
(2002) 04 CAL CK 0059
In the Calcutta High Court
Case No : Writ Petition No. 1349 of 2001

Bhaskar Mondal

APPELLANT

Vs

UCO Bank and Others

RESPONDENT

Date of Decision : 09-04-2002

Acts Referred:

Constitution of India, 1950 — Article 20, 20(3), 226
Criminal Procedure Code, 1973 (CrPC) — Section 154, 220, 221, 300
General Clauses Act, 1897 — Section 26, 3(38)
Penal Code, 1860 (IPC) — Section 409

Citation : (2002) 2 CALLT 574

Hon'ble Judges : Dilip Kumar Seth, J

Bench : Single Bench

Advocate : Sadananda Ganguly, for the Appellant; Subrata Roy, Dilip Kr. Kundu and Saumya Ghosh, for the Respondent

Judgement

Dilip Kumar Seth, J.

Submission of the petitioner :

1. Out of the self-same set of allegations, the respondents had initiated a departmental proceedings, as well as had lodged FIR, on the basis whereof, after investigation, the case has since been committed before the Special Court for trial u/s 409 of IPC. In the circumstances, the petitioner has prayed for stay of the departmental proceedings on the ground of prejudice of defence in the criminal trial. Relying on the facts and the material produced before this Court, the learned counsel for the petitioner, Mr. Sadananda Ganguly, had also sought for quashing of the criminal case, as well as the disciplinary proceeding. According to him, the FIR lodged and the charge sheet issued in the departmental proceeding, do neither disclose any offence nor disclose any misconduct. The mala fide is apparent on the face of the records and the material produced. He had elaborated the grounds, on which he is seeking both the reliefs. He attempted to point out how he would be prejudiced in his defence.

He has relied on the decisions in *R.P. Ramajayam v. T. N. Cements Corporation Limited* 1994 (1) SLR 71 ; *Ashok Kumar Katoch v. Oriental Bank of Commerce and Ors.* 1996(4) SLR 643, *B.K Aggarwal v. State Bank of India and Ors.*, 1999(5) SLR 743 and *Capt. M. Paul Anthony v. Bharat Gold Minis Limited* 1999(2) SLR 33AIR 1999 SC 1016, in support of his contentions.

Submission of the Respondents :

2. The learned counsel for the respondent, Mr. Subrata Roy, on the other hand, contends that the question of quashing of the criminal proceedings cannot be maintained in the facts and circumstances of the case. He further contends that both the First Information Report and the charge sheet issued in the departmental proceedings, disclosed prima facie case of offence or misconduct, as the case may be. Until a triable issue is raised, and on the face of the record, it is apparent that the allegations cannot be sustained, those jurisdiction can be exercised, but it cannot be exercised in case it is otherwise. That apart, the relief cannot be asked for having regard to the facts and circumstances of this case. In respect of the other contentions, he points out from *Capt M. Paul Anthony (supra)* as well as various other decisions, that nowhere it was laid down that when a criminal case is pending, a departmental proceedings cannot be proceeded with. On the other hand, it lays down that it can be proceeded with. According to him, if there is no legal bar in proceeding with the departmental proceedings, then there cannot be a justification for staying a departmental proceeding, pending criminal case. The stay can be granted only in appropriate cases having regard to the facts and circumstances of each case to be determined by the Court. There being no straight-jacket formula and there being no legal bar, the Court may or may not grant the stay. He further contends that the scope of the criminal case and the standard of proof required therein and the allegations required to be proved to bring home the charges are completely different and distinct from those required or involved in the disciplinary proceedings. As such there is no bar in proceeding with the departmental proceedings. The allegations of misconduct and the allegations of the offence are not similar. Those are distinct and different. One act or omission may give rise to different consequences. It might result in a misconduct or it might be an offence triable by a Criminal Court. He sought to distinguish the decisions cited by Mr. Ganguly and pointed out that in none of the decisions it was held that there was legal bar in proceeding with the departmental proceedings pending trial before a Criminal Court.

