

(2012) 01 CAL CK 0045
In the Calcutta High Court
Case No : M.A.T. 1339 of 2011

Keshab Chandra Saha

APPELLANT

Vs

United Commercial Bank and Others

RESPONDENT

Date of Decision : 11-01-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 248(1), 482
Penal Code, 1860 (IPC) — Section 120B, 420, 468, 471

Citation : (2012) 1 CALLT 269 : (2012) 2 CHN 683 : (2012) 133 FLR 546 :
(2012) 3 LLJ 47 : (2012) LLR 362

Hon'ble Judges : J.N. Patel, C.J.;Sambuddha Chakrabarti, J

Bench : Division Bench

Advocate : Monilal Chatterjee, Mr. Arijit Chatterjee, for the Appellant; Malay Kumar Basu, C.R. Bakshi, for the Respondent

Final Decision : Dismissed

Judgement

Sambuddha Chakrabarti, J.—In an earlier appeal filed by the present appellant a Division Bench of our Court had remanded the matter to the learned Single Judge after framing the issues to be decided by the Trial Court. The points so framed were:

- 1) Whether after acquittal in a criminal case the writ petitioner is entitled to pray for quashing of the departmental proceedings; and
- 2) Whether the bank authorities are debarred from proceeding with the said proceeding.
2. After remand the matter went back to the learned Single Judge and His Lordship by an elaborate judgement and order, dated July 27, 2011 had dismissed the writ petition answering both the questions formulated by the Division Bench in the negative.
3. This judgement and order of the learned Single Judge has been impugned in the present appeal.

4. This case unfortunately has a chequered career, perhaps largely due to different stands taken by the appellant himself in different proceedings.

5. Short of all details the facts necessary for the disposal of the present appeal may be taken note of. In the year 1978 the appellant was appointed as a subordinate staff of the United Commercial Bank (UCO Bank), i.e., the respondent no. 1 herein. In 1982 the Manager of the concerned branch of the Bank lodged a complaint with the police station regarding fraudulent withdrawal of Rs. 23,000/- from a certain account. This complaint was treated as a First Information Report. The police started investigating into the matter and the appellant and some other persons were arrested and a case was started against the appellant under Sections 468/471/420/120B of the Indian Penal Code. On September 14, 1982 the appellant was placed under suspension under the provisions of the first Bipartite Settlement. On July 31, 2000 the Bank had issued a charge-sheet to the appellant and decided to conduct an enquiry against him and appointed an Enquiry Officer.

6. The appellant filed his first writ petition before this Court challenging the decision of the respondent Bank to issue the charge-sheet about 18 years after the alleged occurrence when the criminal case was still pending against him.

7. That writ petition was disposed of by an order dated April 4, 2003 by a learned Single Judge staying all further proceedings of the departmental enquiry till the disposal of the criminal case. The concerned Chief Judicial Magistrate before whom the criminal case was pending was directed to positively conclude the proceeding within six months from the date of the order. The learned Single Judge further directed the respondents authorities to pay all subsistence allowances to the appellant within two months from the date of the communication of that order. While disposing of this petition His Lordship made it clear that after dismissal of the criminal case the respondents authorities would be free to proceed with the departmental proceedings in accordance with law.

8. By a judgement and order dated January 13, 2004 the Chief Judicial Magistrate, Hooghly, had acquitted the appellant on the grounds to which we shall make reference later.

9. It is worth mentioning that at the instance of a defalcated holder of an account another criminal case was pending against the appellant in the Court of the learned Sub-Divisional Judicial Magistrate, 3rd Court Srerampore, Hooghly. The said case was quashed by this Court by a judgement and order dated December 15, 2005 u/s 482 of the Code of Criminal Procedure.

10. After the dismissal of the first criminal case by the Chief Judicial Magistrate, Hooghly the Enquiry Officer for the departmental enquiry which had already been commenced served a notice, dated May 3, 2004, to hold the next hearing of the departmental proceedings on May 19, 2004 at the time and place as mentioned therein. It is this notice which has been impugned by the appellant in the writ petition being W.P. No. 8965(W) of 2004 from which the present appeal has

arisen.

