

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 4445 of 2020

FOR APPROVAL AND SIGNATURE:

HONOURABLE MS. JUSTICE VAIBHAVI D. NANAVATI

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?	
2	To be referred to the Reporter or not ?	
3	Whether their Lordships wish to see the fair copy of the judgment ?	
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	

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THE KARNAVATI COOPERATIVE BANK LIMITED

Versus

THE DISCIPLINARY COMMITTEE

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Appearance:

MR MB GANDHI, SENIOR ADVOCATE with MR CHINMAY M GANDHI(3979) for the Petitioner(s) No. 1

MS DHARMISHTA RAVAL(707) for the Respondent(s) No. 1,2

NOTICE SERVED for the Respondent(s) No. 3

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CORAM: HONOURABLE MS. JUSTICE VAIBHAVI D. NANAVATI

Date : 04/07/2023

ORAL JUDGMENT

1. The writ-applicant herein is a Cooperative Bank and the present writ-application is instituted through its Vice President



challenging the order passed by the respondent No.1 - Disciplinary Committee constituted under Section 21B of the Chartered Accountants (Amendment) Act, 1949. The writ-applicant Bank herein was the complainant before the institute of Chartered Accountants of India (ICAI) to the effect that the respondent No.3 herein was appointed as Concurrent Auditor of the writ-applicant Bank since 2004-05. During financial year 2007-08 and 2008-09 the respondent No.3 as stated by the writ-applicant herein in the complaint dated 10.6.2013 without actual verification of cash, gave a clean report for number of months and due to aforesaid action of the respondent No.3, cashier of the writ-applicant Bank misappropriated cash to the tune of Rs.43,00,000/-. On the basis of aforesaid complaint at the instance of the writ-applicant Bank herein the respondent No.2 conducted an inquiry, prima facie opinion dated 1.8.2015 was formed looking into various documents that the respondent No.3 was guilty of professional and other misconducts falling within the meaning of Clause (7) of Part-I of the Second Schedule of the Chartered Accountants Act, 1949.



2. The respondent No.1 herein passed the impugned order dated 23.12.2019 whereby Respondent No.3 herein was held to be not guilty of Professional and any other misconduct and the same has resulted in filing of the present writ-application at the instance of the original complainant i.e. the writ-applicant Bank being aggrieved by the impugned order dated 23.12.2019 passed by the respondent No.1 herein praying for the following reliefs :-

“(A) This Hon'ble Court may be pleased to issue writ of mandamus and/or any other appropriate writ, order or direction in the nature of mandamus holding and declaring that the order passed by the Disciplinary Committee - Respondent No.1 dated 16.12.2019 (Annexure-C) is a non-speaking order as well as order without considering the numerous documents on the record of the case and it is cursory one and be further pleased to declare the same as void and be pleased to quash and set-aside the same.



(B) Pending admission, hearing and/or final disposal of this petition, this Hon'ble Court may be pleased to stay the execution, operation and implementation of the order dated 16.12.2019 passed by Respondent No. 1 (Annexure-C).

C) Such other and further orders as this Hon'ble Court may deem just, fit and expedient be passed in favour of the petitioner.

D) Costs of this petition be provided for to the petitioner.”

3. Heard Mr. M. B. Gandhi, the learned Senior Counsel assisted by Mr. Chinmay Gandhi, the learned advocate appearing for the writ-applicant Bank and Ms. Dharmishta Raval, the learned advocate appearing for appearing for the respondents No.1 and 2.

Submissions on behalf of the writ-applicant :-

4. Mr. M. B. Gandhi, the learned Senior Counsel submitted that in view of the callous attitude of respondent No.3 – cashier Mr. Milind Kothari siphoned/misappropriated



the writ-applicant Bank to the tune of Rs.43 lakhs. Reliance was placed on the criminal proceeding initiated by the writ-applicant Bank against the cashier Mr. Milind Kothari wherein the criminal proceedings came to be initiated against the cashier being Criminal Case No.9 of 2010 wherein the learned Metropolitan Magistrate, Court No.11, Ahmedabad by an order dated 21.8.2012 acquitted Mr. Milind Kothari in the said proceedings. Reliance was also placed on some of the contentions/findings considered by the learned Metropolitan Magistrate in the judgment that together with the remark by the learned Magistrate to the effect that "In this way the Chartered Accountant Manojbhai Pandya had shown his carelessness in preparing the Audit Report". Placing reliance on the same it was submitted that the aforesaid would clearly establish that the respondent No.3 was guilty of professional misconduct. It was submitted that the respondent No.3 never personally visited the Bank for the purpose of audit of account and deputed his audit staff who were negligent according to the statement of the staff members of the respondent no.3



4.1 It was submitted that the staff member of respondent No.3 Mr. Rakesh Bhatt had also made a statement u/s 164 of Cr.P.C ., and at that time, the Police Inspector, Crime Branch, Ahmedabad had written a letter to the learned Metropolitan Magistrate on 21.12.2009 to the effect that the witness is likely to get threats and, therefore, he requested to have his statement recorded u/s 164 of Cr.P.C ., out of his own volition. Upon receipt of the said letter, the learned Chief Metropolitan Magistrate directed the learned Metropolitan Magistrate that the said statement to be recorded.

