<u>*THE HONOURABLE SRI JUSTICE P.NAVEEN RAO</u>

<u>+W.P. No. 39248 OF 2015</u>

% 11.12.2015

K S Brahmananda Rao S/o late Sri Kondalarayudu
R/o Plot No. 21, Annapurna Enclave,
Serilingampally, Hyderabad

Petitioner

Vs.

$State bank of India
Rep by its General Manager,
State Bank Bhavan, Madam Cama Road,
Mumbai and another

Respondents

!Counsel for the petitioner : Dr. P.B.Vijaya Kumar

Counsel for the Respondents: Sri B.S.Prasad

<Gist :

>Head Note:

? Cases referred:

(2015) 2 SCC 365
(1999)3 SCC 679
(2012) 1 SCC 442

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

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WRIT PETITION NO. 39248 of 2015

Between :
K S Brahmananda Rao S/o late Sri Kondalarayudu
R/o Plot No. 21, Annapurna Enclave,
Serilingampally, Hyderabad

Petitioner

And

State bank of India
Rep by its General Manager,
State Bank Bhavan, Madam Cama Road,
Mumbai and another

Respondents

JUDGMENT PRONOUNCED ON : 11.12.2015

THE HON'BLE SRI JUSTICE P.NAVEEN RAO

1. Whether Reporters of Local Newspapers may :
   Be allowed to see the Judgments ? :

2. Whether the copies of judgment may be marked : YES
   To Law Reporters/Journals :

3. Whether Their Ladyship/Lordship wish to : YES
   See fair Copy of the Judgment ? :

HONOURABLE SRI JUSTICE P. NAVEEN RAO

<u>WRIT PETITION No. 39248 of 2015</u>

Date :11-12-2015

Between :

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Rep by its General Manager,
State Bank Bhavan, Madam Cama Road, Mumbai and another

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The Court made the following:

HONOURABLE SRI JUSTICE P. NAVEEN RAO

WRIT PETITION No. 39248 of 2015

ORAL ORDER:

In this writ petition, petitioner challenges continuation of the disciplinary proceedings commenced in pursuant to issuance of charge memo dated 29.6.2004 on the ground that on the same set of facts and evidence, he was acquitted in criminal case.

2. Heard the learned counsel for petitioner and learned standing counsel for respondent bank.

3. Facts which are relevant for the purpose of deciding the issue in this writ petition are as under: While petitioner was working as Clerk-cum-Cashier in the Komaragiripatnam, Allavaram mandal, East Godavari District, petitioner was served with a charge memo dated 29.6.2004 leveling various allegations. Substance of the allegations is, having received the cash from the depositor, he did not remit the amount to the concerned account; made fictitious credit entries in the ledger transactions sheet; illegally credited the draft of a customer into the joint account of the petitioner and his mother; on the day cash was received from the customer, same was not debited immediately; debited savings bank withdrawals from his mother account even though there is no sufficient cash balance.

4. On various allegations, which also form part of the charge memo dated 29.6.2004, crime No. 34 of 2002 was registered against the petitioner in Allavaram police station. On investigation, police filed charge sheet. In C.C. No. 34 of 2002, the Additional First Class Magistrate, Amalapuram by judgment pronounced on 23.6.2006 convicted and sentenced the petitioner on the charges leveled against him. In Criminal Appeal No. 163 of 2006, the II Additional District and Sessions Judge, East Godavari at Amalapuram confirmed the conviction and sentence.

5. Petitioner challenged the conviction and sentence imposed by

the trial Court as confirmed by the first Appellate Court by preferring Criminal Revision Case No. 73 of 2008 before this Court. This Court by judgment dated 27.2.2015 allowed the Criminal Revision by setting aside the conviction and sentence and acquitted the petitioner of the charges alleged against him.

6. Petitioner filed W P No. 12907 of 2004 challenging the continuation of the disciplinary proceedings, pending criminal proceedings. This Court by order dated 14th September, 2004 made in WPMP No. 16478 of 2004 stayed the disciplinary proceedings in respect of charges which are similar to the charges in C.C. No. 341 of 2002 and granted liberty to disciplinary authority to proceed in respect of other charges. However, entire departmental proceedings were kept in abeyance.

