(1998) 12 MAD CK 0047

In the Madras High Court

Case No : Writ Petition No. 13255 of 1990

V. Parameswara Iyer APPELLANT

Vs

Canara Bank RESPONDENT

Date of Decision : 14-12-1998

Acts Referred:
Constitution of India, 1950 — Article 226

Citation : (2000) 101 CompCas 424

Hon'ble Judges : N.V. Balasubramanian, J

Bench : Single Bench

Advocate : S. Vaidyanathan, for Row and Reddy, R. Vaigai and M. Gnana Sekar, for the Appellant; V. Karthik, for T.S. Gopalan and P. Ibrahim Kalibullah, for the Respondent

Judgement

N.V. Balasubramanian, J.—The petitioner has filed this writ petition challenging the order of the first respondent confirming the order of the

second respondent imposing punishment of censure and ordering recovery of a sum of Rs. 21,000 together with interest on the ground that the

petitioner was negligent in passing a loose leaf cheque.

2. The facts leading to the filing of the writ petition are that the petitioner was an ex-serviceman and joined the services of the Canara Bank on

September 29, 1975, as a clerk and became an officer on November 13, 1980. According to him, he had an unblemished record of service till the

incident in question took place and while he was working as accountant of the Pal-lavaram branch of the Canara Bank, the incident in question is

said to have taken place in the following manner : One Sudalaimani was having an S. B. Account No. 22624 in the Pallavaram branch of the

Canara Bank and on March 10, 1988, a person claiming to be Sudalaimani came and asked the bank for a duplicate pass book stating that the

original pass book was lost. The counter staff issued a duplicate pass book, which according to the petitioner, was done after following the normal

procedure for the issue of a duplicate pass book and on the very next day, i.e., on March 11, 1988, the same person who obtained the duplicate

pass book came to the Pallavaram branch of the Canara Bank and requested for the issue of a loose leaf cheque from the counter staff. According

to the procedure, the counter clerk has to issue the loose leaf cheque only after getting specific permission from the manager, and the manager can

also authorise issue of loose leaf cheque only after satisfying himself that the person who claims the loose leaf cheque is the person who owns the

S. B. account. It seems that the said person was also issued a loose leaf cheque which he utilised and presented the same for encashment of a sum

of Rs. 21,000. The counter clerk passed the cheque for payment, and he sent the same to the petitioner for sanctioning the payment as the amount

involved was more than Rs. 15,000. According to the petitioner, he verified the signature which was in Tamil in the loose leaf cheque with the

specimen signature found in the specimen card, and he passed the cheque for payment.

3. On March 16, 1988, the real account holder Sudalaimani turned up at the bank and presented a cheque for Rs. 600 for encashment. At that

time, he noticed that a sum of Rs. 21,000 had been wrongly debited to his account, and he questioned the same stating that he had not withdrawn

the money. Immediately, a police complaint was lodged and a claim was also lodged with the insurance. The bank initiated proceedings by issue of

a memo to the petitioner and also to others namely, the manager and the clerk. In so far as the manager is concerned, the charge levelled against

him was that he had not followed the manual of instructions for issue of loose leaf cheque and he was negligent and contributed to the perpetration

of the fraud. As per the memo, while issuing the duplicate pass book, the counter clerk should have noticed the variation between the signature

found in the requisition letter and the specimen signature lodged with the bank and the counter clerk should have noticed the variance in the

signature found in the loose leaf cheque with the specimen signature lodged with the bank and the conduct of the party in getting a duplicate pass book and making a request for a loose leaf cheque on the very next day and withdrawing a large sum of money should have created suspicion in

his mind.

4. In so far as the petitioner is concerned, the memo has stated that the petitioner had authorised the payment of the loose leaf cheque without

verifying the signature found in the loose leaf with the specimen signature lodged with the bank. As per the memo, the petitioner was responsible

and he has contributed to the loss. According to the petitioner, he gave an explanation stating that he verified the signature and he did not find any

difference in the signature. Subsequently, a charge-sheet was issued and as per the charge-sheet, the petitioner did not verify the signature found in

the loose leaf cheque with the specimen signature lodged with the bank and thereby contributed to the financial loss to the bank. The petitioner also

submitted his explanation to the charge levelled against him.

