(1999) 10 MAD CK 0060

In the Madras High Court

Case No : Writ Petition No. 3985 of 1999 and W.M.P. No. 20167 of 1999

V. Prabakaran APPELLANT

Vs

S. Thillaivanan, Chief Manager, Enquiry Officer, South Indian Bank Ltd. and The General Manager RESPONDENT

Date of Decision : 13-10-1999

Acts Referred:
Penal Code, 1860 (IPC) — Section 420, 467, 471

Citation : (1999) 10 MAD CK 0060

Hon'ble Judges : E. Padmanabhan, J

Bench : Single Bench

Advocate : V. Sairam, for the Appellant;

Final Decision : Dismissed

Judgement

E. Padmanabhan, J.

1. In this writ petition, the Petitioner an employee of the South Indian Bank prays for the issue of writ of mandamus forbearing the Respondent from proceeding with the departmental enquiry against the Petitioner pursuant to the chargesheet No. PER: DS:CS:I/98-99 dt. 16.5.1998 on the file of the first Respondent.

2. The Petitioner who had joined the service of the South Indian Bank Limited, Kancheepuram, was suspected to be a culprit in connection with the issuance of cheque leaves of an account holder. A police complaint was lodged by the Respondent management on 21.3.1997. The Crime Branch Police registered Crime No. 8 of 1997 for alleged offences under Sections 467, 471 and 420 IPC.

3. On the date, when the writ petition was filed, investigations were under progress. While so the Respondents framed charges as seen from chargesheet dated 16.5.1998 and he was directed to face the departmental enquiry on 24.11.1998.

4. According to the Petitioner, the subject matter of the Criminal case and the departmental proceeding is one and the same and therefore, the departmental proceeding should be stayed pending disposal of the Criminal case. The Petitioner relies upon the pronouncement of the Apex Court in Tata Oil Mills Company Ltd., v. Workmen AIR 1985 SC 155 and if the departmental proceeding is to be proceeded further, the Petitioner will be compelled to disclose his defence to his disadvantage and will cause prejudice to the Petitioner. The counsel also contended that two proceedings cannot be proceeded simultaneously. Hence the present writ petition.

5. Heard Mr. V. Sairam, learned Counsel appearing for the Petitioner.

6. The learned Counsel for the Petitioner placed a copy of the chargesheet filed by prosecution in CC No. 307 of 1999 against the writ Petitioner and one another accused. The writ Petitioner is the first accused. In the charge sheet, the Petitioner is implicated for alleged offences under Sections 420, 468 and 471.

7. As seen from the charge sheet, the Petitioner as A-l along with A-2 cheated the witness Rajasah by dishonestly inducing the Banker to deliver a sum of Rs. 60,000/- on 28.1.1997, Rs. 20,000 on 11.2.1997, Rs. 20,000/ on 22.2.1997 by presenting the forged cheques and knowingly using it as a genuine document and has withdrawn a sum of Rs. 1,00,000/- out of the Current Account of the witness Rajasah.

8. It is also the further case of the prosecution that the Petitioner had forged the signatures of the witness in three cheques and also filled up the date of cheque and account numbers in three cheques for the purpose of cheating and thereby the Petitioner had committed the offence u/s 468 IPC.

9. The departmental charges framed against the Petitioner reads thus:

That he stealthily removed from the branch the below mentioned cheque leaves from the cheque book issued in the current Deposit Account No. 1434 of M/s. Arul Apparels, which was surrendered at the Branch when the account was closed. He got these cheques drawn up as if it was drawn on Current Account No. 1559 of Sri. Rajasah. These cheques were encashed on the dates mentioned in column No. IV, in the current Account of Sri. V. Rajasah with his connivance and he appropriated the amount of the cheques.

