Lakshman Kumar Mondal Vs U. Co. Bank and Others

Court: Calcutta High Court

Date of Decision: Jan. 24, 2002

Acts Referred: Constitution of India, 1950 â€" Article 226
Criminal Procedure Code, 1973 (CrPC) â€" Section 2

Citation: (2004) 1 CHN 321 : (2004) 2 LLJ 614

Hon'ble Judges: D.K. Seth, J

Bench: Single Bench

Advocate: Subrata Talukdar, for the Appellant; C.R. Bakshi, for the Respondent

Final Decision: Dismissed

Judgement

D.K. Seth, J.
The petitioner has challenged the departmental proceedings on the ground that the chargesheet could not be issued and no

departmental proceeding could be initiated and proceeded with, in view of Clause 6.3 of the Manual on disciplinary action and related matters of

UCO Bank read with Clause 2.1 thereof. According to the petitioner, a disciplinary proceeding starts with the issue of the chargesheet, as is laid

down in Clause 2.1 of the Manual. As such, issue of chargesheet is a step for proceeding departmentally. In terms of Clause 6.3, a departmental

proceeding cannot be proceeded against a delinquents, if steps have been taken to prosecute an employee or get him prosecuted for an offence

involving moral turpitude, unless he is put on trial within a year of commission of offence. According to the learned Counsel for the petitioner, the

expression ""commission of offence"" means the day when the commission of offence is brought to the notice of the prosecuting authority, namely,

the date of lodging of the FIR and as such, unless one year expires from the lodging of the FIR, the departmental proceeding cannot be initiated.

He also relies on the decision in Capt. M. Paul Anthony Vs. Bharat Gold Mines Ltd. and Another, , in support of his contention.

2. The learned Counsel for the respondents, on the other hand, points out to clause 19.4 of the Bipartite Settlement on the basis of which Clause

6.3 of the Manual was so incorporated. Relying on the said provision, the learned Counsel for the respondents contends that the one year embargo

is related to the date of commission of offence and not the date of lodging of the FIR. He also contends that neither Clause 6.3 nor Clause 19.4 of

the settlement proscribe issuing of the chargesheet. It is only the proceeding of the departmental enquiry that is prescribed. Therefore, the

chargesheet was rightly issued and it could be proceeded with, since one year from the commission of offence has already expired. The decision in

Capt. M. Paul Anthony (supra) does not apply in the present case. Alternatively, he submits that if the period of one year is calculated from the

date of commission of offence, in that event, chargesheet that has been issued on 5th March, 2001, is a day long after lapse of one year after

commission of offence. As such the same cannot be said to be invalid. He relied on the decision of this Court in Sekhar Chandra Saha v. West

Bengal State Warehousing Corporation and Ors., reported in 1994 Lab. I.C.331.

3. I have heard the respective Counsel at length, on the question of extension of Interim Order.

Clause 19.4 of the Bipartite Settlement provides as follows:

If after steps have been taken to prosecute an employee or to get him prosecuted, for an offence, he is not put on trial within a year of the

commission of the offence, the Management may then deal with him as if he had committed an act of "gross misconduct" or of "minor misconduct",

as defined below; provided that if the authority which was to start prosecution proceedings refuses to do so or come to the conclusion that there is

no case for prosecution it shall be open to the management to proceed against the employee under the provisions set out below in Clauses 19.11

and 19.12 infra relating to discharge, but he shall be deemed to have been on duty during the period of suspension, if any, and shall be entitled to

the full wages and allowances and to all other privileges for such period. In the event of the management deciding, after enquiry, not to continue him

in service, he shall be liable only for termination with three months pay and allowances in lieu of notice as provided in Clause 19.3 (supra). If within

the pendency of the proceedings, thus instituted, he is put on trial such proceedings shall be stayed pending the completion of the trial, after which

the provisions mentioned in Clause 19.3 above shall apply.