5. The deputy manager, Canara Bank, second respondent herein, found the writ petitioner guilty of the charges levelled against him. The petitioner

filed an appeal against the order to the general manager, Canara Bank, the first respondent herein. The first respondent passed the impugned order

dated March 29, 1989, confirming the order passed by the first respondent imposing penalty. It is against that order, the present writ petition has

been filed alleging that the petitioner was not guilty of negligence. According to the writ petitioner, the duplicate pass book was issued by the

counter clerk after verifying the signature and the counter clerk also issued the loose leaf cheque after verifying the signature. According to the

petitioner, the counter clerk had initially verified the signature found in the cheque in question and since he found the same to be in order, he passed

the cheque for payment. According to him, the bank itself issued a memo stating that but for the act of the manager and the counter clerk, the

incident in question would not have happened and the petitioner had verified the signature and he found that there was no difference in the signature

in the loose leaf cheque as the signature of Sudalaimani varied from time to time. According to the petitioner the petitioner has to authorise payment

of several cheques in a single day, and it is not possible to examine each and every cheque in a scientific manner in the normal course of daily

transaction of banking business.

6. The respondents have filed a counter-affidavit. In the counter-affidavit, there is a reference to the manual of instructions dealing with current

accounts and savings bank accounts and under the said instructions only for certain exceptional cases, one loose leaf cheque should be issued and

that too, when the account holder himself calls at the branch. It is also stipulated that there should be a letter of requisition from the account holder

and the signature in the requisition letter should be verified by the supervisor and he should affix the seal and certify that the signature is verified

under his authentication. It is also stipulated that the manager should authorise the issue of loose leaf cheques and a separate cheque book issue

register has to be maintained for the issue of loose cheque leaves and the manager of the branch, after the issue of the loose cheque leaf, should

sign the register by authorising the issue.

7. In so far as the cheque tendered for payment is concerned, the counter clerk, after issue of the token should verify with reference to the ledger

and folio pertaining to that account whether there is sufficient amount to the credit of the account holder, whether where is any stop payment and

whether the cheque presented is from the cheque book issued to the account holder. He must post the entry in the ledger and strike the balance

and also enter it in the savings bank subsidiary register maintained by him, incorporate and make an entry on the face of the cheque about the

ledger folio number and initial it indicating that he has made an entry in the appropriate account in the ledger. If the cheque is for a sum less than Rs.

15,000 the supervisory staff who is also in the clerical cadre may pass the cheque for payment. If the cheque is for a sum more than Rs. 15,000

the cheque must be passed by the officer after the supervisor verifies the striking of the balance and posting of the entry in ledger folio and the

concerned officer who is entrusted with the responsibility of passing the cheque in the branch should verify the signature on the cheque with the

specimen signature kept in the records and after satisfying himself that the signature is genuine, in the sense that it conforms to the specimen, he

should affix ""pay"" instruction under his signature and cancel the signature of the account holder. Once the cheque is passed by the supervisory staff

or the officer, the cheque goes to the cashier for payment. Therefore, according to the respondents, the responsibility of verifying the genuineness of the signature found in the cheque is squarely on the supervisory staff or the officer depending upon the value of the cheque. The counter-affidavit

also narrated the events leading to the issue of the duplicate pass book in the instant case, issue of the loose leaf cheque and the investigation

conducted when the real account holder questioned the withdrawal of Rs. 21,000 on March 11, 1988, from his account.

