(2001) 10 GUJ CK 0028

In the Gujarat High Court

Case No : Appeal From Order No 339 of 1999

Regional Authority and Disciplinary Authority APPELLANT

Vs

Navinchandra P. Joshi RESPONDENT

Date of Decision : 17-10-2001

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 2
Prevention of Corruption Act, 1988 — Section 13(1), 13(2)

Citation : (2002) 22 GLH 655

Hon'ble Judges : B.J. Shethna, J

Bench : Single Bench

Advocate : Mahesh Thakar and Mona N. Trivedi, for Petitioners No. 1- 2, for the Appellant; P.R. Thakkar, for the Respondent

Final Decision : Allowed

Judgement

B.J.Shethna, J.—The appellants have challenged in this appeal theimpugned order dated 7.5.1999 passed by the learned CivilJudge (S.D.), Vadodara below Ex.5 in Special Civil SuitNo.314 of 1999 filed by the respondent-plaintiff wherebythe learned judge allowed the application Ex.5 andconfirmed ex-parte ad-interim relief granted earlier infavour of the respondent-plaintiff in terms of para 14(A)of the application. While granting this relief theappellant-bank is restrained from proceeding further withthe departmental inquiry against the respondent-plaintiffwho was its employee working as Manager of satellitebranch of Pavagadh till the final disposal of criminalcase filed against the respondent- plaintiff.

2. The respondent-plaintiff was serving at PavagadhOffice as In-Charge (S.O.C. Satellite Office) HalolBranch, Halol. He was the only person posted at Pavagadhoffice, therefore, he has to discharge the duties ofclerk to manager. On 20.7.1997, the appellant-banklodged FIR before CBI Police Station against therespondent-plaintiff and other accused for committingfraud with the bank to the tune of Rs.1.42 crores.Accordingly,FIRwas registered againstrespondent-plaintiff and others for various offencespunishable under Sections 120B, 420,

465, 471 and Section 13(2) read with Section 13(1)(d) of Prevention ofCorruption Act, 1988. The respondent-plaintiff wasplaced under suspension and served with the charge sheetdated 11.2.1999 for misappropriation, corruption andfraud played with the bank and the public money in croresof rupees. The respondent was superannuated from serviceon 31.5.1999, therefore, just before few days of hisretirement he approached the learned Civil Judge (S.D.),Baroda by way of Special Civil Suit No.314 of 1999 on1.4.1999 with an application Ex.5 praying that the bankbe restrained from further proceedings with thedepartmental inquiry in pursuance to the charge sheetdated 11.2.1999 submitted against it on the ground thatthe bank wants to proceed against him on the same chargesfor which the criminal case is registered against himwith CBI.

3. Learned Judge without assigning any reasonspassed an ex-parte order in favour of therespondent-plaintiff in terms of para 14(A) of hisapplication on 1.4.1999 while issuing show cause noticeto the bank. Thus, the learned Judge, in clear violationof provisions of Order 39 Rule 2 of Code of CivilProcedure passed the mandatory ad-interim injunction infavour of the respondent-plaintiff. After hearing thebank the learned Judge by his impugned order dated7.5.1999 confirmed ex-parte ad-interim order grantedearlier by him and allowed the application Ex.5. Thisorder is challenged by the appellant-bank by way of thisappeal.