Facts :

3. In order to appreciate this situation, we may briefly refer to the facts in short. On 24th June, 1999, FIR was lodged by UCO Bank without naming any person. Subsequently, on enquiry, it was revealed that the petitioner was responsible for the charges. On the basis thereof, the petitioner was arrested and produced before the Criminal Court, which had ultimately granted him bail. The warrant of arrest was issued on 23rd November of 2000 and the petitioner was brought on

arrest on 28th of December, 2000. On 2nd of January, 2001, the petitioner was arrested and thereafter a charge sheet was issued to him on 12th March, 2001. The criminal case appears to be based on the self-same set of facts. An investigation was made by the bank through its internal machinery and a report was submitted on 3rd of March, 1999. In the said report, it was pointed out that all the persons, who were present in the branch at the relevant time were responsible for the loss of bank's record and also asked for report of handwriting expert. The report of the handwriting expert was obtained on 28th April, 2000.

3.1. So far as the criminal case is concerned, it appears that the same was committed to the learned Special Court, Tamluk, where trial under Sections 409 and 201 of the Indian Penal Code by an order dated 17th April, 2001. The petitioner had made an application u/s 239 of the Code of Criminal Procedure for discharging him, the said application is still pending. The chargesheet submitted by the police in the criminal case has not been placed before this Court. From the First Information Report, it appears that some employees had committed some major criminal offences of cognizable nature relating to fraudulent transaction of public money, misappropriation of public money by fraudulent means, attempts to destroy evidence to avoid detection of crime. This having been detected recently, it was necessary to investigate the same by police and for initiation of criminal proceedings, certain details of the allegations have also been indicated in the said FIR. Whereas in the chargesheet in the departmental proceedings, there was an allegation of misappropriation of certain amounts through misrepresentation and also breach of certain conditions of service and making false entry etc. The allegations in the charge sheet at the criminal proceeding appears to be based on self-same set of facts and it has not been so disputed.

Quashing of the criminal case :

4. Now, it is to be seen whether the criminal case should be quashed or not. Normally, the Writ Court does invoke jurisdiction when there are adequate alternative, efficacious remedy. Writ Court never invoke its jurisdiction when a party has resorted to an alternative remedy, which is, otherwise, efficacious. In the present case, the same relief for quashing the criminal case can be had u/s 239 of the Code of Criminal Procedure. The petitioner had also made such an application and the same is pending. Therefore, on this ground alone, the prayer for quashing of the criminal proceedings can be refused.

4.1. So far as the Writ Court is concerned, it cannot quash a criminal proceeding when the material produced before it discloses some material to implicate the accused. Admittedly, on the basis of the FIR, if no criminal case could be maintained, this Court could have quashed the said proceeding at that stage, but then it would have been too early a stage to do so. The criminal investigation should be allowed to proceed and should not be thwarted by the Court, simply because, it is of the opinion that the FIR does not disclose an offence against the accused. Similar view was taken by the Allahabad High Court in *P.N. Mishra v. State of U.P.* (Criminal Misc. App. No. 6486 of 1997) disposed of by me on 24th

May 2000.

Disclosure of case in FIR :

5. Unless an offence is disclosed from the FIR, it is liable to be quashed. The leading case on this question much relied upon and where the law has been crystallized, is that of *State of West Bengal and Others Vs. Swapan Kumar Guha and Others*, . Though the Criminal Procedure Code confers unfettered power to the police to investigate all cases where they suspect that a cognizable offence has been committed, but in appropriate cases an aggrieved person can always seek a remedy by invoking power of the High Court. Then High Court may restrain the police from misusing their legal power (*S.N. Sharma Vs. Bipen Kumar Tiwari and Others*,). In *Swapan Kumar Guha (supra)*, it was held that the condition precedent to the commencement of investigation u/s 157 of the Code is that the FIR must disclose, prima facie, that a cognizable offence has been committed. The right of enquiry is conditioned by the existence of reasons to suspect the commission of a cognizable offence and they cannot, reasonably, have reason so to suspect unless the FIR, prima facie, discloses the commission of such offence. If that condition is satisfied, the investigation must go and principle laid down in AIR 1945 18 (Privy Council) , will apply. The Court has then no power to stop the investigation for to do so would be to trench upon the lawful power of the police to investigate into cognizable offence. On the other hand, if the FIR does not disclose the commission of a cognizable offence, the Court would be justified in quashing the investigation. The legal proposition, thus, crystallize to the extent that the Court cannot interfere with the investigation into an offence when an offence is disclosed. The FIR is the basis on which investigation is initiated. The initiation of the investigation is not based on the condition that on the face of it, the FIR would disclose a conviction. On the other hand, it is a matter, which gives rise to suspect that an offence might have been committed, the ingredients disclosed in the FIR be sufficient to make the police suspect the commission of an offence, it is entitled to investigate. But, in this case, the case has since been committed to Special Court. Therefore, at this stage, it is no more open to say that it is an abuse of process, as is apparent from the facts disclosed.