8. It seems, the matter was referred to the handwriting expert to verify whether the cheque was forged and also to ensure whether the complaint of

the account holder was genuine. The handwriting expert confirmed that the signature of the account holder was forged. The matter was investigated

and on investigation, it was found that the writ petitioner had not properly verified the signature found in the loose leaf cheque with the signature in

the specimen card. Though there were procedural violations in the matter of issue of the duplicate pass book and in the matter of issue of the loose

leaf cheque the case of the respondents was that they could not have direct bearing on the fraud perpetrated on the bank. According to the

respondents, the petitioner was proceeded against for negligence in not properly verifying the signature on the cheque with the specimen signature

which resulted in the loss of Rs. 21,000 to the bank. An explanation was called for and after holding enquiry, it was found that the petitioner alone

was responsible as he was the person who had the last opportunity of preventing the fraud. Though there was negligence on the part of the

petitioner, the manager, the temporary supervisor and the counter clerk, but the negligence on the part of the temporary supervisor was not of the

same degree, the disciplinary proceedings were initiated against the manager, the counter clerk and the petitioner. Since the petitioner was found

guilty in the disciplinary proceedings, he was awarded a punishment of censure and recovery of a sum of Rs. 21,000 was also ordered as against

the petitioner. As far as the manager is concerned he is also given a punishment of censure. In the counter-affidavit, there is also a reference as to

how the signature in the loose leaf cheque varied from the specimen signature of the account holder. According to the respondents, it was the

negligence on the part of the petitioner that was the root cause for the fraud being perpetrated on the bank.

9. S. Vaidyanathan, learned counsel for the petitioner submitted that the petitioner was not responsible and according to him, the charges were

levelled against the manager, the writ petitioner and the counter clerk and, therefore, all of them should be made responsible for the loss. He

referred to the memo, issued to the manager, the petitioner and the counter clerk and submitted that all dealt with the alleged forgery. He also

referred to the act of imputation or lapse on the part of the petitioner. Learned counsel for the petitioner submitted that the petitioner had verified

and found that the signature tallied with the signature found in the specimen card. According to learned counsel, even the counter clerk also verified

the signature and since the loose leaf cheque was deemed to have been issued after verification of the signature of the account holder by the

counter clerk, there is no reason to suspect the transaction. Learned counsel for the petitioner further submitted that a copy of the report of the

handwriting expert was not furnished to the writ petitioner before it was relied upon by the disciplinary authority. He also submitted that the bank

should have taken into account the totality of the circumstances and when the manager and the counter clerk were responsible, the imposition of

penalty on the petitioner alone was not fair. He submitted that the issue of the duplicate pass book, issue of the loose leaf cheque and the payment

made by the bank should all be viewed as a single transaction and the respondent-bank was not justified in coming to the conclusion that the

petitioner was alone responsible for making good the loss suffered by the bank.

10. V. Karthik, learned counsel for the respondents referred to the manual of instructions of the current and savings bank accounts and also

referred to the duties of the special assistants of the Canara Bank and submitted. that in the case of cash cheque of the value above Rs. 15,000 if

the signature of the drawer is found forged, the officer who passed the cheque for payment is responsible for the loss. According to learned

counsel for the respondents, the bank had taken disciplinary proceedings against both the manager and the counter clerk and in so far as the

manager is concerned, penalty of censure was imposed. According to learned counsel for the respondents, had the petitioner been more vigilant

and alert, he would have found that there was variation between the signature found in the loose leaf cheque and the specimen signature and the

petitioner was the last person who verified the cheque for payment and since he has not exercised due and proper care to compare the signature, the bank was put to loss of a sum of Rs. 21,000. Since the cheque was for a higher value, according to learned counsel for the respondents, the

petitioner should have been more vigilant and exercised greater care to find out the forgery.

