S.B.I & Ors vs Neelam Nag & Anr on 16 September, 2016

Author: A.M.Khanwilkar

Bench: A.M.Khanwilkar, T.S.Thakur

Reportable

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.4715 of 2011

State Bank of India & Ors. …..Appellants

Vs.

Neelam Nag ……Respondent

J U D G M E N T

A.M.KHANWILKAR, J.

The short question involved in this appeal is: whether the High Court was justified in directing stay of the disciplinary proceedings initiated by the appellant-Bank against the respondent until the closure of recording of prosecution evidence in the criminal case instituted against the respondent, based on the same facts?

2. The respondent was appointed in the clerical cadre of the appellant- Bank. At the relevant time, she was working as an Assistant (Clearing). Allegedly, some time on 29th May 2006, the respondent by her acts of commission and omission caused loss to the Bank in the sum of Rs. 44,40,819/- by granting credit to one Laxman Parsad Ratre (who was an employee of Bhilai Steel Plant). The respondent herself introduced Laxman Parsad Ratre to open an account in the appellant Bank. On 7th November 2006, the respondent was placed under suspension for indulging in gross irregularities and misconduct including of misplacing the clearing instruments relating to various customers. The respondent vide letter dated 8th November 2006, not only admitted her misdeeds but assured the Chief Manager of returning the amount commensurate to the financial loss caused to the Bank because of her lapses at the earliest, failing which suitable action can proceed against her. The said communication reads thus:

> “To, Chief Manager State Bank of India Main Branch, Durg (Ch.G.) Sir, Context :- Your memo number – Serial number/branch/2006 – 07/196 dated 30.10.2006.

In context of your aforesaid memo I am sorry for the wrong ways adopted by me. I admit that I have done a wrong deed and I am suffering from the feeling of guilt.

Whatever amount comes in this context that I will try to pay as early as possible after obtaining the amount from the known sources. At present I am able to arrange Rs. 60,000/- and I am depositing the same.

By mortgaging the family movable and immovable property, arrangement for obtaining the amount, thought and efforts are continued for making such arrangement as early as possible. Because this works take time, I should be given proper time to go further in effort and to finish the work of mortgage.

Our relatives staying nearby and far away and in other states, with them my contact is continued and arrangement for the amount is continued. This work is also taking time. Therefore to continue my effort proper time to be given to me.

Amount of my C.P.F and salary is to be used for compensating this amount. I will keep on informing you regarding my every effort and will deposit the money received in bank account.

I have done this work in mental stress and due to pressure of situation for which my heart is feeling sorry that I have used all wrong ways and means. I have two small children, wife and old and ill mother and father, considering all this give me an opportunity to deposit the amount received from my aforesaid efforts for which I will be grateful to you for my whole life. I have not taken such a wrong step in fourteen years of my bank service but this step I have taken due to mental stress and situation. By giving me apology, proper time to accomplish my efforts.

I assure you that I will not commit this kind of mistake in future.

If I fail in the above efforts, you are independent for initiating proceedings on me.

Thanking you Dated :- 8.11.06 Sd/-

(Neelam Nag) Senior Assistant "

3. Nevertheless, a FIR was lodged in connection with the said irregularities and misdeeds committed by the respondent bearing FIR No.1043/2006, for offences punishable under Sections 409, 34 of the IPC by appellant-Bank. Laxman Parsad Ratre has also been named as an accused in the said FIR. It is alleged in the FIR that Laxman Parsad Ratre who had account in State Bank of India issued two cheques in favour of Tanishk Securities both valued Rs.6,50,000/-, knowing that he did not have balance in his account. Those cheques were deposited by Tanishk Securities in their U.T.I. Branch Bhilai for clearance. U.T.I. Branch dispatched those cheques to State Bank of India at Durg, Bhilai. The respondent was posted in that Branch at the relevant time, who in connivance with the

