

State Bank Of India & Ors vs R.B. Sharma on 10 August, 2004

Equivalent citations: AIR 2004 SUPREME COURT 4144, 2004 (7) SCC 27, 2004 AIR SCW 4587, 2004 (6) SCALE 541, 2004 (6) ACE 535, 2004 (7) SRJ 465, 2004 CRIAPPR(SC) 630, 2004 LAB LR 950, (2004) 6 JT 361 (SC), 2005 (1) SERVLJ 35 SC, 2004 (6) JT 361, 2004 (2) ALL CJ 1942, (2004) 5 ALLMR 1115 (SC), (2004) 2 CGLJ 157, (2004) 21 ALLINDCAS 956 (SC), 2004 ALL CJ 2 1942, (2004) 106 FJR 927, (2004) 4 LAB LN 36, (2005) 3 MAD LW 71, (2004) 29 OCR 209, (2004) 4 RAJ LW 502, (2004) 3 SCT 833, (2004) 5 SERVLR 429, (2004) 3 CHANDCRIC 375, (2004) 3 CURLR 296, (2005) 99 CUT LT 1, (2005) 1 MAD LJ 36, (2004) 6 SUPREME 227, (2004) 6 SCALE 541, (2004) 4 ESC 454, (2004) 22 INDLD 215, (2004) 3 ALL WC 2699, (2004) 2 BANKJ 747, (2004) 113 DLT 25, (2004) 102 FACLR 1027, 2004 SCC (L&S) 913, (2004) 2 BANKCLR 571

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Bench: Arijit Pasayat, C.K. Thakker

CASE NO.:
Appeal (civil) 5424 of 2004

PETITIONER:
State Bank of India & Ors.

RESPONDENT:
R.B. Sharma

DATE OF JUDGMENT: 10/08/2004

BENCH:
ARIJIT PASAYAT & C.K. THAKKER

JUDGMENT:

J U D G M E N T (Arising out of SLP (Civil.) No. 3866/2004) ARIJIT PASAYAT, J Leave granted.

By the impugned judgment a learned Single Judge of the Delhi High Court directed stay of departmental proceedings till conclusion of the criminal case pending against the respondent (hereinafter referred to as the 'employee').

The order came to be passed in the following circumstances:

The employee was placed under suspension on 11.5.1994 for alleged omissions and commissions amounting to gross irregularities. He was, at the relevant time, working

as officiating manager at the Green Park Extension branch of the bank. According to the employer-Bank (appellant herein) he along with one Y.K. Sharma, another employee of the bank, met Director (Finance) of M/s Bharat Dynamics Ltd. at his Hyderabad office and requested him to invest funds in the Green Park Extension branch and offered interest @ 14.5% on the invested funds.

A cheque of Rs.60 crores was issued and handed over to the employee for issuance of necessary deposit certificates in the name of aforementioned concern. According to the employer, instead of issuing the deposit certificates the employee got the amount deposited in the current account of one of M/s Jaydees International and the deposit receipt of Rs.20 crores was in the name of the said concern. On the basis of the deposit receipt, a demand loan of Rs.15 crore was sanctioned to it. A complaint was lodged with the Crime Branch, Delhi Police on 12.5.1994 for alleged commission of offences punishable under Sections 406, 409, 420, 467 and 120-B of the Indian Penal Code, 1860 (in short the 'IPC'). The FIR was registered in respect of the employee and the other persons for their involvement in committing fraud and commission of other offences. Charge was framed on 19.6.1996 wherein it was noted that the employee along with one Shri John Daniel and Sri V.S. Murthy Director (Finance) of Bharat Dynamics Ltd. and others entered into a criminal conspiracy with the object to make available to aforesaid John Daniel Rs.100 crores out of the surplus funds of Bharat Dynamics Ltd. A petition challenging the framing of charges is pending disposal before the Delhi High Court. On 25.2.1995 a show-cause notice was issued to the respondent-employee alleging that irregularities were committed while working at the concerned branch which facilitated an attempt to defraud the bank to the tune of Rs. 60 crores. It was alleged that he failed to discharge his duties with utmost devotion and diligence and acted in a manner unbecoming of a bank official and highly prejudicial to the bank's interest in violation of applicable Rule and such acts clearly amounted to misconduct.