5.1 In the name of guarding the life and liberty of a citizen, who is alleged to have committed an offence, the Court cannot permit its process to be abused much to the detriment of the justice delivery system and thereby sending wrong signal and message down to the society where honest people feel frustrated and disheartened while dishonest goes on unpunished having taken advantage of the judicial system, abusing its process much to his advantage.

5.2. In *Madhavrao Jiwajirao Scindia and Others Vs. Sambhajirao Chandojirao Angre and Others*, , the same view was taken by the Apex Court to the extent that when a prosecution in the initial stage is asked to be quashed, the test to be pleaded by the Court is as to whether the uncontroverted allegations as made prima facie establish the offence. It is also for the Court to take into

consideration any special features, which appear in a particular case to consider where it is expedient in the interest of justice to permit a prosecution to continue.

Matters to be considered :

6. In case of *Radhey Shyam Khemka and Another Vs. State of Bihar*, the Supreme Court has observed that seeking, quashing of proceeding was a futile attempt to close the chapter before it was unfolded itself. It will be for the Trial Court to examine the matter on the materials produced on behalf of the prosecution. The exercise cannot be performed either by the High Court or by the Apex Court.

The case made out in the FIR :

7. Be that as it may, the FIR discloses offence but no accused was named. Therefore, the FIR could not have been quashed on that ground. An enquiry has since been conducted and in the enquiry some materials were found against the petitioner. He was arrested and produced before the Court, the charge sheet has since been submitted and the case has since been committed. Once the charge sheet is submitted and such charge sheet discloses an offence, Writ Court cannot exercise its jurisdiction to quash a proceeding. The criminal trial should not be impaired unless it is shown to be mala fide. From the material, it appears that there are sufficient materials, on which a decision, one way or the other, is possible. Therefore, having regard to the materials placed before this Court and in the facts and circumstances of the case, the prayer for quashing of the criminal case cannot be maintained.

Double Jeopardy :

8. Now let us examine the principle of double jeopardy as contemplated under Article 20(2) of the Constitution of India prohibits prosecution and punishment of a person for the same offence more than once, having regard to the facts of this case.

8.1. The expression "offence" used in Article 20 is to be understood as defined in Section 3(38) of the General Clauses Act, which applies to the Constitution by reason of Article 367. In order to attract this provision, the offence must be the same or in other words involving the same ingredients in all respect. But trial for a separate and distinct offence even though they might be based on the self-same allegation but make out different ingredient for different offence would not be barred under Article 20(2). This Article has to be taken as supplemented by Section 26 of General Clauses Act, 1897 as well as Code of Criminal Procedure, hereinafter called as the Code, as provided in Section 403 of 1894 Code, now Section 300 of 1973 Code. The principle is based on the doctrine of atrocities convict of autriafic. The object is to avoid harassment that might be caused to a person for successive criminal proceedings where only one crime has been committed.

8.2. The above principle has been laid down by the Apex Court in *Maqbool*

Hussain v. State 1952 SCR 730; State of Bombay v. S.L. Apte and Anr. AIR 1961 SC 558); Raja Narayanlal Bansilal Vs. Maneck Phiroz Mistry and Another, ; Leo Roy Frey Vs. The Superintendent, District Jail, Amritsar and Another, ; Assistant Collector of Customs and Another Vs. L.R. Malwani and Another, .

8.3. Section 3(38) of the General Clauses Act defines offence to mean any act or omission made punishable by any law for the time being in force. This expression means that if an act constitutes an offence under a particular law satisfying the ingredients required for such offence, then he cannot be tried for an offence within the meaning of the said provision. Unless an act or omission gives rise to some ingredients that constitute an offence, such act or omission is an offence. Thus one set of act or omission may constitute different ingredients for different offence either under the one law in relation to one subject or law covering different subjects. This is made clear from Section 26 of the General Clauses Act, which provides where an act or omission constitutes an offence under two or more enactments, then the offender shall be liable to be prosecuted and punished under either or any of these enactments, but shall not be liable to be punished twice for the same offence.

8.4. Section 220 of the Code permits simultaneous trial on several distinct and different offences that might be constituted out of the same transaction or series of acts or omissions. Section 221 permits trial of an offence that might be disclosed out of the same transaction or series of acts and omissions though not charged. Trial is prohibited in respect of same offence arising out of one set of act or omission excluding distinct and separate offence for which charge can be framed u/s 220(1) of the Code even arising out of the same set of act or omission.