11. In the writ petition the appellant had inter alia prayed for a writ in the nature of Mandamus commanding the respondents etc. to inter alia withdraw and rescind the said notice as the petitioner had already been acquitted in the criminal case. The chief grievance of the petitioner was that the departmental proceedings was based on the criminal case which had ended in an acquittal; but in spite of it the respondents authorities had issued a notice for holding enquiry after an inordinate delay of about 22 years. According to the petitioner this by itself provided sufficient reason for setting aside of the decision to continue with the departmental proceedings.

12. The said writ petition was dismissed by a judgement and order, dated July 7, 2004. While dismissing the writ petition the learned Single Judge observed that by filing the instant petition the appellant herein had abused the process of the Court. In view of the liberty granted in the earlier writ petition to the respondents, i.e., the Bank authorities, to proceed with the departmental proceedings once the criminal case was disposed of there was absolutely no scope for the petitioner to approach this Court again.

13. From this judgement and order the appellant filed an appeal wherein a Division Bench initially passed an interim order on December 20, 2004 to the effect that even if the departmental proceedings against the appellant had been commenced no final order should be passed therein till that appeal is heard having regard to the fact that the charge-sheet in the disciplinary proceeding was issued 18 years after the alleged incident. Their Lordships made it clear that pending hearing of the appeal the Bank authorities would be at liberty to continue with the disciplinary proceedings against the appellant but no final order was to be passed on the said proceedings without the leave of the Court.

14. Pursuant to the leave granted the departmental proceedings against the appellant continued and ended. In the said appeal the Bank authorities filed an application praying for leave to dismiss the appellant. The said application was dismissed by a Division Bench with a direction to put up the hearing of the appeal in the last week of December 2006.

15. That appeal, however, did not appear as directed. Another Division Bench before which the appeal appeared had dismissed the appeal for default on November 26, 2007. Although the appellant had filed an application for restoration of the appeal before the said appeal was actually restored on December 22, 2007 the disciplinary authority had passed the order of dismissal of the appellant from service. Subsequently, on February 18, 2008 the appeal was restored.

16. Thus, when the order of dismissal of the appellant was passed there was no appeal pending before this Court. It may be mentioned that before passing the final order the disciplinary authority of the concerned Bank intended to give a personal hearing to the appellant and advised him to appear before him at the

time and place mentioned in the notice. The appellant, however, did not appear at the personal hearing and thus, final order of dismissal was passed.

17. It is on record as part of the annexure to the affidavit-in-opposition filed by the respondents to the application for amendment of the writ petition (CAN 10715 of 2009) that the said order of dismissal was sent to the appellant's recorded address which had come back to the Bank as "un-delivered". Thereafter, the Manager of the concerned branch of the Bank tried to serve the same to the appellant personally on January 9, 2008. But the appellant had refused to accept the same in presence of three officials of the said branch.

18. The said appeal came up before a Division Bench and by order dated March 3, 2008 this appeal was remanded to the Court of the learned Single Judge to be decided on the points as formulated by the said Division Bench. The learned Trial Judge, as mentioned before, has dismissed the writ petition by holding both the points against the appellant. The appellant had filed the present appeal against the said judgement of the learned Trial Judge after remand.

19. The scope of the present appeal is thus a rather narrow one. It is restricted to the findings of the learned Single Judge to the questions formulated by the Division Bench in the earlier appeal. Although the learned Advocate for the appellant had sought to raise various issues they must be deemed to fall outside the scope of the present appeal as the learned Single Judge was not expected to travel beyond the issues framed by Their Lordships.

20. The learned Advocate, however, has assailed the judgement and order impugned in the appeal on the ground that the learned Trial Judge did not follow the ratio of the judgement in the case of P. V. Mahadevan - Vs.- MD, T.N. Housing Board, reported in (2005) 6 SCC 363. In that case there was a delay of 10 years in initiating a departmental enquiry and it was held that since there was no convincing explanation given by the employer it would be prejudicial to the appellant in that case to allow the employer to proceed further with the departmental proceedings.