7. Based on conviction, petitioner was dismissed from service by proceedings dated 14.7.2006. As a consequence to setting aside the conviction and sentence, petitioner was reinstated into service by proceedings dated 23.9.2015. In the same proceedings, respondent bank informed the petitioner that bank reserves right to proceed with the disciplinary action as already initiated. Petitioner was also informed that the period of absence from service from the date of dismissal and date of reinstatement would be decided in disciplinary proceedings. Notice dated 23.10.2015 was issued directing the petitioner to appear before the enquiry officer. Petitioner assails the further continuation of the disciplinary proceedings in this writ petition.

8. Learned counsel for petitioner contends that the charges leveled against the petitioner in the disciplinary proceedings as well as in the criminal proceedings are on same set of facts and the allegations are also same and since petitioner is now acquitted of the charges leveled against him by this Court in the Criminal Revision Case filed by him, disciplinary proceedings are not maintainable. Without appreciating the legal position on the maintainability of the disciplinary proceedings, as a consequence to setting aside of the charges leveled against him in the criminal proceedings, the disciplinary authority illegally decided to continue the disciplinary

proceedings, which amounts to total non application of mind. The disciplinary authority ought to have considered the scope of continuation of the disciplinary proceedings, once petitioner was acquitted.

9. By placing reliance on the decision of the Supreme Court in **S.BHASKAR REDDY Vs. SUPERINTENDENT OF POLICE**[1], learned counsel for petitioner contended that petitioner was given honourable acquittal by the High Court and once petitioner is acquitted honorably, no further proceedings can be maintained on the same set of allegations and charges.

10. The stand of learned standing counsel for respondent bank is that it is permissible for the employer to proceed with the departmental proceedings, even if, the employee is acquitted of the charges leveled against him in the criminal proceedings and there is no prohibition in proceeding against him.
More so, petitioner on his own volition obtained stay of departmental proceedings during the pendency of criminal proceedings and it is not open to the petitioner to stall the departmental proceedings after conclusion of the criminal proceedings. Learned standing counsel stated that the principle of law is well settled.

11. The point for consideration in this writ petition is whether it is permissible to continue the disciplinary proceedings initiated on 29.6.2004 when petitioner was acquitted of criminal charges leveled against him on same set of facts?

12. Petitioner is an employee of respondent Bank, which is a nationalized Bank. His conditions of service are regulated by service regulations. An employee can be proceeded against, if he commits misconduct during the course of employment. Initiation of the disciplinary proceedings on allegation of misconduct can result in imposing appropriate punishment as prescribed in the service regulations. Depending on the nature of allegations made, the punishment that can be imposed vary from warning to that of dismissal/removal from service. If an employee in public

service also commits certain illegalities which also attract prosecution under the criminal law, criminal proceedings can also be initiated against such person and he can be found guilty of criminal misconduct and be punished. Service regulations enable dismissal/ removal from service summarily and without holding further enquiry based on conviction in Criminal Court.

13. Relationship of employer and employee is based on trust and confidence. Disciplinary action against employee is based on regulation of the conduct of the employee in the course of his service, whereas, criminal proceedings are for committing crime against the society, though such crime is alleged to have been committed in the course of public employment

14. Criminal law requires that the charges leveled against a person must be proved beyond reasonable doubt and burden lies on the prosecution to establish the charges. Any deficiency and element of doubt will go against the prosecution. On the contrary, departmental proceedings are with reference to conduct of the employee and continuation of the relationship of employee and employer. The relationship of employee –employer is based on trust and confidence of the employer on the employee. Even if the employer has an element of doubt on the conduct and character of the employee, employer may not be willing to continue the employee in his service. However, before taking action against an employee in public service, the employer is required to follow due process and on establishment of charges leveled against him appropriate punishment can be imposed. In domestic enquiry on the charges leveled against the employee what is required is preponderance of probabilities of the charges leveled against him. If employee admits of the allegations made against him, there is no need to conduct enquiry and employee can straight away be dismissed. An admission made in any form can be used against him to hold him guilty. Circumstantial evidence can be taken into consideration to hold that the charge is proved and to impose appropriate punishment. Thus, nature of evidence required in the departmental proceedings is quite different from the nature of evidence that is required in criminal proceedings.

15. Disciplinary proceedings and criminal proceedings operate in

two different fields. Disciplinary action relates to employer losing trust and confidence on the employee on account of alleged misconduct affecting the image and reputation of the employer and ensuring strict discipline in the work force. Criminal proceedings relate to committing of crime by a person who is in public employment, during the course of his employment and in gross abuse of his position in the service or outside the employment. Ordinarily, if employee is involved in crime outside the employment, the employer do not initiate departmental action but waits for the outcome of the criminal prosecution. During the course of investigation/trial, employee can be placed under suspension. On the contrary, if employee indulges in acts of misconduct which also attract criminal prosecution, ordinarily employer not only lodges complaint with the police but also initiates departmental action.