4. On behalf of appellant-bank it was vehementlysubmitted by Dr.Thakar that the learned Judge hascommitted grave error in passing the ex-parte ad- interimorder without assigning any reason and later onconfirming interim relief without properly consideringthe fact that the charges are not similar to theallegations made against the respondent-plaintiff in theFIR filed before the CBI. He also submitted that whenthe offences are committed by the respondent- plaintiffthen the criminal complaint has to be filed by the bankand accordingly it was filed. He submitted that in thecriminal complaint, the respondent- plaintiff is not theonly person but many other persons are also there asaccused and one of them is absconding. He, therefore,submitted that if the bank is not allowed to proceedfurther with the respondent in the departmental inquiryon the ground that the criminal case is pending againstthe respondent-plaintiff then, with the lapse of time nowitnesses will be available in the departmental inquirybecause ordinarily it takes years in final disposal ofthe criminal cases before the criminal court, which wouldnot be in the interest of justice. He further submittedthat when there are serious charges against therespondent- plaintiff of committing fraud with the bankand misappropriating funds running into crores of rupeesthen the bank should be allowed to proceed further withthe departmental inquiry. He submitted that therespondent will be at liberty to defend him in thedepartmental inquiry and he can be punished only if he isfound guilty at the end of the departmental proceedings.If he proves his innocence then he can certainly beexonerated. Relying upon several Hon''ble Supreme Courtjudgments he submitted that mere pendency of the criminalcase should not come in the way of the bank to proceedfurther by way of departmental proceedings against

itsemployee.

5. As against that learned counsel Shri Thakkar for the respondent-plaintiff submitted that the chargeslevelled against the respondent-plaintiff are identicalto the charges levelled against him in the criminalcomplaint, therefore, it will cause prejudice to theplaintiff in his defence if departmental proceedings ispermitted to be proceed further. According to him whenthe criminal case is filed against him then burdenheavily lies upon the prosecution to prove its caseagainst the respondent-plaintiff beyond reasonable doubtand in criminal case he is not required to open hismouth. Whereas, in departmental proceedings he has todisclose his defence which may come in his way during thetrial of criminal case. In support of his submission hehas placed reliance upon Hon''ble Supreme Court judgmentreported in (i) 1993(3) SC 376 (ii) AIR 1865 SC 155, andDivision Bench of this court reported in 1991(1) GLH (UJ)2. He has also submitted that when complicated questionsof law and facts are involved in the matter and chargesare of grave and serious nature levelled against thedelinquent, then on the same sets of facts the bankshould not be allowed to proceed with the departmentalinquiry. Lastly he submitted that after service of thecharge sheet in 1999 the respondent-plaintiff issuperannuated from service in May, 1999, therefore, bankis not going to suffer any financial loss by payingsubsistence allowance. He also submitted that if therespondent- plaintiff is found guilty by the competentcourt then on conviction his services can very well beterminated by bank without holding any inquiry. He alsosubmitted that when the learned Judge has exercised hisdiscretion in favour of the plaintiff and restraineddefendant-Bank from further proceedings with thedepartmental inquiry then this court should not interferewith such discretionary order.

6. I have carefully considered the rival submissionsmade by learned counsel for the parties. I have alsocarefully gone through the judgment of the Hon''bleSupreme Court as well as of this court cited by thelearned counsel for the parties in support of thesubmissions. Having carefully gone through the same Imust say that neither the Hon''ble Supreme Court nor thiscourt has laid down that whenever there is a criminalcase registered against the person then he cannot bedealt by way of departmental proceedings. It dependsupon facts of each case. In a given case court may thinkit proper to restrain the employer from proceedingfurther with the departmental inquiry when the criminalcase is filed. If it is satisfied that prejudice islikely to be caused and in a given case court may notinterfere.

7. Coming to the facts of the instant case it primafacie appears that the respondent-plaintiff was the onlyperson posted at Pavagadh office of the bank and theallegation made against him is that he has committedserious misconduct and committed fraud of crores ofrupees against the bank. The appellant-bank wanted toproceed against the respondent-plaintiff on the followinggrounds :-

(i) The plaintiff committed gross error in not issuing NRI deposit and issuing domestic term deposit, which was a clear violation of the guidelines of the Bank and Reserve Bank of India.

(ii) The plaintiff collected account payee draft favouring Shri D.C. Patel and A.D. Patel for a third party namely Bombay Engineering and Training Company. The amount was credited in the account without waiting for actual realisation.