11. I have carefully considered the submissions of learned counsel for the parties. I have set out the facts already. The respondent-bank no doubt

had issued memos to the manager of the bank, counter clerk and the writ petitioner herein. Though in the preamble portion in all the three memos,

a reference to the events leading to the fraudulent encashment of the cheque is common, the respondent-bank called for explanations with

reference to three different irregularities committed by the three persons. In other words, the explanations called for from these three persons were

different from one another. In so far as the writ petitioner is concerned, he was asked to explain how he authorised the payment of the loose leaf

cheque when the signature distinctly differed from the specimen signature lodged with the bank and the petitioner failed to notice the variation in the

signature and on that basis, the petitioner was asked to give his explanation on the ground that there was negligence on his part and he had

contributed to the perpetration of the fraud resulting in the loss to the bank. No doubt, the writ petitioner submitted his explanation stating that he

verified the signature found in the cheque leaf and denying his negligence. Subsequently, charges were levelled against him on the ground that he

had not properly verified the signature found in the loose leaf cheque with the specimen signature and the petitioner had failed to discharge his duty

with utmost devotion and diligence. The writ petitioner submitted his explanation and ultimately, it was found by the disciplinary authority that the

petitioner should have verified the signature and passed the cheque for payment and since he was solely responsible, he could not be absolved of

his responsibilities merely because the person who was responsible for issue of the loose leaf cheque should have verified the signature of the

person making a request before issuing the loose leaf cheque. Since the petitioner had failed in the performance of his duty as an officer of the bank

to verify the signature found in the loose leaf cheque with the specimen signature and passed the cheque for payment, the disciplinary authority

came to the conclusion that the writ petitioner did not exercise due care and diligence in verifying the signature and the petitioner was guilty of the act of imputation attributed against him.

12. The manual of instructions for the current and savings bank accounts particularly, under the heading, ""Authority to pass cheques/vouchers"",

which are relevant for the purpose of this case read as under :

In respect of cheques and instruments for amounts exceeding Rs. 15,000 for cash and Rs. 25,000 for transfer, special assistant/temporary

supervisor should verify and check all aspects of the cheque/instrument like date/ amount/endorsement/whether the cheque leaf is from the book

issued to the customer, posting of entries, balance, stop payment instructions, if any, court orders, if any, etc., and thereafter, send the same

together with the specimen signature card to the officer/manager/senior manager, for verification of the signature and passing of the instrument for

payment. The special assistant/temporary supervisor is not required to verify the signature.

In the case of cash cheques up to Rs. 15,000 and transfer cheques up to Rs. 25,000 with forged signatures, the special assistants/temporary

supervisors will be solely responsible for the entire amount of loss caused to the bank. In the case of cash cheques beyond Rs. 15,000 and transfer

cheques beyond Rs. 25,000 if the signatures are forged, the officer/ manager/ senior manager who passes the cheque for payment will be held fully

responsible for the loss caused to the bank.

13. The instructions also provide that where the amount exceeds the power of the supervisor, the supervisor should verify all the requirements

including the verification of the signature of the drawer, but send it to the immediate next higher authority and such higher authority should satisfy

himself that various requirements have been complied with and order payment of the cheque under his signature. The duties of the special assistants

of the bank clearly provide that in the case of cheques beyond Rs. 15,000 for cash and Rs. 25,000 for transfer, if the signature of the drawer is

found to be forged, the officer who passed the cheque for payment shall be held responsible for the loss to the bank. The above manual

instructions as well as the duties of the special assistants make it clear that the petitioner is responsible for verification of the signature when the

cheque amount exceeds the sum of Rs. 15,000 and it is not the duty of the counter clerk to verify the signature as the amount exceeds the sum of

Rs. 15,000 in the case of cash cheque and in such case, the special assistant is not required to verify the signature and it is only the duty of the

officer to verify the signature with the specimen signature card and pass the instrument for payment. Therefore, the mere fact that the counter staff

had not verified the signature is not a relevant ground in considering the question whether the petitioner was responsible for the loss caused to the

bank. So also the fact that the supervisor had also verified the signature in question is riot a relevant consideration in considering the question

whether the petitioner was responsible or not. The order of the disciplinary authority as well as the appellate authority shows how the signature

varied from the specimen signature and had the petitioner been more alert, he would have found out the variation in the signatures and since he

failed to exercise proper care and acted without due diligence which is expected of higher officers like the petitioner herein, the cheque was passed

