view of the same, the allegations:

and the charge framed against the petitioner are to the following effect:

...You recommended Candget loans to them to the extent of Rs. 89.56 lakhs during the period from January 2006 to March 2006 violating the laid

down norms for identification of the borrowers, execution of documents, disbursement of the loans and follow-up of the loans. All the accounts

have become sticky and the whereabouts of the borrowers/company were not known. An investigation conducted in the matter revealed that the

documents furnished by the employees of the company as proof of address, income PAN card, Passport were found to be fake/fabricated. Only a

few persons purported to be the borrowers said to have visited the branch to open the account and to receive the loan proceeds. The investigation

also revealed that the loan'' proceeds were received by you. The follow up letters sent to the residential addresses of the borrowers were returned

with the reason "" No such person/No such address/No such street/left etc....

By your above acts, you have failed to discharge your duties with honesty, integrity, devotion and diligence and thereby contravened Regulation

3(1) read with Regulation 24 of Canara Bank Officer Employees'' (Conduct) Regulations, 1976, which is punishable under the provisions of

Canara Bank Officer Employees'' (Discipline & Appeal) Regulations, 1976.

3. It is seen that though enquiry proceedings were initiated in respect of fabrication of documents and also granting of loans in contravention of the

rules of the Bank thereby causing financial loss to the Bank, the Central Bureau of Investigation. The Central Bureau of Investigation has also

registered a case in R.C. No. 9/A/2007 on January 21,2007 against the petitioner and 12 others under Sections 120-B, 420, 468, 471 I.P.C. and

Section 13(2) read with Section 13(1)(e) of Prevention of Corruption Act, 1988. It is not in dispute that the matter is under investigation by the

Central Bureau of Investigation and the investigation is not yet completed. Eventhough this writ petition is filed challenging the charge memo, the

main ground of attack is that when same set of facts are involved in criminal proceedings as well as in departmental proceedings and when criminal

investigation is pending, the petitioner cannot be expected to reveal his defence in the departmental proceedings as it might affect his substantial

defence in the criminal proceedings. Therefore, the learned Counsel for the petitioner would submit that eventhough the petitioner is prepared to

face departmental proceedings, by virtue of pendency of investigation by the Central Bureau of Investigation, the departmental proceedings should

be deferred till criminal investigation is over.

4. In order to find out the present stage of investigation by the Central Bureau of Investigation, this Court directed the learned Counsel for the

Central Bureau of Investigation to take notice. Accordingly, Mr. N.

Chandrasekaran, learned Counsel appearing for the Central Bureau of

Investigation, on instructions from the department, would submit that investigation against the petitioner, on the above said charges, is pending and

that the department would complete the investigation within a period of 3 months. However, for the purpose of granting sanction for prosecuting

the petitioner, according to the learned Counsel, the Bank may take some time and that the period which the Bank may take, shall not be burdened

on the Department.

5. On the other hand, learned Counsel for the respondent Bank, on instructions, would fairly submit that immediately after investigation by Central

Bureau of Investigation is completed, within 15 days from the date of receipt of report from the said-agency, the Bank would pass orders in

respect of grant of sanction for prosecuting the petitioner so as to enable the criminal prosecution to be proceeded further.

6. The submissions made by the learned Counsel for Central Bureau of Investigation and learned Counsel for the Bank are recorded.

7. On a careful reading of the First Information Report in criminal case against the petitioner as well as the contents of the charge-memo framed

against the petitioner in the departmental proceedings as per the rules governing the respondent Bank, the question that has to be decided is

whether the petitioner is guilty of violating the code of conduct prescribed, which are binding on him. Nevertheless, such violation of code of

conduct basically depends upon the allegation made against the petitioner i.e., he committed gross irregularities in granting loans and thereby

siphoned off funds of the Bank in an improper manner. Therefore, there is no difficulty to come to the conclusion that whether it is criminal

investigation or departmental proceedings, the basic issue that has to be decided is whether the conduct of the petitioner in granting loans has

resulted in financial loss to the Bank.