21. The learned Single Judge had taken note of this contention of the appellant herein and had considered the above judgement. But the grievance of the appellant is this that the learned Single Judge had not given any reason for not following the ratio of the said decision. In fact, there was hardly anything for this decision to be relied upon at the hearing of the present writ petition after remand. That the charge-sheet in the departmental proceedings was issued about 18 years after the alleged incident was mentioned in the writ petition and while disposing of the earlier appeal the Division Bench was aware of it and the point that was urged before the Division Bench was that whether after the acquittal in a criminal case an employer was entitled to proceed with the departmental proceedings on the identical charges and since the quashing of the charge-sheet on the ground of delay was not formulated such contention must be deemed to have been impliedly overruled by the Division Bench. This will

further be obvious from the fact that the Division Bench had remanded the matter to the learned Single Judge on whether after the acquittal of the appellant he was entitled to pray for quashing of the proceedings and the departmental proceedings could still continue. Therefore, the impermissibility of the continuance of the departmental proceedings on the ground of delay not having been formulated by the Division Bench to be a point for a decision after remand the appellant simply cannot reagitate the same in an appeal from an order after remand on limited points.

22. The next contention of the appellant is that since the charges before the criminal court as well as the departmental proceedings were based on the same set of facts the learned Trial Judge ought to have held the ratio of a Division Bench judgement of our Court in the case of *State of West Bengal and Others - Vs.- Vidyasagar Pandey and Another*, reported in 2011 (1) CLJ (Cal) and the ratio of the case of *Gopi Ballav Sarkar -Vs.- Food Corporation of India and Others*, reported in 2011 (3) CLJ (Cal) 460 for a proposition that when both the criminal and departmental proceedings are initiated on the same set of facts the findings of the learned Magistrate must prevail over those of the disciplinary authority. The appellant had made a further grievance of the fact that the learned Single Judge did not call for the records of the disciplinary proceedings and failed to consider that the Enquiry Officer before arriving at his finding had not taken note of the finding of the criminal Court. The other contention of the appellant was that the order passed by the Division Bench in the earlier appeal that no final order in the disciplinary proceeding should be passed except with the leave of the Court, was violated by the respondents.

23. We may, however, begin with the last contention of the appellant. This has plainly no merit. It is far too well known a proposition that an interim order granted in an appeal survives only during the pendency of the appeal. The earlier appeal was dismissed twice. The respondents authorities have submitted that the appellant was absent on repeated calls. They mentioned a figure. It was called on thirteen occasions. It was first dismissed on 28th August, 2007. Then it was restored. Thereafter, again it was dismissed on November 26, 2007. Before the appeal was restored for the second time the order of dismissal was issued by the Bank when there was no appeal pending. As such the interim order granted in that appeal had no force. The submission of the appellant that although the appeal was dismissed for default but the interim order was not vacated is highly ingenious, but against the fundamentals of all rules and procedure. As such the contention that leave of the Court ought to have been taken is not a valid one.

24. The learned Trial Judge had taken pains to consider the circumstances and the reasons for the acquittal of the appellant in the criminal case. The learned Chief Judicial Magistrate, Hooghly while acquitting the appellant u/s 248(1) of the Code of Criminal Procedure had held that the prosecution had failed to produce any written complaint made by the de facto complainant nor could it produce the documents seized in connection with the case or any expert opinion

regarding the handwriting of the accused persons. The learned Magistrate further held that after the death of the de facto complainant the prosecution lost the opportunity to bring them forth before the Court the nature of the offences committed. It may be mentioned that the appellant got the benefit of doubt and was eventually acquitted for the shortcomings mentioned above.

25. So far as the second criminal case is concerned which was quashed by the High Court the case diary of it was lost and there was no effort for the reconstruction of the same.

26. It has been argued on behalf of the respondents authorities that because of the pendency of the criminal case they did not initiate any departmental proceedings and it was only after the judgement in the case of Capt. M. Paul Anthony -Vs.- Bharat Gold Mines Limited and Another, reported in 1999 SCC (L&S) 810 was published that they decided as a matter of policy to issue the charge-sheet on July 31, 2000. The learned Trial Judge had rightly held that the reasons for acquittal of the writ petitioner cannot be allowed to be intermingled in the present case to say that since one criminal case was quashed by the High Court and the other ended in a finding of not guilty the respondents must be restrained from proceeding with the departmental proceedings.