4.2 Mr. Gandhi, the learned Senior Counsel also submitted that the respondent authority failed to take into consideration the statement of the respondent No.3 before the police at the time of investigation that there was an admission about not counting of notes and failure of duty and misconduct by profession. It was submitted that undisputedly Mr. Devang Soni had taken charge only for one day i.e. on 12.02.2009 to 13.02.2009 and there was a holiday on the next day, he



handed over the keys to Mr. Dilip Pathak on 14.02.2009.

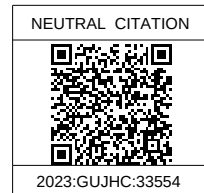
4.3 It was submitted that the respondent No.1 had also not taken into consideration the accounts which are produced about operating of accounts by Mr. Milind Kothari, the then cashier, accused as well as the accountant of his father Mr. Pushpdant Kothari. It was submitted that modus operandi of Mr. Milind Kothari was such that he was having other accounts in Citi Bank, HDFC and several other banks and he was drawing the amount with the help of the credit card and the Banks are normally, in such cases, drawing monthly bills, which a party has to pay and, therefore, huge amount being withdrawn, he would issue a cheque to square up the accounts and when the cheque was issued and come for clearance, then, as a Cashier, he himself was able to check in computer that cheque clearance and, therefore, at that time, against the very amount of cheque, he would deposit the cash amount in his bank account maintained by the writ-applicant Bank.

4.4 It was submitted that the son and father jointly operated



such accounts and credit cards in different Banks and as and when the payment was to be made, he used to issue the cheque and thereafter cash was deposited. It was submitted that looking to the size of the amount i.e. Rs.1 lakh, Rs.2 lakhs etc., clear a Cashier who had a nominal salary, could not have such a large amount of cash and, therefore, it is prima facie case established that amount of Rs.43 lakhs was siphoned by Mr. Milin Kothari, the Cashier at that point of time.

4.5 It was submitted that the Bank has already filed a Lavad Suit No.248 of 2010 for recovery of Rs.43 lakhs and interest from Mr. Milind Kothari and others wherein Respondent No.3 herein is defendant No.5 in the said suit. The writ-applicant herein had also made a claim against the Insurance Company namely, the Oriental Insurance Company Limited and the claim was rejected and therefore, a complaint was filed before the Gujarat Consumer Disputes Redressal Commission, which was dismissed and therefore, the matter was carried to the National



Consumer Disputes Redressal Commission wherein, an order was passed on 28.03.2018 to the effect that Rs.25,000/- to be deposited within four weeks in the Consumer Legal Aid Commission and further the State Commission was directed to restore the complaint on its original number and to decide the said complaint, preferably within six months.

4.6 It was submitted that the impugned order dated 16.12.2019 passed by the disciplinary committee i.e. the respondent No.1 is a non-speaking order and that the authority is required to decide the matter on merits. It was submitted that all the documents which are produced by the party should be taken into consideration and reasons should be provided as to why a particular evidence is accepted or not accepted. It was submitted that in the facts of the present case, large number of documents are produced but there is no reference of the said documents and therefore, amongst several documents some of the documents are appended to the writ-application to show that an error is committed and the



professional misconduct is committed by the respondent No.3. The order impugned being a non-speaking order is required to be quashed and set-aside.

4.7 Mr. Gandhi, the learned Senior Counsel submitted that the writ-applicant Bank has already dismissed Mr. Nilesh Nimavat, Cashier of the Bank at the relevant time and Mr. Dilip Pathak, Manager as well as Mr. Milind Kothari, who was Cashier by whom the amount was siphoned/stolen.

4.8 In support of his above submissions Mr. Gandhi, the learned Senior Counsel relied on the following decisions :-

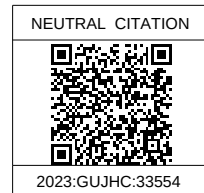
- (a) In the case of C. A. Rajesh V. Dudhwala vs. Disciplinary Committee, reported in 2013(0) GLHEL-HC-229415.
- (b) In the case of T. O. Aleyas, S/o Late Kuruvilla Unittan vs. The Institute of Chartered Accounts of India, High Court of Kerala in W.P.(C) No.29211 of 2011 (B).
- (c) In the case of Council Of Institute Of Chartered Accountants Of India Versus Manubhai A.Panchal And Co, reported in 2018 GLR (2) 1110.



Submissions on behalf of the Respondents No.1 and 2 :-

5. Ms. Dharmishta Raval, the learned advocate appearing for appearing for the respondents No.1 and 2 at the outset submitted that the writ-applicant has no locus standi to file the present the writ-application under the provisions of Article 226 of the Constitution of India.

