

(1993) 12 KL CK 0007
In the High Court Of Kerala
Case No : W.A. No. 1125 of 1993-B

Gireesan

APPELLANT

Vs

Indian Overseas Bank and Others

RESPONDENT

Date of Decision : 08-12-1993

Acts Referred:

Banking Regulation Act, 1949 — Regulation 10
Constitution of India, 1950 — Article 20, 20(2), 32
Criminal Procedure Code, 1973 (CrPC) — Section 300, 403(1)
Foreign Exchange Regulation Act, 1947 — Section 8
General Clauses Act, 1897 — Section 26
Penal Code, 1860 (IPC) — Section 161, 165, 409, 465, 477A
Prevention of Corruption Act, 1988 — Section 5(1), 5(2)
Sea Customs Act, 1878 — Section 167(8)

Citation : (1993) 12 KL CK 0007

Hon'ble Judges : K.S. Paripoornan, J; K.P. Balanarayana Marar, J

Bench : Division Bench

Advocate : R. Harikrishnan and John Britto, for the Appellant;

Final Decision : Dismissed

Judgement

K.P. Balanarayana Marar, J.—The appeal is directed against the judgment in O.P. 804/1989. Petitioner is the Appellant.

2. Petitioner was a Shroff/Godown-keeper attached to the Trivandrum Branch of 1st Respondent, the Indian Overseas Bank. For certain misconduct he was charge-sheeted by the bank and proceeded against in terms of the bipartite settlement between the 1st Respondent and its workmen represented by All India Overseas Bank Employees Union. Petitioner was kept under suspension and an enquiry was conducted. The enquiry officer found Petitioner guilty of the misconduct alleged against him. The disciplinary authority proposed to dismiss him from service and he was asked to show cause against the proposed punishment. After the receipt of his explanation the disciplinary authority imposed punishment of discharge. An appeal was preferred against this order.

The appellate authority, the Deputy General Manager, reduced the punishment to one of stoppage of five future increments with cumulative effect. Pursuant to that order Petitioner rejoined duty on 11th April 1984. In the meanwhile the Central Bureau of Investigation had registered a case against the Petitioner for offences under Sections 409, 465 and 477A of the Indian Penal Code and Section 5(2) read with Section 5(1)(c) and (d) of the Prevention, of Corruption Act. The Special Judge (C.B.I./S.P.E.) Ernakulam found Petitioner guilty of the offences and sentenced him to undergo rigorous imprisonment for a period of one month and to pay a fine of Rs. 2,000 and in default to undergo simple imprisonment for another period of 15 days. During the pendency of the trial Petitioner was suspended from service. After the judgment of the Special Judge Petitioner was dismissed from service by virtue of the provisions contained in Regulation 10(i)(b) (i) of the Banking Regulations Act, 1949 as well as paragraph 17.3 (b) of the bipartite settlement. The order of dismissal was challenged before this Court in the Original Petition. By judgment dated 15th March 1993 the learned Single Judge dismissed the petition. That judgment is assailed in this appeal.

3. Heard counsel for Appellant.

4. The correctness of the judgment is assailed mainly on the ground that Appellant is punished twice for the same offence. He was once found guilty of misconduct by the disciplinary authority and discharged from service. On appeal the punishment was reduced to stoppage of five future increments with cumulative effect. Punishment having been imposed on the Petitioner once, the dismissal on the basis of the judgment of the Special Judge is illegal, argues counsel.

5. It is urged by learned Counsel for the Appellant that the punishment of dismissal in pursuance to the conviction entered by the Special Judge amounts to violation of the right guaranteed under Article 20(2) of the Constitution of India. The Article reads:

No person shall be prosecuted and punished for the same offence more than once.

Section 300 of the Code of Criminal Procedure also bars a second trial for the same offence when a court of competent jurisdiction has already convicted or acquitted a person for the same offence. The principle embodied in Article 20(2) of the Constitution and Section 300 of the Code of Criminal Procedure is based on the ancient maxim of criminal jurisprudence "nemo debet bis vexari prounae teadem cause" which means that a person should not be vexed twice with respect to the same matter. If some allegations are made against a person and he is tried in respect of those allegations and he is either acquitted or convicted, he should not be tried again with respect to the offences based on the same allegations, according to Section 300 of the Code of Criminal Procedure u/s 26 of the General Clauses Act 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 those enactments, but shall not be liable to be punished twice for the same offence. In short, the principle is that no one should be twice punished for the same offence. A question arises whether a person who was found guilty of misconduct in a domestic enquiry and punished by the disciplinary authority can be proceeded against by a criminal court for the same offence and whether the delinquent has to face a second punishment on the basis of conviction entered by that court.

