
(1995) 02 P&H CK 0018
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 1285 of 1987

Parkash Chand Shahi

APPELLANT

Vs

State Bank of India and Another

RESPONDENT

Date of Decision : 08-02-1995

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1996) 112 PLR 194

Hon'ble Judges : H.S. Bedi, J

Bench : Single Bench

Advocate : P.S. Patwalia, for the Appellant; R.K. Chhibbar Ratan Laxmi and Anand Chhibbar, for the Respondent

Final Decision : Dismissed

Judgement

H.S. Bedi, J.—The petitioner joined the service of the State Bank of India as a Clerk on April 18, 1962, and was promoted in the year 1972 to the rank of Officer in Junior Management Grade Scale-I and posted to the Jalandhar City branch of the Bank. While the petitioner was so posted, F.I.R. No. 481 dated December 3, 1973, Under Sections 420/468/471/120-B of the Indian Penal code was registered at Police Station, Civil Lines, Ludhiana, with regard to certain frauds which had taken place in the Jalandhar City Branch of the Bank the allegation being that 9 bank drafts had been forged and thereafter encashed as a result of the conspiracy hatched by the petitioner and his co-accused. The petitioner was accordingly arrested and while in police custody, he is alleged to have written a letter of confession admitting his guilt and also deposited a sum of Rs. 25,000/- allegedly through one Tilak Raj Walia as his share of the booty on account of the pressure put on him by the police. The petitioner was, however, acquitted in the criminal case vide judgment dated February 12, 1986, Annexure P-1 to the petition on the ground that there was no evidence against him. During the pendency of the criminal case against the petitioner, a charge sheet dated October 18, 1982, relating to the fraud committed in Jalandhar City branch and

in Ludhiana Miller Gunj branch of the Bank was served on him. A copy of the charge sheet has been appended as Annexure P-2 to the petition. In the charge sheet, particular reference was made to the fact that the petitioner had already tendered his confession on December 11, 1973 and had also deposited a sum of Rs. 25,000/- to make good the loss to the Bank. The Bank thereafter appointed Mr. H.L. Mehra as the Inquiring Authority to inquire into the charges against the petitioner, but this action was challenged by the petitioner in Civil Writ Petition No. 1032 of 1983 in this Court claiming that a departmental inquiry as also a criminal prosecution could not go on simultaneously. By an interim order dated May 26, 1983, this Court ordered that the inquiry proceedings could continue but the final order could be passed by the Bank with regard to the charges which were not the subject matter of the criminal case. The inquiry thereafter was confined only to the three bank drafts encashed at the Ludhiana Miller Gunj branch whereas the charge with regard to the six bank drafts was stayed. The proceedings in the inquiry took place on March 14, 1983, April 14, 1983 and April 22, 1983, and on the last date the parties were required to submit their written briefs. The Inquiring Authority submitted his report on June 29, 1983 (Annexure P-8 to the petition), holding therein that the guilt of the petitioner stood established from the letter of confession written by him which letter stood proved by the evidence of Mr. S.R. Gosain, one of the bank's witnesses, and the further fact that a sum of Rs. 25,000/- had been deposited on behalf of the petitioner, which showed his involvement in the incident in question. The Inquiring Authority was further influenced by the fact that though the petitioner had been given a chance to cross-examine the bank's witnesses in order to disprove the genuineness of the letter of confession as also the situation in which the deposit of Rs. 25,000/- had been made, he had not chosen to do so despite having been requested repeatedly by him in that behalf. The punishing authority thereafter vide Annexure P-10-A to the writ petition agreeing with the report and conclusions drawn by the Inquiring Authority, dismissed the petitioner from service. The appeal (Annexure P-11 to the writ petition) was filed by the petitioner which too was rejected vide Annexure P-12 to the writ petition. Aggrieved thereby the present writ petition had been filed.

2. Mr. P.S. Patwalia, learned counsel for the petitioner, has urged only one point before me, his sole argument being that the letter of confession, dated December 11, 1973, did not in fact exist and the document produced in Court did not bear his signatures nor his initials. On this basis, he urged that the findings of the Inquiring Authority stood vitiated as there was no evidence against the petitioner in the absence of the alleged letter of confession. He has further urged that it was his case throughout that the letter of confession ought to have been shown to him so that he could compare his signatures with the signatures if any on the aforesaid document and that neither the original nor its true photo copy was shown to him and, therefore, the only inference that could be drawn was that no such document in fact existed. In support of his plea that a document could not be used against a delinquent till a copy of it had been supplied to him,

he placed reliance on Kashinath Dikshita Vs. Union of India (UOI) and Others, . As against this, Mr. R.K. Chhibbar learned counsel for the respondents, has pointed out that the assertion of Mr. Patwalia that the findings of guilt recorded against the petitioner was based solely on the letter of confession was not entirely correct as there were certain other circumstances which implicated the petitioner. In this connection he has pointed out that the fact that Rs. 25,000/- had been deposited on behalf of the petitioner to make good the loss to the bank has not been denied and that the factum of the deposit as also on whose behalf the deposit was made stood proved from the statement of S.R.N. Gosain who had stated that he had verified the signatures of the petitioner on the confession letter which was brought to bank by one Tilak Raj Walia who had also deposited the money in the bank on behalf of the petitioner. Mr. Chhibbar has further urged that the petitioner having been requested repeatedly to cross-examine the bank witnesses did not do so and as such the case of bank stood proved by the testimony of S.R.M. Gosain alone. Mr. Chhibbar also urged that it was the admitted case that various documents, including the original alleged letter of confession, had been handed over to the police and as such were not in the domain of the bank and no inference, therefore, could be drawn against the bank if the original letter of confession was not shown to the petitioner or the same produced on record. In this connection, he cited State Bank of India and Ors. v. Samarendra Kishore Endow and Ors. J.T. 1994 S.C. 217 and State of Maharashtra and Anr. v. Madhukar Narayan Mardikar 1991(1) S.L.R. 140(S.C.) . Mr. Chhibbar has lastly urged that in view of Bank of India v. Aurba Kumar Saha 1994(1) S.L.R. 260 (S.C.) it was not open to the High Court while examining the matter under Article 226 of the Constitution of India to reappraise and re-evaluate the findings recorded by a domestic tribunal.

