IN THE HIGH COURT OF JHARKHAND AT RANCHI W. P. (S) No. 3326 of 2020

Sanjay Kumar Prasad Petitioner

Versus

1. Punjab National Bank, Head Office at Plot No.4, Sector, 10, Dwarka, New Delhi-110075.

- 2. Managing Director-cum-Chief Executive Officer, Punjab National Bank, Head Office, 1st Floor, B. Wing, Sector-10, Dwarka, New Delhi-110075.
- 3. Executive Director, Human Resource Division, Punjab National Bank, Corporate Office at 1st Floor, B. Wing, Plot No.4, Sector-10, Dwarka, New Delhi-110075. Respondents

CORAM : HON'BLE MR. JUSTICE Dr. S. N. PATHAK

(Through Video Conferencing)

For the Petitioner : M/s K. N. Choubey, Senior Advocate

Rajendra Krishna & Vishal Kumar Tiwary, Advs.

For the Respondents : M/s Manoj Tandon & P.A.S. Pati &

Rohan Kashyap, Advocates

CAV ON: 24.11.2021 PRONOUNCED ON: 02.02.2022

Dr. S.N. Pathak, J:- Heard Mr. K.N. Choubey, learned Senior Counsel, assisted by Mr. Rajendra Krishna and Mr. Vishal Kumar Tiwary, advocates for the petitioner and Mr. Manoj Tandon, learned counsel, assisted by Mr. P.A.S. Pati and Mr. Rohan Kashyap, advocates appearing on behalf of respondent-Bank.

Prayer.

2. In the instant writ petition, the petitioner has challenged the order of penalty of removal from service dated 27.1.2020 (Annexure-7 to the writ petition). The appellate order dated 25.06.2020 (Annexure-9 to the writ petition) passed by the appellate authority rejecting the appeal of the petitioner is also under challenge. The petitioner further prayed for reinstatement in service with all consequential benefits.

Factual Matrix

3. The facts as delineated in the writ petition are that while the petitioner was posted as Circle Head, Punjab National Bank, Mumbai City, he was proceeded with regular departmental proceeding by framing a memo of charge dated 23.1.2019 under Regulation 6 of Punjab National Bank Officer Employees' (Discipline & Appeal) Regulations, 1977. Altogether three charges were levelled against the petitioner under different headings. The petitioner submitted his reply denying the charges levelled against him. The Enquiry Officer

submitted the enquiry report on 17th October, 2019 holding some of charges proved and some of them not proved. The petitioner was given an opportunity to submit reply to the said enquiry report. Thereafter, the petitioner replied thereto. The disciplinary authority passed the penalty order on 27.1.2020 with major penalty of removal from service, which shall not be a disqualification for future employment, in terms of Regulation 4(i) of the PNB Officer Employees (D &A) Regulations, 1977. Thereafter, an appeal was preferred by the petitioner on 27.2.2020. The appeal of the petitioner was however rejected by the appellate authority on 25.6.2020.

- 4. It is the specific case of the petitioner that he is the permanent resident of Ranchi, having address given in the cause title; that he received the impugned letters of removal by the disciplinary authority as well as the appellate authority at his permanent address in Ranchi in the State of Jharkhand and he is permanently residing in Ranchi and hence, part of cause of action lies in the State of Jharkhand on account of receiving of the impugned orders and as such, this Court had jurisdiction to entertain the writ petition.
- 5. The respondent Punjab National Bank filed its counter affidavit raising preliminary objection on the ground that this Court lacks the territorial jurisdiction as no cause of action has arisen within the territorial jurisdiction of this Court. Mere receiving of impugned letters of removal by disciplinary authority as well as appellate authority would not be sufficient for the part the cause of action to arise in the State of Jharkhand. This petitioner was working as Deputy General Manager, Priority Sector and Financial Inclusion Division, Punjab National Bank, Head Office, Sector-10, Dwarka, New Delhi. The entire disciplinary proceeding was commenced and concluded at New Delhi. The entire cause of action arose within the State of Delhi and not in the State of Jharkhand. Mere receiving letters in the State of Jharkhand will not give cause of action in the State of Jharkhand. On merits, it has been stated that the power of judicial review in a disciplinary proceeding of the Court under Article 226 of the Constitution of India is limited. The petitioner was holding an important post of Branch Head, Brady House, at the time when entire irregularities took place. The petitioner failed to discharge his duty of a responsible officer which led to loss of crores of rupees of the public money at Bank. The Bank, therefore, has passed the penalty of removal from service, which however will not be a disqualification for future employment.