27. The Supreme Court has on many occasions spanning over a long period of time highlighted the differences in the scope of criminal cases and departmental proceedings. For example in the case of Nelson Motis Vs. Union of India and another, a three Judge bench of the Supreme Court had very plainly held that the nature and scope of a criminal case are very different from departmental proceedings and as such an order of acquittal in a criminal case does not conclude the departmental proceedings. Again in the case of General Manager, UCO Bank and Another Vs. M. Venuranganath, the Supreme Court further elaborated that these two proceedings operated in different fields and as such there was no bar against the initiation of disciplinary proceedings even if a person was acquitted in a criminal trial. In Suresh Pathrella Vs. Oriental Bank of Commerce, the Supreme Court had stressed on the different yardsticks and standards of proof required in two different proceedings and held acquittal in a criminal case should be no bar in drawing up disciplinary proceedings against a delinquent officer.

28. In the case of Ajit Kumar Nag -Vs.- General Manager (PJ), Indian Oil Corporation Limited, Haldia and Others, reported in 2005 SCC (L&S) 1020 a three Judge bench of the Supreme Court had reiterated the well settled principle of law that acquittal by a criminal court does not preclude an employer from taking an action if it is otherwise permissible. The logic behind this principle is quite obvious. The two proceedings - criminal and departmental - are entirely different. Their Lordships observed:

..... They operate in different fields and have different objectives. Whereas the object of criminal trial is to inflict appropriate punishment on the offender, the

purpose of enquiry proceedings is to deal with the delinquent departmentally and to impose penalty in accordance with the service rules. In a criminal trial, incriminating statement made by the accused in certain circumstances or before certain officers is totally inadmissible in evidence. Such strict rules of evidence and procedure would not apply to departmental proceedings. The degree of proof which is necessary to order a conviction is different from the degree of proof necessary to record the commission of delinquency. The rule relating to appreciation of evidence in the two proceedings is also not similar. In criminal law, burden of proof is on the prosecution and unless the prosecution is able to prove the guilt of the accused "beyond reasonable doubt", he cannot be convicted by a court of law. In a departmental enquiry, on the other hand, penalty can be imposed on the delinquent officer on a finding recorded on the basis of "preponderance of probability". Acquittal of the appellant by a Judicial Magistrate, therefore, does not ipso facto absolve him from the liability under the disciplinary jurisdiction of the Corporation. We are, therefore, unable to uphold the contention of the appellant that since he was acquitted by a criminal court, the impugned order dismissing him from service deserves to be quashed and set aside.

29. Reference may also be made to the case of Secretary, Ministry of Home Affairs and Another -Vs. Tahir Ali Khan Tyagi, reported in JT 2002 (Suppl.1) SC 520. In this case a Division Bench of the Supreme Court held that departmental proceedings and criminal proceeding can run simultaneously and that departmental proceedings can also be initiated even after the acquittal of an employee in a criminal proceeding particularly when the standard of proof in two proceedings are completely different from each other. In the former case the proof must be one beyond reasonable doubt whereas in a domestic enquiry the standard of proof may very well be preponderance of probability.

30. To the same effect also is the ratio of the case of Samar Bahadur Singh Vs. State of U.P. and Others, . The facts of that case are largely similar to the facts of the present one. There also over the self-same incident a criminal case was instituted and a departmental proceedings was initiated. In the criminal case the concerned employee was acquitted and it was sought to be argued that in the departmental proceedings also this employee should be acquitted. Dismissing the contention and the appeal Their Lordships held that acquittal in the criminal case has no bearing or relevance to the facts of the departmental proceedings as the standards of proof in both these cases were totally different. There also the standard of proof in a criminal case was held to be beyond all reasonable doubt. But for the domestic enquiry it was the preponderance of probabilities. In yet another case, i.e., Chairman-cum-M.D., T.N.C.S. Corpn. Ltd. and Others Vs. K. Meerabai, another Division Bench clearly held that the scope of the criminal proceedings in a criminal Court and the scope of disciplinary proceedings in a departmental enquiry are quite distinct, exclusive and independent of each other. In the said case the Supreme Court had relied on one of its earlier judgement in the case of Lalit Popli Vs. Canara Bank and Others, wherein it was held that in a

criminal proceeding the standard of proof, the mode of enquiry and the rules governing the enquiry and the trial were conceptually different. In the case of a disciplinary proceeding the technical rules of evidence or "proof beyond doubt" have no application. On the other hand preponderance of probabilities and some materials on record are necessary to arrive at the conclusion whether or not delinquent had committed the misconduct.

