

The State Bank Of India And Ors. vs P. Soupramaniane on 26 April, 2019

Equivalent citations: (2019) 2 ESC 344, AIR 2019 SUPREME COURT 2187, 2019 LAB IC 2470, (2019) 162 FACLR 253, (2019) 2 CLR 149 (SC), (2019) 2 PAT LJR 367, (2019) 2 SCT 764, (2019) 2 SERVLJ 12, (2019) 3 CURLR 323, (2019) 3 LAB LN 12, (2019) 3 RAJ LW 2322, (2019) 3 SERVLR 942, (2019) 4 CURCC 297, (2019) 6 SCALE 809, 2019 (9) ADJ 7 NOC, AIR 2019 SC (CIV) 2045, AIRONLINE 2019 SC 202

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Bench: M.R.Shah, L. Nageswara Rao

Reportable

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL No. 7011 of 2009

The State Bank of India & Others. Appellants

Versus

P. Soupramaniane Respondent

JUDGMENT

L. NAGESWARA RAO, J.

1. The Respondent who was working as a Messenger in the State Bank of India at Puducherry was discharged from service by an order dated 15.05.1986. The appeal filed by the Respondent against the order of discharge was dismissed on 03.07.1986. Later, the Staff Union took up the cause of the Respondent and made a representation on his behalf which was also rejected on 04.05.1992. Challenging the aforementioned orders, the Respondent filed a Writ Petition in the High Court of Judicature at Madras which was dismissed by a learned Single Judge on 07.06.2000. Aggrieved thereby, the Respondent filed a Writ Appeal which was allowed by the Division Bench of the Madras High Court. The order of discharge of the Respondent from service was set aside and the Appellants were directed to reinstate the Respondent. The Appellants were directed to pay 1/4th of the salary from the date of discharge till the date of reinstatement as back wages. Notice was issued by this Court in Special Leave Petition filed by the Appellants on 01.09.2009 and the judgment of the High

Court was stayed. Thereafter, leave was granted on 19.10.2009 and the interim order was made absolute. We are informed that the Respondent has attained the age of superannuation on 31.12.2012.

2. Since the discharge of the Respondent from service is on the basis of conviction for an offence involving moral turpitude, it is necessary to refer to the facts of the criminal case. A report was submitted by the Station House Officer (SHO), Grand Bazaar Police Station, Puducherry that on 17.06.1983 at 9.00 hours the Respondent voluntarily stabbed Karthiban s/o Dharamssivam and Sivagurunathan s/o Brame Dhanabal with a broken soda bottle. On completion of investigation, charge sheet was filed against the Respondent. Thereafter, charge was framed under Section 307 IPC. After appreciation of the evidence on-record, the trial court found that the Respondent had no intention to cause murder of the victims who were examined as PWs-1 and 2. The injuries were certified as simple by PW-5. The trial court was of the opinion that there was no material to convict the Respondent under Section 307 IPC. However, the trial court convicted the Respondent under Section 324 IPC and sentenced him to undergo imprisonment for three months. The motive for the crime was an earlier dispute between two groups belonging to different political parties. The conviction was affirmed by the Appellate Court. The Appellate Court released the Respondent on probation as it was of the opinion that the Respondent was a fit person to be dealt with under Section 360 CrPC. One of the reasons given by the Appellate Court to release the Respondent on probation was that the Respondent was employed as a Messenger in a Bank and any sentence of imprisonment would affect his career.

3. As stated earlier, discharge of the Respondent from service was on the ground of his conviction by a criminal court for an offence involving moral turpitude.

4. Section 10(1)(b)(i) of the Banking Regulation Act, 1949 provides that conviction by a criminal court of an offence involving moral turpitude shall disentitle a person from continuing in employment of a banking company. The Writ Appeal filed by the Respondent was allowed by a Division Bench of the High Court on the ground that the criminal court released the Respondent under probation in exercise of its power under Section 360 CrPC to enable the Respondent to continue in service. The High Court was of the opinion that the purpose of the order of the criminal court would be defeated if the Respondent is discharged from service. Another reason given by the High Court is that the provision of law under which the bank discharged the Respondent from service was not mentioned and no reasons were assigned by the bank in the order of discharge.

5. We do not agree with the reasons given by the High Court for setting aside the order of discharge and directing the reinstatement of the Respondent in service. A show- cause notice was issued to the Respondent in which it was categorically mentioned that the Respondent cannot continue in service after his conviction in a criminal case involving moral turpitude in view of Section 10(1)(b)(i) of the Banking Regulation Act, 1949. After considering the explanation of the Respondent, an order of discharge was passed. The High Court is not right in holding that no reasons had been given by the bank for discontinuing the Respondent from service. The High Court committed an error in holding that the order of discharge should be set aside on the ground that the provision of law under which the Respondent was discharged was not mentioned in the order. Yet another reason given by the

High Court for interference with the order of discharge is that the criminal court released the Respondent on probation only to permit him to continue in service. The release under probation does not entitle an employee to claim a right to continue in service. In fact the employer is under an obligation to discontinue the services of an employee convicted of an offence involving moral turpitude.¹ The observations made by a criminal court are not binding ² on the employer who has the liberty of dealing with his employees suitably.