co-accused dispatched those cheques to State Bank of India, Malviya Nagar Branch even though Laxman Parsad Ratre did not have account in that Branch. The cheques were returned by that Branch. The respondent intentionally did not immediately return those cheques to U.T.I. Branch at Bhilai. Resultantly, U.T.I. Branch at Bhilai as per the settled practice assumed that the cheques have been cleared and released the payment to Tanishk Securities, by endorsing payment in the name of State Bank of India. Thereby causing a loss of Rs. 13 lakhs to State Bank of India. That was revealed only on 28.10.2006 during reconciliation of accounts of the two Banks. Further, the respondent herself had introduced Laxman Parsad Ratre for opening an account in the appellant-Bank. She has admitted her lapse in the communication sent by her to the Chief Manager of the appellant-Bank dated 8th November, 2006. In a written admission given on 6th November, 2006 Laxman Parsad Ratre mentioned that he was involved in a criminal activity in connivance with the respondent. The FIR has been registered for offence of possible loss of Rs. 29,53,262/-.

4. After registration of the FIR, the local police proceeded with the investigation and filed charge-sheet No. 63/2007, under Section 173 of the Criminal Procedure Code, on 6th February, 2007, before the Magistrate. Criminal Complaint No. 1043/2006 was registered for offences punishable under Sections 409, 34 of IPC. The competent Court then proceeded to frame charges against the respondent on 12th June 2007. Thereafter, on 7th April, 2008, the appellants, through appellant No.2, called upon the respondent to offer an explanation about the alleged irregularities and misdeeds committed by her. The respondent vide communication dated 15th April, 2008 simply denied all the allegations. The Competent Authority, therefore, decided to initiate departmental enquiry against the respondent, for which, charge-sheet dated 19th September, 2008 was issued to the respondent, which reads thus:

> "Shri Neelam Nag, Senior Assistant (Suspended) Indian State bank Bhilai Steel Plant Area Branch Bhilai Sr. No. Ankara/Area 3/ Anushansha / 820 19th Sep, 2008 Charge sheet I in the capacity of disciplinary authority charge following charges upon you You have committed following mistake during working in Durg Branch.
>
> You have given identification to Lachhman Parsad Ratre for opening the account thereafter through this account through accounts you have manage the operation of the Fund of other administrative accounts.
>
> Through saving account no. 01119-0021348 two cheques bearing no. 463553 and 4635554 which is amounting to Rs. 6,50,00.00 each in favour of Tanishk Securities on 29.5.2006 which was due Durg Branch. Which was submitted by U.T.I. Bank for adjustment, due to not insufficient amount in Durg Branch instead of returning to Bhilai Branch intentionally for making the balance of adjustment has transfer to Malviya Nagar Durg Branch with responding.
>
> Two cheque bearing no. 4635553 and 463554 each amounting to Rs. 65,0000/- which were due to Durg Branch, Malviya Nagar Branch had returned with T.R. on 31.5.2006, which should have return by you to Head Branch Bililai without any proceeding, but you intentionally keep it with you.

The above incident detail (information come in light) on 28.10.2006 held branch clearing of the general account in clearing it make clear that in Udhavi schedule 07 Rupees 13,00,000 entries which was originate by Malviya Nagar Durg Branch, it was not responded by Durg Branch.

You had attached with Tanishk Securities commodity trading and you by misusing the amount of Chattisgarh State Electricity division got deposit in the account of Shri Lachhman Parsad Ratre. You have removed the original slip of deposit of the account of chattisgarh State Electricity division and in place of it install the slip of Shri Rate saving bank account therefore the dealing and clearing of the saving bank account which has committed by you, the complete detail is clear and enclosed in Annexure –

2.

Therefore you with the intention of cheating you have divert the total amount of Rs. 48,0000 of 16 challan of State Govt. on 4.5.2006 (Annexure 2(11)).

