IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 03.12.2024

PRONOUNCED ON : 19.12.2024

CORAM:

THE HON'BLE DR.JUSTICE ANITA SUMANTH
AND
THE HON'BLE MR.JUSTICE G.ARUL MURUGAN

W.A.No.1321 of 2019
and C.M.P.No.8979 of 2019

C.Punniyakotti	...	Appellant / Petitioner

versus

The Managing Director, Tamil Nadu Zari Limited, Industrial Estate, Kanchipuram - 631 502.	...	Respondent / Respondent

PRAYER: Writ Appeal filed under Clause 15 of the Letters Patent against the order dated 26.02.2019 in W.P.No.12582 of 2018.

For Appellant	:	Mr.N.G.R.Prasad for Mr.R.Rajaram
For Respondent	:	Mr.R.Neelakandan Additional Advocate General Assisted by Mr.P.S.Sivashanmugasundaram

JUDGMENT

[*Judgment* of the Court was made by ***G.ARUL MURUGAN, J.***]

This intra-court appeal is preferred as against the order dated 26.02.2019 in W.P.No.12582 of 2018, wherein the writ petition preferred challenging the charge memo came to be dismissed.

2. The appellant, who was working as storekeeper in the respondent undertaking, was posted as cashier for the period from 21.05.2010 to 24.07.2011. Earlier, one R.Mani had been working as cashier from 1999 onwards till 20.05.2010. There was a shortfall in the amount remitted to the bank accounts and therefore, a charge memo came to be issued as against the said R.Mani wherein a sum of Rs.68,46,000/- was found to have not been deposited in the bank and thereby misappropriated.

3. Pursuant to the charge memo, an enquiry was conducted and ultimately the said R.Mani was dismissed from service. Further, a criminal case has been registered against the said R.Mani and since he had admitted his guilt and also had repaid a sum of Rs.16,00,000/- to the respondent undertaking, a suit had been filed as against the said R.Mani in O.S.No.57 of 2013 on the file of the District Court No.II, Kancheepuram, seeking recovery of a sum of Rs.52,48,717/- after deducting the amount of Rs.16,00,000/- repaid by him.

4. While the proceedings stood thus, the appellant was issued with the charge memo dated 19.10.2017 charging him for having manipulated the statement of accounts by utilising forged bank statement and misappropriating the company cash of Rs.9,15,000/- for the period from 27.05.2010 to 07.06.2011. The appellant had submitted a reply dated 16.01.2018 and not satisfied with the reply, an enquiry officer has been appointed and the appellant had participated in the enquiry.

5. However, when the enquiry was pending, the appellant had preferred the writ petition challenging the charge memo issued against him on the ground that when already one R.Mani has been charged in respect of the misappropriation, including for this period, the proceedings initiated by issuing a charge memo for the same period cannot be maintained, particularly when already R.Mani has been punished and further he has admitted his guilt and also partly repaid the amount.

6. The learned single Judge by observing that in fact the appellant had also been involved in connivance with the other officials and the said R.Mani wherein a sum of Rs.16,00,77,090/- was misappropriated, for which a separate charge memo was issued to him and further when serious charges of misappropriation were made in the impugned charge memo and the appellant having submitted his reply and also participated in the enquiry, had to face the disciplinary proceedings and the challenge to charge memo can be maintained only on limited grounds of lack of jurisdiction, malafide intention, by an incompetent authority or in violation of any statutory rules, had dismissed the writ petition.

7. Assailing the order of the writ court, the appellant had preferred the above appeal.

8. Mr.N.G.R.Prasad, learned counsel for the appellant argued that with respect to the shortfall of money credited into the bank account for the period from 1999-2000 to 2011-2012, the impugned charge memo issued as against the appellant for a particular period 2011-2012 cannot be maintained. It is his further contention that the said R.Mani, who was working as cashier and involved in misappropriation, had admitted his guilt and has also repaid a sum of Rs.16,00,000/- and while so, the charge in respect of a sum of Rs.9,15,000/- made against the appellant, which is already covered in the proceedings initiated against R.Mani, cannot be sustained.

9. It is his further submission that when the respondent themselves had lodged a complaint only as against R.Mani who was the cashier and also F.I.R. came to be registered as against him and further when already an enquiry has been conducted wherein R.Mani was found responsible for the misappropriation and loss for which punishment of termination from service has been imposed against him, the petitioner cannot be proceeded for the same charge of misappropriation for the same amount.

