

Allahabad Bank And Anr vs Deepak Kumar Bhola on 13 March, 1997

Equivalent citations: AIRONLINE 1997 SC 629

Bench: J.S. Verma, B.N. Kirpal

PETITIONER:
ALLAHABAD BANK AND ANR.

Vs.

RESPONDENT:
DEEPAK KUMAR BHOLA

DATE OF JUDGMENT: 13/03/1997

BENCH:
J.S. VERMA, B.N. KIRPAL

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T KIRPAL. J.

This is an appeal from the judgment of the Allahabad High Court which had allowed the writ petition filed by the respondent and quashed an order of suspension which had been passed pending prosecution launched against him. Briefly stated the facts are that during the year 1984-85. The respondent was working as Clerk-cum-Typist in Allahabad Bank with on of its branch at Lucknow. An investigation was conducted by the Delhi Special Police Establishment and a case was registered on 29.8.1986. The C.B.I./S.P.E., Lucknow, after investigation, submitted a report whereupon the Superintendent of Police wrote a letter dated 18.9.1987 to the appellant bank for according sanction for prosecution of the respondent and one other person namely Ajay Bhatia inter alia for criminal mis-conduct and cheating.

On the receipt of the aforesaid letter the appellant took steps to accord sanction to prosecute the respondent. It also decided to take action under clause 19.3 (a) of the first Bipartite Settlement 1966

between the management and the Union and to suspend the respondent. Accordingly, the suspension order dated 23.9.1987 was passed which reads as under :

"Since it is revealed that you while functioning as clerk-cum- typist in Allahabad bank. Aalam Bagh. Lucknow during the year 1984-

85 entered into a criminal conspiracy with Shri Ajai Bhatia. Clerk-Cum-Cashier under suspension. Shri H.R. Gurnani Advocate, lucknow and some unknown persons with the common object to commit the offences of criminal misconduct and cheating by adopting corrupt and illegal means or otherwise abusing your position by obtaining undue pecuniary gain for yourself and or others and since steps to get you prosecuted have been taken, you are hereby placed under suspension with First Bipartite Settlement dated 19.10.1966 pending proceedings against you.

During suspension period you will be paid subsistence allowance as per rules. You will also not leave station without prior permission of the competent authority during suspension period. You are also required to submit in writing your local postal address where you want to be communicated hereafter."

Pursuant to the sanction of the prosecution charge sheet dated 29.9.1987 was filed in the court against the respondent. Thereupon, the court issued summons on 26.11.1987 to the respondent filed a writ petition in the Allahabad High Court challenging the aforesaid order of suspension. By the impugned judgment dated 23.4.1991 the High Court came to the conclusion that by the mere fact that a person had entered into the criminal conspiracy, it could not be regarded that an offence involving "moral turpitude"

had been committed and, therefore, the appellant had no jurisdiction to pass the order of suspension. The High Court, accordingly, quashed the suspension order and directed the payment of full salary and allowances to the respondent. This appeal arises as a consequent of special leave having been granted to the appellant.

It has been contended by the learned counsel for the appellant that the respondent had committed an offence involving moral turpitude and, therefore, the appellant had the jurisdiction to suspend the respondent. The submission of Mr. R.K. Jain, learned senior counsel on behalf of the respondent, however was that on the facts and circumstances of the case when nearly 10 years have elapsed, this court should not interfere. It was further submitted that there had been no application of mind by the bank to the passing of the suspension order and the High Court was, consequently, right in quashing the order of suspension.

The charge sheet, which was filed, specific the acts of commission commissions which were alleged to have been committed by the respondent and others. The acts as specified by the charge-sheet are as follows:

"Shri Ajai Bhatia, while functioning as Clerk-cum-Cashier Allahabad bank. Alam Bagh Branch, Lucknow during the year 1984-85 had shown the issue of cheque books bearing SI. No. 7771 to 7780 against account no. 2618 in name of Shri Gajraj Sharma, and he made the endorsement in the cheque issue register against this entry. Shri Deepak Kumar Bhola signed as Rajendra for having recieved the said cheque book on behalf of A/C holder, the ledgers of S.B. A/C Nos. 2284 belonging to Sri Shanti Prakash and Smt. Prem Lata, show that the cheque book containing cheque Nos. 7631. 7640. 7581 to 7590 and 7551-7560 respectively were issued to these A/C holders when actually none of these account holder shad ever applied for any cheque book nor actually cheque book was issued to any of these person and fictitious entires were made in the ledger account. The cheque no. 7631 amounting to Rs. 9560.62 paisa and cheque no.

