
in view the fact that nothing has been proved against the petitioner, we consider it appropriate to direct that the period of suspension shall be treated to have been spent on duty and that he would be entitled to full arrears of salary. He would be further compensated by payment of Rs. 25,000 on account of the protracted proceeding that he has faced.

(13) The writ petition is allowed in the above terms.

R.N.R

Before N.K. Agrawal, J.

B.K. AGGARWAL,—Petitioner

versus

STATE BANK OF INDIA & OTHERS,—Respondents

C.W.P. No. 11966 of 1998

12th October, 1999

Constitution of India, 1950—Art. 226—Indian Penal Code, 1860—S. 409—In 1995, FIR lodged by the Bank against the petitioner placing him under suspension for fraudulently withdrawing money from saving accounts—In 1997, CJM charging the petitioner under section 409 IPC—Departmental proceedings also initiated against him—Whether both the criminal proceedings and the disciplinary proceedings based on identical allegations go on simultaneously—Held, no—Disciplinary proceedings ordered to be stayed till the conclusion of the criminal trial.

Held, that the criminal case as well as the departmental proceedings are based on identical allegations. The matter was reported to the police by a senior officer of the Bank. The nature of evidence would also be similar in both the proceedings, though the standard of proof may indeed be different. In the criminal trial, standard of proof would be stricter. FIR was lodged on 31st October, 1995 whereas charge sheet in the disciplinary proceedings has been served on the petitioner on 18th December, 1997. In these circumstances, it is found appropriate that the disciplinary proceedings may await the outcome of the criminal case. The petitioner should not be asked to face two identical proceedings involving same facts and allegations. The questions to be decided in both the proceedings appear to be almost similar. In these circumstances, it would be just and fair to stay the disciplinary proceeding till the conclusion of the criminal trial.

(Para 11)

S.K. Mittal, Advocate *for the Petitioner.*

I.P.S. Doabia, Advocate *for the Respondents.*

JUDGMENT

N.K. Agrawal, J.

(1) This is a petition under Articles 226 and 227 of the Constitution for stopping the disciplinary proceedings against the petitioner till the decision in the criminal trial pending against him.

(2) The petitioner joined service with the State Bank of India as a Cashier in the year 1972. He was promoted as an Officer, Junior Management, Grade Scale I, in the year 1980. He was working in the year 1995 as the Assistant Manager at the Rewari Branch of the Bank. Certain fraudulent withdrawals of money were made from some saving accounts during the period from August to October 1995. Such withdrawals were to the tune of Rs. 2,28,500. An F.I.R. was registered by the police against the petitioner on 30th October, 1995 under Section 409 I.P.C. That report had been lodged by Shri H.K. Benal, Assistant General Manager.

(3) The petitioner has averred in his petition that a criminal case has been registered against him on the basis of certain confessions allegedly made by him. Actually, he had been kidnapped from Rewari on 30th October, 1995 and was beaten. He was forced to sign a confessional statement. His wife lodged an F.I.R. On 31st October, 1995. He was placed under suspension on 17th November, 1995. He was granted anticipatory bail on 2nd February, 1996. The challan was put up in the Court on 1st March, 1996. The Chief Judicial Magistrate, Rewari, framed charge under section 409 I.P.C. against him on 8th September, 1997. A charge sheet dated 18th December, 1997 was issued to the petitioner in the departmental proceedings. He has been asked to submit his reply to the charge sheet served on him in the disciplinary proceedings.

(4) The petitioner's case is that the allegations in the F.I.R. and the departmental charge sheet are the same. Both are based on the same facts and the documents. The petitioner would take his defence in the criminal case. He wrote to the Deputy General Manager, who is the disciplinary authority, that he is unable to submit his reply to the departmental charge sheet as it will prejudice his legal rights in the criminal case. He informed that he did not want to disclose his defence in the disciplinary proceedings prior to the disclosure in the criminal trial. He, therefore, requested the disciplinary authority to stay the

departmental proceedings till the final decision in the criminal case. The disciplinary authority has not stayed the enquiry.

(5) Learned counsel for the petitioner has argued that if the petitioner is compelled to take his defence in the departmental proceedings, his rights in the criminal case would be adversely affected. He has not yet disclosed his defence in the criminal case. The Enquiry Officer has directed the petitioner to put forward his defence failing which *ex parte* departmental proceedings would be initiated. The petitioner sent a representation on 7th March, 1998 stating therein that the disciplinary proceedings may be stayed. Since his request has not been accepted, the petitioner has come to this Court for the necessary relief.