The Head Branch Bhilai through clearing house has closed to submit due cheque in Durg Branch, there after the cheque of various bank situated at Bhilai which has deposited in Durg Branch should presented for collection, you changing the deposit slip of Chattisgarh State Electricity Division current account preparing the deposit slip of Lachhman Ratre has changed. Therefore the FDR of current of Chattisgarh State Electricity division has misused (Annexure 2 (12)).

On 9th August, 2006 Chattisgarh State Electricity divisions has deposited two cheque total amounting to Rs. 125916/- of other banks for deposit in their current account you by changing the slip. Due to reference on the same day cheque no. 463549 amounting to Rs. 125916 I.D.B.I. Branch Bhilai has submitted these cheque in Durg Branch which was in the saving bank account of Shri Ratre, due to not having insufficient fund in the account of Shri Ratre returned but the above cheque through clearing by not returning but by you in the deposit of clearing scroll and transfer both side with cunning make balance. Therefore you by not returning the cheque intentionally with cheating has tampered the current account cheque of Chattisgarh State Electricity division.

Therefore with well plan manner the amounting to Rs. 4440891 has deposit in the fake of account of Shri Rate and misuse the above amount and fix in commodity market. It clear detail is enclosed in Annexure 1 & 2 in which the current account of Chattisgarh State Electricity division and the amount of Govt. challan with cheating deposit in the account of Shri Ratre and misuse by you. Therefore the current amount of Chattisgarh State Electricity Division amounting to Rs. 1653262 which has not cleared until now, in the same manner branch clearing general account amounting to Rs. 1300000 which is still unclear pending in Malviya Nagar Durg Branch. Therefore a huge amount loss has suffered by bank, for which you are completely liable. Your above conduct against the bank interest and second party compromise dt. 6.8.2002 para Sardi/P&HRD/57 page 7 para 5(a) and J comes under gross misconduct and punishable.

(2) In this regard you are hereby directed in regard to charge sheet submit your written reply within 7 days of the receipt of this letter, in case during this period you did not give your reply then I should admit that in regard to this letter you did not want to say nothing and in this regard bank shall fee to take action.

3) In the second copy of this letter by making complete signature and date given the acknowledgement.

Sd/-

Disciplinary Officer and Assistant Chief Managing Director Administration) Sd/-

Enclosure : above.

57/dpc/staff Signature 20.9.2008"

5. The appellant No.2 then instituted disciplinary proceedings against the respondent on 23rd October 2008, which fact was notified to the respondent on 31st October 2008, by the appellant No. 3 calling upon her to attend the same. The respondent did not cooperate and instead protested the initiation of such disciplinary proceedings against her. She was then advised to file a writ petition bearing Writ Petition No.4629/2009 before the High Court of Chhatisgarh at Bilaspur. The learned Single Judge found merits in the stand taken by the respondent - that the facts involved in the criminal case registered against the respondent and initiation of disciplinary proceedings, was based on the same facts. The learned Single Judge also adverted to Clause 4 of the Memorandum of Settlement dated 10th April, 2002 which grants protection to the employees of the appellant-Bank from facing departmental proceedings until the completion of the trial of the criminal case. On that reasoning, the learned Single Judge allowed the Writ Petition and directed the appellants to forbear from proceeding with the disciplinary proceedings until completion of the trial. This decision was challenged by the appellants by way of Writ Appeal No.80/2010 before the Division Bench. The Division Bench affirmed the view taken by the learned Single Judge and negatived the stand taken by the appellant in her favour. The Division Bench held that the respondent may suffer disadvantage and prejudice if she was compelled to disclose her defence in the departmental proceedings, which is likely to be used in the criminal case pending against her. The Division Bench, however, modified the operative order passed by the learned Single Judge by passing following directions:

> "Therefore, we dispose of this appeal by upholding the order of the learned Single Judge with the following directions:
>
> The A.C.J.M. Durg is directed to conclude the trial which is pending since 2006 on day to day basis, in which we have been informed that one witness has already been examined, The writ appellants would be free to proceed further in the disciplinary proceedings as soon as the case from the prosecution side is closed." (emphasis supplied)

