J. D. Jain vs The Management Of State Bank Of India & ... on 17 December, 1981

Equivalent citations: 1982 AIR 673, 1982 SCR (2) 227, 1982 (1) SCC 143, AIR 1982 SUPREME COURT 673, 1982 LAB. I. C. 356, (1982) 44 FACLR 65, 44 FACLR 65, 1982 UJ (SC) 73, (1982) IJR 29 (SC), 1982 (14) LAWYER 33, 1982 SCC(CRI) 122, 1982 APS LAB CAS 85, 1982 (1) SCJ 176 (2), 1982 SCC (L&S) 68, (1982) 1 LABLJ 54, (1982) 1 LAB LN 33, (1982) 1 SCWR 243, (1982) 60 FJR 50, (1982) 1 SCJ 176(2), (1981) 3 SERVLR 175, (1982) 2 SERVLJ 96

Author: Baharul Islam

Bench: Baharul Islam, V.D. Tulzapurkar, A. Varadarajan

PETITIONER:
J. D. JAIN

Vs.

RESPONDENT:
THE MANAGEMENT OF STATE BANK OF INDIA & ANR.

DATE OF JUDGMENT17/12/1981

BENCH:
ISLAM, BAHARUL (J)
BENCH:
ISLAM, BAHARUL (J)
TULZAPURKAR, V.D.
VARADARAJAN, A. (J)

CITATION:
1982 AIR 673 1982 SCR (2) 227
1982 SCC (1) 143 1981 SCALE (3)1884

ACT:
Constitution of India 1950 Art. 226-Award of Industrial Tribunal-Jurisdiction of High Court-interference-When arises.
Industrial Disputes Act 1947 S. 11A-Complaint-Depositor against bank employee-Debit authority alteration of-Withdrawal of excess money-Confession by employee to officer of alteration and withdrawal-Holding of domestic enquiry-Non examination of depositor-Charge of fraud and misappropriation proved-Employee discharged from service-Dispute raised-Issue referred to Tribunal-Tribunal holding depositor (complainant) not examined-Evidence against

employee 'hearsay'-Directing reinstatement-High Court in writ petition setting aside of tribunal-High Court Whether correct in interfering with award-Award whether vitiated by misconception of law.

Labour Law-Domestic enquiry-Guilt whether to be established beyond reasonable doubt-Proof of misconduct alone-Whether sufficient,

Words & Phrases 'hearsay'-Meaning of

HEADNOTE:

The Appellant was working as a Cashier in a Bank. A depositor who had a Savings Bank Account with the Bank came to the Bank to receive his Pass Book. On receipt of his Pass Book from the Counter Clerk he complained to the ledger keeper that, on a certain date he had withdrawn only Rs. 500 but a debit entry of Rs, 1,500 had been shown in the Pass Book. The Ledger keeper took the depositor to the Supervisor and The Agent and his complaint was recorded. When the documents pertaining to the withdrawal were examined it was found that the depositor had given a letter of authority to the appellant authorising withdrawal from his account. The letter of authority showed that it was for withdrawal of Rs. 1500 though there appeared to be some interpolation suggesting that the figure of Rs. 500 had been altered lo the figure of Rs. 1500.

A memorandum of charge was served on the appellant by the Management respondent No. I and a disciplinary enquiry was held. The Enquiry Officer submitted his report and his findings were that the appellant had fraudulently altered the amount in the letter of authority given by the depositor, withdrew Rs. 1500 from the depositor's account and paid Rs. 500 only to the depositor and

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misappropriated Rs. 1500. In pursuance of the enquiry the appellant was discharged from service.

The appellant having raised an industrial dispute the matter was referred to the Industrial Tribunal. Before the Tribunal the appellant denied the charges and pleaded that as the depositor was not examined in the disciplinary enquiry there was no legal evidence before the Enquiry officer for finding that he was guilty. Before the Tribunal the Management examined no witnesses but produced documents and relied on them. The Tribunal held that on the evidence before it the appellant could not be held guilty as in the absence of the evidence of the depositor, the evidence recorded was 'hearsay' and directed reinstatement to the appellant with full back wages.

The respondent moved the High Court under Article 226 and 227 which held that the charge against the appellant had been established and quashed the award of the Tribunal.