10. He further submitted that in fact R.Mani had admitted his guilt and also repaid a sum of Rs.16,00,000/- out of the misappropriated sum of Rs.68,48,717/- and further accepting the same, the respondent had filed a suit in O.S.No.57 of 2013 on the file of the District Court No.II, Kancheepuram, only as against the said R.Mani for recovery of the balance sum of Rs.52,48,717/- after deducting the amounts paid by him. There is no occasion or necessity for the respondent to initiate proceedings as against the appellant in respect of a portion of the amount that is already covered in those proceedings.

11. The learned counsel further contended that the said R.Mani had all along worked as cashier and even though the appellant was in-charge for the short duration, still R.Mani had the entire control in respect of the cash and was making the deposits and only as such he had admitted the entire misappropriation amount and he has also been facing the proceedings, both civil and criminal and had also already suffered a punishment of termination from service.

12. The learned counsel therefore submitted that the second charge memo cannot be issued for the same occurrence and therefore the charge memo cannot be allowed to be proceeded and sought for indulgence of this Court. In support of his contentions, the learned counsel for the appellant relied on the following decisions:-

i. *Chief of Army Staff v. Major Dharam Pal Kukrety [(1985) 2 SCC 412]*
ii. *Siemens Ltd. v. State of Maharashtra [2007 (1) CTC 844]*
iii. *Union of India v. Vicco Laboratories [2008 (2) CTC 511]*
iv. *Union of India v. K.D.Pandey [2003-III-LLJ-557]*

13. Mr.R.Neelakandan, learned Additional Advocate General appearing for the respondent argued that the appellant was working as cashier in the respondent undertaking from 21.05.2010 to 24.07.2011 and during this period, cash belonging to the company of a sum of Rs.9,85,000/- was taken for deposit in the State Bank of India, Kancheepuram, and the appellant had only deposited a sum of Rs.80,000/- through vouchers and had misappropriated the remaining cash of a sum of Rs.9,15,000/- and manipulated the statement of accounts by utilising forged bank statement and as such the proceedings initiated as against the said R.Mani has nothing to do with the present charges framed as against the appellant.

14. He further contended that apart from another charge memo wherein the appellant, along with others and the said R.Mani, were charged in respect of the misappropriation of a huge sum of Rs.16,00,77,090/-, the appellant is also facing a criminal case on the file of the Chief Judicial Magistrate, Chengalpet, initiated by the Vigilance and Anti Corruption Department in Crime No.3 of 2017 as against him and his wife in respect of the possession of disproportionate resources to the tune of Rs.49,44,769/-.

15. The learned Additional Advocate General further submitted that when the appellant was appointed on compassionate grounds initially on daily wages, he had been involved in the misappropriation of cash of the respondent and in fact, even the said R.Mani is none other than his own uncle. He further contended that the said R.Mani had filed a written statement in the suit denying his admission of the misappropriated amount and in the suit the documents containing the statement of accounts and vouchers manipulated and created by the appellant herein by which a sum of Rs.9,15,000/- was misappropriated had been filed.

16. He further contended that when the disputed facts are involved, the challenge made to the charge memo cannot be sustained and in support of his submissions, the learned Additional Advocate General relied on the decisions of the Hon'ble Supreme Court in the case of ***State of Orissa v. Sangram Keshari Misra*** reported in ***(2010) 13 SCC 311*** and ***Ministry of Defence v. Prabhash Chandra Mirdha*** reported in ***(2012) 11 SCC 565*** and sought for dismissal of the writ appeal.

17. Heard the rival submissions and perused the materials available on record.

18. The appellant, who was working in the respondent undertaking as storekeeper was posted as cashier on 21.05.2010 and in fact, R.Mani, who was working as cashier, was relieved and the charge of cashier was handed over to the appellant. The relevant portion of the order is extracted hereunder:-

> *"**2)**. In super session of the earlier orders issued the following Reentrustment of work is hereby ordered:*
>
> *(i)Thiru.R.Mani, Cashier is directed to handover the stock of scrap materials to Thiru.S.Pitchaikani, Storekeeper and also he is directed to hand over the post of Cashier to Thiru.C.Punniakotti, Accounts Assistant and report to the Managing Director immediately. He shall continue to hold the post of CPC testing Section in-charge.*
>
> *(ii)Thiru.S.Pitchaikani, Storekeeper is directed to take over the stock of scrap materials from Thiru.R.Mani, Cashier with immediate effect.*
>
> *(iii)Thiru.C.Punniakoti, Accounts Assistant is hereby directed to take over the post of Cashier from Thiru.R.Mani*
>
> ***3)**. This order shall take effect immediately."*

