

S. Sundari vs The General Manager, Industrial ... on 17 April, 1997

Equivalent citations: 1997(2)CTC19

ORDER

N.V. Balasubramaniam, J.

1. The petitioner has filed this petition under Article 226 of the Constitution of India for issue a writ or Certiorari calling for the records of the respondent and to quash the show-cause notice issued by the General Manager, Industrial Relations Section, Personnel Wing, Head Office, Canara Bank, Bangalore in his Ref. No. IRS.DP.MC.CHF. 3503:VRI: dated 2.11.1991.

2. The petitioner joined the service in Canara Bank in the year 1975 as an Officer Trainee, and she was promoted to the post of Manager in the year 1983. While she was functioning as Manager of Abiramapuram Branch of Canara Bank, Madras during the year 1986, she was suspended on the charges that she has passed certain cheques which were ultimately found to be forged ones. The substance of the criminal case initiated against the petitioner is as under: "During the period of her service as Second Line Manager in Abiramapuram Branch, Madras, one Mukunthan was also working as a Clerk. In the said branch, a constituent by name Rani Venkatramani opened a Savings Bank Account bearing S.B. No. 1417 on 1.7.1978. The said Rani Venkatramani after her marriage had gone to U.S.A. and visited India in the year 1984. The Savings Bank account of Rani Venkataramani remained inoperative during that period. A sum of Rs. 21,612.78 was the credit balance in the said S.B. Account till December, 1985. On 19.1.1986, according to the respondent, the petitioner, without any requisition from the account holder, issued a cheque book bearing Nos. 573041 to 573050 to the said Mukunthan. Mukunthan filled up a cheque leaf bearing No. 573041 dated 19.1.1986 for a sum of Rs. 21,500 and forged the signature of Smt. Rani Venkatramani on it. According to the respondent, the said Mukunthan made corresponding debit entries in the ledger sheet of S.B. Account No. 1417 of the sum of Rs. 21,500 under the withdrawal column and posted the balance amount of Rs. 112.78 in the relevant column and he also made entires in the subsidiary sheets. The said Mukunthan, according to the respondent, took the cheque alongwith the ledger and the subsidiary sheet pertaining to account No. 1417 to the petitioner who passed the cheque for payment and affixed her signature and she also affixed her initial by using the rubber stamp 'signature verified'. She also authenticated the entries in the ledger and the subsidiary sheet by affixing her initials. There was one another transaction during the year 1984 wherein Mukunthan prepared an additional inter-branch advise for Rs. 50,213.63 purported to have been sent by Bombay Fort branch showing as if a S.B. Account in the name of Rani Venkatramani at Bombay Fort Branch was closed and the entire balance amount was transferred to Abiramapuram branch to the account of Rani Venkataramani. He prepared a credit slip for Rs. 50,213.63 for crediting the said amount into the S.B. Account No. 1417 and filled up a cheque bearing No. 573042 for Rs. 50,000 and forged the

