J. D. Jain

Vs

Management of State Bank of India and Another

Civil Appeal No. 495 (L) of 1979

(V.D. Tulzapurkar, Baharul Islam, A. Varadarajan JJ)

17.12.1981

JUDGMENT

BAHARUL ISLAM, J. –

1. This appeal by special leave is by the appellant, J. D. Jain, who was a workmen and whose services have been terminated by the management of the State Bank of India (hereinafter called the 'respondent'-.

2. The material facts are these :

3. The appellant was working as a cashier in the Meerut City branch of the State Bank of India. On June 21, 1971, one Dishan Prakash Kansal (Kansal' for short) who had a Savings Bank account with the said branch of the State Bank came to the bank to receive his passbook. On receipt of the passbook from the counter clerk, Kansal complained to Wadhera who was the ledger-keeper, that of February 8, 1971, he had withdrawn only Rs. 500 but a debit entry of Rs. 1500 had been shown in the passbook. Wadhera thereupon took Kansal to the Supervisor, R. P. Gupta, before whom Kansal repeated his complaint. Necessary documents pertaining to he said withdrawal were then examined and it was found that Kansal had given a ' letter of authority' (which expression means, we are told, the withdrawal application from) to the appellant on February 8, 1971 authorising him to withdraw the amount from his account. The letter of authority showed that it was for withdrawal of Rs. 1500 through there appeared to be some interpolation suggesting that the figure of Rs. 500 had been altered to the figure of Rs. 1500. The matter was then brought to the notice of M. Ramzan, the Agent of the State Bank, before whom also Kansal is said to have repeated his complaint.

4. Eventually on September 18, 1972, a memorandum of charges was served on the appellant by the respondent stating, inter alia, that in the letter of authority, the appellant altered in his own handwriting with different ink the amount of Rs. 500 to Rs. 1500 and thus received Rs. 100 in excess, passing only Rs. 500 to the passbook-holder, and that he subsequently, on June 24, 1971, deposited Rs. 250 in the account of Kansal to liquidate a part of the amount misappropriated by him. The appellant replied to the charges. He denied the allegations. Thereupon, the respondent appointed one Rajendra Prasad as an Enquiry Officer and a formal disciplinary enquiry was held against the appellant. The Enquiry Officer submitted his report to the respondent on February 13, 1973. The findings of the Enquiry Officer were that the appellant had fraudulently altered the amount in the letter of authority given to him by Kansal, withdrew Rs. 1500 from Kansal's account and paid Rs. 500 only to Kansal and misappropriated Rs. 1000. The disciplinary authority on receipt of the report of the Enquiry Officer passed the following order (material portion only) :

> 2. Although, the charges against you are of a serious nature which would, in normal course, warrant your dismissal from the service of the bank, yet keeping in view your past record, I am inclined to take a lenient view in the matter. Upon consideration of the matter, I have tentatively come to the decision that your misconduct be condoned and you be merely discharged of in terms of paragraph 521 (5) (e) of the Sastry Award read with paragraph 18.28 of the Desai Award and paragraph 1.1 of the Agreement dated March 31, 1967 entered into between the Bank and the State Bank of India Staff Federation. Before, however, I take a final decision in the matter I would like to give you hearing as to why the proposed punishment should not be imposed upon you. To enable you to do so, I enclose copies of the proceedings of the enquiry and findings of the Enquiry Officer.
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> 3. You may ask for a hearing or if you so prefer show cause in writing within one week of receipt by you thereof. If you fail therein, I will conclude that you have no cause to show in this behalf.

The appellant then submitted a representation to Shri V. B. Chadha, the Regional Manager of the State Bank of India on June 15, 1973. Shri Chadha after perusing the representation of the appellant and hearing him in person, recommended that the proposed punishment should not be imposed upon the appellant, on the grounds that Kansal had not been examined as a witness and that there had been no written complaint against the appellant. The respondent, however, did not accept the recommendation, and, by its memorandum of December 7, 1973, discharged the appellant from service with effect from the close of the business on December 22, 1973.

5. The appellant then having raised as industrial dispute, the Central Government, by its order dated January 17, 1975 referred the following issue to the Central Government Industrial Tribunal at Delhi for adjudication :

> Is the management of State Bank of India justified in discharging from service Shri J. D. Jain, Cashier of Meerut Branch, with effect from December 22, 1973 ? If not to what relief is he entitled ?

6. Before the Tribunal, the appellant denied the charge. He, inter alia, pleaded that as Kansal was not examined in the enquiry, there was no legal evidence before the Enquiry Officer for a finding that he was guilty.