6. The appellants relying on a recent decision of this Court in the case of Stanzen Toyotetsu India Private Limited vs. Girish V. & Ors.[1] contend that the departmental proceedings cannot be suspended indefinitely or delayed unduly. It is contended that inspite of the direction given by the Division Bench to the concerned criminal Court to take up the case pending since 2006 on day-to-day basis, the trial is still pending and only 3 witnesses out of total 18 prosecution witnesses cited in the charge-sheet have been examined. There is no hope of an early completion of the trial nor of completion of prosecution evidence. The delay is attributable to the accused in the said criminal case, including the respondent herein. In the backdrop of this grievance vide order dated 1st July 2016, the State of Chhattisgarh was directed by this Court to file a status report regarding the criminal proceedings launched against the respondent, giving details of the total number of prosecution witnesses cited in the charge-sheet; number of witnesses examined so far; and the cause for delay in the completion of trial. The State of Chhattisgarh has filed an affidavit of the Additional Superintendent of Police dated 1st August 2016. From this affidavit, it is noticed that the criminal trial No.1043/2006 before framing of charge on 12th June 2007, was listed on 13 dates. After framing of charge, the matter has proceeded before the Sessions Court on 133 dates. In paragraph 9 to 11 of the affidavit, the break up has been given as under:

> "9. It is further respectfully submitted that the perusal of Court proceedings of 133 dates reveal that the delay in completion of trial was due to multiple reasons. It is submitted that on some dates, the case was adjourned due to absence of accused persons. On some dates, the case was adjourned as the prosecutor was absent. The case was also adjourned due to non-availability of files as it was sent to the Sessions Court for deciding the Bail Application u/s 439 CrPC. The case was also adjourned on the application made by the accused persons to make available some documents. The case was also adjourned due to Ld. Presiding Officer on leave, the transfer of Presiding Officer, the change of Court. The case was also adjourned due to strike by the Lawyers or due to Court holiday. In the gist of dates on which the case was listed before the Ld. Trial Court, are as follows:

S.No.	Particulars (Reason for Delay)	Dates
1.	Accused Laxman Ratre not present	06
2.	Accused Neelam Nag not present	14
3.	Prosecution witnesses not present	10
4.	Accused persons not present	05
5.	ADPO not present	23
6.	Documents	07
7.	Arguments	05
8.	Application for bail	07
9.	Receiving of demand letter	06
10.	Case Diary sent to the Magistrate	05
11.	Receiving of Diary	04
12.	Court holiday	03
13.	Strike of Advocates	02
14.	Service of copy of the case	01
15.	Change of charges	01
16.	Time sought by the Advocates of accused persons	01
17.	Presiding Officer on leave	05

18.	Transfer of Presiding Officer	03
19.	Reply	04
20.	Keeping current status	04
21.	Evidence	10
22.	Case sent to copying department	03
23.	Issuance of instruction regarding case hand-over	01
24.	Receiving of case on transfer	01
25.	Framing of charges	01
26.	Order	01
		133 DAYS
	TOTAL=	

10. It is further submitted that the perusal of the Court proceedings reveal the dates on which, the prosecution witness were present and the outcome on that date :

30.06.2007 Prosecution witnesses Joy C. Aryakara and Pushpkala present in Court, however, since the matter was fixed for 02.07.2007, they were asked to come again on that date.

02.07.2007 The above 2 prosecution witnesses were present, however, they could not examined due to non-availability of case diary and seized documents.

18.07.2008 prosecution witness Pushpkala present in Court however, she could not be examined since the Ld. Presiding Officer was on leave.

09.03.2009 Prosecution witness Pushpkala present in Court however, she could not be examined.

08.10.2010 Prosecution witnesses Joy C. Aryakara and Ms. Pushpkala present in Court, however, they could not be examined since co-accused Laxman Ratre was not present nor any advocate appeared on his behalf.