Cheque Dateof Amount of Date of

No. Cheque the Cheque withdrawal

252045 28.1.1997 Rs. 60,000/- 28.1.1997

252096 10.12.1996 Rs. 20.000/- 22.2.1997

That he stealthily removed from the branch the below mentioned cheque leaf from the cheque book issued in the Current Deposit Account No. 1434 of M/s. Arul Apparels, which was surrendered at the Branch at the time of closure of the account. He got this cheque drawn up as if it was drawn on Current Account No. 1559 of Sri. V. Rajasha, except the account number, which was filled up as per the information given by him when the cheque was presented across the counter for payment. This cheque was encashed on the date mentioned in column No. IV in the Current Account of Sri. V. Rajasah with his connivance and he appropriated the amount of the cheque. Thus, he defrauded the bank.

Cheque No. Cheque No. Cheque No. Cheque No.

1 252048 10.10.1996 Rs. 20,000/- 11.2.1997

The aforesaid acts alleged to have been committed by him amount to fraud and act prejudicial to the interest of the bank.

10. On a perusal of the charge sheet filed before the Criminal Court and the charge framed in the departmental enquiry this Court finds that though they relate to the same incidents that they are not identical. In the departmental action, it is alleged that the Petitioner had removed the cheque leaves from the cheque book issued for the Current Deposit Account, which was surrendered at the branch when the account was closed and the said cheques were encashed in the current account of a different account holder with his connivance and appropriated the amount of the cheques.

11. It is further alleged that the Petitioner had committed act prejudicial to the interest of the bank and actively took part in encashing of the cheques causing loss to a substantial amount. The charge before the criminal court is totally different.

12. In The Delhi Cloth and General Mills Ltd. Vs. Kushal Bhan, it has been laid down that the principles of natural justice do not require that the employer should await for the decision of the Criminal court before taking disciplinary action against the employee.

13. In Jang Bahadur Singh Vs. Baij Nath Tiwari, the Apex Court held thus:

The view expressed in the three cases of this Court seem to support the position that while there could be no legal bar for simultaneous proceedings being taken, yet, there may be cases where it would be appropriate to defer disciplinary proceedings awaiting disposal of the criminal case. In the latter class of cases, it would be open to the delinquent employees to seek such an order of stay or injunction from the court. Whether in the facts and circumstances of a particular case there should or should not be such simultaneity of the proceedings would then receive judicial consideration and the court will decide in the given circumstances of a particular case as to whether the disciplinary proceedings should be interdicted, pending criminal trial.

14. In State of Rajasthan Vs. B.K. Meena and others, their Lordships of the Apex court held thus:

It must be remembered that interests of administration demand that undesirable elements are thrown out and any charge of misdemeanour is enquired into promptly. The disciplinary proceedings are meant not really to punish the guilty but to keep the administrative machinery unsullied by getting rid of bad elements. The interest of the delinquent officer also lies in a prompt conclusion of the disciplinary proceedings. If he is not guilty of the charge, his honour should be vindicated at the earliest possible moment and if he is guilty, he should be dealt with promptly according to law. It is not also in the interest of administration that persons accused on serious misdemeanour should be continued in office indefinitely, i.e. for long periods awaiting the result of criminal proceedings. It is not in the interest of administration. It only serves the interest of the guilty and dishonest. While it is not possible to enumerate the various factors, for and against the stay of disciplinary proceedings, we found it necessary to emphasize some of the important considerations in view of the fact that very often the disciplinary proceedings are being stayed for long periods pending criminal proceedings. Stay of disciplinary proceedings cannot be, and should not be, a matter of course. All the relevant factors, far and against, should be weighed and a decision taken keeping in view the various principles laid down in the decisions referred to above.

15. In the light of the above pronouncements of the Apex court, on the facts of the present case, this Court is of the considered view that this is not a fit case, where the disciplinary action by the Respondent Bank should be stayed. The criminal charges for which the Petitioner is being prosecuted and the departmental charges relate to different misconduct and they are not grounded on the same set of facts or imputations and it is not as if by proceeding further with the departmental, enquiry, the Petitioner will be prejudiced.

16. Further this is not a fit case where this Court should issue a Writ of mandamus forbearing the Respondent/employer to stay the disciplinary proceedings pending criminal prosecution. In the circumstances, this Court holds that there are no merits. Hence the writ petition is dismissed. Consequently, the connected W.M.P. is also dismissed.