Instead of submitting any explanation, the employee filed a reply by letter dated 31.3.1995 stating that the same shall be submitted at the appropriate stage. Charge-sheet in terms of Rules 67 and 68 of the State Bank of India Officers Service Rules (in short the 'Service Rules') was issued on 19.6.1996 relating to the alleged irregularities committed by the employee while working as Deputy Manager at the concerned branch. On 27.7.1996 employee refused to reply to the charge-sheet taking the ground that the matter was still pending in the Criminal Court and submission of reply shall amount to disclosure of defence during the departmental proceedings. On 16.11.1996 Inquiry Officer wrote a letter to the employee requiring the employee to appear at the inquiry. A suit was filed by the employee (Suit No.801/1996) before the Civil Judge, Delhi along with an application under Order XXXIX, Rules 1 and 2 of the Code of Civil Procedure, 1908 (for short 'the Code') with prayer to restrain the appellant- bank from proceeding further with the departmental proceedings. The suit is still pending. An interim order of restraint was passed by learned Civil Judge on the application under Order XXXIX, Rules 1 and 2 of the Code which was challenged by the bank in appeal before the Senior Civil Judge, Delhi, which was numbered as Appeal No.85/97. By order dated 2.11.2002, learned Senior Civil Judge allowed the appeal and set aside the order dated

20.1.1997 passed by learned Civil Judge. The employee filed CM (M) No. 294/2003 before the Delhi High Court to set aside the order dated 2.11.2002 passed by the First Appellate Court. By the impugned order the High Court has allowed the application by reversing the order of learned Senior Civil Judge and restoring the order of stay passed by learned Civil Judge.

In support of the appeal, Mr. Gopal Subramaniam, learned senior counsel submitted that the High Court has not kept in view the correct principles of law relating to a situation where both the departmental proceedings and criminal case are pending. The basic issue which was necessary to be decided by the High Court was whether criminal case and departmental proceedings can proceed simultaneously and whether the departmental proceedings ought to be continued. Strong reliance has been placed on several decisions of this Court to which reference shall be made infra. The respondent-employee appeared in-person and submitted that there has been hardly any progress in the criminal case and with a view to harass him, the authorities are trying to finalise the departmental proceedings. According to him both the criminal case and the departmental proceedings are outcome of mala fides. Since the subject matter of the criminal proceedings and departmental inquiry is substantially the same, the High Court has rightly directed stay of the departmental proceedings. It is to be noted that both the parties relied on the decision of this Court in *Capt. M. Paul Anthony v. Bharat Gold Mines Ltd.* and another (1999 (3) SCC 679). It is fairly well-settled position in law that on basic principles proceedings in criminal case and departmental proceedings can go on simultaneously, except where departmental proceedings and criminal case are based on the same set of facts and the evidence in both the proceedings is common.

The purpose of departmental enquiry and of prosecution are two different and distinct aspects. The criminal prosecution is launched for an offence for violation of a duty the offender owes to the society, or for breach of which law has provided that the offender shall make satisfaction to the public. So crime is an act of commission in violation of law or of omission of public duty. The departmental enquiry is to maintain discipline in the service and efficiency of public service. It would, therefore, be expedient that the disciplinary proceedings are conducted and completed as expeditiously as possible. It is not, therefore, desirable to lay down any guidelines as inflexible rules in which the departmental proceedings may or may not be stayed pending trial in criminal case against the delinquent officer. Each case requires to be considered in the backdrop of its own facts and circumstances. There would be no bar to proceed simultaneously with departmental enquiry and trial of a criminal case unless the charge in the criminal trial is of grave nature involving complicated questions of fact and law. Offence generally implies infringement of public duty, as distinguished from mere private rights punishable under criminal law. When trial for criminal offence is conducted it should be in accordance with proof of the offence as per the evidence defined under the provisions of the Indian Evidence Act 1872 (in short the 'Evidence Act'). Converse is the case of departmental enquiry. The enquiry in a departmental proceedings relates to conduct or breach of duty of the delinquent officer to punish him for his misconduct defined under the relevant statutory rules or law. That the strict standard of proof or applicability of the Evidence Act stands excluded is a settled legal position. Under these circumstances, what is required to be seen is whether the department enquiry would seriously prejudice the delinquent in his defence at the trial in a criminal case. It is always a question of fact to be considered in each case depending on its own facts and circumstances.