22.07.2011 Prosecution witness Pushpkala was examined Prosecution witness Joy C. Aryakara also present in Court however, the defence refused to cross-

examine on the ground of non-availability of certain bank documents. This prosecution witness was therefore could not be cross-examined.

15.09.2011 prosecution witness K.G. Goswami present in Court however, the examination could not take place due to absence of accused / respondent No.1 Neelam Nag.

24.09.2011 Prosecution witnesses KG. Goswami and N. Chandrashekhar present in Court. The co-accused Laxman Ratre is absent. Witness N. Chandrashekhar could not be examined due to non-availability of some documents.

04.11.2011 Witness N. Chandrashekhar present. The examination could not take place due to non-availability of certain documents.

01.09.2012 Prosecution witness A.S. Jitendra present in Court. The accused / Respondent No.1 Neelam Nag was absent, however, at the request of his Counsel, the examination of prosecution witness was deferred.

03.09.2015 Prosecution witness Ramesh Kumar present in Court. The accused Neelam Nag was absent. Examination of witness did not take place.

02.11.2015 Prosecution witness Ramesh Kumar Present. The accused Neelam Nag was absent. Examination of witness did not take place.

11. It is submitted that 3 prosecution witnesses have been examined. The delay in completion of trial is due to reasons mentioned in the above paras." Relying on these facts, the appellants contend that no further indulgence can be shown to the respondent and the protection given to the respondent by the High Court should be vacated keeping in mind the exposition in the above mentioned reported decision. As regards the argument of the respondent that the disciplinary proceedings must be suspended in view of Clause 4 of the Memorandum of Settlement dated 10th April 2002, arrived at by the Management of 52 'A' Class Banks as represented by the Indian Banks' Association and their workmen under Section 2(p) and Section 18(1) of the Industrial Disputes Act, that cannot be considered as a legal bar atleast in the fact situation of the present case. The interpretation of Clause 4 of the said settlement, as put forth by the appellant, would further the cause of justice and in particular larger public interest, considering the fact that the misconduct is in relation to embezzlement of substantial amount by an employee of the public sector bank - which has caused financial loss not only to the bank but resultantly to the public exchequer. It is in the interest of all concerned that the action, as permissible in law, must be taken forward in connection with the gross misconduct and the provision in the Memorandum of Settlement such as Clause 4 cannot be treated as an impediment thereto. Any other interpretation of Clause 4 of the Settlement would be against public policy and also encouraging unscrupulous employees of the bank to stall the disciplinary proceedings by taking advantage of the pending criminal case, which is an independent action in law. The respondent being named as an accused in the criminal case; and also responsible for prolonging the trial of the criminal case, cannot be permitted to take advantage of her own wrong.

7. The respondent, on the other hand, supported the view taken by the High Court and contends that, in view of Clause 4 of the Memorandum of Settlement and the settled legal position, the disciplinary proceedings must be put on hold atleast until the recording and closure of evidence of prosecution witnesses in the criminal case, as directed by the Division Bench. That is essential because the charge framed against the respondent in the criminal case and the charge-sheet issued by the disciplinary authority against the respondent is based on the same set of facts. The defence of the respondent in disciplinary proceedings may cause serious prejudice to the respondent in the criminal case. According to the respondent, in view of the complexity of the facts and the evidence necessary to substantiate the same, it is advisable and essential to protect the respondent from being exposed to disclosure of her defence which may be identical to one to be taken in the criminal case

or for that matter compel her to depose against herself on those facts.