8. This is certainly a case where same set of facts are involved in both criminal as well as departmental proceedings. The Supreme Court in the

decision Capt. M. Paul Anthony Vs. Bharat Gold Mines Ltd. and Another, where a similar question was involved, held that, eventhough on the

facts and circumstances of the case, the departmental proceedings need not be stopped during the pendency of criminal case, the same can be done in cases where cogent reasons are given. The Supreme Court laid down the following criteria in respect of the above issue:

22. The conclusions which are deducible from various decisions of this Court referred to above are:

(i) Departmental proceedings and proceedings in a criminal case can proceed simultaneously as there is no bar in their being conducted

simultaneously, though separately.

(ii) If the departmental proceedings and the criminal case are based on identical and similar set of facts and the charge in the criminal case against

the delinquent employee is of a grave nature which involves complicated questions of law and fact, it would be desirable to stay the departmental

proceedings till the conclusion of the criminal case.

(iii) Whether the nature of a charge in a criminal case is grave and whether complicated questions of fact and law are involved in that case, will

depend upon the nature of offence, the nature of the case launched against the employee on the basis of evidence and material collected against

him during investigation or as reflected in the charge-sheet.

(iv) The factors mentioned at (ii) and (iii) above cannot be considered in isolation to stay the departmental proceedings but due regard has to be

given to the fact that the] departmental proceedings cannot be unduly delayed.

(v) If the criminal case does not proceed or its disposal is being unduly delayed, the departmental proceedings, even if they were stayed on

account of the pendency of the criminal case, can be resumed and proceeded with so as to conclude them at an early date, so that if the employee

is found not guilty his honour may be vindicated and in case he is found guilty, the administration may get rid of him at the earliest.

9. Apart from the fact that it is settled law that departmental proceedings and criminal proceedings are different in nature and there is no bar for the

departmental proceedings to continue when criminal case is pending, the Supreme Court has held that if departmental proceedings and criminal

proceedings are based on identical and similar set of facts and the charge against the delinquent in the criminal case is grave in nature, which

involves complicated questions of law, it is desirable that the departmental proceedings is postponed till the conclusion of the criminal case. The

reason; for the said decision is obviously that the delinquent, if compelled to reveal his defence in the departmental proceedings, especially when

criminal investigation is pending on the same issue, it would definitely affect his case in the criminal proceedings, which is grave in nature and

thereby, virtually affect his right to defend provided under Article 21 of the Constitution of India. In fact, the above cited judgment of the Supreme

Court has been followed with approval in the latest judgment Indian Overseas Bank, Anna Salai and Another Vs. P. Ganesan and Others, ,

wherein in paragraph 18, it has been observed as hereunder:

Legal position operating in the field is no longer res Integra. A departmental proceedings pending a criminal proceedings does not warrant an

automatic stay. The superior Courts before exercising its discretionary jurisdiction in this regard must take into consideration the fact as to whether

the charges as also the evidence in both the proceedings are common and as to whether any complicated question of law is involved in the matter.

10. Applying the dictum laid down by the Apex Court to the case on hand, I am of the considered view that it is desirable that departmental

proceedings initiated against the petitioner are deferred till the investigation in the criminal case is completed by the Central Bureau of Investigation.

More so, due to the reason that the Central Bureau of Investigation itself has come forward with a definite stand that the investigation is in progress

and that the same would be completed within a period of 3 months.

11. In the light of the above, the writ petition is disposed of directing the Central Bureau of Investigation to complete the investigation in the case

registered against the petitioner in R.C. No. 9/A/07 dated February 21, 2007 within a period of 3 months from the date of receipt of a copy of this

order and send a report immediately to the respondent Bank. On receipt of the said report, as submitted by the learned Counsel for the Bank, the

respondent Bank shall complete its process of granting sanction to prosecute the petitioner within 15 days thereafter. On such sanction being

granted, it is for the Central Bureau of Investigation to proceed with the laying of charge-sheet against the petitioner in accordance with law and

thereafter, it is open to the respondent Bank to proceed with the departmental proceedings based on the impugned charge-memo and pass

appropriate orders on merits and in accordance with law, after giving due opportunity to the petitioner. No costs. Connected M.P. is closed.