8.5. Thus, from Section 26 of the General Clauses Act read with Section 300(1) and (2) of the Code, it is abundantly clear that the principle of double jeopardy is not attracted if one set of act or omission constitute separate and distinct offence either under one enactment or under different enactments. In that event, the offence would not be the same offence within the meaning of Section 26 of the General Clauses Act read with Section 300 of the Code. Article 20 has neither eclipsed nor had obliterated the provisions of Section 26 of the General Clauses Act nor of Section 300 of the Code. It has only reiterated the same while recognizing it as a fundamental right for a citizen, adding strength and constitutional flavour. There is no conflict in between any of these provisions. On the other hand, each of these provisions are supplemental to each other. The prohibition that was engrafted in the said two provisions have since been adopted in the Constitution as fundamental right while securing the freedom and liberty of the citizens. Article 20(2) thus prohibits second trial of a person for the same offence as defined from separate and distinct offence, though arising out of the same set of acts or omissions constituting the ingredient distinct and separate from the offence involved in the first.

8.6. Support to the above proposition may be found in the decisions in (State of

Bombay v. Apte and Anr. AIR 1961 SC 558; State of Bihar Vs. Murad Ali Khan and Others, ; Leo Roy Frey v. The Superintendent, District Jail, Amritsar AIR 1950 SC 119; The State of Madhya Pradesh Vs. Veereshwar Rao Agnihotry, ; Om Prakash Gupta Vs. State of U.P.,).

8.7. In the present case, admittedly, the criminal case constitutes a different offence under the Indian Penal Code. Out of the same set of transaction in the departmental proceedings, a different kind of misconduct is constituted which is not an offence. It may be in conflict with the condition of service but it is not an offence, as we understand it. Therefore, there is no bar in holding simultaneous criminal proceedings and departmental proceedings.

Quashing of departmental proceedings/charge sheet :

9. A charge sheet is a document, which set in motion the machinery of the domestic enquiry. It must be clear and not vague. It must be capable of being understood or defined with sufficient certainty. In the charge sheet, the delinquent must be clearly told what case he has to meet (Surath Chandra Chakrabarty Vs. State of West Bengal,). It is necessary that the charge sheet shall contain material, particulars of the charge against the workman spelling out the misconduct. Each and every details, particulars may not be necessary to be given in the charge sheet, but it must be sufficiently stated to enable the workman to put up his defence Management of Delhi Transport Undertaking Vs. Industrial Tribunal, Delhi and Another, . The charge sheet must not contain anything to indicate that there was a close mind behind it or that the issues are pre-judged.

9.1. The grounds on which a charge sheet can be quashed are normally vagueness, absence of material, disclosure of a closed and biased mind, mala fide, without authority or jurisdiction etc. Each case has to be determined on the basis of the facts of each individual case. It has to be discovered from the text of the charge sheet.

9.2. So far as the departmental proceedings in this case is concerned, from the statement of allegations and the charges framed against the petitioner, it does not appear that there are sufficient reason to interfere with the departmental proceedings at this stage. Since there are some materials on the basis whereof a decision either way can be taken, having regard to the materials that might be brought on record, during the course of enquiry, this Court is not supposed to quash the departmental proceedings at this stage. When certain charges are made on the basis of certain allegations, until it is distinctly, clearly and conclusively appears before the Court that there is no material to support the charges or when the Court comes to a conclusion that the charge sheet is an outcome of mala fide, the Court is not supposed to strike off the departmental proceedings. In the circumstances, this prayer also cannot be sustained.

Stay of departmental proceedings :

10. Now, we may come to the question of stay of the departmental proceedings in view of the pendency of the criminal proceedings. The petitioner alleges that his defence will suffer prejudice, if he is compelled to disclose defence, with which he will be defending the criminal case, to defend the departmental proceedings. According to Mr. Ganguly, it would be the same set of facts to be proved through same set of evidence or witnesses both in the criminal case as well as in the departmental proceedings, even though the standard of proof may differ and the implication of the guilty may not be the same. This is being disputed by Mr. Roy on the ground that admittedly, the standard of proof would be different, the approach would be different, the question that will be requiring proof would also be different. He further contended that this defence cannot be used in the criminal case where independence proof of facts would be necessary.