Whereas Clause 6.3 of the Manual provides as follows:--

6.3. As per Clause 19.4 of the Bipartite Settlement, dated 19.10.66, as amended if after steps have been taken to prosecute an employee or get

him prosecuted for an offence involving moral turpitude, he is not put on trial within a year of the commission of the offence, the Bank may

departmentally proceed against him. So when an employee commits an offence involving moral turpitude, the Bank has two options:

(i) either to prosecute the employee or get him prosecuted by filing an FIR with the Police; (unless he is otherwise prosecuted)

or

(ii) to proceed against him departmentally,

But if the Bank opts for (i) first, it has to wait for one year from the date of commission of the offence, if, within this period (one year) the employee

is not put on trial the Bank has the liberty to proceed against the employee departmentally.

NOTE: Moral turpitude--The term ''moral turpitude'' has not been defined in any statute of India. It is a Judge made concept. It broadly means any

act done, which is contrary to honesty and good morals.

4. These two provisions are almost identical. Clause 6.3 provides that if steps have been taken for prosecuting an employee or get him prosecuted

and he is not put on trial within a year of the commission of offence, in respect of moral turpitude, he may be proceeded against departmentally.

Thus, it provides of two steps (1) to proceed departmentally straightaway without taking steps for criminal prosecution or (2) to initiate steps for

criminal prosecution. If it takes the second step, in that event, it has to wait for one year from the commission of offence, before it can proceed

departmentally against him. It is virtually, a reflection of Clause 19.4 of the Bipartite Settlement, which also means the same thing. There is no

conflict in between the two. However, Clause 19.4 prescribes that in case during the pendency of enquiry if criminal trial starts, in that event, the

departmental proceeding would be stopped. These two provisions are to be read together in order to give the complete meaning to the Rules of

Procedures. If read together, the provisions are clear and unambiguous. In case, steps are taken to prosecute criminally, in that event, until one

year from the date of commission of offence expires, no departmental proceedings can be proceeded with. If during the departmental proceeding

the trial starts, in that event, the departmental proceeding will be stopped as soon the criminal trial starts. In the present case, the offence was

alleged to have been committed in 1997. The FIR was lodged on 8th November, 2000. Chargesheet for departmental proceeding was issued on

5th March, 2001.

Clause 2.1 of the Manual provides as follows:--

2.1. The disciplinary procedure starts from the time a chargesheet is issued and served to an employee.....

5. The Disciplinary Proceeding starts with the issue of the chargesheet. There is no doubt about it. It is also so provided in the Manual. The

embargo that has been provided in Clause 6.3 of the said Manual read with Clause 19.4 of the Bipartite Settlement, prescribes departmental

proceeding, which is clarified in Clause 6.3 of the Manual to the extent that cannot be proceeded against where steps for prosecution is taken. It

does not prohibit commencement of the departmental proceeding in such a case. It cannot be said that there would be an embargo on the initiation

of the departmental proceedings. But the embargo is with regard to the proceeding with the departmental action. Therefore, though chargesheet

may be issued and reply may be submitted and it may be decided to proceed against departmentally, then it cannot proceed where steps for

prosecution has been taken, until one year from the date of commission of offence expires, provided no trial has commenced within the period. In

such a case, it can proceed with the departmental proceeding, only after the expiry of the said period and not before and has to stop as soon the

criminal trial starts.

The period is limited by the expression ""if he is not put on trial within the year of the commission of the offence."" The same expression is used in

Clause 6.3 as well as in Clause 19.4 respectively. In both these clauses the expressions are identical. The language is clear. It relates to the date of

commission of offence alleged. It cannot be treated to be the date of lodging of FIR. The learned Counsel for the petitioner, however, contended

that the mere allegation will not do. It should be the date, on which it is alleged and has been put on record by lodging of FIR. According to him,

until it is proved, the allegations cannot be said to be an offence and, therefore, there is no question of commission of offence on an alleged date.

Therefore, the one year is to be calculated from the date of lodging of the FIR.

6. This contention is devoid of any merit. If such a contention is accepted, in that event, it cannot be proceeded with even after lodging of the FIR.