Arguments advanced by Petitioner.

- 6. Mr. K.N. Choubey, learned Senior Counsel appearing for the petitioner before assailing the order of removal, since preliminary objection has been raised by the respondent Bank, addresses the Court on the point of jurisdiction:-
 - (i) On the jurisdictional issue, it has been submitted by Mr. Choubey, learned senior counsel appearing for the petitioner that the territorial jurisdiction depends upon attending facts and circumstances of a particular case. After the petitioner was removed from service, he had left with no option, but to shift at his parental house at Ranchi. The petitioner has preferred his appeal from Ranchi and contested the same from Ranchi itself and it is well known that the proceeding of appeal is also a part of the departmental proceeding. Therefore, the part of cause of action lies at Ranchi.
 - (ii) To buttress his arguments, learned senior counsel places heavy reliance on the decision of the Hon'ble Supreme Court of India, in the case of Navinchandra N. Majithia Vs. State of Maharashtra, reported in (2000) 7 SCC 640. The petitioner has also relied upon the judgments in the cases of Shanti Devi Vs. Union of India & ors. reported in (2020) 10 SCC 766, State of Punjab Vs. Balbir Singh, reported on AIR 1977 SC 629, Tavancore Rayon Ltd. Vs. Union of India, reported in (1969) 3 SCC 869, State of West Bengal Vs. Atul Krishna Shaw, reported in AIR 1990 SC 2205 and Jawahar Lal Singh Vs. Naresh Singh, reported in (1987) 2 SCC 222.
- 7. On merits, it has been argued that in view of the procedural laches and discriminating approach of the Bank Authorities, the order of removal has no legs to stand on the following grounds:-
- (i) The fraud took place on account of system failure as the Bank could not envisaged such fraud and no system was developed to detect such fraud. The petitioner was informed by AGM, Brady House that there could be chances of issuance of unauthorized LOU in favour of Nirav Modi of Gitangajli Group. Therefore, the petitioner, being the Circle Head, ordered the preliminary enquiry in the matter. The petitioner has been made scapegoat in the present case.
- (ii) Learned senior counsel further assails that the impugned orders deserve to be quashed and set aside on the ground of parity itself. He submits that the

- petitioner was slapped with the penalty of removal from service whereas other similarly situated co-delinquents were awarded the lesser penalty though the case of the petitioner stands at similar footing to that of the other Branch Heads excluding Rajesh Jindal.
- (iii) Referring to Circulars dated 24.9.2010 and 15.3.2014, which relate to definition of second man and the responsibility of the second man at the branches, learned senior counsel submits that before imposing penalty upon the petitioner, the disciplinary authority ought to have ascertained whether the loss is due to omission or commission of the concerned employee and also the past history of the charged employee was to be considered. It is further contended that the petitioner joined in the year 1986 as Management Trainee and has unblemished career record.

Arguments advanced by Respondent-Bank

8. Mr. Manoj Tandon, learned counsel, assisted by Mr. P.A.S. Pati, advocate appearing on behalf of the respondent-Bank submits that the petitioner has not been able to make out a case for interference by this Court. He submits that cause of action arose at Mumbai i.e. the State of Maharastha or Delhi. No cause of action has arisen within the territorial jurisdiction of the State of Jharkhand and hence, this Court does not have jurisdiction to decide the writ petition. Learned counsel further adds that mere receiving letters in the State of Jharkhand will not give the cause of action in this Court. The petitioner may be residing within the territorial jurisdiction of this Court but on this count alone, the writ petition may not be entertained. Mr. Tandon refers the various paragraphs of the counter affidavit wherein, the Bank has taken preliminary objection of maintainability of this writ petition, as no cause of action or part of cause of action has arisen within the territorial jurisdiction of the State of Jharkhand. To fortify his submission, Mr. Tandon, refers a decision of the Hon'ble Supreme Court of India in the case of Oil and Natrual Gas Commission Vs. Utpal Kumar Basu & Ors. reported in (1994) 4 SCC 711. He also places reliance of order dated 26.2.2019 passed in **W.P.(S)** No. 4078 of 2017 by this Court, whereby the writ petition was dismissed on the point of territorial jurisdiction. On merit, Mr. Tandon refers to the memo of charge dated 23.1.2019 wherein altogether three charges under different headings were levelled against the petitioner. He submits that considering the reply submitted by the petitioner, the enquiry officer submitted the enquiry report on 17.10.2019. Thereafter, the petitioner was given