7632 for Rs. 7532.00 was purportedly to have been issued by genuine account holder Lekha Ram of Account holder of A/C No. 2484. Another cheque No. 7551 amounting to Rs. 1400.00 cheque No. 7552 amounting to rs. 14.800.00 purportedly have been issued by Sri Shanti Prakash A/C holder of account No. 1103 and cheque No, 07775 for Rs. 12800.51 purported to have been issued by Sri Gajre Sharma account holder of A/C No. 2618 were presented in the Corporation Bank. Quiaser Bagh Lucknow by Sri Deepak Kumar Bhola aforesaid who was working as Clerk cum Typist in Allahabad Bank Alam Bagh Branch. Lucknow in the name of Rajendra Rathore. Shri H.R. Gurnani, Advocate, Lucknow had introduced Shri D.K. Bhola as Rajendra Rathore at the time of opening of account and Shri H.R. Gurnani Advocate had his own account No. 87 in the said Corporation Bank, Sri Deepak Bhola, aforesaid submitted five pay in slips for depositing the cheque no. 7551 for Rs. 11400.60, 7552 for Rs. 14800.00, 7632 for Rs. 7532, 7631 for Rs. 9560 and 7775 for Rs. 12800.51 through five cheque No. 021721 dated 24.4.84 for rs. 11000.00, 021762 dated 1.9.84 for Rs. 1500.00 021763 dated 15.8.84 for Rs. 17000.00, 021765 dt. 25.9.84 for Rs. 11000.00, 021762 dated 1.9.84 for Rs. 1500.00, 021763 dated 15.8.84 for Rs. 17000.00, 021765 dated 25.9.84 for Rs. 21900.00 and 021767 dated 25.9.84 for Rs. 203.73 paisa. Said Deepak Kumar Bhola impersonating himself as Rajendra Rathore operated S.B. A/C No. 3206 in Corporation Bank. Quiserbagh Lucknow and withdrew the entire amount. Whereas, the aforesaid account holders Sri Lekharam having A/C No. 2484, Sri Shanti Prakash and Srimati Premlata A/c No. 1103 and Sri Gajraj Sharma A/c No. 2618 never issued these cheques and never availed the cheque facility in operating their respective accounts.

Total sum of Rs. 56.103.77 was withdrawn from said fake account No. 3206 by Sri Deepak Kumar Bhola by issueing five cheques by signing as Rajendra Rathore."

On the basis of the aforesaid allegations, the respondent was charged for offences punishable under Sections 120(B)/429/420/467/468/471 I.P.C. and 5 (2) read with Section 5(1)(d) of Prevention of Corruption Act. 1947.

It will be appropriate for refer clauses 19.2 & 19.3 of the First Bipartite Settlement under which orders were passed suspending the respondent. These clauses read as follows:

"19.2 By the expression "

offence" shall be meant any offence involving moral turpitude for which an employee is liable to conviction and sentence under any provision of law.

"19.3 (a) When in the opinion of the management an employee has committed an offence, unless he be otherwise prosecuted, the bank may take steps to prosecute him or get him prosecuted, the bank may take steps to prosecute him or get him prosecuted, the bank may take steps to prosecuted and in such a case he may also be suspended.

(b) If he is convicted, he may be dismissed with effect from the date of his conviction or be given any lessor from of punishment as mentioned in Clause 19.6 below".

It is evident from the bare perusal of the aforesaid clauses that if in the opinion of the management, an employee has committed an offence, then the bank may take steps to prosecute him and in such a case, he may also be suspended. The word "offence" occurring in clause 19.3 (a) has been defined in clause 19.2 to mean any offence involving "moral turpitude" for which an employee is liable to conviction an sentence under any provision of law.