31. On behalf of the appellant reliance was sought to be placed on two other judgements of the Supreme Court where the ratio related to the scope of judicial interference about the findings arrived at a departmental enquiry which, however, is not very germane for the issues involved, inasmuch as, as has been found by us earlier, that the appellant now cannot challenge the order of dismissal and enlarge the scope of the appeal which now is very restricted.

32. Mr. Chatterjee, the learned Advocate appearing for the appellant has relied on the case of G.M. Tank Vs. State of Gujarat and Another, for a proposition that when an employee is honourably acquitted in a criminal trial a contrary finding recorded in departmental proceedings is unjust, unfair and oppressive. The fact of that case, however, are slightly different from the one at hand. The appellant in that case was charged for offence of acquisition of properties disproportionate to his known source of income. After holding a departmental enquiry he was dismissed from service. On the same set of facts, charges and evidence a criminal complaint was lodged under Prevention of Corruption Act, 1947 and he was honourably acquitted. Before the Supreme Court one of the questions that arose for consideration was whether an acquittal, absolutely "on merits amounting to clear exoneration of the appellant" by the Special Court ipso facto absolved the appellant from the liability under the disciplinary jurisdiction when the charges leveled against him in both the proceedings were based on the same set of facts, charges, circumstances and evidence. There the Supreme Court had come to a finding that there was no evidence to hold the appellant guilty of the charges leveled against him. There the same witnesses were examined both by the criminal Court as well as in the departmental proceedings and it was in this context that the Supreme Court held against the findings recorded in the departmental proceedings.

33. The facts of this case are obviously very different. The appellant before us was not acquitted by the criminal Court absolutely on merits which can be said to have amounted to his exoneration by the criminal Court. Moreover, the scope of the charge-sheet of the departmental enquiry is not exactly the same as that of the First Information Report lodged. If we compare the charge-sheet with the First Information Report we find that there is sufficient difference between the two. Apart from the factual differences, the charge-sheet in connection with the departmental proceedings specifically mentioned that the alleged act of the appellant was prejudicial to the interest of the Bank and caused willful damage to its property. That apart, the learned Advocate appearing for the respondents had submitted that while in the criminal case the documents seized from the Bank

were not produced in Court at the departmental enquiry charges against the appellant were proved with the documents available with the Bank. Thus the ratio of the case of G. M. Tank (Supra) does not apply to the facts of the present case.

34. The appellant next relied on the case of Roop Singh Negi Vs. Punjab National Bank and Others, . In that case the duty of an Enquiry Officer in a departmental proceedings was examined in view of the finding arrived by such officer and the Supreme Court came to the conclusion that there was practically no evidence against the appellant except a purported confession made by him. The Supreme Court in that case further observed that the order of the disciplinary authority was not supported by any reason that the report of the Enquiry Officer was based on merely ipse dixit as also surmises and conjectures and in such view of the matter the Supreme Court held that the finding was not sustainable.

35. The facts of the present case being obviously very different, the reported case has no application.

36. The next case relied upon by the appellant is a Division Bench judgement in the case of Jiban Kumar Sarkar -Vs.- Union of India and Others, reported in 2011 (3) CLJ (Cal) 365. In that case the Court after finding that the disciplinary authority had violated the basic requirements of the principles of natural justice had directed the dismissed appellant to be reinstated. Needless to say, the fact before us are entirely different inasmuch as the question formulated by the appellate Court had nothing to do with the nature of the disciplinary proceeding.

37. The appellant has further relied on two judgements, one of the Supreme Court in the case of M.V. Bijlani Vs. Union of India (UOI) and Others, and the other, a Division Bench Judgement of our Court in the case of Prabhat Kumar Pal - Vs.- State of West Bengal and Others, reported in 2010 (4) CHN (Cal) 943. There because of unexplained delay in initiating the proceedings the charge-sheet as well as the disciplinary proceedings were quashed. We have already held that the appellant can no longer be heard to agitate the delay in issuing the charge-sheet when the Division Bench had not formulated the said question for further decision.