10.1. Admittedly, out of the self-same set of facts, different liabilities may arise, same facts might have different consequences in respect of the same person under different provisions of law. The same set of acts or omission may constitute different offence under the same or different law. The same transaction may make a person liable for criminal offence under the penal law as well as for misconduct as contemplated in service jurisprudence. The approach in respect of offence and misconduct are different; the standards of proof required are different; the effects are also different. It may be a case where some action though forms an ingredient both for criminal offence as well as for misconduct, yet when proved it may constitute an offence but not misconduct under service rules or vice versa. The facts required to be proved in a departmental proceedings though may be same, but may be proved differently than that in the Criminal Court.

10.2. From the statement of allegations, it appears that imputation Nos. 1, 5, 8, 9 & 10 purported to disclose an offence while the rest though misconduct but may not be an offence. Even without misappropriation, preparing and passing of withdrawal form from an account without debiting the corresponding account may not constitute an offence, but still it may be a misconduct. Similar analogy may be drawn in respect of the imputation Nos. 5, 8, 9 & 10 as well. Thus, it appears that there are certain materials, which could lead the Court to harbour some reservations on the basis of submission as made by Mr. Roy, in view of the absence of legal bar as has been laid down in the various decisions covering the field.

10.3. The departmental proceeding and the criminal case have its own sphere of object and affectivity. It has different implications at different levels. A criminal offence is an offence against the society or the State as the case may be. If someone goes unpunished, it is the society as a whole, which will suffer. Unless persons indulging in criminal offence are brought to book the society may feel to have been let down by the administration. It might have far reaching consequences. It may send a wrong signal. There may be people, who might be tempted to commit offence, unless there is deterrence. The trial and punishment

is a deterrence for an offence.

10.4. Whereas a misconduct may not be an offence against the society; it may not affect the society as a whole. It may not have any effect on the society at all. But it has a great importance on the establishment, where a person is employed. It has immense implication and is of profound interest to the employer in respect of the discipline in the establishment, whether punished or not by the Criminal Court. To ask the employer to wait the decision of a criminal case, when its discipline is at stake, would surely be an injustice to the employer. Normally, criminal cases take longer time. Such lapse of time might result in the disappearance of evidence or witnesses on whom the employer might rely. The importance of discipline also suffers at the cost of such stay. The prosecution for the criminal offence is not at the hands of the employer. It has no control over the same. It may take a long time and thereby the interest of the discipline or administration may also suffer and be prejudiced. Punishment in criminal case, may also not serve the purpose of administrative discipline of the establishment. Internal discipline is a matter of great concern for the administration.

10.5. Therefore, it is not a one-way traffic. It has to be looked into from both the sides. A balanced view is required to be taken in such circumstances. Whenever, stay of departmental proceedings is asked for, it cannot be granted as a matter of course. The Court has to weigh the material and consider on the basis of the facts of each case, to decide as to what side the balance tilts. The approach of the Court has to create a balance in between. A pedantic approach of the Court in staying departmental proceedings whenever there is a criminal case pending, may become counter-productive and may affect the interest of the employer, its business and discipline and administration in the establishment. It may also be considered that so long the departmental proceedings remain stayed, in case a person remains under suspension the employer is compelled to incur expenses on account of payment of subsistence allowance for a period for which it would not have been liable, but for the stay granted by the Court.

The legal proposition : When the departmental proceedings can be stayed:

11. Mr. Ganguly had relied on R.P. Ramajayam (supra), a decision by the Madras High Court which had held in favour of staying departmental proceedings pending criminal case arising out of identical facts on the plea that the delinquent cannot be compelled to disclose his defence, since it would erode the legal right of the delinquent. This decision was rendered in July 1993. In Ashok Kumar Katoch (supra) decided in 1995, the Himachal Pradesh High Court (DB) had taken the same view. Similar view was taken in B.K. Agarwal (supra) by the Punjab and Haryana High Court. We may refer to various other similar decisions of different High Courts. Such decisions as observed in Capt M. Paul Anthony (supra) can be aptly described definitely a question of perennial nature and had arisen more often than not in spite of various judicial pronouncements, despite the proposition having been settled by the Apex Court, which provided the answer. In the said decision, it was held, that "proceedings in a criminal case and

the developmental proceedings can proceed simultaneously with a little exception.....The little exception may be where the departmental proceedings and the criminal case are based on same set of facts and the evidence in both the proceedings is common without there being a variance."