19. Subsequently, by order dated 25.07.2011, the post of cashier was directed to be handed over to one S.Pitchaikani, Assistant, with immediate effect. Therefore, it is evident that the appellant was working as cashier in the respondent undertaking from 21.05.2010 to 25.07.2011. While so, a charge memo was issued on 19.10.2017 to the appellant for the charge of misappropriating the cash of Rs.9,15,000/- by manipulating the statement of accounts by utilising forged bank statements. The relevant portion of charge memo is extracted as under:-

> *"It is seen from records of the Company, Thiru C.Punniyakotti, Junior Assistant/Accounts Assistant had worked as Cashier incharge for the periods from 21.05.2010 to 24.07.2011.*
>
> *While preparation of Bank Reconciliation Statement in respect of State Bank of India, Kancheepuram, for the aforesaid period there was a discrepancy of Rs.9,15,000/- (Rupees Nine Lakh Fifteen Thousand only) ie, the Company cash taken for deposit in to the Bank during your period as Cashier is Rs.9,85,000/- whereas the actual cash deposited by you in to the Bank is only Rs.80,000/-, thereby caused a discrepancy of Rs.9,15,000/-. This was confirmed by the original Bank statement received from the State Bank of India, Kancheepuram. It was ascertained and confirmed that the Bank Statement furnished by you during the period was not at all issued by the Bank, hence, you are charged that you have manipulated the Statement of Accounts by utilizing the forged Bank statement and misappropriated the Company cash of Rs.9,15,000/-. The details of short remittance arrived after reconciliation with the original Bank Statement is furnished below.*
>
> ***Bank name / Account No: State Bank of India, Kancheepuram/10943970608***

Voucher / Challan Date	*Amount as per Voucher / Challan Rs.*	*Amount as per SBI Statement Rs.*	*Difference amount Rs.*
27.05.2010	*85,000/-*	*5,000/-*	*80,000/-*
07.08.2010	*1,25,000/-*	*5,000/-*	*1,20,000/-*
02.09.2010	*1,10,000/-*	*10,000/-*	*1,00,000/-*
22.11.2010	*2,25,000/-*	*25,000/-*	*2,00,000/-*
23.12.2010	*1,25,000/-*	*25,000/-*	*1,00,000/-*
15.03.2011	*1,75,000/-*	*5,000/-*	*1,70,000/-*
07.06.2011	*1,50,000/-*	*5,000/-*	*1,45,000/-*
Total:	***9,95,000/-***	***80,000/-***	***9,15,000/-***

> *For the above lapses you are directed to remit the misappropriated sum of Rs.9,15,000/- immediately to Tamil Nadu Zari Limited.*
>
> *Otherwise, suitable disciplinary action will be initiated against*

you as per the Staff Service Rule of Tamilnadu Zari Ltd, under Section IV - 4.1 a and 4.1 b. You are directed to offer your explanation with respect to the charges framed against you and your decision regarding remittance of said misappropriated amount, within 7 days on receipt of this memorandum, in writing to this office, unless otherwise the things will be dealt with based on merits and evidences."

20. The appellant had submitted a reply on 16.01.2018 admitting the position that during the period from 21.05.2010 to 24.07.2011 he was given the post of cashier as additional charge and it is his only contention that the said R.Mani, who was the earlier cashier for nearly 20 years, continued to look after the works of cashier and he had thereby remitted the deposits in the Bank. Not satisfied with the reply, the respondent had appointed an enquiry officer and the appellant had also participated in the enquiry and pending enquiry, he had preferred the writ petition challenging the charge memo.

21. The crux of the submissions of the learned counsel for the appellant is that, already a charge memo was issued in respect of R.Mani on 24.08.2013 in respect of misappropriation of a sum of Rs.68,46,000/- and that relates to the period from 03.03.2001 to 07.06.2011. R.Mani who was the erstwhile cashier had accepted the misappropriation and had also repaid a sum of Rs.16,00,000/-. For recovery of the balance amount, the respondent had also initiated civil proceedings in O.S.No.57 of 2013 as against the said R.Mani.

22. Further, a complaint had also been lodged before the police as against R.Mani for manipulation and forging the bank statements and misappropriating a sum of Rs.68,48,717/- and a criminal case has also been registered as against him. Further based on the charge memo issued against him, an enquiry had been conducted and R.Mani was held responsible for misappropriation of this entire amount, based on which he has also been terminated from service.