signature of Rani Venkatramani. He made corresponding entries in other books of accounts of the bank and the cheque was passed for payment by the petitioner. Here also she has affixed her initials for having verified the signature by putting the seal, 'signature verified' she had also authenticated the ledger and subsidiary sheet by affixing her initials. According to the respondent, Mukunthan received the sum of Rs. 50,000 and he paid to the petitioner a sum of Rs. 14,463. There was another fraudulent withdrawal of Rs. 40,000 from the same account by the said Mukunthan and the modus operandi was the same and the petitioner was paid a sum of Rs. 14,050.65. The Central Bureau of Investigation conducted the investigation and first information report was lodged on 15.7.1985. A police case was also registered against the petitioner and Mukunthan and the petitioner was placed under suspension on 31.7.1986. A criminal case was registered against the petitioner and Mukunthan and it was numbered as CC.26 of 1987 before the IX Additional Special Judge, Madras and the criminal Court on 30.9.1991 delivered the judgment holding that the petitioner and Mukunthan were guilty of the offences Under Sections 120(B), 467(3), 471 and 420 I.P.C. and Section 5(2) read with 5(1)(d) of the Prevention of Corruption Act, 1947. The petitioner was awarded a sentence of two years imprisonment and a fine of Rs. 500, in default of payment to suffer 6 months imprisonment. The Trial Court also suspended the sentence for a period of 2 months. The petitioner preferred an appeal on the file of this Court in C.A.No. 665 of 1991. This Court in Crl.M.P.No. 5520 of 1991 in C.A.665/91 suspended the sentence of imprisonment of the petitioner on 4.10.1991 and she was released on bail. This court by a subsequent order passed in Crl.M.P.No. 4793 of 1992 in C.A.665 of 1991 dated 14.7.1992 suspended the operation of the judgment in C.C.26 of 1987 on the file of the IX Additional Special Judge pending disposal of the criminal appeal. The respondent, as soon as the petitioner was convicted for the offences above mentioned, by the IX Addl. Special Judge, Madras, issued a show-cause notice to the petitioner as to why she should not be dismissed from service as per Regulation 4(h) of the Canara Bank Officer Employees' (Discipline and Appeal) Regulations, 1965, (hereinafter referred to as, 'Discipline and Appeal Regulations') and interims of Regulation 11 of the Discipline and Appeal Regulations. The petitioner was requested to make representation on the punishment to be imposed on her. The petitioner has approached this Court contending that she has preferred a criminal appeal against the conviction and the sentence recorded by the trial Court and the judgment of the trial Court has not become final. According to the petitioner, her appeal is both against the conviction as well as sentence Under Section 374 of the Code of Criminal Procedure and hence, it cannot be said that she has been convicted of a criminal charge as found in Regulation-11 of the Disciplinary and Appeal Regulations. The further contention of the petitioner is that in view of a decision of this Court in M. Palani v. The Executive Engineer, TNEB and Anr., 1990 L.W.Crl.337, the show- cause notice issued was illegal. The case of the petitioner is that her appeal is Under Section 374 of the code of Criminal Procedure and when the conviction awarded by the trial Court is under the consideration of the High Court, the conviction has not become the final and no further action can be taken on the basis that the conviction has become final. It is also stated in the additional affidavit filed by the petitioner that after noticing the stand of the respondent that this Court had not stayed the conviction, but only suspended the sentence, she has approached this Court again by filing, Crl.M.P.4793 of 1992 to suspend the operation of the judgment in C.C.26 of 1987 on the file of IX Addl. Spl. Judge. In the said Crl.M.P., the petitioner has stated that in order to avoid her being terminated from service, she has filed the petition Under Section 389(1) readwith Section 482 of the Code of Criminal Procedure to suspend the operation of the judgment of the trial court. She has, in the said petition, brought to the

attention of this court that is the department terminates her service, on the basis of the conviction even during the pendency of the appeal, she will be prejudiced and put to hardship and hence, she has prayed that this court should stay the operation of the judgment including conviction, in other words to grant stay of the conviction imposed on her in C.C.26 of 1987. According to the petitioner, this court has passed an order suspending the operation of judgment in C.C.26 of 1987 and since the operation of the judgment is suspended, the conviction on the criminal charge made in C.C.26/87 is also stayed and hence, Regulation 11 of the Disciplinary and Appeal Regulations cannot be invoked.

3. The respondent has filed a counter affidavit narrating the events leading to the conviction of the petitioner in the criminal case, and submitted that consequent to the conviction of the petitioner in the criminal court, the respondent issued a show-cause notice proposing punishment of dismissal from the service of the petitioner. The case of the respondent is that after the criminal court has found the petitioner was guilty of the offences, the respondent is entitled to take action under the relevant Regulation. According to the respondent, so long as the conviction stands, issue of notice under Regulation 11 cannot be faulted with. The case of the respondent is that the petitioner has been convicted for the offences involving moral turpitude and her retention in employment in the bank would expose the bank to the charge of violating the provisions of the Banking Companies Regulation Act, 1949. According to the respondent, the conviction by the trial court still stands and till it is set aside, it is open to the respondent to initiate disciplinary proceedings against the petitioner.