11.1. In *The Delhi Cloth and General Mills Ltd. Vs. Kushal Bhan*, , it was held that the principle of natural justice do not require the employer to wait for the decision of the Criminal Court before taking action against an employee. However, the Apex Court in the said decision was pleased to add that in the case of *Tata Oil Mills Co. Ltd. Vs. Its Workmen*, , to the extent, that "it is desirable that if the incident giving rise to a charge framed against a workman in a domestic enquiry is being tried in a Criminal Court, the employer should stay the domestic enquiry pending the trial disposal of the criminal case."

11.2. This question cropped up again in *Jang Bahadur Singh Vs. Baij Nath Tiwari*, . In the said decision, it was held that pendency of civil or criminal proceeding before the Court does not create a legal bar in taking of disciplinary action vested in the disciplinary authority. In the said case, the two proceedings can be proceeded simultaneously if the initiation and continuation of the departmental action is in good faith and is not calculated to obstruct or interfere with the course of justice pending in Courts, unless there is an order of stay. There is no legal bar in proceeding in both the cases simultaneously. This question again cropped up in *Kusheshwar Dubey Vs. Bharat Coking Coal Ltd. and Others*, . In the said decision, it was held that there is no legal bar for simultaneous proceeding being taken at the same time. It is held that it is open to delinquent to seek stay or injunction from Court. On the other hand, it has pointed out that no straight-jacket formula could be laid down whether simultaneous proceeding would be allowed to continue as to receive judicial consideration. The Court has to decide on the basis of facts of each particular case. In *Nelson Motis Vs. Union of India* and another, , the Apex Court had held that "the nature and scope of a criminal case are very different from those of departmental disciplinary proceeding and an order of acquittal, therefore, cannot conclude the departmental proceedings." *State of Rajasthan Vs. B.K. Meena and others*, , had laid down that each of the decision referred to therein starts with the indisputable proposition that there is no legal bar for both proceedings to go simultaneously and then say that in certain situation, it may not be "desirable", "advisable" or "appropriate" to proceed with the disciplinary enquiry when a criminal case is pending on identical charge. The staying of disciplinary proceedings, it is emphasized, is a matter to be determined having regard to the facts and circumstances of a given case and no hard and fast rules can be enunciated in that behalf. The only ground suggested in the above decisions in constituting a valid ground for staying the disciplinary proceeding is that the defence of the employee in the criminal case may not be prejudiced. This ground has, however, been hedged in by providing further that this may be done in cases of grave nature involving questions of fact and law.....that not only the charges must be grave but that the case must involve complicated questions of

law and fact. Moreover, "advisability", "desirability" or "propriety" as the case may be, has to be determined in each case taking into consideration all the facts circumstances of the case.....

***** This decision has gone two steps further than the earlier decisions by providing :

"1. The "advisability", "desirability" or "propriety" of staying the departmental proceedings, "go into the scales while judging the advisability or desirability of staying the disciplinary proceedings" merely as one of the factors which cannot be considered in isolation of other circumstances of the case. But the charges in the criminal case must, in any case, be of a grave and serious nature involving complicated question of fact and law.

2. One of the contending considerations would be that the disciplinary proceedings cannot and should not be delayed unduly. If the criminal case is unduly delayed, that may itself be a good ground for going ahead with the disciplinary enquiry even though the disciplinary proceedings were held over at an earlier stage. It would not be in the interest of administration that persons accused of serious misdemeanor should be continued in office indefinitely awaiting the result of criminal proceedings."

11.3. In Depot Manager, Andhra Pradesh State Road Transport Corporation Vs. Mohd. Yousuf Miya, etc., , it was held that there was no bar to proceed simultaneously with departmental enquiry and trial of criminal case unless the charge in criminal case is of grave nature involving complicated questions of fact and law.

11.4. All these decisions were discussed in Capt M. Paul Anthony (supra) wherein the conclusion were deduced from the various decisions in the following manner :

"(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 (i) 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, administration may get rid of him at the earliest."

11.5. In fact, in *Catp. M. Paul Anthony (supra)*, the ratio decided in various decisions have been crystallized as above. It had laid down that both the proceedings can proceed simultaneously since there is no legal bar, but in a case where both the proceedings are founded on identical and similar set of facts and the charges are grave in nature involving complicated questions of fact and law, it is desirable to stay the departmental proceedings till the criminal case is concluded. Whether the charge in criminal case is grave and whether the complicated questions of fact and law are involved is dependent on the nature of the offence and the nature of the allegations on the basis of the evidence and material collected during investigation as reflected in the charge sheet. This cannot also be considered in isolation and due regard is to be given that the departmental proceedings is not unduly delayed. If the criminal case does not proceed or the disposal is unduly delayed then departmental proceedings can proceed and if not stayed the same should be resumed. It is to be done for the reason that if the employee is found not guilty of the charge, then his honour would be vindicated and if he is found guilty, the administration may get rid of him at the earliest.