What is an offence involving "moral turpitude" must depend upon the facts of each case. But whatever may be the meaning which may be given to the term "moral turpitude" it appears to us that one of the most serious offences involving "moral turpitude" would be where a person employed in a banking company dealing with money of the general public. commits forgery and wrongfully withdraws money which he is not entitled to withdraw.

This Court in PAWAN KUMAR VS. STATE OF HARYANA AND ANOTHER. (1996) 4 SCC 17 at page 21 dealt with the question as to what is the meaning of expression "moral turpitude"

and it was observed as follows"

" "Moral turpitude" is an expression which is used in legal as also societal parlance to describe conduct which is inherently base, vile, depraved or having any connection showing depravity".

This expression has been more elaborately explained in BALESHWAR SINGH vs. DISTRICT MAGISTRATE AND COLLECTOR. BANARAS, AIR 1959 All. 71 where it was observed as follows:

"The expression 'moral turpitude' is not defined anywhere. But it means anything done contrary to justice, honesty, modesty or good morals. It implies depravity and wickness of character or disposition of the person charged with the particular

conduct. Every false statement made by a person may not be moral turpitude, but it would be so if it discloses vileness or depravity in the doing of any private and social duty which a person owes to his fellowmen or to the society in general. If therefore the individual charged with a certain conduct owes a duty, either to another individual or to the society in general, to act in a specific manner or not to so act and he still acts contrary to it and does so knowingly, his conduct must be held to be due to vileness and depravity. It will be contrary to accepted customary rule and duty between man and man"

In our opinion the aforesaid observations correctly spell out the true meaning of the expression "moral turpitude". Applying the aforesaid test, if the allegations made against the respondent are proved, it will clearly show that he had committed an offence involving moral turpitude and, therefore, the appellant had the jurisdiction to suspend him under the aforesaid clause 19.3. The High Court observed that there was nothing on record to suggest that the management had formed an opinion objectively on the consideration of all relevant material available against the petitioner that in the circumstances of the case the criminal acts attributed to the petitioner implied depravity and vileness of character and are such as would involve moral turpitude. It did not regard entering into a criminal conspiracy to commit the aforesaid offences as being an offence involving moral turpitude. We are, to say the least, surprised at the conclusion which has been arrived by the Allahabad High Court. There was material received before the appellant, in the form of the report of the C.B.I./S.P.E., which clearly indicated the acts of commission and omissions, amounting to "moral turpitude" alleged to have been committed by the respondent. Furthermore the respondent has been charged with various offences allegedly committed while he was working in the bank and punishment for which could extend upto ten years imprisonment (in case the respondent is convicted under Section I.P.C.).

We are unable to agree with the contention of learned counsel for the respondent that there has been no application of mind or the objective consideration of the facts by the appellant before it passed the orders of suspension. As already observed, the very fact that the investigation was conducted by the C.B.I which resulted in the filing of a charge-sheet, alleging various offences having been committed by the respondent, was sufficient for the appellant to conclude that pending prosecution the respondent should be suspended. It would be indeed inconceivable that a bank should allow an employee to continue to remain on duty when he is facing serious charges of corruption and mis-appropriation of money. Allowing such an employee to remain in the seat would result in giving him further opportunity to indulge in the acts for which he was being prosecuted. Under the circumstances, it was the bounden duty of the appellant to have taken recourse to the provisions of clause 19.3 of the First Bipartite Settlement, 1966. The mere fact that nearly 10 years have elapsed since the charge-sheet was filed, can also be no ground for allowing the respondent to come back to duty on a sensitive post in the bank, unless he is exonerated of the charge.

In our opinion, the High Court was not justified in quashing the orders of suspension. We, accordingly, allow this appeal, set-aside the impugned judgment of the Allahabad High Court and dismiss the Writ Petition No. 6118/1988 which had been filed by the respondent. There will, however, be no order as to costs.