(2004) 08 OHC CK 0004

In the Orissa High Court

Case No : Original Jurisdiction Case No. 13383 of 1997

Bharat Chandra Khillar APPELLANT

Vs

General Manager, Bank of India and Others RESPONDENT

Date of Decision : 03-08-2004

Acts Referred:
Penal Code, 1860 (IPC) — Section 380, 420, 467, 468, 471

Citation : (2004) 98 CLT 389 : (2004) 3 LLJ 1084

Hon'ble Judges : Pradip Mohanty, J;P.K. Mohanty, J

Bench : Division Bench

Advocate : A.K. Mohapatra, K.N. Parida, M.R. Misra, R.K. Mohanty, A.K. Misra, A. Tripathy and S.C. Sahoo, for the Appellant; Bibhudendra Mishra and Karunakar Jena, for the Respondent

Final Decision : Dismissed

Judgement

Pradip Mohanty, J.—The petitioner calls in question continuation of the departmental proceeding in terms of charge-sheets dated 12.8.1986 and 7.8.1997 and has prayed for quashing the same.

2. The petitioner, after being selected, initially joined as sub-staff under the opposite parties on 1.2.1974 and was promoted to the clerical grade on 15.2.1980. Thereafter, he was also promoted to the post of Cashier-cum-Accounts Clerk. In 1985, when the petitioner was working as Cashier-cum-Clerk in Bangiriposi branch of the Bank of India, a case was initiated against him on the allegation that he gave a pay slip of Rs. 1,000/- of Motigaanj Branch to M/s. Anchal Cloth Store and took four sarees. The Bankers cheque bearing No. 0003355 was accepted by the owner of the shop Sri Om Prakash Maheswari and the same was deposited in the Allahabad Bank, Balasore for collection through Bangiriposi Branch. Subsequently, it was detected that a cheque book containing 25 cheques including the above cheque was stolen from the bank of Bangiriposi Branch. The Branch Manager, Bangiriposi Branch reported the matter to the Bangiriposi Police-station, on the basis of which G.R. Case No. 442 of 1986 was

registered for the offences under Sections 380/467/486/471, IPC. Later, the owner of the saree shop Om Prakash Maheswari also filed I.C.C. Case No. 428 of 1986, wherein, by judgment dated 27.11.1989, the learned Magistrate convicted the petitioner for the offence u/s 420, IPC and sentenced him to undergo rigorous imprisonment for one year. However, on an appeal being filed, the learned Sessions Judge, Balasore, set aside the order of conviction arid acquitted the petitioner vide judgment dated 23.3.1992 passed in Criminal Appeal No. 135 of 1989.

3. The Department also served charge-sheet dated 12.8.1986, copy whereof is Annexure-2 to the writ petition, on the petitioner for the following acts of misconduct :

(i) Shri B. C. Khilar, staff-cash-cum-Accounts clerk, stole away a cheque book containing 25 cheques adnumbering 0003351 to 0003375 from Bangiriposi Branch during his tenure at the said branch;

(ii) Shri B. C. Khilar forged the signature of the Manager on the Cheque No. 0003355 dated 27.5.86 for the purpose of issuing it as a "Pay Slip";

(iii) Shri B.C. Khilar fraudulently defraud the Bank by presenting to a cloth merchant at Balasore the said Cheque No. 0003355 dated 27.5.86 favouring "Aanchal", being name of the cloth shop; having forged the signature of the Manager, as a consideration for having purchased certain articles from the former.

4. The petitioner submitted his show-cause on 6.11.1986 denying the allegations. It is alleged that the petitioner submitted the judgment of the appellate Court dated 23.3.1992, but after a lapse of six years, he received another charge-sheet on the self-same charges on 7.8.1997 vide Annexure-4. It may be stated here that by judgment dated 24.8.1996 (copy whereof is Annexure-6) passed by the JMFC, Baripada, in GR Case No. 442 of 1986, which was instituted by the police, the petitioner was acquitted.

5. The petitioner alleges that departmental proceeding is illegal being based on the self-same charges. Otherwise also, it is hit by the principle of double jeopardy and thus unconstitutional.