The application of the principle :

12. Thus, the test to be applied in a given case is to find out as to whether the charges in the criminal cases are grave and involve complicated question of fact and law or whether the proceeding is unduly delayed. If there is no legal bar, the question of prejudice cannot be sustained. Whether the defence would be prejudiced or not is not a question to be considered at all. Even though in one case the ground was mentioned as prejudicing the defence but in *M. Paul Anthony (supra)*, it was not accepted as a ground. The grounds have been confined to the test as laid down.

12.1. In none of these decisions any criteria has been laid down as to how and in what manner or way the graveness of the charges or the complication of the law or fact or the extent of undue delay is to be fathomed or what should be the unit for calculating the delay which is undue. The Courts are still left at large with the "desirability", "advisability" or "propriety" keeping all questions again open. In fact, it has been left to the discretion of the Court, which has to exercise it having regard to the facts and circumstances of each case.

The present case :

13. In the present case, the period to which allegations related was in 1997. We are now in 2002. The allegations are that the things were done in a manner, which could not be detected and should be discovered at a later stage and even after it was detected it had taken some time to investigate. It is almost three years from the lodging of the FIR. Thus, it appears that this is a case where it is being delayed unduly. The charges are definitely grave but do not seem to involve any complicated questions of law. The facts also do not seem to be complicated. The scope of the departmental proceedings is altogether different from that of the criminal case. The nature of the misconduct alleged are quite different from the offences with which the petitioner is charged. Apart from four of the imputations, the rest does not make out criminal offence, though it might be a misconduct under service jurisprudence. This case, however, falls within the observation contained in Clause (ii) are reflected in para 20 of Capt M. Paul Anthony (supra) at page 345, without the question of law and fact being far from complicated. The majority of the facts alleged are dependant on the documentary evidence and records etc. As held In M. Paul Anthony (supra), the question of graveness of the charges and the complicatedness of the fact cannot determined in isolation. It has to be decided having regard to the question of delay. At the same time, it has also to be examined from the charges involved in both the proceedings and the difference in between and the extent of proof required for either of them and the material allegations having relation to the charges of misconduct. All these factors are to be taken note of before arriving at the conclusion of the "desirability", "advisability" or "propriety" of staying the proceeding.

13.1. Judging from this angle, we may now examine the present case. In the criminal case the charges are u/s 409 and 201 of the IPC read with Section 468, 471 IPC. Section 201 IPC relates to causing disappearance of evidence of offence and giving false information to screen the offender. Section 409 IPC deals with criminal breach of trust by public servant, banker, merchant or agent. Section 468 covers forgery for the purpose of cheating. Section 471 deals with using forged document as genuine. The statement of allegations and the misconduct alleged in the departmental proceedings, if considered and compared, with those of the criminal proceedings, it would show that it had alleged fraudulent withdrawal of money from different savings bank accounts on different dates. The statement of allegations with regard thereto may be had from imputation Nos. 1, 5 and 9. Though the said imputation relates to misappropriation, which is the subject matter of criminal offence, the departmental proceedings relate to fraudulent withdrawal of money, which might be something nearer to misappropriation, but the proof is not the same which is not a consideration. Since on the basis of such allegation, misconduct alleged is failure to discharge duties with utmost integrity, honesty and violative of regulation 3 of the Conduct Rules. Therefore, the scope of the enquiry does not intricately relate to the criminal offence. The question to be determined in the departmental enquiry so far as the charge No. 1 is concerned does not appear to involve complicated

questions of law and fact.

13.2. The second charge of gross abuse of official position or power for personal gain. The imputations Nos. 3, 4, 6, 7, 8 and 10 are the foundation of the second charge. The third charge relates to breach of faith in the performance of duties and acting in a manner un-becoming of a bank officer. This charge is founded on all the imputations. The fourth charge was that he did not take effective step for house keeping of the branch and had shown indifferent attitude and failure to discharge his duties with devotion and diligence. This charge is based on imputation No. 11. The fifth charge failure to keep proper custody of important records is related to imputation No. 12.