23. While so, in respect of the sum of Rs.9,15,000/- for the period from 21.05.2010 to 24.07.2011, a second charge memo had been issued to the appellant for the same charges which have been levelled against R.Mani. It is the vehement contention that when it was already found that the misappropriation had been done by R.Mani and part of the amount has been recovered and the recovery proceedings for the balance amount are pending against him, the impugned charge memo issued against the appellant cannot be maintained for the same amount.

24. From the perusal of the records, it could be seen that even though a sum of Rs.68,48,717/- was found to have been misappropriated and proceedings have been initiated as against R.Mani who was the erstwhile cashier, admittedly the appellant had been working as cashier for a period from 21.05.2010 to 24.07.2011 and in that period, out of the total sum of Rs.9,85,000/- taken for deposit, the appellant had only remitted a sum of Rs.80,000/- and there was a shortfall of Rs.9,15,000/- in respect of the remittances made in the State Bank of India, Kancheepuram.

25. Though at first blush the arguments seem to be attractive, the fact remains that the appellant had worked as cashier for this period and not only there is a shortfall of deposit to a tune of Rs.9,15,000/- but also the statement of accounts has been manipulated and forged bank documents have been created, which have been utilised for misappropriation of these amounts.

26. The respondent has also filed those documents before the Civil Court in Exs.A.299 to A.319, to evidence that the appellant had indulged in manipulation during the above period. Therefore, in so far as the charges framed against the appellant regarding manipulation of statement of accounts by utilizing the forged Bank statement for misappropriating the cash during the period when admittedly he worked as the cashier, the factual issues have to be enquired into and it is for the appellant to participate in the proceedings and put forth his defence.

27. When the charges levelled against the appellant is substantiated by the materials placed including the payment vouchers, remittance receipts and statement of Bank accounts prepared by him as a cashier during the relevant period from 21.05.2010 to 24.07.2011, he is bound to face the enquiry. In fact when the appellant admits his role as cashier during that period, he only pleads that the erstwhile cashier Mani was still having control over the cash and remittances, which are all factual issues that can be put forth by him during the enquiry if he has any materials in that regard and the charge memo cannot be quashed on these grounds.

28. As rightly noted by the writ court, the grounds for challenging the charge memo are very limited on the grounds of jurisdiction, malafideness and against statutory provisions. The writ petition challenging the charge memo on this ground of second charge for the same occurrence is not factually correct and is rightly dismissed by the writ court.

29. The decision relied on by the learned counsel for the appellant in *K.D.Pandey*'s case cited supra, is in respect of a second enquiry on the same set of charges, which was held not permissible. But in the instant case, the charge is not only in respect of the recovery of Rs.9,15,000/- which also according to the respondent does not form part of the total amount for which Mr.Mani has been charged, but the charge is also in respect of the manipulation and creation of forged documents and bank statements by the appellant for the period during which he discharged his duties as cashier.

30. Regarding the decisions in *Major Dharam Pal Kukrety*'s case and *Siemens Ltd*.'s case, they are in respect of the notice issued without jurisdiction and with predetermined mind. Even in the decision relied on by the appellant in *Vicco Laboratories*'s case, the Hon'ble Supreme Court held that the writ petition can be entertained if the issuance of notice is without jurisdiction or abuse of process, but the interference at show cause notice stage should be rare and not in routine manner. Further there can be no interference where factual adjudication is necessary. Therefore, the decisions relied on by the learned counsel for the appellant do not support the facts of the present case.

31. In the decision relied on by the learned Additional Advocate General for the respondent in the case of ***State of Orissa v. Sangram Keshari Misra*** reported in ***(2010) 13 SCC 311***, the Hon'ble Supreme Court held that it is unnecessary to examine the contentions in respect of its correctness or truth, as it is the function of the disciplinary authority. The relevant paragraph is extracted hereunder:-

> *"**10**. Though there appears to be some merit in the said contentions of the first respondent, it is unnecessary to examine the correctness of these contentions as normally a charge-sheet is not quashed prior to the conducting of the enquiry on the ground that the facts stated in the charge are erroneous. It is well settled that the correctness or truth of the charge is the function of the disciplinary authority (vide Union of India v. Upendra Singh [(1994) 3 SCC 357 : 1994 SCC (L&S) 768 : (1994) 27 ATC 200] SCC p. 362, para 6). Therefore we reject the contention that the charge ought to have been quashed without reserving to the State to proceed in accordance with law."*

32. Further, in the decision relied on by the Additional Advocate General for the respondent in the case of ***Ministry of Defence v. Prabhash Chandra Mirdha*** reported in ***(2012) 11 SCC 565***, the Hon'ble Supreme Court held that the challenge to the charge memo can be made only on limited grounds and the same cannot be quashed at the initial stage, as it would be a premature stage to deal with the issues. The relevant paragraph is extracted as under:-