6. The opposite parties, through the Chief Manager, Industrial Relation Bank of India, Zonal Office, have filed counter affidavit denying the allegations and refuting the claims made by the petitioner. According to the opposite parties, when the petitioner was working as a Clerk in the Bangiriposi Branch of the Bank of India, he had access to the cheque books of that Branch. He committed theft of the cheque book bearing cheque Nos. 0003351 to 0003375. Subsequently, he was transferred to the Khunta Branch of the Bank of India. On 27.5.1986 he went to M/s Anchal Cloth Store situated at Balasore town, owned by one Om Prakash Maheswari, and purchased four pieces of sarees. He presented the cheque bearing No. 0003355 for Rs. 1,000/- towards the price of the sarees. The cheque was written by the petitioner himself and he also forged or managed to

forge the signature of the Manager, Bangiriposi Branch. For such misconduct, the petitioner was departmentally charge-sheeted on 12.8.1986, copy whereof is Annexure-2., On the basis of the FIR lodged by the Branch Manager, Bangiriposi Branch, PS Case No. 24 dated 30.5.1986 was registered under Sections 380, 467, 468 and 471, IPC and investigation was taken up. During the course of investigation, TI parade was conducted where the shop-owner had identified the petitioner to have given the cheque in question. According to the opposite parties, since the criminal case was instituted, the Bank had to wait till disposal of the same before proceeding further in the departmental proceeding in terms of clauses 19.3 and 19.4 of the Bipartite Settlement dated 19.10.1966, which is binding on the parties. Clause 19.4, which has been quoted in the counter affidavit and has not been controverted, reads thus :

"If after steps have been taken to prosecute an employee or to get him prosecuted for an offence, he is not put on trial within a year of the commission of the offence, the Management may then deal with him if he had committed an act of "gross misconduct" or of "minor misconduct" as defined below, provided that if the authority which was to start prosecution proceeding refuses to do so or come to the conclusion that there is no case for prosecution it shall be open to the management to proceed against the employee under the provisions set out below in Clauses 19.11 and 19.12 infra relating to discharge, but he shall be deemed to have been on duty during the period of suspension, if any, and shall be entitled to the full wages and allowances and to all other privileges for such period.

In the event of the management deciding, after enquiry, not to continue him in service, he shall be liable only for termination with three (3) months'' pay and allowances in lieu of notice as provided in Clause 19.3 Supra. If within the pendency of the proceedings thus instituted he is put on trial such proceeding shall be stayed pending the completion of the trial, after which the provisions mentioned in Clause 19.3 above shall apply."

7. GR Case No. 442 of 1986 was disposed of on 24.8.1996 by the learned JMFC, Baripada acquitting the petitioner of all the charges. On receipt of the information, the departmental authorities wanted to proceed with the departmental proceeding by order dated 7.8.1997 {Annexure-4) in continuation of the charge-sheet dated 12.8.1986, which is the bone of contention of the petitioner. The allegation of the petitioner that the departmental proceeding has been initiated after a lapse of eleven years has been strongly denied in the aforesaid premises. It is the case of the opposite party-Bank that in view of the Tripartite Agreement between the parties and in view of the fact that the GR Case initiated at the instance of the bank authorities was disposed of only on 24.8.1996, there is no delay on the part of the Bank in proceeding with the departmental enquiry. As such, the action of the bank authorities does not call for interference.

8. In view of the pleadings of the parties, the question that falls for consideration

is whether the departmental proceeding pursuant to the charge-sheet dated 12.8.1986, continuation whereof is the charge-sheet dated 7.8.1997, is justified at this stage, in view of the fact that the petitioner has already been acquitted of all the charges in the criminal case. In a Full Bench decision of this Court in Jayaram Panda Vs. D.V. Raiyani and Others, it has been held that there is no bar to proceed with the departmental proceeding even if the delinquent/employee is acquitted of the criminal charges. In such view of the matter, there is no impediment to proceed against the petitioner in the departmental proceeding.

9. In the result, the writ petition is dismissed. There would be no order as to costs.

P.K. Mohanty, J.

I agree