opportunity to submit his reply to the second show cause, which he duly submitted. After considering the reply of the petitioner, the penalty order was passed on 27.1.2020. The petitioner preferred appeal against the penalty order and after considering the appeal, the appellate authority rejected the same on 25.6.2020. Learned counsel submits that there is no procedural irregularity pointed out by the petitioner in the facts and circumstances of the present case and it is a clear case of loss of confidence on account of the petitioner jeopardizing the Bank's interest and hence, the writ petition deserves to be dismissed.

Findings of the Court

- 9. Having heard learned counsel for the parties and after going through the records, I find that though in the facts of this case, the petitioner was imposed capital punishment of removal from service after a full-fledged proceeding, but before delving into the merits of the case, it would be appropriate to examine the issue of territorial jurisdiction. The issue fell for consideration before the Hon'ble Apex Court in the case of *Om Prakash Srivastava v. Union of India*, reported in (2006) 6 SCC 207, wherein, it was observed as under:-
 - "6. Clause (2) of Article 226 of the Constitution is of great importance. It reads as follows:
 - "226. (2) The power conferred by clause (1) to issue directions, orders or writs to any Government, authority or person may also be exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such power, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories."
 - 7. The question whether or not cause of action wholly or in part for filing a writ petition has arisen within the territorial limits of any High Court has to be decided in the light of the nature and character of the proceedings under Article 226 of the Constitution. In order to maintain a writ petition, a writ petitioner has to establish that a legal right claimed by him has prima facie either been infringed or is threatened to be infringed by the respondent within the territorial limits of the Court's jurisdiction and such infringement may take place by causing him actual injury or threat thereof.
 - 8. Two clauses of Article 226 of the Constitution on plain reading give clear indication that the High Court can exercise power to issue direction, order or writs for the enforcement of any of the fundamental rights conferred by Part III of the Constitution or for any other purpose if the cause of action

wholly or in part had arisen within the territories in relation to which it exercises jurisdiction notwithstanding that the seat of the Government or authority or the residence of the person against whom the direction, order or writ is issued is not within the said territories.

- 9. By "cause of action" it is meant every fact, which, if traversed, it would be necessary for the plaintiff to prove in order to support his right to a judgment of the Court. In other words, a bundle of facts, which it is necessary for the plaintiff to prove in order to succeed in the suit.
- 10. In a generic and wide sense (as in Section 20 of the Civil Procedure Code, 1908) "cause of action" means every fact, which it is necessary to establish to support a right to obtain a judgment.
- 11. It is settled law that "cause of action" consists of a bundle of facts, which give cause to enforce the legal inquiry for redress in a court of law. In other words, it is a bundle of facts, which taken with the law applicable to them, gives the plaintiff a right to claim relief against the defendant. It must include some act done by the defendant since in the absence of such an act no cause of action would possibly accrue or would arise.
- 15. In Halsbury's Laws of England (4th Edn.) it has been stated as follows:
 - "Cause of action' has been defined as meaning simply a factual situation, the existence of which entitles one person to obtain from the court a remedy against another person. The phrase has been held from earliest time to include every fact which is material to be proved to entitle the plaintiff to succeed, and every fact which a defendant would have a right to traverse. 'Cause of action' has also been taken to mean that a particular act on the part of the defendant which gives the plaintiff his cause of complaint, or the subject-matter of grievance founding the action, not merely the technical cause of action."
- 10. Further the Hon'ble Apex Court while dealing with on the issue of territorial jurisdiction in the case of *Shanti Devi v. Union of India*, reported in (2020) 10 SCC 766, held as follows:-
 - "17. Mulla on the Code of Civil Procedure while commenting on Section 20 of the Civil Procedure Code defined cause of action in the following words:
 - "12. Cause of action.—The expression "cause of action" has acquired a judicially settled meaning. In the restricted sense, "cause of action" means the circumstances forming the infraction of the right or the immediate occasion for the action. In the wider sense, it means the necessary conditions for the maintenance of the suit, including not only the infraction of the right, but

the infraction coupled with the right itself. Compendiously the expression means every fact by which it would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of the court."