7. The Tribunal framed the following two issues :

> 1. Whether a proper and valid domestic enquiry was held by the Bank and its effect ?
> 2. Is the management of State Bank of India justified in discharging from service Shri J. D. Jain Cashier of Meerut Branch with effect from December 22, 1973 ? If not to what relief is he entitled ?

8. Before the Tribunal, the management examined no witness but produced certain documents and relied on them. The appellant also did not adduce any evidence.

9. On a perusal of the evidence recorded by the Enquiry Officer, the Tribunal held that on the evidence before it, the appellant could not be held guilty as., according to it, in the absence of the evidence of Kansal, the evidence recorded was hearsay, with the result that it directed reinstatement of the appellant with full back wages from December 22, 1973. The respondent moved the High

Court under Article 226 and 227 of the Constitution of India for quashing the award of the Tribunal. The High Court held that the charges against the appellant had been established and quashed the award of the Tribunal. It is against this judgment of the High Court that the present appeal by special leave is directed.

10. Mr. R. K. Garg, learned, counsel appearing for the appellant makes three submissions before us :

> (1) That the Tribunal exercised its powers under Section 11-A of the Industrial Disputes Act and the High Court, exercising powers under Articles 226/227 of the Constitution, had no jurisdiction to interfere with the award of the Tribunal :
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> (2) The Tribunal in the perspective of the broad contours of the case rightly refused to rely on the evidence which was hearsay, Kansal not having been examined;
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> (3) Assuming the evidence could be relied on, the High Court committed error, in not considering the receipt executed by Kansal showing payment of Rs. 1000 to Kansal and its judgment is vitiated.

11. In an application for a writ of certiorari under Article 226 of the Constitution for quashing an award of an Industrial Tribunal, the jurisdiction of the High Court is limited. It can quash the award, inter alia, when the Tribunal has committed an error of law apparent on the face of the record or when the finding of facts of the Tribunal is perverse. In the case before us, according to the Tribunal, as Kansal was not examined, the evidence before it was hearsay and as such on the basis thereof the appellant could not be legally found guilty.

12. Before the Enquiry Officer, the respondent examined the following witnesses :

> Gupta (Witness 1), Vadhera, the ledger-keeper (Witness 2), Mahesh Chander who was incharge of Savings Bank Account on February 8, 1971 (Witness 3), M. Ramzan, Agent of the Bank (Witness 4), Sarkar (Witness 5), and Bhardwaj (Witness 6).

13. Bhardwaj was a leader of the employees' union of the respondent. He did not support the case of the respondent. The other witnesses supported the case of the respondent. Witnesses 1, 2, 4 and 5 depose that a verbal complaint was made by Kansal in their presence to the effect that he had authorised the appellant to withdraw Rs. 500 which sum was paid to him, but the entries showed that Kansal had withdrawn Rs. 1500. Witnesses Vadhera, Ramzan and Sarkar also deposed that the appellant had confessed before them that he had made the alterations in the figure and in words of the sum. The Tribunal after having made detailed references to the evidences of the above witnesses in fact found, "All that this evidence thus, proves is that a complaint was made by Shri Kansal and that the workmen confessed that he had altered the debit authority". Curiously, however, it held, "This evidence, by no means proved that the workman altered the debit authority to defraud or that he actually defrauded or that he mis-appropriated the amount of Rs. 1000 after paying Rs. 500 only to Mr. Kansal from the amount of Rs. 1500 withdrawn from the Bank by him as it was not direct evidence but was in the nature of hearsay evidence since it was learnt through the medium of a third person and that person was not available". It further held, "There can be no hesitation, therefore, that the Enquiry Officer replied on hearsay evidence in arriving at his findings and it vitiated the enquiry". It went on, "All this could be enough for raising a suspicion only. In order to be called 'proved' it needed evidence which was not there". It further observed, "But the question was whether

it was done without the consent or knowledge of Mr. Kansal. There was no evidence on the record to prove it. The only person who could speak about it was Mr. Kansal. He did not appear before the Enquiry Officer, and therefore, there was no direct evidence that the change that was admittedly made by the workmen in the debit authority was without Mr. Kansal's consent or knowledge or that it was designed to defraud".

14. The positive findings of the Tribunal are :

> (i) Kansal made the complaint as alleged by the management,
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> (ii) The appellant confessed that he had made the alterations charged with, as alleged by the management,
>
> (iii) By implication it has also found that Rs. 1000 in excess of the original amount of Rs. 500 was received by the appellant as a result of the alterations. But it has held that as Kansal was not examined, fraud and misappropriation on the part of the appellant cannot be held to be proved, as the evidence was 'hearsay'.