(iii) The plaintiff instead of issuing Foreign Currency Non-Resident deposit in name of Shri A.D. Patel, D.C. Patel, P.I.Patel, M.D.Patel and N.M.Patel, converted the same in Indian rupees. This resulted in huge exchange loss to the bank.

(iv) The plaintiff received cheque of Rs.25 lacs drawn on Allahabad Bank, Gandhinagar for issuing FDR in the name of Gujarat Panchayat Varg Vikas Nigam, Gandhinagar and unauthorisedly credited the amount in the account of Bombay Engineering & Trading Company.

(v) That the plaintiff received cheques worth Rs.70 lacs for issuing FDR in the name of Sainik Welfare Resettlement Board and credited the amount in current account of Bombay Engineering and Trading Company which was withdrawn from the account.

(vi) The plaintiff received cheques of Rs.59,30,753/= from Executive Engineer, ECP, GIDC, Vadodara for issuing FDR which he unauthorisedly credited in the account of Bombay Engineering and Trading Company.

(vii) The plaintiff had given credit of Rs.25 lacs in the account of Bombay Engineering and Trading Company wrongfully without receiving the proceeds and open FDR in name of Gujarat Panchayat Varg Vikas Nigam.

(viii) The plaintiff unauthroisedly issued 3 pay orders of Rs.10 lacs each on 26.2.1997 without obtaining any application from or actually receiving any funds or passing any voucher."

8. The above charges cannot be said to be similar tothe charges levelled against him in the criminal case.Having close scrutiny of the averments made in the FIRand the charges levelled against him in the departmentalproceedings it cannot be said that the charges areborrowed from the FIR from the same sets of facts.

9. There is lot of substance in the submission madeby Thakkar that the respondent-plaintiff quietly go onaccepting subsisting allowance from 1997 to 1999 till thesubmission of the charge sheet while remaining undersuspension and it is only when he was served with chargesheet then in the last days of his retirement heapproached civil court by way of suit and obtainedex-parte ad-interim injunction without reasons.

10. On peculiar facts and circumstances of the case,I am fully satisfied that no prejudice is going to becaused to the respondent-plaintiff if he is dealt with indepartmental inquiry by the bank. If he is innocent hecan certainly prove his innocence even in thedepartmental inquiry. Dr.Thakar was right in submittingthat when there are other accused along withrespondent-plaintiff in CBI case and one

of them isabsconding, then the criminal case is not going to beover soon and it is definitely going to take long time.The respondent- plaintiff has retired from service,therefore, it is desirable that during his existence thedepartmental inquiry is over. If the bank is not allowedto be proceeded further with the departmental inquirythen after lapse of some years it will not be able to getany evidence and the witnesses also may not be available.When the person in the rank of officer of the bankagainst whom serious allegations are made formisappropriation of crores of rupees then in myconsidered opinion the departmental proceedings cannot bestayed till final disposal of the criminal case filedagainst him. It is a case of public money, therefore, Iam of the considered opinion that the learned Judge waswrong in coming to the conclusion that therespondent-plaintiff had prima facie case and thatbalance of convenience was also in his favour and theirreparable loss would be caused to him. In the instantcase, the plaintiff has miserably failed to prove anyprima facie case in his favour. The balance ofconvenience was never in his favour and no irreparableloss is going to be caused if the bank is permitted toproceed with the departmental proceedings.

11. Before parting, I must state that in this type ofcases where there is a fraud played upon the financialinstitutions like banks, in such type of cases, courtsshould be slow in granting injunction.

12. In view of the above discussion, this appeal isallowed. Impugned judgment and order dated 7.5.1999passed by the learned Civil Judge (S.D.), Baroda belowEx.5 in Special Civil Suit No.314 of 1999 confirming hisearlier ex- parte ad-interim order dated 9.4.1999 ishereby quashed and set aside. The appellant bank ispermitted to proceed further with therespondent-plaintiff by way of departmental inquiry andcomplete the same as early as possible because therespondent has already crossed the age of 60.