8. We have heard the learned counsel for the parties at some length. The only question that arises for consideration, is no more res-integra. It is well-settled that there is no legal bar to the conduct of the disciplinary proceedings and criminal trial simultaneously. However, no straightjacket formula can be spelt out and the Court has to keep in mind the broad approach to be adopted in such matters on case to case basis. The contour of the approach to be adopted by the Court has been delineated in series of decisions. This Court in Karnataka SRTC vs. M.G.Vittal Rao[2] has summed up the same in the following words:

> "(i) There is no legal bar for both the proceedings to go on simultaneously.
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> (ii) The only valid ground for claiming that the disciplinary proceedings may be stated would be to ensure that the defence of the employee in the criminal case may not be prejudiced. But even such grounds would be available only in cases involving complex questions of facts or law.
>
> (iii) Such defence ought not to be permitted to unnecessarily delay the departmental proceedings. The interest of the delinquent officer as well as the employer clearly lies in a prompt conclusion of the disciplinary proceedings.
>
> (iv) Departmental proceedings can go on simultaneously to the criminal trial, except where both the proceedings are based on the same set of facts and the evidence in both the proceedings is common." (emphasis supplied)

9. The recent decision relied by the appellant in the case of Stanzen (supra), has adverted to the relevant decisions[3] including the case of M.G.Vittal Rao (supra). After adverting to those decisions, in paragraph 16, this Court opined as under:

> "16. Suffice it to say that while there is no legal bar to the holding of the disciplinary proceedings and the criminal trial simultaneously, stay of disciplinary proceedings may be an advisable course in cases where the criminal charge against the employee is grave and continuance of the disciplinary proceedings is likely to prejudice their defence before the criminal Court. Gravity of the charge is, however, not by itself enough to determine the question unless the charge involves complicated question of law and fact. The Court examining the question must also keep in mind that criminal trials get prolonged indefinitely especially where the number of accused arraigned for trial is large as is the case at hand and so are the number of witnesses cited by the prosecution. The Court, therefore, has to draw a balance between the need for a fair trial to the accused on the one hand and the competing demand for an expeditious conclusion of the ongoing disciplinary proceedings on the other. An early conclusion of the disciplinary proceedings has itself been seen by this Court to be in the interest of the employees." (emphasis supplied)

10. The Court then went on to examine the facts of that case and observed in para 18 as follows:

> "18. .....The charge-sheet, it is evident from the record, was filed on 20.8.2011. The Charges were framed on 20-12-2011. The trial Court has ever since then examined only three witnesses so far out of a total of 23 witnesses cited in the charge-sheet. Going by the pace at which the trial Court is examining the witnesses, it would take another five years before the trial may be concluded. The High Court has in the judgment under appeal given five months to the trial Court to conclude the trial. More than fifteen months has rolled by ever since that order, without the trial going anywhere near completion. The disciplinary proceedings cannot remain stayed for an indefinitely long period. Such inordinate delay is neither in the interest of the appellant Company nor the respondents who are under suspension and surviving on subsistence allowance....." (emphasis supplied) In paragraph 19, the Court proceeded to conclude thus:
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> "19. In the circumstances and taking into consideration all aspects mentioned above as also keeping in view the fact that all the three Courts below have exercised their discretion in favour of staying the ongoing disciplinary proceedings, we do not consider it fit to vacate the said order straightaway. Interests of justice would, in our opinion, be sufficiently served if we direct the Court dealing with the criminal charges against the respondents to conclude the proceedings as expeditiously as possible but in any case within a period of one year from the date of this order. We hope and trust that the trial Court will take effective steps to ensure that the witnesses are served, appear and are examined. The Court may for that purpose adjourn the case for no more than a fortnight every time an adjournment is necessary. We also expect the accused in the criminal case to cooperate with the trial Court for an early completion of the proceedings. We say so because experience has shown that the trials often linger on for a long time on account of non-availability of the defence lawyers to cross-examine the witnesses or on account of adjournments sought by them on the flimsiest of the grounds. All that needs to be avoided. In case, however, the trial is not completed within the period of one year from the date of this order, despite the steps which the trial Court has been directed to take the disciplinary proceedings initiated against the respondents shall be resumed and concluded by the inquiry officer concerned. The impugned orders shall in that case stand vacated upon expiry of the period of one year from the date of the order."