The contents of an FIR are also allegations unproved. The language being clear and unambiguous, and there have been no doubt, and no two

constructions being possible, this Court cannot make any other meaning. It has to adopt the simple grammatical meaning. Within the ''one year

from the commission of any offence'' means one year from the date, on which the offence is alleged to have been committed. Therefore, the

embargo is limited only to the period as provided in Clause 19.4 and Clause 6.3 of the Bipartite Settlement and the Manual respectively.

7. In the present case, the offence was alleged to have been committed in 1997. Therefore, the period of one year, in terms of both the said

clauses, would be deemed to have expired within one year from the date of the alleged commission of an offence. As such, the present chargesheet

could have rightly been issued on 5th March, 2001, which is long after one year from commission of offence.

8. Be that as it may, even if the contention of the learned Counsel for the petitioner is accepted, the FIR. having been lodged on 8th November,

2000, now i.e., after 8th November, 2001, there is no embargo in proceeding departmentally. Since there is nothing to prevent issuing the

chargesheet under Clause 19.4 and Clause 6.3 respectively, the departmental proceeding can be carried though with the chargesheet already

issued. However, this is too technical a point. In case the Management decides to proceed, it has to issue a notice for holding the enquiry and if

along with the notice, a copy of the chargesheet is again issued, then the petitioner cannot have any grievance, since the period of one year has

already expired. Therefore, I do not think that there would be any difficulty in proceeding with the enquiry and it will be open to the Management

to issue fresh chargesheet, if so advised. In any event, now, there is no embargo in proceeding with the enquiry as the present situation stands. The

decision in Capt.M. paul Anthony (supra) is not applicable in the present case, inasmuch as, it would be relevant only when the trial starts. The

learned Counsel for the petitioner relied on paragraph 22 of the said decision, which provides as follows:

22. The conclusions which are deducible from various decisions of this Court referred to above are:

(i) Departmental proceedings and proceedings in a criminal case can proceed 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.

* * * * *"".

9. Paragraph 22 provides that there is no bar in proceeding simultaneously with the departmental proceeding as well criminal prosecution. But in

case, where charges are grave involving complicated questions of law and of act, it is desirable to stay the departmental proceedings. But the

criminal case begins with the beginning of the trial before a Court. It does not begin with or at the stage of police investigation. The said decision

never intended that the departmental proceeding would be stayed as soon FIR is lodged and police investigation is continuing and even before the

criminal trial starts before a Court. However, the above principle will not apply where there are specific rules provided on the principle laid down

through the ratio decidendi. In the present case, the question is governed by the specific provision provided in Clauses 19.4 and 6.3 respectively,

which will prevail.

10. Now let us examine whether in view of the specific provision provided, whether the departmental proceeding can be proceeded with. In my

view, the mere lodging of the FIR and police investigation does not amount to a criminal trial or a case as contemplated under Clause 19.4 or

Clause 6.3, as the case may be. The position is made clear in Clause 19.4 by providing that if within the pendency of the departmental proceeding

the trial starts the departmental proceeding shall stop. Therefore, it is only the trial of a criminal case before the Court, which is material and

intended in Clauses 19.4 and 6.3 respectively, and not the investigation by police.

11. The object of Clauses 19.4 and 6.3 respectively, was aimed at ensuring a fair deal and save double jeopardy. It had, in fact, aimed at

protecting interest of the delinquent, in consonance with the principle culminated in Capt. M.Paul Anthony (supra). The principle enunciated

therein, had all along been constantly followed, in many cases, by the High Courts and the Supreme Court. However, the safeguard is meant to be

applied when there is a trial. Both these clauses had used the word ''trial''. The prohibition, provided in those clauses with regard to holding or

continuing departmental proceedings, is related to the beginning of trial. Therefore, we cannot interpret the object of the said two clauses to an

extent, which would stand contrary to the object and purpose.

12. The word investigation, inquiry and trial denote successive stages in a criminal proceeding in the order, in which they are arranged. In order to

find out the meaning of the word trial, we may refer to the meaning, as assigned to these words in the Code of Criminal Procedure (Code). Though

investigation and inquiry has been defined, the word trial has not been defined either in the Code or in the IPC.