38. Learned Advocate for the appellant further relied on a three Judge Bench judgement of our Court in the case of Bhowanipore Gujrati Education Society and Another Vs. Kolkata Municipal Corporation and Others, for a proposition that a Single Judge of a High Court is bound not only by the judgement of a Division Bench but also that of a coordinate bench, i.e., a single Judge or for that matter, any Bench of High Court cannot differ from the earlier judgements of benches of coordinate strength merely because it holds a different view. When a Division Bench of two Judges differs from the judgement of another Division Bench it has to refer the case to the Full Bench. While we respectfully agree with the view expressed herein we, however, do not find any relevance for relying on the same in the present context.

39. We have found that the points formulated by the Division Bench are squarely covered by a three Judge Bench decision of the Supreme Court. That being a judgement of a larger bench must prevail over any contrary view expressed by smaller benches. That apart the judgements taking a contrary view are clearly distinguishable on facts and do not apply to the present case. We also do find that in the case of Ajit Kumar Nag (Supra) the employer was allowed to proceed with the departmental proceedings in accordance with the rules and regulations.

40. The learned Advocate for the respondent authorities has relied on the Bipartite Settlement between Certain Banking Companies represented by the Indian Banks' Association and Their Workmen (1966-1979) in support of the contention that the relevant rules permit continuance of departmental proceedings after the acquittal of an employee in a criminal case. Chapter XIX of this Bipartite Settlement is concerned with a disciplinary action and the procedure therefore. Clause 19.3(C) deals with a situation when an employee is acquitted in a criminal case and it was agreed,

19.3(C):If he be acquitted, it shall be open to the management to proceed against him under the provisions set out below in Clauses 19.11 and 19.12 infra relating to discharges. However, in the event of the management deciding after enquiry not to continue him in service, he shall be liable only for termination of service with three month's pay and allowances in lieu of notice. And he shall be deemed to have been on duty during the period of suspension, if any, and shall be entitled to the full pay and allowances minus such subsistence allowance as he has drawn and to all other privileges for the period of suspension provided that if he be acquitted by being given the benefit of doubt he may be paid such portion of such pay and allowances as the management may deem proper, and the period of his absence shall not be treated as a period spent on duty unless the management so direct.

41. Thus when the relevant rules permit the continuance of disciplinary proceedings after the acquittal of an employee in a criminal case we cannot hold that the learned Single Judge has committed any error in answering the points formulated by the Division Bench in the negative.

42. In such view of the matter, it was within the competence of the respondents to continue to proceed with the enquiry even after the dismissal of the criminal case which, we have already noted, cannot be said to be on merits. This is not one such a case where the appellant was honourably acquitted. This is also not a case where the charges framed against him in the departmental enquiry can be said to be founded exactly on identical facts as mentioned in the First Information Report.

43. We have already seen that the order of dismissal was not the subject-matter of dispute before the learned single Judge after its remand.

44. Therefore, the same is also outside the purview of the present appeal. That apart it appears that the appellant himself had raised an industrial dispute before

the Assistant Labour Commissioner (Central) challenging his dismissal from service. In their affidavit-in-opposition to the appellant's application for amendment of the writ petition the respondents authorities have brought this on record. It was submitted on behalf of the Bank authorities that now he cannot move another forum for the same reliefs with the same allegation. The learned Single Judge had rightly observed that since an industrial forum has been created to specially deal with matters within its purview mere pendency of a case before the High Court cannot take away its jurisdiction unless there is a specific order restraining it from proceeding with that case. Since no such order was passed in the case restraining the industrial adjudicator the appellant's contention that by moving an industrial forum his right to move the High Court did not stand relinquished or that because of the pendency of the writ petition the industrial forum had no jurisdiction was rightly held by the learned Trial Judge to be a misconceived one. On this ground also the writ petition was not maintainable.

45. We, thus, find no infirmity in the judgement and order passed by the learned Trial Judge. We dismiss this appeal.

46. There shall, however, be no order as to costs..

47. Urgent photostat certified copy of this order, if applied for, be supplied to the parties on priority basis upon compliance of all requisite formalities.

Sambuddha Chakrabarti, J.

48. I agree.