In the appeal to this Court it was contended on behalf

of the appellant: (1) that the Tribunal exercised its powers under Section 11 A of the Industrial Disputes Act and the High Court exercising powers under Article 226/227 had no jurisdiction to interfere with the award; (2) the Tribunal rightly refused to rely on the evidence which was hearsay; the depositor not having been examined, and (3) the High Court committed an error in not considering the receipt executed by the depositor showing payment of Rs. 1000 to the depositor.

Dismissing the appeal,

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HELD: The award of the Tribunal is vitiated by misconception of the law involved. It erred in holding that as Kansal (depositor) was not examined, fraud and misappropriation on the part of appellant cannot be held to be proved and in failing to appreciate the confession made by the appellant to the higher officer that he had altered the amount in figures and words in his own hand. [236 G]

1. In an application for a writ of certiorari under Article 226 for quashing the award of an Industrial Tribunal the jurisdiction of the High Court is limited. It can quash the award when the Tribunal has committed an error of law apparent on the face of the record or when the finding of facts of the Tribunal is perverse. [233 B]

In the instant case, three kinds of proceedings against the delinquent were possible: (i) departmental proceedings and action, (ii) Criminal prosecution for the alleged misappropriation of the amount, and (iii) civil proceedings for recovery of the amount alleged to be misappropriated. The respondent adopted the first course and instituted the domestic enquiry. In such an enquiry guilt need not be established beyond reasonable doubt; proof of misconduct may be sufficient. [234 G-235 A]

State of Haryana & Anr. v. Rattan Singh A.I.R. 1977 S.C. 1512, referred to

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2. The word 'hearsay' is used in various senses. Sometimes it means whatever a person declares on information given by someone else. [235 E]

In the instant case, the Tribunal after having made a detailed reference to the evidence of the witnesses found that a complaint was made by Kansal and that the appellant confessed that he had altered the debit authority, but held That as Kansal was not examined, this was not direct evidence but was of the nature of 'hearsay' evidence, with regard to the fact whether the appellant manipulated the documents, withdrew the excess amount and misappropriated it, there is no direct evidence of any of the witnesses except the appellant's confession. The evidence on which reliance has been taken by the respondent is the confession and circumstantial evidence. The evidence of Kansal would have been primary and material. if the fact in issue were whether Kansal authorised the appellant to make the

alterations in the authority letter. But Kansal's complaint was to the contrary. No rule of law enjoins that a complaint has to be in writing as insisted by the Tribunal. For the purpose of a departmental enquiry, complaint substantiated by circumstantial evidence is enough. What the respondent sought to establish in the domestic enquiry was that Kansal had made a verbal complaint with regard to the withdrawal of excess money by the appellant. On the factum of complaint of Kansal the evidence of these four witnessess is direct as the complaint is said to have been made by Kansal in their presence and hearing. It is not therefore 'hearsay'. The respondent has succeeded in proving that a complaint was made by Kansal on the evidence of these four witnesses. [236 A-E]

Subramaniam v Public Prosecutor [1956]1 W.L.R. 965, referred to

3. The receipt executed by Kansal showing payment by the appellant of Rs. 1000 to the former is destructive of the appellant's defence and on the contrary proves the respondent's case. [236 H-237A]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 495 of 1979.

Appeal by special leave from the judgment and order dated the 18th October, 1978 of the Delhi High Court in Civil Writ Petition No. 1292 of 1975.

R.R. Garg, U.R. Lalit and Randhir Jain for the Appellant.

M.C. Bhandare, S.A. Shroff, S.S. Shroff and Miss C.K Sachurita for Respondent No. 1.

The Judgment of the Court was delivered by BAHARUL ISLAM J. This appeal by special leave is by the appellant, J.D. Jain. who was a workman and whose services have been terminated by the management of the State Bank of India (hereinafter called the respondent).

