

(2009) 08 SC CK 0086
In the Supreme Court Of India
Case No : Civil Appeal No. 798 of 2008

Bank of India and Another	Vs	APPELLANT
Bhimsen Gochhayat		RESPONDENT

Date of Decision : 12-08-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 378
Penal Code, 1860 (IPC) — Section 419, 420, 468

Citation : (2011) 1 SCC(L&S) 713

Hon'ble Judges : V.S. Sirpurkar, J;Deepak Verma, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. This appeal is by the Appellant - Bank of India against the judgment of Division Bench of the High Court whereby the High Court has allowed the writ petition filed by the Respondent herein namely; Bhimsen Gochhayat. The Respondent initially started his career as a sweeper in the Bank of India, Basta Branch on 22.6.1978 and rose ultimately to the post of daftry. At the relevant time, the Respondent was working in Akhupada Branch of the Bank. While so working, a report came to be made against him that he had tried to defraud the bank by attempting to withdraw Rs. 35,000/- allegedly deposited in the name of one Babaji Nayak. The prosecution for the offences under Sections 419/420/468 Indian Penal Code came to be launched against him and he was convicted by the trial court for the offence punishable u/s 468 Indian Penal Code alone though he was acquitted of the other offences.

2. The prosecution case against the Respondent was that on 17.8.1982 the Manager of the Bank of India, Balasore Branch received an inter office memorandum dated 9.8.1982 for Rs. 35,000/- purported to have been sent by the Bank of India, Lindsay Street Branch, Calcutta requesting him to open a Saving Bank Account being the housing loan disbursement in the name of Babaji Nayak. Accordingly, on the same day, a Saving Bank Account No. 2255 for Rs.

35,000/- was opened in the Bank of India, Balasore Branch in the name of Babaji Nayak. On the next day i.e. on 18.8.1982, one young man identifying himself to be the son of Babaji Nayak came to the Bank of India, Balasore Branch with a bank withdrawal form bearing the signatures of Babaji Nayak. But the bank staff refused the payment as the signatures of the Babaji Nayak in the record of the bank and on the withdrawal form differed and requested him to bring Babaji Nayak who was the account holder. At that time, the present Respondent Bhimsen Gochhayat was also present in the bank premises along with the so called son of Babaji Nayak.

3. Again, on 20.3.1982 at about 12 noon, the so-called Babji Nayak came to the Bank of India, Balasore Branch and presented a blank withdrawal form to the saving bank ledger keeper and requested him to fill it up for Rs. 30,000/-. He also put his signatures in the withdrawal form. As the signatures of Babaji Nayak on the withdrawal form did not match with the recorded signature in the bank, the bank staff questioned him on certain points. From the answers given by him, the doubt became stronger. So, the then Manager of the Bank of India, Balasore Branch contacted with the Lindsay Street Branch over the trunk call regarding the genuineness of the aforesaid account and came to know that no such transaction has ever taken place. During that period, Babaji Nayak is said to have fled from the Bank and was located by the staff of the bank near Nargis Talkies, Balasore. So-called Babaji Nayak told that due to the influence of the Respondent, he came to receive the payment. A police report, therefore, came to be made.

4. After a usual investigation, it turned out that the Respondent herein had the hand in the whole affair. The Respondent along with two other co-accused was put for trial and was convicted by the trial court. Since, the Respondent was convicted by the trial court, the bank proceeded to dismiss him on account of the conviction. The Respondent filed an appeal before the learned Additional Sessions Judge. The appellate court acquitted the Respondent of the charge on the ground that it was not proved that he had committed any forgery and, thereby, had committed any offence u/s 468 Indian Penal Code.

5. The Respondent was reinstated after his acquittal by the appellate court. In the meantime, the bank initiated a departmental inquiry against the Respondent by serving him charge sheet. It in the charge-sheet-cum-suspension order, it was stated as under:

While working as Daftary in Akhupada Branch during the year 1982, you were alleged to have attempted to commit a fraud at Balasore branch in collusion with outsiders by signing CAN No. 226007 dated 09.08.1982 for 35,000/- containing forged signatures purported to have been signed from Lindsay Street Branch by Shri R.R. Nabar and R.B. Shah. You had stolen the entire pad of CAN No. 4521 containing CANs bearing No. 226001 to 226050 from the Branch kept the same at your residence. You had used the broken pieces of Branch Receipt Scroll Rubber Stamp to affix Lindsay Street Branch on CAN No. 226007 you had filled in

the blank CAN No. 226007 dated 9.8.1982 for Rs. 35,000/- favouring Shri Babaji Nayak with forged signature of R.R. Nabar and R.B. Shah to defraud Balasore Branch of the Bank. A sheet of paper containing many forged signatures were found in your possession. From your residence CAN 226012 bearing Lindsay Street Branch stamp favouring Shri Babaji Nayak purported to have been signed by the above officials was seized. You had in collusion with the outsiders namely Shri Maheswar Khillar, who impersonated himself as Babaji Nayak and Shri Pitambar Gochhayat tried to withdraw a sum of Rs. 30,000/- dishonestly by the aforesaid instrument dated 9.8.1982. Your handwriting is appearing on the forged instrument through which you had attempted to commit the fraud of Rs. 35,000/- in collusion with the said outsiders.