6. Though we do not agree with the reasons given by the High Court for setting aside the order of discharge of the Respondent from service, it is necessary to examine whether Section 10 (1)(b)(i) of Banking Regulation Act is applicable to the facts of the case. Conviction for an offence involving moral turpitude disqualifies a person from continuing in service in a bank. The conundrum that arises in this case is whether the conviction of the Respondent under Section 324 IPC can be said to be for an offence involving moral turpitude.

7. Moral Turpitude' as defined in the Black's Law Dictionary (6th ed.) is as follows:

"The Act of baseness, vileness, or the depravity in the private and social duties which man owes to ¹ Sushil Kumar Singhal v. Punjab National Bank, (2010) 8 SCC 573 ² This Court has observed on multiple occasions that in criminal jurisdiction, Courts do not have the power to pass a direction that the said conviction will not have any impact on the convict's services. See: Girraj Prasad Meena v. State of Rajasthan (2014) 13 SCC 674 his follow man, or to society in general, contrary to accepted and customary rule of right and duty between man and man."³ "implies something immoral in itself regardless of it being punishable by law"; "restricted to the gravest offences, consisting of felonies, infamous crimes, and those that are malum in se and disclose a depraved mind." ⁴ According to Bouvier's Law Dictionary, 'Moral Turpitude' is :

"An act of baseness, vileness or depravity in the private and social duties which a man owes to his fellow men or to society in general, contrary to the accepted and customary rule of right and duty between man and man." Burton Legal Thesaurus defines 'Moral Turpitude' as :

"Bad faith, bad repute, corruption, defilement, delinquency, discredit, dishonor, shame, guilt, knavery, misdoing, perversion, shame, ice, wrong." ³ p. 1008 ⁴ p. 1517

8. There is no doubt that there is an obligation on the Management of the Bank to discontinue the services of an employee who has been convicted by a criminal court for an offence involving moral turpitude. ⁵ Though every offence is a crime against the society, discontinuance from service according to the Banking Regulation Act can be only for committing an offence involving moral turpitude. Acts which disclose depravity and wickedness of character can be categorized as offences involving moral turpitude. Whether an offence involves moral turpitude or not depends upon the facts⁶ and the circumstances⁷ of the case. Ordinarily, the tests that can be applied for judging an offence involving moral turpitude are:

a) Whether the act leading to a conviction was such as could shock the moral conscience or society in general;

b) Whether the motive which led to the act was a base one, and

c) Whether on account of the act having been committed the perpetrators could be considered 5 Sushil Kumar Singhal (supra) 6 Allahabad Bank v. Deepak Kumar Bhola 7 Pawan Kumar v. State of Haryana, (1996) 4 SCC 17 ¶12 to be of a depraved character or a person who The other important factors that are to be kept in mind to conclude that an offence involves moral turpitude are :– the person who commits the offence; the person against whom it is committed; the manner and circumstances in which it is alleged to have been committed; and the values of the society. 9 According to the National Incident – Based Reporting System (NIBRS), a crime data collection system used in the United States of America, each offence belongs to one of the three categories which are: crimes against persons, crimes against property, and crimes against society. Crimes against persons include murder, rape, and assault where the victims are always individuals. The object of crimes against property, for example, robbery and burglary is to obtain money, property, or some other benefits.

Crimes against society for example gambling, prostitution, and drug violations, represent society's prohibition against engaging in certain types of activities. Conviction of any 8 Mangali v. Chakki Lal, AIR 1963 ALL 527 9 Jorabhai Hirabhai Rabari v. District Development Officer, Mehsana, AIR 1996 Guj

3. alien of a crime involving moral turpitude is a ground for deportation under the Immigration Law in the United States of America. To qualify as a crime involving moral turpitude for such purpose, it requires both reprehensible conduct and scienter, whether with specific intent, deliberateness, willfulness or recklessness. 10

9. There can be no manner of doubt about certain offences which can straightaway be termed as involving moral turpitude e.g. offences under the Prevention of Corruption of Act, NDPS Act, etc. The question that arises for our consideration in this case is whether an offence involving bodily injury can be categorized as a crime involving moral turpitude. In this case, we are concerned with an assault. It is very difficult to state that every assault is not an offence involving moral turpitude. A simple assault is different from an aggravated assault. All cases of assault or simple hurt cannot be categorized as crimes involving moral turpitude. On the other hand, the use of a dangerous weapon which can cause the death of the victim may may result in an offence involving moral turpitude. In the instant case, there was no motive for the Respondent to cause 10 Cristoval Silva – Trevina 241 & N Dec 687 (AG 2008) the death of the victims. The criminal courts below found that the injuries caused to the victims were simple in nature. On an overall consideration of the facts of this case, we are of the opinion that the crime committed by the Respondent does not involve moral turpitude. As the Respondent is not guilty of an offence involving moral turpitude, he is not liable to be discharged from service.

10. For the aforementioned reasons, we affirm the judgment of the High Court. The Appeal is dismissed accordingly.

.....J. [L. NAGESWARA RAO]J. [M.R.SHAH] New Delhi,
April 26, 2019.