4. Mr. N.T. Vanamamalai, learned senior counsel for the petitioner submitted that this court has stayed the conviction and the effect of the order in Crl.M.P.4793 of 1992 is that the operation of the judgment is suspended during the pendency of the criminal appeal and when the judgment is not in force and it is not open to the respondent to initiate proceedings under Canara Bank Disciplinary and Appeals Regulations. He brought to my notice, a decision of Andhra Pradesh High court in Sundararamireddi v. State, 1990 Cri.L.J.167 wherein the Andhra Pradesh High Court held that an order of conviction is a part of the judgment and it is open to the criminal court to suspend the operation of the conviction which is a part of the judgment if that becomes necessary in a given case. According to the learned senior counsel for the petitioner when the conviction has been stayed in exercise of the powers Under Section 482 of the code of Criminal Procedure, by this court the judgment is not in force, there is no power to the respondent to issue a show-cause notice. He also brought to my notice, a decision of the Supreme Court in Rama Narang v. Ramesh Narang, , wherein the Supreme Court held that in a fit case if the High Court feels satisfied that the order of conviction needs to be suspended or stayed so that the convicted person does not suffer from certain disqualification provided for in any other statute, it may exercise the power. According to the learned senior counsel for the petitioner, attention of this Court was specifically invited to the show-cause notice issued by the respondent-bank and the attention of the court was drawn to the fact that prejudice would be caused if the order of termination is passed and it is only after satisfying itself, this Court has ordered the suspension of conviction and hence, learned senior counsel submitted that it is not open to the respondent to proceed further with the show-cause notice after the entire judgment is suspended by this Court.

5. Learned Counsel for the respondent submitted that this case is covered by a decision of the Supreme Court in *Dy. Director of Collegiate Education (Admn.) v. S. Nagoor Meera*, wherein the Supreme Court held that there can be no question of suspending the conduct which led to the conviction on a criminal charge. According to the counsel for the respondent, because the sentence or the order is suspended by the appellate Court on the ground that the Government servant/accused has been released on bail pending appeal, it is not a ground that prevents the authority from passing an order of dismissal or removal or reduction in rank of a Government Servant. According to the counsel for the respondent, the petitioner has been convicted of a serious offence by the criminal Court and if she is allowed to continue in service, it will have demoralising effect on other employees of the bank. Learned counsel for the respondent also submitted that on the basis of a decision of Supreme Court in *State of T.N. v. A. Jaganathan*, the order suspending the conviction should be construed as an order suspending the sentence. According to the learned counsel for the respondent, the petitioner has prayed for suspension of the operation of the judgment including the conviction, but this Court has ordered the stay of the operation of the judgment alone and other portion of the prayer regarding the stay of conviction was not granted. Hence, he submitted that it cannot be stated that the conviction was stayed by this Court. Strong reliance was placed by him on a Division Bench Judgment of this Court in *W.P.17011 of 1994 S. Vasundara v. Canara Bank rep. by its Chairman and Managing Director, Bangalore and Ors.*, I.L.R 1996 (3) 1005 between *S. Vasundara and Canara Bank rep. by its chairman and Managing Director and two others*, wherein this court has held that the bank can proceed with the disciplinary proceedings in view of the fact that only the sentence was suspended and the conduct which led to the conviction of the petitioner on criminal charges cannot also be suspended. He, therefore, submitted that this case is fully covered by the above said decision of this Court and the petitioner will not be prejudiced even if an order of dismissal is passed as the petitioner will be reinstated if ultimately she is acquitted of all the charges in the criminal appeal. He therefore, submitted that the respondent bank was justified in issuing show-cause notice calling for the explanation from the petitioner and the power of the bank is traceable to the Regulation 11 of the Discipline and Appeal Regulations of the said bank.