A three-judge Bench of this Court in *Depot Manager, A.P. State Road Transport Corporation v. Mohd. Yousuf Miya and Ors.* (1997 (2) SCC 699) analysed the legal position in great detail on the above lines.

The aforesaid position was also noted in *State of Rajasthan v. B.K. Meena* (1996 (6) SCC 417).

There can be no straight jacket formula as to in which case the departmental proceedings are to be stayed. There may be cases where the trial of the case gets prolonged by the dilatory method adopted by delinquent official. He cannot be permitted to, on one hand, prolong criminal case and at the same time contend that the departmental proceedings should be stayed on the ground that the criminal case is pending.

In *Capt. M. Paul Anthony's case* (supra) this Court indicated some of the fact situations which would govern the question whether departmental proceedings should be kept in abeyance during pendency of a criminal case. In paragraph 22 conclusions which are deducible from various decisions were summarised. They are as follows:

- (i) Departmental proceedings and proceedings in a criminal case can proceed simultaneously as there is no bar in their being conducted simultaneously, though separately.
- (ii) If the departmental proceedings and the criminal case are based on identical and similar set of facts and the charge in the criminal case against the delinquent employee is of a grave nature which involves complicated questions of law and fact, it would be desirable to stay the departmental proceedings till the conclusion of the criminal case.
- (iii) Whether the nature of a charge in a criminal case is grave and whether complicated questions of fact and law are involved in that case, will depend upon the nature of offence, the nature of the case launched against the employee on the basis of evidence and material collected against him during investigation or as reflected in the charge-sheet.
- (iv) The factors mentioned at (ii) and (iii) above cannot be considered in isolation to stay the departmental proceedings but due regard has to be given to the fact that the departmental proceedings cannot be unduly delayed.
- (v) If the criminal case does not proceed or its disposal is being unduly delayed, the departmental proceedings, even if they were stayed on account of the pendency of the criminal case, can be resumed and proceeded with so as to conclude them at an early date, so that if the employee is found not guilty his honour may be vindicated and in case he is found guilty, the administration may get rid of him at the earliest.

A bare perusal of the impugned order of the High Court shows that after noticing the rival submissions, learned Single Judge came to an abrupt conclusion that the petitioner in the case before it (the employee) has been able to show substantially that the entire matter in the departmental proceedings and before criminal court is the same. No details have been indicated to justify this conclusion. Though elaborate reasoning may not be necessary to be indicted, certainly, the skeletal description of how there is substantial similarity has to be indicated. That has not been done. The employee who appeared in-person submitted that several materials are available which would go to show that the matter is substantially the same. On the contrary, learned senior counsel appearing for the employer-bank submitted that they are founded on different premises and, therefore, unreasoned conclusion of learned Single Judge cannot be maintained. He additionally pointed out that the respondent-employee is responsible for delaying the criminal case and he cannot be permitted to take advantage of the long pendency of the criminal case.

Since learned Single Judge has not indicated even skeleton basis for his conclusion that matter is substantially the same, it would be appropriate for the High Court to re-hear the matter. Accordingly, the impugned order of the High Court is set aside and the matter is remitted back to the High Court for fresh consideration.

The High Court shall dispose of the matter afresh in accordance with law and pass a reasoned order for its conclusions to be arrived at on consideration of the rival stands. We make it clear that we have not expressed any opinion on the merits of the case. The appeal is allowed to the extent indicated with no order as to costs.