> *"**12.** Thus, the law on the issue can be summarised to the effect that the charge-sheet cannot generally be a subject-matter of challenge as it does not adversely affect the rights of the delinquent unless it is established that the same has been issued by an authority not competent to initiate the disciplinary proceedings. Neither the disciplinary proceedings nor the charge-sheet be quashed at an initial stage as it would be a premature stage to deal with the issues. Proceedings are not liable to be quashed on the grounds that proceedings had been initiated at a belated stage or could not be concluded in a reasonable period unless the delay*

creates prejudice to the delinquent employee. Gravity of alleged misconduct is a relevant factor to be taken into consideration while quashing the proceedings."

33. It is also contended by the learned Additional Advocate General for the respondent that the erstwhile cashier R.Mani is none other than the uncle of the appellant and therefore he even might have wanted to protect the appellant from the disciplinary proceedings by admitting the misappropriation for the entire period. However, he had denied admitting any of those charges in the statements filed by him before the Civil Court. The relevant portion of the written statement filed by R.Mani before the Civil Court is extracted hereunder:-

> *"**9**.The defendant denies the averment that he has confessed and admitted that he has caused the misappropriation. The defendant states that a group of persons and goondas came to his residence and threatened the defendant and his family members to sign in a paper, where they have already typed the contents of admitting the guilt. Though the defendant resisted to sign in the paper, he was assaulted by the hooligans. The defendant to save his life from the hooligans had no other option except to sign in the paper brought by the plaintiff's henchman. The above incident had been witnessed by the neighbours of the defendant and they are prepared to give evidence before this Hon'ble Court about the culpability of the plaintiff's hooligans in getting the signature of the defendant in the paper, which now being claimed as admission of guilt and confession.*
>
> ***10**. The defendant sates that any confession either in writing or oral before the authorities are not valid and cannot be relied upon by the courts unless the same is done before the judicial authorities."*

34. Further, when R.Mani was not working as a cashier during the period from 21.05.2010 to 24.07.2011 and when admittedly the appellant was discharging the duties of cashier in this period and remittances have been made through vouchers and the bank statements have been prepared and manipulated to show the deposits through which only a deposit of Rs.80,000/- was made in the bank account of the respondent and a sum of Rs.9,15,000/- was misappropriated, the respondent has rightly issued the charge memo by framing the charges for manipulation and forging the bank statements and also for misappropriation.

35. It is also brought to the notice that the appellant along with R.Mani and other employees, had been charged for misappropriation to a tune of Rs.16,00,77,090/- and further the appellant is facing a vigilance case initiated in Crime No.3 of 2017 pending in Spl.S.C.No.10000013/2022 on the file of the Chief Judicial Magistrate, Chengalpet, for possessing disproportionate resources to the tune of Rs.49,44,769/-. It is therefore submitted that the appellant cannot simply neglect the charges by shifting the blame to R.Mani.

36. Though the submissions are made in respect of the other pending cases, we are not inclined to go into those aspects in the instant appeal. Even though recovery proceedings had been initiated as against R.Mani which are pending and disciplinary proceedings had been initiated against him and he has been punished, still the appellant is liable to face the proceedings, particularly when the charges framed against him is in respect of the manipulation and forging of the bank documents and receipts for the purpose of misappropriation, during the admitted period 2010-2011 when the appellant discharged his duties as cashier.

37. When these factual details are ought to be enquired into by the disciplinary authority, it is not a case of being without jurisdiction or a second charge for the same issues as projected by the appellant. As rightly pointed out by the learned single Judge, when serious charges of forging and manipulation of records are involved and charged against the delinquent appellant and when the appellant had also submitted his reply and participated in the enquiry proceedings, the challenge made to the charge memo is not sustainable.

38. In such circumstances, we see no error or infirmity in the order of the learned single Judge in dismissing the writ petition.

39. In view of the same, the Writ Appeal stands ***dismissed***. There shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

[A.S.M.J.,] [G.A.M.J.,]
19.12.2024

Speaking order
Index : Yes
Neutral Citation : Yes

sri

To

The Managing Director,
Tamil Nadu Zari Limited,
Industrial Estate,
Kanchipuram - 631 502.

Dr. ANITA SUMANTH, J.
AND
G.ARUL MURUGAN, J.

sri

Pre-Delivery Judgment made in
W.A.No.1321 of 2019
and C.M.P.No.8979 of 2019

19.12.2024