6. I have carefully considered the contentions of the learned senior counsel for the petitioner and the learned counsel for the respondent. It is now necessary to consider whether there was an interim stay of the conviction ordered by this Court in *CrI.M.P.4793 of 1992*. As already seen, this Court by an order dated 4.10.1991 in *CrI.M.P.5520 of 1991* suspended the sentence of imprisonment alone, the effect of the order is that the petitioner has to pay the fine of Rs. 500/- and that part of the order of the criminal court in *C.C.26 of 1987* was not suspended. There is no stay of the payment of fine of Rs. 500/- passed in pursuance of judgment in *C.C.26 of 1987* by the IX Addl. Special Judge, Madras. The petitioner subsequently brought to the attention of this Court that the respondent bank has taken a stand that this Court has suspended only the sentence but not stayed the conviction and it is on the basis of the stand taken by the respondent, this court, has ordered suspension of the operation or the judgment pending disposal of the criminal appeal. Though the counsel for the respondent has urged that this court has negated the plea of stay of conviction. I am not able to accept the contention of the learned counsel for the respondent. This court after noticing its earlier order suspending the sentence and taking note of the fact that if the conviction was not stayed, it would be prejudiced the petitioner, has suspended the operation of the judgment. In my view, this

Court has exercised the powers Under Section 482 of the Code of Criminal Procedure, and stayed the operation of the judgment including the conviction therein. It is now necessary to notice the decision of Andhra Pradesh High Court in Sundararamireddi's case, cited supra, wherein the Division Bench presided over by Jayachandra Reddy, J. (as His Lordship then was) held that the expressions, judgment and order have to be understood whenever they occur in any particular section of the Code in the context in which they are employed. The Division Bench also held that order of conviction is a part of the judgment and the same is followed by the sentence, if awarding of sentence is necessary. Learned Judge held that once a person is convicted and he challenges the judgment pronounced against him by the criminal court in an appeal, it is axiomatic that he can ask for suspension of execution of the sentence, if there is a sentence and he can as well ask for suspension of the operation of the conviction which is a part of the judgment if that becomes necessary in a given case. The Andhra Pradesh High Court on the scope of the powers of this Court to grant suspension of the conviction, on Sundararamireddi's case, 1990 Cri.L.J.167 cited supra held as under:-

At any rate, what we are concerned with in this batch of petitions is whether an appellate Court has power under S.389 of the Code to suspend the operation of the judgment, which includes the 'Conviction'. As we have already noted, under S.389 of the code, the Court can order suspension of the execution of sentence as well as the 'Order appealed against. The words 'Order appealed against' must be given a wider meaning as to include 'conviction' also, so that the Court in appropriate or exceptional cases can suspend an order of 'conviction'. We have taken this view having regard to the basic fact that the judgment of the trial court as a whole, convicting the appellant, is before the Appellate Court and the judgment declares conviction as well as the sentence, and also that the Appellate Court has got wide powers to alter a finding or reverse a finding, or sentence and even to acquit an accused. That being so, we find it difficult to hold that under S.389(l) of the Code the Appellate Court has no power to suspend 'conviction'."

7. In my view, the petitioner herein has asked for the suspension of the operation of the conviction which is a part of the Judgment and when this Court has suspended the operation of the judgment, it is effect means that this Court ordered suspension of the operation of the conviction. Hence, I am not able to accept the contention of the learned counsel for the respondent- bank that the order of conviction is not stayed. As laid down by Andhra Pradesh High Court, the order of conviction is a part of the judgment and when the judgment is stayed, conviction portion of the judgment is also suspended during the pendency of the appeal.