for payment by the petitioner. The submission that the petitioner has to pass several cheques is not a valid defence as it is his duty to verify the

signature and the mere fact that he has to verify a number of cheques in each working day of the bank is not relevant which would absolve him

from his responsibilites. The submission of Mr. Vaithianathan, learned counsel for the petitioner that at the time of issue of the duplicate pass book

and the issue of the loose leaf cheque, the signature of the person was verified and on that basis, the duplicate pass book and the issue of the loose

leaf cheque, the signature of the person was verified and on that basis, the duplicate pass book and the loose leaf cheque were issued and hence,

the petitioner would have in the normal circumstances believed that the cheque was signed by the account holder Sudalaimani is not acceptable. It

is not open to the petitioner to pass on the blame to the supervisor or the counter clerk, when the cheque was presented for payment for higher

value and when the bank has issued instructions that the officers would be responsible to verify the signature found in the instrument with that of the

specimen signature, the petitioner must be held responsible as he was the person who had the last opportunity to prevent the fraud against the

bank. Further, the disciplinary authority as well as the appellate authority have found that the signature in the loose leaf cheque varied from the

specimen signature of Sudalaimani. The orders also disclose how the signature varied from the specimen signature of the said Sudalaimani. In my view, had the petitioner been very diligent and more alert, he would have found out the forged signature in the loose leaf cheque and when the

manual instructions of the bank clearly enjoins the petitioner with a duty of verifying the signatures, in my view it is not open to the petitioner to

shirk from his responsibilities and the disciplinary authority as well as the appellate authority have come to the correct conclusion that the petitioner

was negligent on the basis of the material on record.

14. The Supreme Court in State of Haryana v. Rattan Singh [1982] 1 LLJ 46 has held that it is well settled that in a domestic enquiry the strict and

sophisticated rules of evidence under the Indian Evidence Act may not apply and all materials which are logically probative for a prudent mind are

permissible and hearsay evidence can be relied upon provided it is reasonable and credible. The Supreme Court further held that once the test of

fair play is satisfied, and there is no question of arbitrariness and bias, the court will be very slow to interfere with such a finding.

15. The Supreme Court in Rae Bareli Kshetriya Gramin Bank Vs. Bhola Nath Singh and other, has held as under (headnote) :

The judicial review is not akin to adjudication of the case on merits as an appellate authority. The High Court, in the proceedings under Article

226, does not act as an appellate authority but exercises within the limits of judicial review to correct errors of law or procedural errors leading to

manifest injustice or violation of principles of natural justice. In this case, no such errors were pointed out, nor any finding in that behalf was

recorded by the High Court. The High Court examined the evidence as if it were a court of first appeal and reversed the finding of facts recorded

by the enquiry officer and accepted by disciplinary authority. This is wholly illegal and cannot be sustained.

16. In this view of the matter, I am not inclined to accept the submissions of Vaidyanathan, learned counsel for the petitioner that the petitioner was

not liable or responsible for his failure to notice the forged signature found in the loose leaf cheque when the cheque was presented for payment

and the penalty of censure, in my view, is quite justified on the facts and circumstances of the case.

17. In my view, the disciplinary authority has come to the correct conclusion that the petitioner was responsible and liable for the encashment of the

forged cheque. But, the disciplinary authority has also held that the petitioner should also make good the loss caused to the bank as he was

negligent in verifying the signatures and ordered recovery of the sum from his pay or such other amounts that may be due to the petitioner. Though

the recovery of the alleged loss from the petitioner''s pocket is a part of the penalty order passed by the authorities, yet, in my view, the penalty

imposed for recovery of the entire amount from the petitioner is not justifiable on the facts of the case. The penalty has been imposed on the

ground that the bank has suffered pecuniary loss and the letter of the Canara Bank dated April 3, 1989, was relied upon to show that the police

also closed the complaint preferred by the Canara Bank. Even assuming that the bank has suffered pecuniary loss of Rs. 21,000 in my view, it is

