

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 15.04.2016
CORAM
THE HONOURABLE MR.JUSTICE HULUVADI G.RAMESH
AND
THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

W.P.No.12832 of 2012
and
M.P.No.1 of 2012

1. Union of India rep.by
The General Manager
Southern Railway
Chennai 600 003.
 2. Senior Divisional Commercial Manager
Chennai Division
Park Town, NGO Annexe
Chennai 600 003.
 3. The Senior Divisional Personnel Officer
Chennai Division
Park Town, NGO Annexe
Chennai 600 003.
- ... Petitioners

vs

1. The Registrar
Central Administrative Tribunal
Madras Bench
Chennai 600 104.
 2. T.Paranjothy
- .. Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of certiorari to call for the records of the first respondent in O.A.No.913 of 2010 including the order dated 29.09.2011 and to quash the same.

For Petitioners : Mr.V.G.Suresh Kumar

For Respondents : Mr.L.Chandrakumar for R2
R1- Tribunal

O R D E R
(Order of the Court was made by HULUVADI G.RAMESH, J.,)

The prayer in the writ petition is for the issuance of a writ of certiorari to call for the records of the first respondent in O.A.No.913 of 2010 including the order dated 29.09.2011 and to quash the same.

2. The brief facts of the case runs as follows:

(i) While the petitioner was working as Station Master Grade-II at Singaperumal Koil Railway Station, he was entrusted with two duties, viz., (i) operating duties, i.e., duties in connection with reception and dispatch of trains and (ii) commercial duties, i.e., regarding issuance of tickets to the required destination when booking clerks were not available. During the relevant period from 26.05.2004 to 01.06.2004, when the regular Commercial Clerk working in the said station went on leave, M/s. R.Ramesh and V.Kannan were doing the duties of the said clerk and many complaints were received as against them. After detailed inspection and auditing, the inspection team found that season tickets and printed cash tickets worth Rs.1,11,615/- were missing. Therefore, the said two officials were suspended and that the second respondent-Paranjothi was issued with "Censure" vide order dated 01.09.2015. However, he did not challenge the said order. Further, the missing amount of Rs.1,11,615/- was directed to be recovered from those two officials in the ratio of 50: 50. In the meantime, the said V.Kannan expired on 02.11.2007. Since the second respondent herein was in-charge of the said station during the relevant period the missing amount was directed to be jointly recovered from the second respondent and the said Ramesh and an order to that effect was passed directing to recover a sum of Rs.5,000/- per month from their salary.

(ii) Challenging the said order, the second respondent filed O.A.No.913 of 2010 before the Central Administrative Tribunal, Madras Bench and the Tribunal vide its order dated 29.09.2011 allowed the said application and also further held that if any recovery has been made from the second respondent, the same has to be refunded forthwith.

(iii) Aggrieved by the said order, the Union of India representing the Southern Railways is before this Court.

3. Learned Standing Counsel appearing for the petitioner-Railways submits that the Tribunal failed to see that the responsibility has been fixed on the second respondent only

after conducting due enquiry as per the Railway Services (Discipline and Appeal) Rules, 1968. Further, the misappropriation has taken place due to the dereliction of duty by the second respondent, who was in the supervisory capacity at that point of time. He further submits that the reasoning given by the Tribunal, while allowing the application filed by the second respondent that, since the second respondent was already imposed with the penalty of Censure, if the recovery is imposed, the same would amount to double jeopardy and the same is unsustainable in law. The recovery has been ordered only because of the loss caused to the public exchequer. Accordingly, he prays for setting aside the order passed by the Tribunal.

4. Per contra, the learned counsel appearing for the contesting respondent submits that without any notice being issued to the second respondent, due to the death of one Kannan, his salary was attached for recovery of 50% of the misappropriated amount. He also submits that when the second respondent was already imposed with the penalty of 'Censure' for dereliction of his duty at the relevant point of time, the recovery order passed against him is against the principles of natural justice. Accordingly, he submitted that the Tribunal, only after considering the facts and circumstances, passed the impugned order, and the same warrants no interference in this writ petition.

5. Heard both sides and perused the order passed by the Central Administrative Tribunal, Madras Bench.

6. It appears that based on the complaint of misappropriation, enquiry was held and that the subordinates of the second respondent were found guilty of the same and they were imposed with the major punishment of reduction to the next lower grade as Commercial Clerk in the pay scale of Rs.3200-4900 for a period of three years with cumulative effect and change of position in their seniority in their cadre with effect from 11.11.2006. Further the contesting respondent was imposed with the penalty of 'Censure', which is a minor punishment. It is further seen that for the loss caused to the Railways, the misappropriated amount was directed to be recovered from the two delinquent officials. However, as one of the delinquent died, order was passed to attach the salary of the second respondent, who was in-charge of the duty at the relevant point of time. Mere imposition of punishment alone would not be sufficient for the alleged misappropriation committed by the delinquent officials and for the loss caused to the Railways, the amount has to be recovered from the persons responsible. However, in the present case one of the delinquent employee died and therefore, the amount due from him is sought to be recovered from his superior supervisory authority.