8. This position is also made clear by a decision of the Supreme Court in Rama Narang's case, cited supra wherein the Supreme Court held as Under:-

"Under the Criminal Procedure Code there are two stages in a criminal trial before a Sessions Court, the stage upto the recording of a conviction and the stage post-conviction upto the imposition of sentence. After the conviction is recorded, Section 235(2) inter alia provides that the Judge shall hear the accused on the

question of sentence and then pass sentence on him according to law. After the Court records a conviction, the accused has to be heard on the question of sentence and it is only after the sentence is awarded that the judgment becomes complete and can be appealed against Under Section 374 of the Code."

The Supreme Court also held that where the order of conviction may incur a disqualification, the attention of the appellate Court must be specifically invited to the consequence that is likely to fall to enable it to apply its mind to the issue since Under Section 389(1) it is under an obligation to support its order for reasons to be recorded by it in writing. In this case, the petitioner has approached this Court and brought the attention of this court to the consequence that would follow if the conviction is not suspended and it is, only after the court was satisfied, this court has granted interim stay of the suspension of the judgment. It is no doubt true that, the respondent-bank was not heard at the time of passing of the order of interim suspension of the judgment. However, the bank has not taken any action to modify the order. Therefore, I am of the view that it is not open to this Court to question the correctness of the order or the propriety of this Court in passing the order staying the operation of judgment in the criminal case.

9. Learned Counsel for the respondent-bank has brought to my attention a decision in State of T.N. v. A. Jaganathan, wherein the Supreme Court held that the discretionary power to suspend the conviction Under Section 389(1) or 482 Cr.P.C. should not be freely exercised. The facts of that case before the Supreme Court are almost similar to the facts of this case, Supreme Court observed that unlike Rama Narang case, , the respondent before the Supreme Court would not suffer any prejudice if the conviction was not stayed by the Criminal Court. The respondent-bank however, has not taken any steps to vacate the order of suspension of conviction as well as sentence. Hence, the decision of the Supreme Court in AJaganathan's case, , wherein the Supreme Court has held that the trifling matters should not be taken into consideration in order, suspension though applicable to the facts of the case, cannot be applied, because the order of this court in CrI.M.P. No. 4793 of 1992 is still operative. Therefore, I hold that this court has ordered suspension of conviction and sentence and both were suspending during the pendency of the criminal appeal.

10. The next question that arises is whether the respondent bank is entitled to proceed with the enquiry of the basis of the show- cause notice issued by the respondent bank. The bank relies upon Regulation No. 11 of the Disciplines and Appeal Regulations and the Regulation No. 11 runs as under:-

"Notwithstanding anything contained in Regulation 6 or Regulation 7 or Regulation 8 the Disciplinary Authority may impose any of the penalties specified in Regulation 4 if the officer employee has been convicted on a criminal charge, or on the strength of facts on conclusions arrived at by a judicial trial".

The regulation consists of two parts. The first part deals with a case where an officer employee has been convicted on a criminal charge. As I have already, held the conviction has been stayed by this court. The effect of the order of this Court is the operation of the judgment is stayed, i.e., this Court ordered suspension of the conviction and the operative part of the judgment of the criminal court is

stayed during the pendency of the criminal appeal. Under Regulation 11 it will be open to the bank to proceed against an employee if the employee has been convicted of a criminal charge. Since this court has stayed the conviction of the criminal charge, I am of the view that Regulation 11 is not applicable to the facts of the case. The respondent-bank has issued a show-cause notice on 02.11.1991 on the basis of the conviction of the petitioner in the criminal case. This Court subsequently, on 14.07.1992 stayed the operation of the judgment. Since this Court has stayed the conviction of the petitioner, it is impermissible for the bank to invoke the Regulation-11. It is also relevant to notice that the respondent-bank has not proceeded on the basis of the second part of the Regulation-11 which empowers the bank to impose penalty on the strength of the facts on conclusion arrived at by a judicial trial. Since the show cause notice was not been issued on the basis of the second part of Regulation No. 11, it is not necessary to consider whether it is permissible for the bank to proceed against the petitioner on the basis of the findings given by the trial court.