18. P. Ramanatha Aiyar in Advanced Law Lexicon, 3rd Edn., Vol. 1, has defined the cause of action in the following words:

"Cause of action" has been defined as meaning simply a factual situation the existence of which entitles one person to obtain from the court a remedy against another person. The phrase has been held from earliest time to include every fact which is material to be proved to entitle the plaintiff to succeed, and every fact which a defendant would have a right to traverse. "Cause of action" has also been taken to mean that particular act on the part of the defendant which gives the plaintiff his cause of complaint, or the subject-matter of the grievance founding the action, not merely the technical cause of action."

19. Black's Law Dictionary defines the cause of action in the following words:

"A group of operative facts giving rise to one or more bases for suing; a factual situation that entitles one person to obtain a remedy in court from another person; ..."

- 20. This Court had occasion to consider the cause of action in the context of Article 226 of the Constitution and has explained the expression "cause of action" in a large number of cases. We may refer to a three-Judge Bench judgment of this Court in ONGC v. Utpal Kumar Basu, where in paras 5 and 6 following has been laid down: (SCC pp. 716-17)
 - "5. Clause (1) of Article 226 begins with a non obstante clause — notwithstanding anything in Article 32 — and provides that every High Court shall have power 'throughout the territories in relation to which it exercises jurisdiction', to issue to any person or authority, including in appropriate cases, any Government, "within those territories" directions, orders or writs, for the enforcement of any of the rights conferred by Part III or for any other purpose. Under clause (2) of Article 226 the High Court may exercise its power conferred by clause (1) if the cause of action, wholly or in part, had arisen within the territory over which it exercises jurisdiction, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories. On a plain reading of the aforesaid two clauses of Article 226 of the Constitution it becomes clear that a High Court can exercise the power to issue directions, orders or

writs for the enforcement of any of the fundamental rights conferred by Part III of the Constitution or for any other purpose if the cause of action, wholly or in part, had arisen within the territories in relation to which it exercises jurisdiction, notwithstanding that the seat of the Government or authority or the residence of the person against whom the direction, order or writ is issued is not within the said territories. In order to confer jurisdiction on the High Court of Calcutta, NICCO must show that at least a part of the cause of action had arisen within the territorial jurisdiction of that Court. That is at best its case in the writ petition.

6. It is well settled that the expression "cause of action" means that bundle of facts which the petitioner must prove, if traversed, to entitle him to a judgment in his favour by the court. In Chand Kour v. Partab Singh Lord Watson said: (IA pp. 157-58)

"... the cause of action has no relation whatever to the defence which may be set up by the defendant, nor does it depend upon the character of the relief prayed for by the plaintiff. It refers entirely to the grounds set forth in the plaint as the cause of action, or, in other words, to the media upon which the plaintiff asks the court to arrive at a conclusion in his favour."

Therefore, in determining the objection of lack of territorial jurisdiction the court must take all the facts pleaded in support of the cause of action into consideration albeit without embarking upon an enquiry as to the correctness or otherwise of the said facts. In other words the question whether a High Court has territorial jurisdiction to entertain a writ petition must be answered on the basis of the averments made in the petition, the truth or otherwise whereof being immaterial. To put it differently, the question of territorial jurisdiction must be decided on the facts pleaded in the petition.

Therefore, the question whether in the instant case the Calcutta High Court had jurisdiction to entertain and decide the writ petition in question even on the facts alleged must depend upon whether the averments made in Paras 5, 7, 18, 22, 26 and 43 are sufficient in law to establish that a part of the cause of action had arisen within the jurisdiction of the Calcutta High Court."