6. The Supreme Court had occasion to consider this matter in the decision in *Maqbool Hussain Vs. The State of Bombay*, An important question as to the construction of Article 20(2) of the Constitution came up for consideration before the Supreme Court. The Appellant in that case had brought gold with him from Jeddah. The Customs Authorities took action u/s 167(8) of the Sea Customs Act and confiscated the gold. A criminal complaint was also filed in the court of the Chief Presidency Magistrate, Bombay for having committed an offence u/s 8 of the Foreign Exchange Regulation Act 7 of 1947. Appellant challenged the prosecution in the High Court of Bombay. The question arose whether by reason of the proceedings taken by the Sea Customs Authorities, the Appellant could be said to have been prosecuted and punished for the same offence with which he was charged in the Court of the Chief Presidency Magistrate, Bombay. The Supreme Court held that the proceedings before the Sea Customs Authorities were not "prosecution" nor the order of confiscation a "punishment" within the meaning of Article 20(2) of the Constitution inasmuch as the Customs Authority was not a court or a judicial Tribunal and merely exercised the administrative powers vested in him for revenue purposes. The Supreme Court took into consideration the words used in Article 20 and held:

The very wording of Article 20 and the words used therein: "convicted", "commission of the act charged as an offence""be subjected to a penalty", "commission of the offence", "prosecuted and punished", "accused of any offence", would, indicate that the proceedings therein contemplated are of the nature of criminal proceedings before a Court of law or a judicial tribunal and the prosecution in this context, would mean an initiation or starting of proceedings of a criminal nature before a Court of law or a judicial tribunal in accordance with the procedure prescribed in the statute which creates the offence and regulates the procedure.

7. The Supreme Court observed that the fundamental right which is guaranteed in Article 20(2) enunciates the principle of "autrefois convict" or "double jeopardy", After referring to the principle enunciated in the Fifth Amendment of the American Constitution, Section 403(1) of the Code of Criminal Procedure 1898, Section 26 of the General Clauses Act, 1897 and the principle on which the plea of "autrefois acquit" or "autrefois convict" is based, the Supreme Court held that these were the materials which formed the background of the guarantee of fundamental right given in Article 20(2). It was held that it incorporated within its scope the plea of "autrefois convict" as known to the British jurisprudence or

the plea of double jeopardy as known to the American Constitution but circumscribed it by providing that there should be not only a prosecution but also a punishment in the first instance in order to operate as a bar to a second prosecution and punishment for the same offence.

8. The Supreme Court then considered the question whether the Sea Customs Authorities when they entertained the proceedings for confiscation of the gold in question acted as a judicial tribunal. The words "before a court of law or judicial tribunal" are not found in Article 20(2). The Supreme Court observed that in order to get the protection of Article 20(2), there must have been a prosecution and punishment in respect of the same offence before a court of law or a tribunal which is required by law to decide the matters in controversy judicially on evidence or oath which it must be authorised by law to administer and not before a tribunal which entertains a departmental or an administrative enquiry even though set up by a statute but not required to proceed on legal evidence given on oath. The Supreme Court ultimately held that when the Sea Customs Authorities confiscated the gold in question, neither the proceedings taken before the Sea Customs Authorities constitute a prosecution of the Appellant nor did the order of confiscation constitute a punishment inflicted by a court or judicial tribunal on the Appellant.

9. The matter was again considered by the Supreme Court in *S.A. Venkataraman Vs. The Union of India (UOI) and Another*, . The facts of that case are more or less similar to the facts of the present case. The Supreme Court was considering the dismissal of a member of Indian Civil Service. An enquiry was conducted against him under the Public Servants (Inquiries) Act for charges including acceptance of illegal gratification and valuable things. The Commissioner on an enquiry found the charges to have been established. After giving the Petitioner an opportunity to show cause against the action proposed to be taken he was dismissed from service on 17th of September, 1953. A charge sheet was submitted against the Petitioner before the Special Judge, Sessions Court, Delhi on 23rd February 1954 charging him with offences under Sections 161 and 165 of the Indian Penal Code and Section 5(2) of the Prevention of Corruption Act. Summons was issued to the Petitioner. The legality of that proceeding was challenged before the Supreme Court in the Original Petition filed under Article 32 of the Constitution. The Supreme Court quoted with approval the observation in *Maqbool Hussain Vs. The State of Bombay*, that the language of Article 20 and the words. actually used in it afford a clear indication that the proceedings in connection with the prosecution and punishment of a person must be in the nature of a criminal proceeding, before a court of law or judicial tribunal, and not before a tribunal which entertains a departmental or an administrative enquiry even though set up by a statute, but which is not required by law to try a matter judicially and on legal evidence.