13. Investigation is a proceeding conducted by the Police Officer or by any other person authorized in this behalf by a Magistrate u/s 202(1). The

object of investigation is the collection of evidences. This is done in order to form an opinion, as to whether on the materials collected, there is a

case for trial and for taking steps, if there be any, for filing of a chargesheet u/s 173 of the Code [H.N. Rishbud and Inder Singh Vs. The State of

Delhi,]. Investigation usually starts on information relating to commission of an offence given to an Officer-in-Charge of a Police Station and

recorded u/s 154 of the Code. However, investigation may be made without information u/s 157 [The State of Uttar Pradesh Vs. Bhagwant

Kishore Joshi,]. Lodging of FIR is an information, on the basis whereof the investigation may start. While investigation refers to proceedings

conducted by police or person other than Magistrate (K. Hoshide and Another Vs. Emperor, , the word inquiry relates to a proceeding before a

Magistrate or Court, prior to trial, not only where an accused has been placed before a Magistrate charged with an offence, but also where the

Magistrate wants to ascertain whether a person has committed an offence and whether he should be put on trial, The object of investigation is to

collect evidence. The object of inquiry is to determine the truth or falsity of certain cases with a view to taking further action thereon. An inquiry

may be judicial or non-judicial, preliminary or local.

14. The word trial is not defined either in the Code or in the IPC. The definition of "inquiry" in Section 2(g) includes every inquiry other than a trial

conducted under the Code by a Magistrate or Court. Section 2(h) of the Code defines "investigation" to include all proceedings under the Code

for collection of evidence, conducted by a Police Officer or by any person, (other than a Magistrate) who is authorized by a Magistrate in this

behalf.

15. Thus, "investigation" and "inquiry" is something other than trial. The very definition of "inquiry" suggests that trial is something different from

inquiry. However, both inquiry and trial is a proceeding before the Magistrate. A trial is a judicial proceeding, which ends in conviction or acquittal

[Hema Singh and Another Vs. Emperor, All other proceedings, having different results, are inquiry, Hoshide (supra). A proceeding before a Court

may be inquiry at an early stage and trial at a later stage. In a session"s case, the trial commences only after the charge is framed u/s 228 of the

Code (Palaniandy v. Emperor ILR 32 Mad. 218). In a warrant case, the proceeding is an inquiry up to the framing of charge. Trial begins when

the accused is charged and then the question before the Court is whether the accused is to be convicted or acquitted on the charge so framed

[Hari Das v. Saritulla ILR 15 Cal 608 (F.B.)]. But in a summons case, there being no formal charge, the trial begins as soon the accused is brought

before the Magistrate.

16. Thus, having regard to the scope and meaning of trial as contemplated in the Code, we may now interpret Clauses 19.4 and 6.3 above. On the

basis of the meaning of the expression trial, the object of Clauses 19.4 and 6.3 was related to trial, to which protection was extended. Therefore,

until the case comes to the stage of trial, the prohibition or exception provided in Clauses 19.4 and 6.3 cannot be attracted. Lodging of FIR is not

a trial. It is never intended that the domestic inquiry would be forbidden only on the lodging of FIR. The period of one year is to be calculated from

the date of commission of offence. If, within the said period, the trial does not commence, the said embargo in Clauses 19.4 and 6.3 would not be

attracted to a disciplinary or departmental proceeding. Similarly such departmental proceedings cannot be stayed until the trial begins. Therefore, in

the present case trial having hot commenced, there is no impediment in proceeding departmentally against the petitioner.

17. Therefore, I am not inclined to extend the interim order. The interim order is, therefore, vacated. The respondents shall be free to proceed with

the disciplinary proceeding, in accordance with Law, having regard to Clauses 19.4 and 6.3 respectively.

18. After the above order was passed, nothing remains to be decided in this writ petition. Therefore, by consent of parties, this matter is treated as

on day"s list and is dismissed as above.

19. Let it be noted, that I have not entered into the merits of the case. All points shall remain open to be agitated in appropriate proceeding.

20. There will be no order as to costs.

21. Urgent xerox certified copy of this order, if applied, be supplied within 7 days.