(emphasis in original)

21. This Court in Navinchandra N. Majithia v. State of Maharashtra, had occasion to consider territorial jurisdiction of the High Court under Article 226(2). Dealing with constitutional amendment made in Article 226(2), this Court laid down the following in para 37: (SCC p. 653)

- "37. The object of the amendment by inserting clause (2) in the article was to supersede the decision of the Supreme Court in Election Commission v. Saka Venkata Raoand to restore the view held by the High Courts in the decisionscited above. Thus the power conferred on the High Courts under Article 226 could as well be exercised by any High Court exercising jurisdiction in relation to the territories within which 'the cause of action, wholly or in part, arises' and it is no matter that the seat of the authority concerned is outside the territorial limits of the jurisdiction of that High Court. The amendment is thus aimed at widening the width of the area for reaching the writs issued by different High Courts."
- 11. From the aforesaid judicial pronouncements, it can very conveniently be inferred that in the instant case, though the original order was made at Mumbai, but communications were made with the petitioner at his parental residence at Ranchi. Therefore, the part of cause of action has arisen in the State of Jharkhand and as such the High Court of Jharkhand has jurisdiction.
- 12. Now on the point of merits, upon perusal of the impugned order of removal from service of the petitioner, question arises as to whether same warrants interference or not. The Court is not prejudiced by the fact that the memo of charge was issued on 23.1.2019 in relation to fraud committed by Mr. Nirav Modi and Mehul Choksi (Geetanjali Group) and other related accounts, but it has to be looked into as to how the petitioner, who was heading the Branch in the capacity of Deputy General Manager-cum-Circle Head, Mumbai City, was responsible for the aforesaid fraud. In the impugned order, it has been clearly mentioned that removal from service would not be a disqualification for future employment in terms of Regulation 6 of Punjab National Bank Officer Employees' (Discipline & Appeal) Regulations, 1977. Much has been argued by learned senior counsel appearing for the petitioner that it is a case of no evidence, but from perusal of the enquiry report, which is at page-330-331 of the writ petition, it appears that sufficient evidence was brought on record and consequently eighteen charges were found proved, which cannot be said to be without evidence. Nothing is reflected from the records that there is no evidence in the case at hand. This Court, sitting under Article 226 of the Constitution of India, cannot re-appreciate the evidences for coming to a conclusion that the petitioner was not guilty of the charges. Admittedly the same is impermissible in

the eyes of law. In plethora of judgments rendered by the Hon'ble Apex Court as well as by this Court, including in the case of *State Bank of India Vs. Ram Lal Bhaskar & Anr.*, reported in (2011) 10 SCC 249, the Hon'ble Apex Court in paragraphs-12 and 14 held as under:-

"12. This Court has held in **State of A.P. v. S. Sree Rama Rao**: (AIR pp. 1726-27, para 7)

- "7. ... The High Court is not constituted in a proceeding under Article 226 of the Constitution a court of appeal over the decision of the authorities holding a departmental enquiry against a public servant: it is concerned to determine whether the enquiry is held by an authority competent in that behalf, and according to the procedure prescribed in that behalf, and whether the rules of natural justice are not violated. Where there is some evidence, which the authority entrusted with the duty to hold the enquiry has accepted and which evidence may reasonably support the conclusion that the delinquent officer is guilty of the charge, it is not the function of the High Court in a petition for a writ under Article 226 to review the evidence and to arrive at an independent finding on the evidence."
- 13. Thus, in a proceeding under Article 226 of the Constitution, the High Court does not sit as an appellate authority over the findings of the disciplinary authority and so long as the findings of the disciplinary authority are supported by some evidence the High Court does not reappreciate the evidence and come to a different and independent finding on the evidence. This position of law has been reiterated in several decisions by this Court which we need not refer to, and yet by the impugned judgment the High Court has reappreciated the evidence and arrived at the conclusion that the findings recorded by the enquiry officer are not substantiated by any material on record and the allegations levelled against Respondent 1 do not constitute any misconduct and that Respondent 1 was not guilty of any misconduct."
- 13. Further in the case of *State of U.P. & Anr. Vs. Manmohan Nath Sinha & Anr.*, reported in (2009) 8 SCC 310, the Hon'ble Apex Court held in para-15 as under:-
 - "15. The legal position is well settled that the power of judicial review is not directed against the decision but is confined to the decision-making process. The court does not sit in judgment on merits of the decision. It is not open to the High Court to reappreciate and reappraise the evidence led before the inquiry officer and examine the findings recorded by the inquiry officer as a court of appeal and reach its own conclusions....."