10. The Supreme Court thereafter pointed out that the prosecution contemplated in Article 20(2) of the Constitution must be in relation to the law which creates

the offence and the punishment must also be in accordance with what that law prescribes. It is observed that the words "prosecution" and "punishment" have no fixed connotation and they are susceptible of both a wider and a narrower meaning. But in Article 20(2) both these words have been used with reference to an "offence" and the word "offence" has to be taken in the sense in which it is used in the General Clauses Act as meaning "an act or omission made punishable by any law for the time being in force". A Commissioner appointed under the Public Servants (Inquiries) Act has no duty to investigate any offence which is punishable under the Indian Penal Code or the Prevention of Corruption Act and he has absolutely no jurisdiction to do so. The Supreme Court observed that the subject matter of investigation by a Commissioner is the truth or otherwise of the imputation of misbehaviour made against a public servant and it is only as instances of misbehaviour that the several articles of charge are investigated, upon which disciplinary action might be taken by the Government if it so chooses. It is also observed that the mere fact that the word "prosecution" has been used would not make the proceeding before the Commissioner one for prosecution of an offence. The Supreme Court in the concluding paragraph of the judgment held thus:

In our opinion, therefore, in an enquiry under the Public Servants (Inquiries) Act of 1850, there is neither any question of investigating an offence in the sense of an act or omission punishable by any law for the time being in force, nor is there any question of imposing punishment prescribed by the law which makes that act or omission an offence.

11. The law on this aspect has been laid down in the two decisions of the Supreme Court aforementioned. The words used in Article 20(2) of the Constitution afford a clear indication that the proceeding in connection with the prosecution and punishment of a person must be in the nature of a criminal proceeding before a court of law and judicial tribunal and not before a Tribunal which entertains a departmental or an administrative enquiry. The purpose of a domestic enquiry is only to help the disciplinary authority to come to a conclusion regarding the misbehaviour of an employee. It is open to the disciplinary authority to adopt the enquiry report or to differ from it. In such an enquiry there is no question of an offence being investigated or an act or omission being punished by any law for the time being in force. Moreover, there is also no question of imposing any punishment prescribed by law which makes that act or omission an offence. The punishment awarded in pursuance to the conviction of Appellant by the Special Judge does not amount to a violation of the fundamental right guaranteed under Article 20(2) of the Constitution, nor can it be said that Appellant is vexed twice with respect to the same matter.

12. Learned Counsel for the Appellant has drawn attention to the decision of Rajasthan High Court in *Kamruddin Pathan v. R.S.R.T.C.* 1988 (2) S.L.R 200. That was a case where a Conductor in Rajasthan State Road Transport Corporation was charge-sheeted on the allegation that he had collected fare from

some of the passengers without issuing tickets. A domestic enquiry was conducted and he was removed from service. On appeal the punishment of removal was reduced to stoppage of two increments. A criminal case was also instituted for the offence u/s 8 of the Rajasthan State Road Transport Service (Prevention of Ticketless Travel) Act, 1975. The Magistrate after trial convicted him and sentenced him to pay a fine of Rs. 60 and in default to undergo simple imprisonment for three days. Thereafter he was dismissed from service on the basis of his conviction. A suit was instituted challenging the dismissal order. The trial court dismissed the suit. The lower appellate court concurred with that decision. The matter came up before the Rajasthan High Court in second appeal. The judgment and decree of the courts below were set aside and the suit was decreed holding that the employee was entitled to re-instatement with backwages. While holding so it was observed that no penalty could be imposed on the Petitioner on the basis of his conviction by the learned Magistrate and the order dismissing him was patently illegal. It is observed that if a Government servant has once been subjected to a departmental enquiry resulting in final order, he cannot be proceeded against at the second enquiry on the same facts on the basis of his conviction by a criminal court. The Rajasthan High Court has also relied on the decision of the same High Court in Dwarka Chand v. State of Rajasthan AIR 1958 Raj. 58 and the decision of Andhra Pradesh High Court in K. Srinivasa Rao v. The Director of Agriculture 1971 Lab. I.C. 778. With respect we disagree. The Rajasthan High Court had not considered the two decisions of the Supreme Court, namely, the decisions in Maqbool Hussain Vs. The State of Bombay, and in S.A. Venkataraman Vs. The Union of India (UOI) and Another, The question involved has been considered by the Supreme Court in those two decisions and the law was laid down therein. We are bound to follow the principles laid down in those decisions. The decision in Kamruddin Pathan case 1988 (2) S.L.R. 200 (supra) is therefore of no assistance to the Appellant.

For the aforesaid reasons the writ appeal is dismissed in limine.