7. In *Sangeetaben Mahendrabhai Patel vs State of Gujarat* [2012 (7) SCC 621], the Supreme Court had occasion to consider the facets of "double jeopardy" and in the said context held as under:-

"30. In *State of Rajasthan v. Hat Singh* this Court held that as the offence of glorification of Sati under Section 5 of the Rajasthan Sati (Prevention) Act, 1987, is different from the offence of violation of prohibitory order issued under Section 6 thereof, the doctrine of double jeopardy was not attracted for the reason that even if the prohibitory order is promulgated, a subsequent criminal act even if it falls under Section 5 could not be covered under Section 6(3) of the said Act. Doctrine of double jeopardy is enshrined in Section 300 Cr.P.C and Section 26 of the General Clauses Act. Both the provisions employ the expression "same offence".

31. Similar view has been reiterated by this Court in *State of Haryana vs. Balwant Singh*, observing that there may be cases of misappropriation, cheating, defamation, etc., which may give rise to prosecution on criminal side and also for action in civil court/other forum for recovery of money by way of damages, etc. Therefore, it is not always necessary that in every such case the provisions of Article 20(2) of the Constitution may be attracted.

32. In *Hira Lal Hari Lal Bhagwati v. CBI* this Court while considering the case for quashing the criminal prosecution for evading the customs duty, where the matter stood settled under the Kar Vivad Samadhan Scheme, 1998, observed that once the tax matter was settled under the said Scheme, the offence stood compounded, and prosecution for evasion of duty, in such a circumstance, would amount to double jeopardy.

33. In view of the above, the law is well settled that in order to attract the provisions of Article 20 (2) of the Constitution i.e. doctrine of autrefois acquit or Section 300 Cr.P.C or Section 71 IPC or Section 26 of the General Clauses Act, the ingredients of the offences in the earlier case as well as in the latter case must be the same and not different. The test to ascertain whether the two offences are the same is not the identity of the allegations but the identity of the ingredients of the offence. Motive for committing the offence cannot be termed as the ingredients of offences to determine the issue. The plea of autrefois acquit is not proved unless it is

shown that the judgment of acquittal in the previous charge necessarily involves an acquittal of the latter charge."

8. In the present case, it is not in dispute that punishment of "Censure" was imposed on the second respondent herein, which has not been challenged and the same has attained finality. However, subsequent to the death of one of the delinquent/employee, who was involved in the misappropriation and against whom an order of recovery was passed, the second respondent has been fastened with the liability to make good the loss suffered by the Railways due to the said misappropriation.

9. Under Articles 20-22 of the Indian Constitution, provisions are made relating to personal liberty of citizens and others. Article 20(2) expressly provides that : "No one shall be prosecuted and punished for the same offence more than once." Offences such as criminal breach of trust, misappropriation, cheating, defamation etc., may give rise to prosecution on criminal side and also for action in civil court/other forum for recovery of money by way of damages etc., unless there is a bar created by law. In the first proceedings, the second respondent was tried for dereliction/negligence of duty due to which the misappropriation happened, whereas by the second order direction was issued for recovery of the loss caused to the Railways. The above orders clearly reveal that the second respondent is not tried for the same offence of misconduct after the punishment is imposed for a proven misconduct but only further action is taken for recovery of the loss caused and, therefore, both are entirely different. Therefore, in the considered opinion of this Court, there is no question of applying principle of double jeopardy to the present case.

10. When such is the position, the reasoning given by the Tribunal that the recovery ordered as against the second respondent would amount to double jeopardy, when already the penalty of 'Censure' has been issued, cannot be sustained. Accordingly, we set aside that portion of the order passed by the Central Administrative Tribunal, Madras Bench.

11. Inasmuch as recovery procedure cannot be initiated against a dead person, recovery was directed to be made from the second respondent, who was in the supervisory position and due to his negligence in duty, misappropriation had happened. As it is submitted by the learned counsel for the second respondent that no notice whatsoever was issued before initiating recovery proceedings, we hereby direct the authority concerned to issue show cause notice and after affording an opportunity of hearing

to the second respondent, appropriate order be passed with regard to the loss caused to the Railways for the recovery of the amount in accordance with law. Such exercise shall be completed by the petitioners within a period of three months from the date of receipt of a copy of this order.

12. With the above observation, this writ petition is allowed in part. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

vj2

To

The Registrar
Central Administrative Tribunal
High Court Compound
Chennai 600 104.

+1cc to Mr.V.G. Surshkumar, Advocate, S.R.No.24028
+1cc to Mr.L. Chandrakumar, Advocate, S.R.No.23910

AD(CO)
EU(13/06/2016)

सत्यमेव जयते

W.P.No.12832 of 2012

WEB COPY