14. In *State Bank of Bikaner and Jaipur Vs. Nemi Chand Nalwaya*, reported in **(2011) 4 SCC 584**, the Hon'ble Supreme Court observed as follows:-

"the Courts will not interfere with findings of fact recorded in departmental enquiries, except where such findings are based on no evidence or where they are clearly perverse.....

The Courts will however interfere with the findings in disciplinary matters if principles of natural justice or statutory regulations have been violated or if the order is found to be arbitrary, capricious, mala fide or based on extraneous consideration."

- 15. In the instant case, nothing has been brought on record that there is violation of principles of natural justice or statutory regulations. Though the learned senior counsel appearing for the petitioner has tried to impress upon this Court that PNB Officer Employees' (D&A) Regulations, 1977 has been violated, but the Court is not at all inspire confidence with the submission of the learned senior counsel, as sufficient materials have been brought on record by the enquiry officer and the same has been agreed upon by the disciplinary authority as well as the appellate authority. Learned senior counsel has failed to establish that there was procedural laches on the part of the enquiry officer or the disciplinary as also the appellate authorities. Neither any fault has been pointed nor argued.
- 16. While referring to the issue of parity, it has been argued that the persons having similar charges were given different punishments, but whether the charges as mentioned in the charge-sheet were same and similar to that of other persons, like Vimlesh Kumar, Circle Head, Virendra Singh, immediate predecessor and Dinesh Bhardwaj, immediate successor, have not been brought on record. Without placing the material with respect to other co-delinquents, who have been awarded the lesser penalty, the parity cannot be claimed and in absence of the same, that ground is also not available to the petitioner. The Bank is the competent authority to consider and decide the same. However, in a case where crores of rupees of the Bank has been misappropriated, the petitioner failed to discharge his duty to stop such fraud of huge magnitude.
- 17. Further the Court cannot even interfere on the quantum of punishment sitting under Article 226 of the Constitution of India. The Hon'ble Apex Court in the case of *Delhi Police*, *through Commissioner of Police & Ors.*Vs. Sat Narayan Kaushik, reported in 2016 (6) SCC 303 held as follows:-

"15. Coming to the first two submissions of the learned counsel for the appellant, we are of the view that High Court, in exercise of its writ jurisdiction, has power to interfere with the quantum of punishment imposed by the appointing authority in an appropriate case provided the High Court has taken into consideration the totality of the facts and circumstances of the case such as nature of charges levelled against the employee, its gravity, seriousness, whether proved and, if so, to what extent, entire service record, work done in the past, remaining tenure of the delinquent left etc. In other words, it is necessary for the High Court to take these factors into consideration before interfering in the quantum of the punishment.

17. In our view, the finding on this issue appears to be just and proper and does not call for any interference in our appellate jurisdiction. We accordingly reject the first and second submissions."

- 18. It is well settled principle of law that when the management has lost confidence on the employee, the question of reinstatement or reducing the quantum of punishment does not arise. In the instant case, the Bank has lost confidence on the Deputy General Manager, the post of which the petitioner was holding and as such, the interference is not warranted in the punishment of dismissal. In the case of Kanhaiyalal Agrawal Vs. Factory Manager, Gwaliar Sugar Co. Ltd, reported in AIR 2001 SC 3645, the Supreme Court laid down the test for loss of confidence to find out as to whether there was bona fide loss of confidence in the employee, namely, (i) the workman is holding the position of trust and confidence; (ii) by abusing such position, he commits act which results in forfeiting the same; and (iii) to continue him in service/establishment would be embarrassing and inconvenient to the employer, or would be detrimental to the discipline or security of the establishment. Loss of confidence cannot be subjective based upon the mind of the management. The loss of confidence can be based on objective facts which would lead to a definite inference of apprehension in the mind of the management, regarding trustworthiness or reliability of the employee.
- 19. Further in the case of *Divisional Controller*, *KSRTC* (*NWKRTC*) *Vs.* **A.T. Mane**, reported in (2005) 3 SCC 254, the Supreme Court held the loss of confidence to be a primary factor to be taken into consideration. The Supreme Court further held that when a person is guilty of misappropriating employer's funds, there is nothing wrong in the employer losing confidence in an employee. The relevant portion of the said judgment is reproduced hereunder:-