2. The material facts are these.

The appellant was working as a cashier in the Meerut City Branch of the State Bank of India. On June 21, 1971, one Dishan Prakash Kansal ('Kansal' for short) who had a Savings Bank account with the said branch of the State Bank came to the Bank to receive 3 his Pass Book. On receipt of the Pass Book from the counter clerk, Kansal complained to Wadhera who was the Ledger-keeper, that on February 8, 1971, he had withdrawn only Rs. 500 but a debit entry of Rs. 1,500 had been shown in the Pass Book. Wadhera thereupon took Kansal to the the Supervisor, R.P. Gupta, before whom Kansal repeated his complaint. Necessary documents pertaining to the said withdrawal were then examined and it was found that Kansal had given a 'letter of authority' (which expression means, we

are told, the withdrawal application form) to the appellant on February 8, 1971 authorising him to withdraw the amount from his account. The letter of authority showed that it was for withdrawal of Rs. 1,500 though there appeared to be some interpolation suggesting that the figure of Rs. 500 had been altered to the figure of Rs. 1,500. The matter was then brought to the notice of M. Ramzan, the Agent of the State Bank, before whom also Kansal is said to have repeated his complaint.

3. Eventually on September 18, 1972, a memorandum of charges was served on the appellant by the respondent stating, inter alia that in the letter of authority, the appellant altered in his own handwriting with different ink the amount of Rs. 500 to Rs. 1,500 and thus received Rs. 1,000 in excess, passing only Rs. 500 to the pass-book holder, and that he subsequently, on June 24, 1971, deposited Rs 250 in the account of Kansal to liquidate a part or the amount misappropriated by him. The appellant replied to the charges. He denied the allegations. Thereupon the respondent appointed one Rajendra Prasad as an Enquiry officer and a formal disciplinary enquiry was held against the appellant. The Enquiry Officer submitted his report to the respondent on February 13, 1973. The findings of the Enquiry officer were that The appellant had fraudulently altered the amount in the letter of authority given to him by Kansal, withdrew Rs. 1,500 from Kansal's account and paid Rs. 500 only to Kansal and misappropriated Rs. 1000. The disciplinary authority on receipt of the report of the Enquiry officer passed the following order (material portion only):-

> "2. Although, the charges against you are of a serious nature which would, in normal course, warrant your dismissal from the service of the Bank, yet keeping in view your past record, I am inclined to take a lenient view in the matter. Upon consideration of the matter, I have tentatively come to the decision that your misconduct be condoned and you be merely discharged of in terms of paragraphs 521 (5) (e) of the Sastry Award read with para graph 18.28 of the Desai Award and paragraph 1.1 of the Agreement dated the 31st March 1967 entered into between the Bank and the State Bank of India Staff Federation. Before, however, I take a final decision in the matter I would like to give you a hearing as to why the proposed punishment should not be imposed upon you. To enable you to do so, I enclose copies of the proceedings of the enquiry and findings of the Enquiry officer.
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> 3. You may ask for a hearing or if you so prefer show cause in writing within one week of receipt by you thereof. If you fail therein, I will conclude that you have no cause to show in this behalf."

The appellant then submitted a representation to Shri V.B. Chadha, the Regional Manager of the State Bank of India on June 15, 1973. Shri Chadha after perusing the representation of the appellant and hearing him in person, recommended that the proposed punishment should not be imposed upon the appellant, on the grounds that Kansal had not been examined as a witness and that there had been no written complaint against the appellant. The respondent, however, did not accept the recommendation, and, by its memorandum of December 7, 1973, discharged the appellant from service with effect from the close of the business on December 22, 1973.

4. The appellant then having raised an industrial dispute, the Central Government, by its order dated January 17, 1975, referred the following issue to the Central Government Industrial Tribunal at Delhi for adjudication:

> "Is the management of State Bank of India justified in discharging from service Shri J.D. Jain, Cashier of Meerut Branch, with effect from 22nd December, 1973? If not to what relief is he entitled ?"

5. Before the Tribunal, the appellant denied the charges, He inter alia, pleaded that as Kansal was not examined in the enquiry, there was no legal evidence before the inquiry officer for a finding that he was guilty.

The Tribunal framed the following two issues:-

> "1. Whether a proper and valid domestic enquiry was held by the Bank and its effect ?
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> 2. Is the management of State Bank of India justified in discharging from service Shri J.D. Jain, Cashier of Meerut Branch with effect from 22nd December, 1973 ? If not to what relief is he entitled ?"

Before the Tribunal, the Management examined no witnesses but produced certain documents and relied on them. The appellant also did not adduce any evidence.