2. Your above acts of stealing Bank's instruments and forging the signatures of the officers as aforesaid on the said instrument with a view to defrauding the bank in collusion with the said outsiders being prejudicial to the interest of the Bank, amount to acts of gross misconduct in terms of Clause 19.5(j) of the First Bipartite settlement dated 19.10.1966.

3. It has been decided to hold a departmental enquiry in respect of your above misconduct in terms of Clause 19.3(d) of the above settlement. Accordingly, in exercise of the powers vested in me as Disciplinary Authority by the Chairman and Managing Director vide his order dated 17.8.1987, I appoint Shri Gyanendra Kumar Acharya, Bhubaneswar Branch as Enquiry Officer to enquire into the charges levelled against you and submit his report to me for further action. The Enquiry Officer hold departmental enquiry against you on the date, time and place to be notified by him to you. You are required to report to the Enquiry Officer on the appointed date, time and place as will be notified to you by him, failing which please note that the enquiry will be held ex-parte

6. On 11.5.1991, the Disciplinary Authority dismissed the Respondent from the service. His appeal before the Appellate Authority also failed. Therefore, he proceeded to file the Writ Petition before the High Court of Orissa.

7. In the impugned judgment, the Division Bench took the view that firstly the departmental proceedings were on the same material and identical and similar set of facts/allegations were also made against the Respondent as those in the criminal prosecution. The Division Bench then relying on the decisions of this Court in G.M. Tank v. State of Gujarat and Anr. AIR 2006 SCW 2709 and Prafulla Chandra Mohapatra Vs. State of Orissa and others, held that the subsequent departmental inquiry could not be proceeded since on the identical charges, he was acquitted by the competent criminal court. The other reason which was given by the Division Bench was that it was only after acquittal of the delinquent by the appellate court that the order for initiation of the departmental proceedings was passed after about seven years had elapsed. On that ground also the Division Bench found fault with the aforementioned enquiry.

8. We have gone through the judgment vary carefully. We have also gone

through the judgments of the criminal courts one convicting the Respondent and the other of appellate court acquitting him. We have compared the prosecution case with the charge-sheet which we have deliberately quoted above. We find that the charges alleged in the charge-sheet in the departmental enquiry are quite different from the one's on which the Respondent was tried by the criminal court. The Respondent was tried only on the basis of the allegations of fraud committed by way of forgery whereas a glance at the charge-sheet would suggest that the allegation therein was that the Respondent had used the broken pieces of Branch Receipt Scroll Rubber stamp to affix Lindsay Street Branch on CAN No. 226007. Apart from this, the Respondent had also stolen the entire paid of CAN No. 4521 containing CANs bearing No. 226001 to 226050 from the Branch and kept the same at his residence. All these allegations were not there in the criminal proceedings. Therefore, it is quite apparent that the criminal proceedings and the departmental proceedings were separate and distinct affairs. The Division Bench has not disclosed anything in this behalf nor has the Division Bench given any finding in respect of the available material on the basis of which the Bank wanted to prove charges. There is no discussion whatsoever in the matter. Further the Division Bench held that on the question of delay, the Bank could not have proceeded only after the appeal of the Respondent was allowed and he was acquitted.

9. We are not impressed by this reasoning either. We do not find that the Bank was late or there was delay in initiating the departmental proceedings. In this view of the matter, we cannot agree with the impugned judgment passed by the Division Bench.

10. Mr. J.R. Dass, Learned Counsel appearing for the Respondent invited our attention to the ruling of this Court in *Prafulla Chandra Mohapatra* (supra). We have gone through the said judgment. Reliance was placed on para 9 of the judgment which reads as under:

Where it was stated that the incident relates to May, 1973. The Disciplinary proceedings were initiated on October 7, 1974 but were not continued presumably in view of the criminal case started against the Appellant and the co-accused Anil Chandra Patnaik. It is important to note that so far as the Appellant is concerned, he was acquitted by the Sessions Judge himself by order dated May 11, 1979 and an application for leave to appeal filed by the State Government u/s 378 Code of Criminal Procedure was rejected by the High Court by order dated October 9, 1979. Therefore, no action was taken to restart the disciplinary proceedings, on the other hand the Appellant was reinstated in service by order dated April 18, 1980 and the entire period during which he remained under suspension on dismissal was ordered to be treated as on duty.

11. It is on this ground that this Court in that case had found fault with the delayed initiation of the departmental enquiry.

12. The factual situation is different in this matter. Here a prompt action was

taken by the bank in dismissing the Respondent soon after his conviction by the trial court. But after he was acquitted by the appellate court, it was entirely on the different ground that the departmental proceedings were initiated against him. In this view of the matter, we cannot affirm the impugned judgment passed by the Division Bench. It is, accordingly, set-aside. However, Mr. J.R. Dass, Learned Counsel appearing for the Respondent submits that he had other questions which were not argued as the writ petition was allowed on these two grounds. In this view of the matter, we remand the matter to the Division Bench for deciding it afresh in accordance with law where the so called other questions not raised before the High Court in the first round shall be allowed to be raised. There shall be no interim orders regarding the departmental inquiry or its outcome.

13. With these observations, This appeal stands disposed of. No costs.