- "12. Coming to the question of quantum of punishment, one should bear in mind the fact that it is not the amount of money misappropriated that becomes a primary factor for awarding punishment, on the contrary, it is the loss of confidence which is the primary factor to be taken into consideration. In our opinion, when a person is found guilty of misappropriating corporation's fund, there is nothing wrong in the corporation losing confidence or faith in such a person and awarding a punishment of dismissal."
- 20. Further the Hon'ble Supreme Court on the point of loss of confidence, in the case of *State Bank of Bikaner & Jaipur Vs. Nemi Chand Nalwaya* (*supra*), held as follows:-
 - "8. When a court is considering whether the punishment of "termination from service" imposed upon a bank employee is shockingly excessive or disproportionate to the gravity of the proved misconduct, the loss of confidence in the employee will be an important and relevant factor. When an unknown person comes to the bank and claims to be the account-holder of a long inoperative account, and a bank employee, who does not know such person, instructs his colleague to transfer the account from "dormant" to "operative" category (contrary to the instructions regulating dormant accounts) without any kind of verification, and accepts the money withdrawal form from such person, gets a token and collects the amount on behalf of such person for the purpose of handing it over to such person, he in effect enables such unknown person to withdraw the amount contrary to the banking procedures; and ultimately, if it transpires that the person who claimed to be the accountholder was an impostor, the bank cannot be found fault with if it says that it has lost confidence in the employee concerned. A bank is justified in contending that not only the employees who are dishonest, but those who are guilty of gross negligence, are not fit to continue in its service."
- 21. In *Torrent Power Ltd. Vs. Chelabhai Nathanbai Luhar*, reported in 2018 SCC OnLine Guj 3580, the Gujarat High Court examined the relevant case law on termination for loss of confidence and summarized the legal principles which are reproduced hereunder: -
 - "10. The principle of law which emerges from the above cited judicial pronouncements can be summarized thus: 10.1. Once the employer has lost the confidence in the employee and the bona fide loss of confidence is affirmed, the order of discharge must be considered to be immune from challenge, for the reason that discharging the office of trust and confidence requires absolute integrity, and in such a case of loss of confidence, reinstatement cannot be directed."

- 22. The Hon'ble Apex Court in the case of *Karnataka SRTC v. M.G Vittal Rao*, reported in (2012) 1 SCC 442, held in para-25 as follows:-
 - "25. Once the employer has lost the confidence in the employee and the bona fide loss of confidence is affirmed, the order of punishment must be considered to be immune from challenge, for the reason that discharging the office of trust and confidence requires absolute integrity, and in a case of loss of confidence, reinstatement cannot be directed."
- 23. In the peculiar facts and circumstances of the case, in which, the charge-sheet was issued to the petitioner in relation to fraud committed by Nirav Modi and Mehul Choksi (Geetanjali Group) and other related accounts, since the petitioner did not observe due diligence and did not follow RBI / FEMA / DGFT / Bank's guidelines and did not ensure proper monitoring and control of FEX business / transactions of Branch Office, MCB, Brady House, Mumbai and he did not discharge his duties diligently and honestly, due to which a fraud of huge magnitude was perpetrated to the Bank and accordingly, jeopardizing Bank's interest, it can conveniently be inferred that in view of Regulation 3(1) & 3 (3) read with Regulation 4(i) of the PNB Officer Employees' (D&A) Regulations, 1977, no lesser punishment than the removal from service is warranted in the instant case.
- As a sequel to the aforesaid observations, rules, guidelines, and legal propositions, this Court is of the considered view that the writ petition has no merit and resultantly, it fails and the same is, hereby, dismissed.

(Dr. S.N. Pathak, J.)

R.Kr.