(6) Learned counsel for the petitioner has placed reliance on a decision of the Supreme Court in *Kusheshwar Dubey vs. M/s. Bharat Coking Coal Ltd., and others (1)*. It has been held as under :—

“The view expressed in the three cases of this Court seem to support the position that while there could be no legal bar for simultaneous proceedings being taken, yet, there may be cases where it would be appropriate to defer disciplinary proceedings awaiting disposal of the criminal case. In the latter class of cases it would be open to the delinquent-employee to seek such an order of stay or injunction from the Court. Whether in the facts and circumstances of a particular case there should or should not be such simultaneity of the proceedings would then receive judicial consideration and the Court will decide in the given circumstances of a particular case as to whether the disciplinary proceedings should be interdicted, pending criminal trial. As we have already stated that it is neither possible nor advisable to evolve a hard and fast, straight-jacket formula valid for all cases and of general application without regard to the particularities of the individual-situation. For the disposal of the present case, we do not think it necessary to say anything more, particularly when we do not intend to lay down any general guideline.”

(7) The Supreme Court had again an occasion to examine a similar matter in *State of Rajasthan vs. B.K. Meena & Others (2)*. It was noticed in that case that the approach and the objective in the criminal proceedings and the disciplinary proceedings were altogether distinct and different. In the disciplinary proceedings the question was whether

(1) A.I.R. 1988 Supreme Court 2118

(2) 1996 (4) Recent Services Judgements 402

the respondent is guilty of such conduct as would merit his removal from service or a lesser punishment, as the case may be. Whereas in the criminal proceedings the question was whether the offences registered against him under the prevention of corruption Act (and the Indian Penal Code, if any) are established and if established what sentence should be imposed upon him.

(8) Learned counsel for the petitioner has, on the strength of the aforesaid two decisions, submitted that in the case of the present petitioner, the criminal case has been launched by none other than the Assistant General Manager of the Bank. The facts are identical in the criminal case as well as the disciplinary proceedings. Since the allegations are not at all different and relate to the withdrawals from the saving accounts, the defence of the petitioner shall not only be prejudiced but the question to be decided in both the proceedings may be similar.

(9) Learned counsel for the respondent—Bank has, on the other hand, contended that there is no sufficient reason to stay the disciplinary proceedings. The petitioner had mis-appropriated the funds of the customers of the Bank. Both the criminal proceedings and the disciplinary proceedings may go on simultaneously. Reliance is placed by the learned counsel on a decision of the Karnataka High Court in *Sri N. Shivalingaiah vs. Karnataka State Co-operative Marketing Federation Ltd. and others* (3). It was noticed in that case that investigation by the police was not complete nor any charge sheet had been filed. Mere pendency of the criminal case was said to be not a bar against taking the disciplinary action. It was further seen that enquiry did not involve any complicated question of law and facts. Therefore, stay of the disciplinary proceedings was said to be not justified.

(10) A Division Bench of this court had also an occasion to consider a similar question in *R.N. Yadav, Accountant, Sugar Mills, Shahabad Markanda, Haryana vs. State of Haryana and others* (4). It was noticed in that case that the statements of the prosecution witnesses under Section 161, Criminal Procedure Code, had already been recorded during investigation. It was held that the interest of the delinquent officer also lay in a prompt conclusion of the disciplinary proceedings. It was ordered that the domestic enquiry should be expeditiously concluded.

(11) On a consideration of the controversy, it is found that the criminal case as well as the departmental proceedings are based on identical allegations. The matter was reported to the police by a senior

(3) 1996 (2) Services Law Reporter 602

(4) 1997 (2) Recent Services Judgements 551

officer of the Bank. The nature of evidence would also be similar in both the proceedings, though the standard of proof may indeed be different. In the criminal trial, standard of proof would be stricter. The matter involves the questions of facts as well as law. FIR was lodged on 31st October, 1995 whereas charge sheet in the disciplinary proceedings has been served on the petitioner on 18th December, 1997. In these circumstances, it is found appropriate that the disciplinary proceedings may await the outcome of the criminal case. The petitioner should not be asked to face two indetical proceedings involving same facts and allegations. The questions to be decided in both the proceedings appear to be almost similar. In these circumstances, it would be just and fair to stay the disciplinary proceedings till the conclusion of the criminal trial.

(12) In the result, the writ petition is allowed. The disciplinary proceedings against the petitioner shall remain stayed till the conclusion of the criminal trial. No costs.

S.C.K.

Before Jawahar Lal Gupta and V. M. Jain, JJ.

STATE OF HARYANA,—Petitioner

versus

RAM KISHAN,—Accused/Respondent

Murder Reference No. 2 of 1998

17th December, 1999

Indian Penal Code, 1860—S. 302—Arms Act, 1959—Ss. 25 and 27—Trial Court awarding death penalty to accused for killing five unarmed and innocent members of a family including a pregnant woman—Cruel and callous crime—No unreasonable or unexplained delay in lodging F.I.R.—Recovery of gun from the accused without licence which was used for crime—Case of prosecution duly established—Appeal dismissed—Death sentence confirmed—Conviction of co-accused also upheld.

Held, that motive is usually a double edged weapon. If a person has a motive to kill, the other side may have a motive to falsely implicate. However, in the present case, it is clear that Ram Kishan had a reason to be offended with the complainant side. He had taken the extreme step of virtually wiping out the entire family. We find nothing to suggest that the complainant side had any reason to leave out the culprit or to falsely implicate Ram Kishan.

(Para 25)