

CASE NO.:
Appeal (civil) 8046 of 2004

PETITIONER:
Jasbir Singh

RESPONDENT:
Punjab & Sind Bank & Ors.

DATE OF JUDGMENT: 31/10/2006

BENCH:
S.B. Sinha & Markandey Katju

JUDGMENT:
J U D G M E N T

S.B. SINHA, J :

Appellant herein was appointed as peon and has been working in the said capacity in Respondent \026 Bank with effect from 4.4.1984. He was confirmed in his services. On an allegation made that he had forged the signature of a depositor Rattan Singh and fraudulently withdrawn a sum of Rs. 25,000/- on 11.4.1989, a departmental proceeding was initiated against him. A criminal case was also initiated under Section 409/201 of the Indian Penal Code. He was acquitted in the criminal case. A purported confession which he had allegedly made was found to have been done under undue coercion. The learned Chief Judicial Magistrate noticed that even Rattan Singh did not make any complaint. The other officers who were said to be involved were not proceeded against.

It was held:

- (i) A sum of Rs. 25,000/- was not standing to the credit of so called Rattan Singh on 11th April, 1989.
- (ii) The appellant was found to have been threatened by the officers.
- (iii) His complaints soon after his release from the hands of the bank officials had not been taken note of.
- (iv) An adverse inference should be drawn against the prosecution witness Mukhtiar Singh in regard to encashment of the withdrawal form without observing due formalities.
- (v) Above all, Rattan Singh was not examined.

It was also held:

"Sixthly, the amount in question is alleged to have been misappropriated on 11th April, 1989, whereas this defalcation was detected on 29th May, 1989 obviously after a long spell. Extra judicial confession can be taken of not only a case of its having been made shortly after the preparation of crime. Seventhly, the evidence adduced by the prosecution is so incompatible inconsistent and weak that no conviction can be passed thereon. Eighthly, there is no direct evidence worth the name of the record connecting the accused in any manner with her offence."

However, despite acquittal, the departmental proceedings continued. The said departmental proceedings ended in an exparte report submitted on 24.5.1996 holding that the charges against the appellant had been proved stating:

"In the circumstances and facts stated above, I am of the considered opinion that the C.S.E. has absented himself intentionally inspite of sufficient opportunity provided to him. In the absence of any defence documents/ witnesses, I have no second choice except to reply on the documents & witnesses produced by the P.O. The Management witnesses and the documents are a sufficient proof to agree with the arguments pleaded by P.O. that Sh. Jasbir Singh, C.S.E. has fraudulently withdrawn Rs. 25000/- on 11.4.89 through & withdrawal form by forging the signature of a depositor Sh. Rattan Singh of S.B. A/c 7069 he received the payment himself from the cashier and to hide this fraudulent transaction, he tempered the record, torn off the relevant portion of SB log book, removed the ledger sheet of SB A/c 7069 and destroyed the withdrawal form dated 11.4.89 of Rs. 25000/- bearing S.B. A/c No. 7069."

Interestingly, Respondent \026 Bank also filed a suit against the appellant for recovery of a sum of Rs. 25,000/-. The suit was decreed. On an appeal preferred thereagainst, the Addl. District Judge, Faridkot by a judgment and decree dated 3.3.2001, on analysis of the evidences brought on records, held that Respondent \026 Bank miserably failed to prove that the appellant has withdrawn the said sum of Rs. 25,000/- and the allegation against him that he had embezzled an amount of Rs. 25,000/- was not proved and, thus, it was not entitled to recover the said amount.

The correctness of the said judgment was not questioned by the Bank. It, thus, attained finality.

Respondent \026 Bank, therefore, invited findings of a competent civil court on the issue as to whether the appellant has committed any embezzlement or not. It is not in dispute that embezzlement of fund was the principal charge against the appellant in all the proceedings. He is also said to have been forged the signature of the account holder and tempered with the records. Respondent \026 Bank failed to prove any of these charges before any court of law.

In Capt. M. Paul Anthony v. Bharat Gold Mines Ltd. and Another [(1999) 3 SCC 679], this Court held that if departmental proceedings and criminal case are based on identical set of facts, evidence in both the proceedings are common and employee is acquitted in the criminal case, an order of dismissal already passed may also be set aside.

The learned counsel for the respondent contended that the decision of this Court has no application. He may be right. But, it is not necessary for us to delve deep into the matter as we are of the opinion that the judgment in civil matter having attained finality, the same was binding on Respondent \026 Bank.

In Narinder Mohan Arya v. United India Insurance Co. Ltd. & Ors. [JT 2006 (4) SC 404], it was opined:

"It is, however, beyond any controversy that when a crucial finding like forgery is arrived at on an evidence which is non est in the eye of the law, the civil court would have jurisdiction to interfere in the matter."

It was further observed:

"It is also of some interest to note that the first respondent itself, in the civil suit filed by the firm relied upon a copy of the report of the enquiry officer. The first respondent, therefore, itself invited comments as regards the existence of sufficiency of evidence/acceptability thereof and, thus, it may not now be open to them to contend that the report of the enquiry officer was sacrosanct.

We have referred to the fact of the matter in some detail as also the scope of judicial review only for the purpose of pointing out that neither the learned Single Judge nor the Division Bench of the High Court considered the question on merit at all. They referred to certain principles of law but failed to explain as to how they apply in the instant case in the light of the contentions raised before them. Other contentions raised in the writ petition also were not considered by the High Court."

In a case of this nature, therefore, the High Court should have applied its mind to the fact of the matter with reference to the materials brought on records. It failed so to do.

The High Court relied upon a decision of this Court in Pratibha Rani v. Suraj Kumar [AIR 1985 SC 628 : (1985) 2 SCC 370] where a statement of law was made that criminal law and civil law can be allowed to operate side by side. There is no quarrel with the said proposition.

The High Court, however, failed to take note of the decision of the civil court. It could not have refused to look into the materials on record solely relying on or on the basis of clause 19.3 (c) of Bipartite Settlement to hold that the departmental proceedings could have been initiated even after the judgment of acquittal is passed in criminal case. We, therefore, are of the opinion that impugned judgments cannot be sustained.

It was, however, urged that no back wages should be directed to be paid. Reliance in this behalf has been placed on U.P. State Brassware Corpn. Ltd. and Another v. Uday Narain Pandey [(2006) 1 SCC 479]. In that case, this Court was dealing with a power of the Industrial Courts under Section 11-A of the Industrial Disputes Act. Therein, as the establishment was closed, the question of reinstatement of the workman did not arise. Still then, 25% back wages were directed to be paid as also the compensation payable in terms of Section 6-N of the U.P. Industrial Disputes Act.

The judgments of both the Civil Court and the Criminal Court established that the appellant was treated very unfairly and unreasonably. For all intent and purport, a criminal case was foisted upon him. A confession, according to learned Chief Judicial Magistrate, was extracted from him by the bank officers in a very cruel manner. It is, therefore, not a case where back wages should be denied. Respondent 026 Bank has tried to proceed against the appellant both in a civil proceedings as well as in a criminal proceedings and at both the independent forums, it failed.

We, therefore, are of the view that the impugned orders and judgments cannot be sustained. They are set aside accordingly. The appeal is allowed. The appellant is directed to be reinstated with back wages, continuity of service and other consequential benefits. The respondent shall also pay and bear the costs of the appellant which is quantified Rs. 10,000/-.