16. The principle of law is well settled by the catena of decisions of the Supreme Court and this Court that ordinarily there is no bar in continuation of the disciplinary proceedings simultaneously with the criminal proceedings or after the conclusion of the criminal proceedings, even if, the employee is acquitted of the charges leveled against him in the criminal proceedings. Certain exceptions are carved out to this general principle.

17. There are long line of precedents on the issue of desirability to continue domestic enquiry pending criminal investigation/trial and further continuation of disciplinary action after employee is acquitted of charges in the criminal case.

18. In a given case, the constitutional Court may inject employer proceeding with the disciplinary action when on the same set of facts and evidence, criminal law is set in motion. This injection is based on the principle that evidence brought on record in domestic enquiry may seriously prejudice the defense of the employee in the criminal case. Based on the facts of given case, the Constitutional Courts have taken the view that continuation of disciplinary enquiry is not desirable, if on the same set of charges and allegations employee is an accused in criminal case.

19. However, it is not in all cases Courts stay domestic proceedings.

The employee has to satisfy that the charges leveled in both proceedings are same, the material facts and evidence relied on by the employer is same and complicated questions of law and facts are involved. Even if employee satisfies above parameters, Court may refuse to stay the domestic enquiry if there is a likelihood of delay in commencement and conclusion of criminal proceedings.

20. In **CAPT M.PAUL ANTHONY Vs BHARAT GOLD MINES LTD AND ANOTHER**[2] the Supreme Court has delineated the principles on the desirability of continuing disciplinary proceedings during the pendency of the criminal proceedings. The parameters of judicial intervention are set out in para 22. They read as under:

> "22**.** The conclusions which are deducible from various decisions of this Court referred to above are:
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> (*i*) Departmental proceedings and proceedings in a criminal case can proceed simultaneously as there is no bar in their being conducted simultaneously, though separately.
>
> (*ii*) If the departmental proceedings and the criminal case are based on identical and similar set of facts and the charge in the criminal case against the delinquent employee is of a grave nature which involves complicated questions of law and fact, it would be desirable to stay the departmental proceedings till the conclusion of the criminal case.
>
> (*iii*) Whether the nature of a charge in a criminal case is grave and whether complicated questions of fact and law are involved in that case, will depend upon the nature of offence, the nature of the case launched against the employee on the basis of evidence and material collected against him during investigation or as reflected in the charge-sheet.
>
> (*iv*) The factors mentioned at (*ii*) and (*iii*) above cannot be considered in isolation to stay the departmental proceedings but due regard has to be given to the fact that the departmental proceedings cannot be unduly delayed.
>
> (*v*) If the criminal case does not proceed or its disposal is being unduly delayed, the departmental proceedings, even if they were stayed on account of the pendency of the criminal case, can be resumed and proceeded with so as to conclude them at an early date, so that if the employee is found not guilty his honour may be vindicated and in case he is found guilty, the administration may get rid of him at the earliest."

21. The next aspect, which is extensively debated and there are long line of precedents, is on the issue of further continuation of disciplinary action after employee is acquitted of criminal charge on which domestic proceedings commenced but were stayed/ commenced but not concluded/

commenced and resulted in imposing punishment, pending criminal prosecution.

22. In **NOIDA ENTERPRENEURS ASSOCIATION Vs NOIDA AND OTHERS**, the Supreme Court set aside the decision of the Government not to continue departmental proceedings on the ground that the concerned employee was acquitted of the charges leveled against him in the criminal proceedings, holding that continuation of departmental proceedings is not barred merely because employee is acquitted in criminal case.

23. In **DIVISIONAL CONTROLLER, KARNATAKA STATE ROAD TRANSPORT CORPORATION Vs M.G.VITTAL RAO**[3], Supreme Court reviewed the entire case law on the subject and held that even if a person stood acquitted by criminal Court, domestic enquiry can be held, as standard of proof required in domestic enquiry and that in a criminal case are altogether different. In criminal case, standard of proof required is beyond reasonable doubt while in domestic enquiry it is the preponderance of probabilities that constitutes the test to be applied. (Para 11). Supreme Court held that **CAPT M PAUL ANTHONY** does not lay down the law of universal application. Facts, charges and nature of evidence, etc., involved in an individual case would determine as to whether decision of acquittal would have any bearing on the findings recorded in the domestic enquiry. (Para 24).