11. It is now necessary to consider a decision relied upon by the learned counsel for the respondent. He relied upon decision of the Supreme Court in *Dy. Director of Collegiate Education (Admit.) v. S. Nagoor Meera*, . In that case, the Supreme Court was considering the provisions of Article 311(2) of the Constitution of India and the Supreme Court has observed as under: -

"What is really relevant thus is the conduct of the government servant which has led to his conviction on a criminal charge. Now, in this case, the respondent has been found guilty of corruption by a criminal Court. Until the said conviction is set aside by the appellate or other higher court, it may not be advisable to retain such person in service. As stated above, if he succeeds in appeal or other proceeding, the matter can always be reviewed in such a manner that he suffers no prejudice."

It is relevant to notice that the Supreme Court was not dealing with the situation arising out of the suspension of the operation of the judgment. On the other hand, the Supreme Court was dealing with the Clause (a) of the second proviso to Article 311(2) which reads as under: -

"Provided further that this clause shall not apply (a) where a person is dismissed or removed or reduced in rank on the ground of conduct which had led to his conviction on a criminal charge."

The Clause (a) of the second proviso to Article 311 (2) is almost similar to the second part of Regulation No. 11 of the Regulations. Since the bank has not proceeded on the second part of the Regulation No. 11, the decision of the Supreme Court in *Dy. Director of Collegiate Education (Admn.) v. Nagoor Meera*, does not apply to the facts of the case.

12. The other decision relied upon by the learned counsel for the respondent is the decision of this Court in *5. Vasundara v. Canara Bank rep. by its Chairman and Managing Director, Bangalore and Ors.*, I.L.R.(1996) 3 Madras 1005 wherein this Court was dealing with the same Regulation No. 11 and in that case, there was only suspension of sentence and it was not a case of suspension of the judgment as well. This Court has held in that case that where only sentence was suspended and the conviction was not set aside pending disposal of the criminal appeal, the disciplinary authority can

take disciplinary proceedings on the basis of the conduct of the petitioner that led to the criminal case. This court has followed the decision of the Supreme Court in Dy. director of Collegiate Education (Admn.) v. Nagoor Meera, . But, as already stated, in that case, only the sentence was suspended and therefore this court has here held that the conduct which led to the conviction of the petitioner on criminal charges cannot be suspended. In this case, as already seen, the respondent bank has proceeded only on the basis of the conviction and not on the basis of the conduct which led to the criminal charge.

13. Learned counsel for the petitioner also relied upon a decision of the Supreme Court in S. Vasundara v. Canara Bank and Ors., 90 F.J.R.268 which affirms the judgment of this Court in S. Vasundara v. Canara Bank rep. by its Chairman and Managing Director, Bangalore and others, I.L.R. (1996) 3 Madras 1005, cited supra. There, the Supreme Court has held that if any delinquent employee of the bank was convicted of a criminal charge, if action is taken on the basis of the misconduct on the basis of the crime committed by the employee by abuse of the office or on the basis of an offence that led to the conviction on a criminal charge or on the strength of facts on conclusions arrived at by a judicial trial irrespective of the abuse of office, it is open to the bank to proceed with the disciplinary action. There, the Supreme Court also noticed that only the sentence was suspended. Here, it is a case of suspension of the operation of the judgment including the conviction. Therefore, the decision of this court as well as the decision of the Supreme Court are not applicable to the facts of the case. Hence, the impugned notice issued is quashed, However, it is made clear that it is open to the respondent bank to approach the criminal court for the modification of the earlier order of this court passed in Crl.M.P.4793/1992 dated 14th July, 1992 to take appropriate proceedings open to it under law.

The Writ Petition is allowed. No costs.