15. The learned Tribunal, it appears, was oblivious of the fact that it was examining the evidence in a domestic enquiry, and not the evidence in a criminal prosecution entailing conviction and sentence.

16. In a case like the one before us, three kinds of proceedings against the delinquent are possible :

> (i) departmental proceedings and action, (ii) criminal prosecution for forgery and misappropriation, (iii) civil proceedings for recovery of the amount alleged to be misappr opriated.

17. The respondent herein adopted course (i) and instituted the domestic enquiry in which the principle applied by the Tribunal is not applicable; is such an enquiry guilt need not be established beyond reasonable doubt; proof of misconduct may be sufficient.

18. The learned Tribunal has committed another error in holding that the finding of the domestic enquiry was based on "hearsay" evidence. The law is well settled that the strict rules of evidence are not applicable in a domestic enquiry.

19. This Court in the case of State of Haryana v. Rattan Singh, AIR 1977 SC 1512 : (1977) 2 SCC 491 : 1977 SCC (L &S) 298, held : (SCC p. 493, para 4)

> It is well settled that in a domestic enquiry the strict and sophisticated ruled of evidence under the Indian Evidence Act may not apply. All materials which are logically probative for a prudent mind are permissible. There is no allergy to hearsay evidence provided it has reasonable nexus and credibility.

20. The next question is, is the evidence in the domestic enquiry really hearsay, as held by the Tribunal ?

21. The word "hearsay" is used in various senses. Sometimes it means whatever a person is heard to say; sometimes it means whatever a person declares on information given by someone else. (see Stephen on Law of Evidence)

22. The Privy Council in the case of Subramaniam v. Public Prosecutor, (1956) 1 WLR 965, observed :

> Evidence of a statement made to a witness who is not himself called as a witness may of may not be hearsay. It is hearsay and inadmissible when the object of the evidence is to establish the truth of what is contained in the statement. It is not hearsay and is admissible when it is proposed to establish by the evidence, not the truth of the statement but the fact that it was made. The fact that it was made quite apart from its truth, is frequently relevant in considering the mental state and conduct thereafter of the witness or some other persons in whose presence these statements are made.

23. In the instant case, the alleged misconduct of the appellant was that he forged documents, withdraw Rs. 1500 - Rs. 1000 in excess of the amount he was authorised to do and misappropriated the excess amount of Rs. 1000. With regard to the fact whether the appellant manipulated the documents, withdrew excess amount and misappropriated it, there is, of course, no direct evidence of any eyewitness except the appellant's confession' referred to above. The evidence on which reliance has been taken by the respondent is the confession and circumstantial evidence, namely, the authority letter containing the admitted interpolations by the appellant in his own handwriting in different ink, and the addition of the digit '1' before 500. The evidence of Kansal would have been primary and material, if the fact in issue were whether Kansal authorised the appellant to make the alterations in the authority letter. But Kansal's complaint was to the contrary. For the purpose of a departmental enquiry complaint, certainly not frivolous, but substantiated by circumstantial evidence, is enough. What the respondent sought to establish in the domestic enquiry was that Kansal had made a verbal complaint with regard to the withdrawal of excess money by the appellant in presence of the four witnesses, namely, Wadhera, Gupta, Ramzan and Sarkar, aforesaid, against his advice. On the complaint of Kansal, the evidence of these four witnesses is direct as the complaint is said to have been made by Kansal in their presence and hearing; it is therefore, not hearsay. As the respondent has succeeded in proving that a complaint was made by Kansal on the evidence of the above-named four witnesses, the respondent has succeeded. No rule of law enjoins that a complaint has to be in writing as insisted by the Tribunal.

24. The learned Tribunal has committed yet another grievous error, in falling to appreciate the confessions made by the appellant "in the presence of witnesses and to the higher officer who appeared as witness" (as found by itself) namely, Wadhera, Ramzan, Gupta and Sarkar, aforesaid. The confessions of the appellant before the said witnesses were to the effect that he had altered the amount in figure and words in his own hand.

25. The award of the Tribunal, therefore, has been vitiated by misconception of the law involved in the case.

26. The last submission of Mr. Garg that the judgment of the High Court had been vitiated as it had not taken into consideration the receipt executed by Kansal showing payment by the appellant of Rs. 1000 to the former is destructive of the appellant's defence. In our opinion, this payment, on the contrary, proves the respondent's case and destroys the appellant's defence which was that he had withdrawn Rs. 1500 as advised by Kansal and paid the full amount to Kansal.

27. In our opinion the High Court was fully in this jurisdiction in quashing the award of the Tribunal. This appeal has no merit and is dismissed. We, however, leave the parties to bear their own costs.

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