On a perusal of the evidence recorded by the Enquiry officer, the Tribunal held that on the evidence before it, the appellant could not be held guilty as, according to it, in the absence of the evidence of Kansal, the evidence recorded was hearsay, with the result that it directed reinstatement of the appellant with full back wages from 22nd December, 1973. The respondent moved the High Court under Article 226 and 227 of the Constitution of India for quashing the award of the Tribunal. The High Court held that the charges against the appellant had been established and quashed the award of the Tribunal. It is against this judgment of the High Court that the present appeal by special leave is directed.

6. Mr. R.K. Garg, learned counsel appearing for the appellant makes three submissions before us:-

> (1) That the Tribunal exercised its powers under Section 11 A of the Industrial Disputes Act and the High , Court, exercising powers under Article 2261227 of the Constitution, had no jurisdiction to interfere with the award of the Tribunal; (2) The Tribunal in the perspective of the broad contours of the case rightly refused to rely on the evidence which was hearsay? Kansal not having been examined;
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> (3) Assuming the evidence could be relied on, the High Court committed error in not considering the receipt executed by Kansal showing payment of Rs.

1000 to Kansal and its judgment is vitiated.

7. In an application for a Writ of Certiorari under Article 226 of the Constitution for quashing an award of an Industrial Tribunal, the jurisdiction of the High Court is limited. It can quash the award, inter alia, when the Tribunal has committed an error of law apparent on the face of the record or when the finding of facts of the Tribunal is perverse. In the case before us, according to the Tribunal, as Kansal was not examined, the evidence before it was hearsay and as such on the basis thereof the appellant could not be legally found guilty.

8. Before the Enquiry officer, the respondent examined the following witnesses:

> Gupta (Witness 1), Wadhera, the Ledger Keeper (Witness 2), Mahesh Chander who was incharge of Savings Bank account on 8.2.1971 (Witness 3), M. Ramzan, Agent of the Bank (Witness 4), Sarkar (Witness 5), and Bhardwaj (Witness 6).
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> Bhardwaj was a leader of the employees' union of the respondent. He did not support the case of the respondent. The other witnesses supported the case of the respondent. Witnesses Nos. 1, 2, 4 and 5 depose that a verbal complaint was made by Kansal in their presence to the effect that he had authorised the appellant to withdraw Rs. 500 which sum was paid to him, but the entries showed that Kansal had withdrawn Rs. 1,500. Witnesses Vadhera, Ramzan and Sarkar also deposed that the appellant had confessed before them that he had made the alterations in the figure and in words of the sum. The Tribunal after having made detailed references to the evidence of the above witnesses in fact found, "All that this evidence thus, proves is that a complaint was made by Shri Kansal and that the workmen confessed that he had altered the debit authority. (emphasis added). Curiously, however, it held, "This evidence, by no means prove that the workman altered the debit authority to defraud or that he actually defrauded or that he mis.

appropriated the amount of Rs. 1,000 after paying Rs. 500 only to Mr. Kansal from the amount of Rs. 1,500 withdrawn from the bank by him as it was not direct evidence but was in the nature of hearsay evidence since it was learnt through the medium of a third person and that person was not available." It further held, "There can be no hesitation, therefore, that the enquiry officer relied on hearsay evidence in arriving at his findings and it vitiated the enquiry." It went on, "All this could be enough for raising a suspicion only. In order to be called 'proved' it needed evidence which was not there." It further observed, "But the question was whether it was done without the consent or knowledge of Mr. Kansal. There was no evidence on the record to prove it. The only person who could speak about it was Mr. Kansal. He did not appear before the inquiry officer, therefore, there was no direct evidence that the change that was admittedly made by the workman in the debit authority was without Mr. Kansal's consent or knowledge or that it was designed to defraud "

> (emphasis added) The positive findings of the Tribunal are:
>
> (i) Kansal made the complaint as alleged by the management.

(ii) The appellant confessed that he had made the alterations charged with, as alleged by the management,

(iii) By implication it has also found that Rs. 1,000 in excess of the original amount of Rs. 500 was received by the appellant as a result of the alternations. But it has held that as Kansal was not examined, fraud and misappropriation on the part of the appellant cannot be held to be proved, as the evidence was 'hearsay'.

9. The learned Tribunal, it appears, was obvious of the fact that it was examining the evidence in a domestic enquiry, and not the evidence in a criminal prosecution entailing conviction and sentence.

In a case like the one before us, three kinds of proceedings against the delinquent are possible .