not possible to impose a penalty of recovery of the entire pecuniary loss on the petitioner alone. The incident leading to the loss has already been

set out in the earlier paragraphs of this judgment. To recapitulate, one person posing himself as Sudalaimani requested for a duplicate pass book

and he was issued the same after verification of his signature and on the next day, the same person came and made a request for issue of a loose

leaf cheque which was also issued in his favour after verifying his signature and he presented the cheque for Rs. 21,000 and encashed the same on

the basis of the authorisation given by the writ petitioner. The chain of events starting from the issue of duplicate pass book till the withdrawal of the

money by that person from the bank, in my view, are so interlinked and interconnected with each other and in my view, the transaction should be

regarded as a single and indivisible transaction. All persons who were parties to the transaction had contributed their share which ultimately

resulted in the payment of Rs. 21,000 and if there is one missing link in any one of the events, the ultimate event would not have taken place and if

the transaction is viewed in such a manner, in my view, all those connected with the events would be liable for the loss. The Canara Bank also has

proceeded on the basis that it was only a single transaction as the preamble portion of the memos, issued to the manager, counter clerk and the

petitioner narrated the same events and only in the notices and the charge-sheets seeking explanation there was a divergence in the nature of

charge. Therefore, I am of the opinion that the transaction should be regarded as a single transaction, and the imposition of penalty of recovery of the entire amount of loss from the petitioner is not sustainable in law. As a matter of fact, in the counter-affidavit filed by the Canara Bank, the bank

has also proceeded on the basis that there was negligence on the part of the manager, temporary supervisor, the counter staff and the petitioner but

the negligence was not of the same degree, but according to the respondents, the petitioner had the last opportunity to prevent the loss and he must

be responsible and liable for the loss. In my view, this approach of the authorities is not justifiable as each one of them had contributed to some

extent to the loss caused to the bank though there is a variation in the degree of contribution. Hence, I hold that the petitioner cannot be made

solely responsible for the pecuniary loss suffered by the bank and the second part of the impugned order imposing penalty of recovery of the entire

loss from the petitioner is not justifiable in law.

18. It is no doubt true that this court after holding that the petitioner was responsible for the clearance of the cheque and after upholding the finding

of the disciplinary authority as well as the appellate authority that the petitioner was negligent, should not normally interfere with the quantum of

punishment as it is within the realm of the disciplinary authority or the appellate authority. However, where the punishment imposed shocks the

conscience of the court, in my view it is one such case this court can interfere with the quantum of punishment imposed and this court has the

power either to remit the matter to the authorities for reimposition of punishment or for the reasons to be stated can reduce tbe quantum of penalty.

Since I have held that the petitioner cannot be made solely responsible for the pecuniary loss suffered by the bank, the latter part of the order

impugned imposing recovery of the entire sum from the petitioner is not sustainable. The result is that the matter would have to be remitted and

reconsidered on the question of imposition of penalty on the petitioner taking into consideration the transaction as a single and indivisible

transaction. In the normal circumstances, this court would have remitted the matter to the disciplinary authority for imposition of appropriate

punishment on the petitioner, but on the facts of the case, it is seen, the incident had taken place in the year 1988 and more than ten years have

passed. The petitioner at the time of filing the writ petition was aged 57 years and there are other persons also who contributed to the loss suffered by the bank and it is not clear whether they are still in service on the rolls of the respondent-bank. The bank though initially proceeded on the right

path, however, separated the charges and proceeded against three different persons in different manner and if the proceedings are to be initiated

once again, the proceedings have to be initiated against all the three or other persons who contributed to the loss caused to the bank. Considering

the time lag and also the amount involved which is not so huge, I am of the view, the matter should be closed and the curtain drawn on the entire

proceedings. The writ petition is allowed to the above extent. The impugned order is quashed only to the extent of imposition of penalty of

recovery of pecuniary loss suffered by the bank from the petitioner and in other respects, it is upheld. However, in the circumstances, there will be

no order as to costs.