13.3. None of these misconduct seems to involve complicated question of law or fact. The scope of the departmental enquiry is limited to the violation of service rules without imposing any criminal liability. The allegations of imputations constitute a misconduct. The same set of facts are the basis out of which the criminal offence are being constituted. But the scope of criminal proceeding is little different from the departmental proceedings.

The guiding factor :

14. Thus, it appears that the scope of the departmental enquiry and the proof are different. This may also be one of the factors for deciding as to whether both the proceedings involved complicated questions of fact and law. In any event, the Criminal Court is not supposed to go into the question, which would be relevant to be gone into in the departmental proceeding. Having regard to the facts of this cast, it is definitely outside the scope of the appropriateness, desirability or propriety on account of non-involvement of complicated questions of law and fact. At the same time, the question that would be gone into in the departmental proceedings would not be relevant for the criminal proceedings. The approach, the standard of proof, the extent of the facts to be established for proving misconduct are different from those in the criminal proceedings. As observed earlier, the facts and the law, as it appears, does not involve any complicated question, though the charges might be grave. The matter would have been different, if the proof of the allegations were dependant mostly on oral evidence, or it were an allegation based on transactions, acts or omissions unconnected with the discharge of duties and function of the employee relating to moral turpitude etc. But when the proof relates mostly on records and documents and is within the purview of the discharge of duties and functions as an employee, it assumes a different complexion than the criminal charges. Therefore, the Court has to examine the extent, to which the complications are related. Unless as held in the said decisions all the tests are satisfied and that the evidences are not in variance, the factor of desirability etc. will apply. In case of any variance in the evidence and all the tests are not satisfied the factor of desirability will not apply.

14.1. The factor of "advisability", "desirability", or "propriety", has no objective standard. It is subject to subjective standard, to be weighed with, by the Court,

having regard to the facts and circumstances of each case. It has to be ascertained from (a) comparison of the charges leveled in the two proceedings", (b) comparison of the ingredients constituting the offence and the misconduct; (c) the nature and distinction between the kinds of charges in either of the two; (d) the relation of the allegations with the discharge of duties and functions of the delinquent as an employee; (e) the extent and scope of the facts to be established; (f) the standard of proof required; (g) the variance of the evidence to be led in the two proceedings; (h) the question of delay involved; (i) the availability of the evidence and witnesses; (j) the relevance of the questions between the two; (k) the extent of dependence the Criminal Court can place on the records of the departmental proceedings; (l) the kind, extent and proportion of evidence involved i.e., documentary or oral; (m) the extent of graveness of the charges; (n) the involvement of complicated question of fact; (o) the extent of complication with regard to the question of law involved. These factors may not be exhaustive, but these are guiding factors for ascertaining the "desirability", "appropriateness" or "propriety" of staying the departmental proceedings.

Conclusion :

15. Having regard to the facts and circumstances of this case as discussed above, in my view, it is not a case, where the staying the proceeding is appropriate, or desirable or proper. Inasmuch as, there has been undue delay and the other distinguishing features having regard the guiding factors as discussed above.

Order :

16. Having regard to the facts and circumstances of the case, therefore, this writ petition is disposed of by granting liberty to the disciplinary authority to proceed with the departmental proceedings irrespective of the pendency of the criminal case after expiry of a period of six months from the date of this order. However, it would be open to the petitioner to apply before the Criminal Court for expeditious disposal of the application u/s 239 of the Code filed in the said case. The learned Special Court shall make all endeavour to dispose of the said application within a period of six months from this date. It will also endeavour to decide the criminal case as expeditiously as possible. Let it be noted that I have not entered into the merits of the case. All points are kept open.

16.1. It appears from a xerox copy of the certified copy of the order dated 4th December 2001 passed in the said criminal case being G. L. No. 184 of 2000 (State v. Bhaskar Mondal) passed by the learned Judge Midnapore, 4th Special Court Tamluk, that special power from the High Court was not received. In case it is not received yet, the learned Registrar General, High Court and Judicial Secretary, Government of West Bengal shall ensure communication of conferment of such special power upon the said Court forthwith, but not later than 3 weeks from receipt of the operative part of this order.

16.2. This writ petition is, thus, disposed of.

16.3. The xerox signed copy of the operative part of this judgment be furnished to the respective counsel for the parties as well as to the learned Registrar General High Court and the Judicial Secretary, Government of West Bengal forthwith.