11. Reverting to the facts of the present case, indisputably, the alleged misconduct has been committed as far back as May 2006. The FIR was registered on 5th December, 2006 and the charge-sheet was filed in the said criminal case on 6th February, 2007. The contents of the charge-sheet are indicative of involvement of the respondent in the alleged offence. Resultantly, the criminal Court has framed charges against the respondent as far back as 12th June, 2007. The trial of that case, however, has not made any effective progress. Only 3 witnesses have been examined by the prosecution, out of 18 witnesses cited in the charge-sheet filed before the criminal Court. Indeed, listing of criminal case on 133 different dates after framing of charges is not solely attributable to the

respondent. From the information made available by the Additional Superintendent of Police on affidavit, it does indicate that atleast 26 adjournments are directly attributable to the accused in the criminal case. That is not an insignificant fact. This is inspite of the direction given by the Division Bench on 28th June, 2010, to the concerned criminal Court to proceed with the trial on day-to-day basis. The progress of the criminal case since then, by no means, can be said to be satisfactory. The fact that the prosecution has named 18 witnesses does not mean that all the witnesses are material witness for substantiating the factum of involvement of the respondent in introducing the co-accused for opening a new bank account, to misplace the clearing instruments relating to various customers or for the payment released to the undeserving customer causing huge financial loss to the bank. The charge in the criminal case is for offences under Section 409, 34 of IPC, one of criminal breach of trust by a public servant.

12. In the peculiar facts of the present case, therefore, we accede to the contention of the appellants that the pendency of the criminal case against the respondent cannot be the sole basis to suspend the disciplinary proceedings initiated against the respondent for an indefinite period; and in larger public interest, the order as passed in Stanzen's case be followed even in the fact situation of the present case, to balance the equities.

13. The next question is: whether Clause 4 of the Settlement would denude the appellants from continuing with the disciplinary proceedings pending against the respondent. Clause 4 of the Settlement reads thus:

> "4. If after steps have been taken to prosecute an employee or to get him prosecuted, for an offence, he is not put on trial within a year of the commission of the offence, the management may then deal with him as if he had committed an act of "gross misconduct" or of "minor misconduct", as defined below; provided that if the authority which was to start prosecution proceedings refuses to do so or comes to the conclusion that there is no case for prosecution it shall be open to the management to proceed against the employee under the provisions set out below in Clauses 11 and 12 infra relating to discharge, but he shall out below in Clauses 11 and 12 infra relating to discharge, but he shall be deemed to have been on duty during the period of suspension, if any, and shall be entitled to the full wages and allowances and to all other privileges for such period. In the event of the management deciding, after enquiry, not to continue him in service, he shall be liable only for termination with three months' pay and allowances in lieu of notice as provided in Clause 3 above. If within the pendency of the proceedings thus instituted is put on trial such proceedings shall be stayed pending the completion of the trial, after which the provisions mentioned in Clause 3 above shall apply." (emphasis supplied)

14. Ordinarily, the scope of Clause 4 of the Memorandum of Settlement pressed into service would be a matter of an Industrial Dispute, to be adjudicated by the competent Forum, if the respondent can be termed as a workman. The respondent herein was appointed in a clerical cadre of the appellant-bank; but when the alleged misconduct was committed on 29th May 2006, she was working as Assistant (Clearing). Neither before the learned Single Judge, the Division Bench nor

before us any argument has been canvassed on the factum of whether the respondent can be treated as a workman within the meaning of the Industrial Disputes Act, 1947. Both sides, however, have relied on the said Clause and invited us to spell out its purport.

15. On the plain language of Clause 4, in our opinion, it is not a stipulation to prohibit the institution and continuation of disciplinary proceedings, much less indefinitely merely because of the pendency of criminal case against the delinquent employee. On the other hand, it is an enabling provision permitting the institution or continuation of disciplinary proceedings, if the employee is not put on trial by the prosecution within one year from the commission of the offence or the prosecution fails to proceed against him for want of any material.