24. On analysis of the precedents on the subject common thread that can be seen in the judicial pronouncements is merely because an employee is acquitted of the charges in the criminal proceedings, it does not automatically absolve an employee of the charges leveled against him in the departmental proceedings, as a matter of course. It is also to be noted that even if the allegations are based on the same set of facts and material on record both in departmental and criminal proceedings, it does not automatically follow that employer is required to be restrained from proceeding departmentally. There can be no straitjacket formula to set aside departmental proceedings as a consequence to the acquittal in criminal case. Each case is required to be considered on its merits, by the

Constitutional Courts whenever an issue of this nature comes up before the Court.

25. Learned counsel forcibly contended that petitioner was honourably acquitted in Criminal Revision and therefore disciplinary action is not maintainable. Guided by the principles laid down by the Supreme Court and this Court in long line of precedents, it is necessary to analyse the findings recorded by this Court in the Criminal Revision, to appreciate the contention of learned counsel for petitioner.

26. As seen from the judgment of this Court in Criminal Revision Case No. 73 OF 2008 dated 27.2.2015 though witnesses stated that amount of account holder by name Kalavathi was credited to the account of K.S.Veni-staff No.47, PW-4 did not state that accused was responsible for such crediting. This Court observed that "***in the absence of evidence of the customer of the bank as to which of the staff members of the bank they had entrusted the cash or other negotiable instruments, it is not possible to safely conclude that such entrustment, if any, was only to the accused***."

27. It appears from the reading of the judgment that though accused has given a letter admitting misappropriation of the amount to a tune of Rs.4 lac and odd, he has denied in his defence. This Court noticed that Ex.P 22 report did not make a reference to this letter. Prosecution witness No.3 who was said to have attested Ex.P.22 did not make any whisper in his evidence about confession letter given by the accused. On analysis of the evidence regarding confession of the petitioner, this Court observed " ….***Therefore, there is no evidence of reliable character to show that the accused gave exhibit P-20 letter and that the accused had personally credited the above said sum to the sundry deposit account***."

28. This Court also noticed that the prosecution failed to notice the sundry deposit account in support of its case that amount was deposited. This Court noticed that for the reasons best known, officers of the bank did not produce material documents before the investigation agency. This Court

therefore held that "……..***evidence brought on record is not sufficient to safely conclude that the evidence is credible and is sufficient to establish the complicity of the accused***."

29. On tallying of signatures obtained by the Magistrate during the course of investigation and opinion of the forensic expert, this Court refused to take cognizance of the said report on the ground that the signatures were obtained by the Magistrate while the investigation was in progress and no case was taken on the file and pending before the Court of the learned Magistrate.

30. This Court further held that original statements of the witnesses recorded under Section 161 of Criminal Procedure Code during the course of the investigation were not filed. The Court further held that ***failure to produce original statements of the witnesses resulted in serious prejudice to the accused and the same is not a defect which can be cured by having resort to the provision of Section 465 of Cr.P.C.***.

31. In Criminal Revision, this Court, therefore was of the view that "Courts below had failed to appreciate the evidence in proper perspective and had failed to give cogent and convincing reasons in support of the findings recorded while overruling the contentions of the accused".

32. In **BHASKAR REDDY** case, the employees were Armed Reserve constables. They were implicated in criminal case on the charge of committing murder. In the criminal case they were acquitted honourably. The charges leveled against appellants in departmental proceedings were same. Having regard to honourable acquittal in criminal case, the Supreme Court held the findings recorded in departmental proceedings resulting in dismissal from service as illegal. The said decision do not come to the aid of the petitioner.

33. The material evidence which was discarded in criminal Court to hold petitioner as not guilty can still be looked into in departmental proceedings. This Court is not elaborating on the nature of evidence that can be looked into in departmental proceedings, as it may prejudice the case of

petitioner. Suffice it to note that it cannot be said that acquittal was honourable, warranting setting aside disciplinary action only on the ground of acquittal in criminal case, moreover, even before disciplinary action is concluded.

34. For the aforesaid reasons, the writ petition fails and accordingly the same is dismissed. No costs. Having regard to the same, miscellaneous petitions, if any pending, are closed.

P NAVEEN RAO,J

DATE: 11-12-2015
TVK

HONOURABLE SRI JUSTICE P. NAVEEN RAO

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WRIT PETITION No. 39248 of 2015

Date :11-12-2015

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[1] (2015) 2 SCC 365

[2] (1999)3 SCC 679

[3] (2012) 1 SCC 442