3. After hearing the learned counsel for the parties, I find no merit in this petition. There can be no dispute with the proposition of Mr. Patwalia that the documents relied upon by the management must be supplied to the delinquent in case any reliance has to be placed upon them. It is equally true, however, that if a document is not within the domain or power of the management, it is not possible for the said document be produced or supplied to the delinquent. In Kashinath Dikshita's case (Supra), the Hon'ble Supreme Court while dealing with a similar situation observed that the non-supply of copies of statement of witnesses and copies of documents relied upon by the disciplinary authority occasioned prejudice to a delinquent and as such the order of punishment passed could not be sustained. In the case in hand, however, the facts are substantially different. It would be seen from the inquiry report that a photo copy of the so-called letter of confession was supplied to the petitioner, though this fact has been denied by Mr. Patwalia during the course of his arguments by urging that infact a typed copy and not a photo-copy had been supplied. This argument is, however, not open to the petitioner at this stage. In his statement S.R.N. Gosain deposed that a copy of the letter of confession was produced before him by Tilak Raj Walia and he verified the signatures of P.C. Shahi on it, and that Walia has

also stated that this letter had been signed by the petitioner in his presence, As already indicated, this statement of the said witness was not disputed by the petitioner at any stage, as S.R. Gosain was not cross-examined. It is further to be highlighted that S.R.N. Gosain also deposed that the original copy of the letter of confession was delivered by him to Pritam Singh, Sub Inspector of Police Vide acknowledgment dated December 18, 1973, on Exhibit P-11. In this situation, the observations of the Hon''ble Supreme Court in Bank of India's case (Supra) become, relevant. In para 4 of this judgment, the Hon''ble Supreme Court observed that if an employee refused to avail of the opportunity of defending himself, he could not be permitted to complain later on that he had been denied a reasonable opportunity of doing so. Mr. Patwalia had also urged that the petitioner did decline to cross-examine the bank witnesses as the copy of the so-called letter of confession had not been shown to him for comparing his signatures, and as such his refusal to cross-examine the bank witnesses was fully justified. This argument too is without force. In Annexure P-5 to the writ petition, which are the proceedings held on March 14, 1983 in the inquiry, the petitioner had specifically stated that he needed to examine the letter in question to compare his signatures as he had never signed such a letter of confession. I am of the view that the implication of this assertion would obviously be that there was some signatures on the letter which he wished to compare with his own signatures. The stand of the petitioner now is that the letter of confession did not bear any signatures and this stand is at variance with the stand taken at the initial stage.

4. Mr. Chhibbar has, in addition, argued that even assuming for a moment that the letter of confession could not be relied upon for the reasons stated by Mr. Patwalia, even then there was sufficient circumstantial evidence to prove the involvement of the petitioner in the charge against him. Mr. Chhibbar has brought to my notice that the fact of Rs. 25,000/- having been deposited on behalf of the petitioner had not been denied, and the explanation tendered by the petitioner that some friend or relative had deposited the amount in question on his account so as to save him from torture by police was not credible as the payment in question stood proved being as at the behest of the petitioner by the statement of S.R.N. Gosain, who stated that money had been deposited by Tilak Raj Walia at the instance of the petitioner and on his behalf. As already noted above, S.R.N. Gosain was not cross-examined by the petitioner and as such his statement goes unrebutted. Relying on these facts, the argument of Mr. Chhibbar is that this Court cannot act as a Court of appeal while hearing a petition under Article 226 of the Constitution of India so as to interfere with the findings of fact recorded by the domestic tribunal. In State Bank of India and others'' case (supra) the Hon''ble Supreme Court noted the scope of the Court's interference under Article 226 in such matters and observed that the power of judicial review was meant to ensure that the individual received fair treatment, and not to interfere with the order of an authority, who after according fair treatment, reached a conclusion on a matter which it was authorised by law to decide, which

may not be correct in the eyes of the Court. It was further observed that the Inquiring Authority was the sole judge in such matter and if there was some legal evidence on which the findings could not be sustained the correctness of such findings could not be permitted to be convassed before the High Court under Article 226 of the Constitution of India. Assuming, therefore, that the letter of confession was not strictly proved, I am of the view that there was other evidence, as referred to above, which did implicate the petitioner.

5. Mr. Chhibbar finally argued that in the light of the various judgments of the Supreme Court, even if the services of the petitioner were held to be wrongfully terminated, he had nevertheless forfeited his right to reinstatement as the management had lost confidence in him. This argument becomes redundant in the context of what has been held by me in this judgment.

6. For the reasons recorded above, there is no merit in this petition and the same is dismissed.