16. As can be culled out from the last sentence of Clause 4, which applies to a case where the criminal case has in fact proceeded, as in this case, for trial. The term "completion of the trial" thereat, must be construed as completion of the trial within a reasonable time frame. This clause cannot come to the aid of the delinquent employee - who has been named as an accused in a criminal case and more so is party to prolongation of the trial.

17. Notably, in the present case inspite of a peremptory direction of the Division Bench given on 28th June 2010 to the concerned criminal Court to proceed with the trial on day-to-day basis, as noted above, no effective progress has been made in that trial (except recording of evidence of three prosecution witnesses out of eighteen witnesses) so far. In the last six years, evidence of only two additional prosecution witnesses has been recorded. The respondent has not pointed out any material on record to even remotely suggest that she had tried her best to dissuade the criminal Court from adjourning the trial, in breach of direction given by the Division Bench of the High Court to proceed on day-to- day basis and to conclude the trial within one year from 28th June, 2010. Pendency of criminal trial for around 10 years, by no means, can be said to be a reasonable time frame to withhold the disciplinary proceedings. We are fortified in taking this view on the principle underlying the former part of the same clause, which envisages that if the Authority which has to start the prosecution refuses (read fails) to do so within one year from the commission of the offence, the departmental action can proceed under the provisions as set out in Clauses 11 and 12 of the Settlement.

18. In the fact situation of the present case, it is possible to take the view that the first part of Clause is attracted. In that, respondent has been put on trial in connection with the alleged offence, by framing of charges on 12th June 2007. That has happened after one year from the commission of the offence.

19. Be that as it may, the remedy of writ being an equitable jurisdiction and keeping in mind the larger public interests (atleast in cases of involvement of the employees of the Public Sector Banks in offence of breach of trust and embezzlement), the arrangement predicated in the case of Stanzen (supra) would meet the ends of justice. For, the disciplinary proceedings instituted against the respondent cannot brook any further delay which is already pending for more than 10 years.

20. We make it clear that we may not be understood to have expressed any final view on the scope of Clause 4 of the Settlement.

21. Accordingly, we exercise discretion in favour of the respondent of staying the ongoing disciplinary proceedings until the closure of recording of evidence of prosecution witnesses cited in the criminal trial, as directed by the Division Bench of the High Court and do not consider it fit to vacate that arrangement straightway. Instead, in our opinion, interests of justice would be sufficiently served by directing the criminal case pending against the respondent to be decided expeditiously but not later than one year from the date of this order. The Trial Court shall take effective steps to ensure that the witnesses are served, appear and are examined on day-to-day basis. In case any adjournment becomes inevitable, it should not be for more than a fortnight when necessary.

22. We also direct that the respondent shall extend full cooperation to the Trial Court for an early disposal of the trial, which includes cooperation by the Advocate appointed by her.

23. If the trial is not completed within one year from the date of this order, despite the steps which the Trial Court has been directed to take the disciplinary proceedings against the respondent shall be resumed by the enquiry officer concerned. The protection given to the respondent of keeping the disciplinary proceedings in abeyance shall then stand vacated forthwith upon expiring of the period of one year from the date of this order.

24. In the result, we partly allow this appeal to the extent indicated above. The parties are left to bear their own costs.

25. A copy of this order be forwarded to the concerned Sessions Court for information and necessary action for ensuring compliance of the direction.

.....CJI (T.S.Thakur) .....J. (A.M.Khanwilkar) New Delhi, 16th September, 2016

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[2] (2014) 3 SCC 636 [3] [4] (2012) 1 SCC 442 [5] [6] (2005) 10 SCC 471 Hindustan Petroleum Corpn. Ltd. V. Sarvesh Berry (1999) 3 SCC 679 Capt. M. Paul Antony v. Bharat Gold Mines Ltd. (1997) 2 SCC 699 A.P. SRTC v. Mohd. Yousuf Miya (1996) 6 SCC 417 State of Rajasthan v. B.K. Meena