

SA Pathan

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

WRIT PETITION NO.3006 OF 2018

ICICI Bank Ltd. (Formerly known as
Industrial Credit & Investment
Corporation of India) ... Petitioner

V/s.

The State of Maharashtra & Anr. ... Respondents

Mr. Girish Kulkarni, Senior Counsel a/w. Mayur
Bhojwani a/w Karan Parmar i/by Manilal Kher Ambalal
& Co.

Mr. A. R. Patil, APP for Respondent No.1-State.

CORAM : AMIT BORKAR, J.

DATED : APRIL 5, 2023

P.C.:

1. The Petition is directed against the order dated 17 February, 2018, issuing process against the Petitioner for offences under Sections 405, 406, 418, 420, 109 read with Section 34 of the Indian Penal Code (for short "IPC").

2. Respondent No.2 who is the original complainant has filed Regular Criminal Case No.313 of 2015 before the Judicial Magistrate First Class, Islampur, Sangli contending that her husband was serving with the erstwhile Sangli Bank Limited, Sangli for more than 30 years. During his lifetime, he opted for pensionary benefits, but the Bank did not released pensionary

benefits. He passed away on 13 January, 2006. Respondent No.2 being wife of the employee was entitled to family pension as per amalgamation agreement executed between the erstwhile Sangli Bank and Petitioner. However, family pensionary benefits were not released in favour of Respondent No.2.

3. Learned trial Court by impugned order issued process against the Petitioner.

4. Aggrieved thereby, the Petitioner has challenged order of issuance of process. This Court on 30 July, 2018 issued notice to Respondent No.2 and protected the Petitioner by granting ad-interim relief in terms of prayer clause (c).

5. The office remark dated 18 March, 2019 indicates that the notice of Petition was served on Respondent No.2. Additionally, Respondent No.2 was served privately by the Petitioner. This Court by order dated 19 August, 2019 in order to grant one more opportunity to Respondent No.2, directed the Petitioner to serve the notice on Respondent No.2. Accordingly, the Petitioner filed affidavit of service dated 8 November, 2019. On 16 January, 2020, this Court issued notice for final disposal to Respondent No.2. Office remark dated 24 January, 2022 indicates that notice for final disposal served on Respondent No.2. Mr. B.K. Paranjape appeared on 28 February, 2020 for Respondent No.2, but failed to file *vakalatnama*. Today, none appears for Respondent No.2, despite service of notice for final disposal.

6. On perusal of the averments in the complaint, it appears that the gist of allegations made against the Petitioner is to the

effect that despite promise in amalgamation agreement to extend facilities of family pension such benefits are not released either in favour of deceased-husband or complainant. Letter dated 15 November, 2002 indicates that the husband of Respondent No.2 resigned from his service. It is well settled that once an employee resigns the employee and the employer's relationship comes to an end as per conditions of service. The person who has resigned is not entitled to any benefits, is not provided in service conditions.

7. The Hon'ble Apex Court in the case of *BSES Yamuna Power Ltd. vs. Ghanshyam Chand Sharma & Anr.*,¹ interpreted the distinction between resignation and voluntary retirement. Relying on Rule 26 of the applicable service Rules, it was held that once a person resigned, he is not entitled to the benefits.

8. The Petitioner-Bank has placed reliance on clause 22 of Sangli Bank Limited Employees Resolution Pension Regulations 1995. Perusal of Rule 22(1) of the Regulations takes away rights of an employee to claim pensionary benefits once he resigned from service. In the absence of challenge to the documents produced on record namely letter of resignation dated 15 November, 2002, the irresistible conclusion which needs to be drawn is that the husband of Respondent No.2 had resigned from employment. Therefore, the wife of such an employee is not entitled to pensionary benefits.

9. Assuming that the pensionary benefits were payable. The essential ingredients of the offences alleged against the Petitioner are not made out, unless, there is material to show that such

1. 2019 SCC OnLine SC 1557.

ingredients are fulfilled.

10. On perusal of complaint and material on record, I am satisfied that accepting the contents of the complaint as true and considering material on record, no offences as alleged against the Petitioner are made out.

11. For the aforesaid reasons, Rule is made absolute in terms of prayer clause (b).

(AMIT BORKAR, J.)