(i) departmental proceedings and action,

(ii) original prosecution for forgery and misappropriation,

(iii) civil proceedings for, recovery of the amount alleged to be misappropriated.

The respondent herein adopted course (i) and instituted the domestic enquiry in which the principle applied by the Tribunal is not applicable; in such an enquiry guilt need not be established beyond reasonable doubt, proof of misconduct may be sufficient.

The learned Tribunal has committed another error in holding that the finding of the domestic enquiry was based on "hearsay" evidence. The law is well-settled that the strict rules of evidence are not applicable in a domestic enquiry.

This Court in the case of State of Haryana & Anr. v. Rattan Singh held:

> "It is well-settled that in a domestic enquiry the strict and sophisticated rules of evidence under the Indian Evidence Act may not apply. All materials which are logically probative for a prudent mind are permissible. There is no allergy to hearsay evidence provided it has reasonable nexus and credibility."

10. The next question is, is the evidence in the domestic enquiry really hearsay, as held by the Tribunal ?

The word 'hearsay' is used in various senses. Some times it means whatever a person is heard to say; some times it means whatever a person declares on information given by someone else. (See Stephen on Law of Evidence).

The Privy Council it the case of Subramaniam v/s. Public Prosecutor, observed: "Evidence of a statement made to a witness who is not himself called as a witness may or may not be hearsay. It is hearsay and inadmissible when the object of the evidence is to establish the truth of that is

contained in the statement. lt is not hearsay and is admissible when it is proposed to establish by the evidence, not the truth of the statement but the fact that it was made. The fact that it was made quite apart from its truth, is frequently relevant in considering the mental state and conduct thereafter of the witness or some other persons in whose presence these statements are made."

11. In the instant case, the alleged misconduct of the appellant was that he forged documents, withdrew Rs. 1,500. 1,000 in excess of the amount he was authorised to do and misappropriated the excess amount of Rs. 1,000. With regard to the fact whether the appellant manipulated the documents, withdrew excess amount and misappropriated it, there is, of course, no direct evidence of any eye witness except the appellant's 'confession' referred to above. The evidence on which reliance has been taken by the respondent is the confession and circumstantial evidence, namely, the authority letter containing the admitted interpolations by the appellant in his own handwriting in different ink, and the addition of the digit "I" before 500. The evidence of Kansal would have been primary and material, if the fact in issue were whether Kansal authorised the appellant to make the alterations in the authority letter. But Kansal's complaint was to the contrary. For the purpose of a departmental enquiry complaint certainly not frivolous, but substantiated by circumstantial evidence, is enough. What the respondent sought to establish in the domestic enquiry was that Kansal had made a verbal complaint with regard to

1) the withdrawal of excess money by the appellant in presence of the four witnesses, namely, Wadhera, Gupta, Ramzan and Sarkar, aforesaid, against his advice. On the complaint of Kansal, the evidence of these four witnesses is direct as the complaint is said to have been made by Kansal in their presence and hearing; it is therefore, not hearsay. As the respondent has succeeded in proving that a come plaint was made by Kansal on the evidence of the above-named four witnesses, the respondent has succeeded. No rule of law enjoins that complaint has to be in writing as insisted by the Tribunal.

12. The learned Tribunal has committed yet another grevious error, in failing to appreciate the confessions made by the appellant "in the presence of witnesses and to the higher officer who appeared as witness" (as found by itself) namely, Wadhera, Ramzan, Gupta and Sarkar, aforesaid. The confessions of the appellant before the said witnesses were to the effect that he had altered the amount in figure and words in his own hand.

The award of the Tribunal, therefore, has been vitiated by misconception of the law involved in the case.

13. The last submission of Mr. Garg that the judgment of the High Court had been vitiated as it had not taken into consideration the receipt executed by Kansal showing payment by the appellant of Rs. 1000 to the former is destructive of the appellant's defence. In Our opinion, this payment on the contrary, proves the respondent's case and destroys the appellant's defence which was that he had withdrawn Rs. 1,500 as advised by Kansal and paid the full amount to Kansal.

14. In our opinion the High Court was fully in its jurisdiction in quashing the award of the Tribunal. This appeal has no merit and is dismissed. We, however, leave the parties to bear their own costs.

N.V.K. Appeal dismissed.