5.1 It was submitted that the writ-applicant herein is the complainant in respect of a complaint bearing reference No.PR/150/13-DD/168/13-DC/435/16 filed with the respondent No.1 against alleged professional misconduct by the respondents No.3 and 4 herein. Pursuant to the said complaint received by the respondents No.1 and 2 herein, the respondents carried out disciplinary proceedings in accordance with the provisions of the Chartered Accountants Act (hereinafter referred to as “Act”) and Chartered Accountants (Procedure of Investigation of Professional and Other Misconduct and Conduct of Cases) Rules, 2007 (hereinafter referred to as “Rules”).



5.2 It was submitted that the said complaint was duly examined by the Director (Discipline) who formed a prima facie opinion that the respondent No.3 is guilty of professional misconduct under Clause 7 of the Part I of the Second Schedule of the Act, after giving due opportunity to both, the writ-applicant and the Chartered accountants to explain their case in writing. After having considered the materials on record the respondent No.1 has not found any positive evidence of negligence on the part of respondent No.3 and accordingly, held the respondent No. 3 is not guilty in terms of Clause 7 of the Part I of the Second Schedule of the Act.

5.3 Placing reliance on the aforesaid submissions Ms. Raval, the learned advocate submitted that the writ-applicant herein has no locus standi to challenge the impugned order in view of the fact that essentially the complainant as a realtor that provide information to the ICAI regarding misconduct. Reliance was placed on an order passed in W.P.(C) 8071/2019 and C.M. Appls No.33381-83/2019. Placing reliance on the aforesaid



decision it was submitted that the writ-applicant is a third party who cannot question the manner in which the respondent No.1 or its body to conduct disciplinary proceedings against its members. In view thereof, the writ-applicant herein has no locus standi to file such writ-application and the petition be dismissed in limine.

Analysis :-

6. Heard the learned advocates appearing for the respective parties. Undisputed facts which emerge for consideration of this Court read thus :-

6.1 The writ-applicant herein is a Cooperative Bank having filed the present writ-application through its Vice Chairman. The writ-applicant Bank filed complaint against the respondent No.3 herein on 10.6.2013 in prescribed manner. The writ-applicant Bank in its complaint alleged as under :-

“The Respondent has been appointed Concurrent Auditor of the Complainant Bank since year 2004-05. During the Financial Year 2007-08 & 2008-09, the Respondent without actual cash

verification gave clean report for number of months and due to this the cashier of the Complainant-Bank did misappropriation of cash of Rs. 43 Lakhs.”

The said complaint was examined by the respondent No.3 authority in accordance with the procedure prescribed under the Chartered Accounts Act and Chartered Accountants (Procedure of Investigation of Professional and Other Misconduct and Conduct of Cases) Rules, 2007. The said complaint came to be duly examined by the Director (Discipline) who formed prima facie opinion that the respondent No.3 is guilty of professional misconduct under Clause 7 of Part I of Second Schedule of the Act. On such prima facie opinion having been formed by the Director (Discipline) in terms of the aforesaid clause forwarded the said opinion to the respondent No.1. The said prima facie opinion was formed by the Director (Discipline) after offering due opportunity to both, writ-applicant herein and the respondents herein to explain their case in writing. Thereafter the said opinion was forwarded to the respondent No.1. After

consideration of the prima facie opinion on 1.8.2015 alongwith the material which was available on record the respondent No.1 did not find any positive evidence of negligence on the part of the respondent No.3 and accordingly held the respondent No.3 not guilty in terms of Clause 7 of Part I of Schedule Second. The said order passed by the respondent No.1 dated 16.12.2019 reads thus :-

“Findings of the Committee :-

4. In view of the above sequential submissions by the respondent which is evident from the certificate (enclosed) duly verified by the officers of banks including the cashier and even by Mr. Devang Soni who took charge on 12th February, 2009. The committee found that there is a merit in the contention of respondent.

5. The committee also noted that the official of the firm who conducted the audit also gave a statement related to verification of the cash which was later on retracted before the Magistrate under Section 164 of Cr. PC and is not being objected. Rather the committee also noted that the court while pronouncing the

final decision against the alleged employee acquitted them for which bank has filed an appeal wherein no decision has been received as yet. It is also noted by the Committee that as per normal procedures adopted in the cash verification the auditors is bound to verify the bundle of notes rather than each and every note in the bundle wherein in the verification at different time there was no objection on the missing bundles by the officials of Bank. It is also very important to note here that the cash in hand matched with the books of accounts. The cash in hand cannot be physically tallied with individual cash chest rather the cash in hand and the cash in both the cash chest have been found correct and no discrepancy has been noticed on this count.

Conclusion :-

6. In view of the above, the committee could not find any positive evidence of negligence on the part of the Respondent to hold him guilty of the negligence in performing his duties. Accordingly, in the considered opinion of the Committee, the

Respondent is NOT GUILTY in terms of Clause (7) of Part I of Second Schedule to the Chartered Accountant Act, 1949.

7. Accordingly, the Committee passes an Order for closure of this case under Rule 19(2) of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007.”

7. At this stage, it is apposite to refer to the decision in the case of **Union of India & Ors. vs. P. Gunasekaran**, reported in **(2015) 2 SCC 610**, paragraphs 12 to 19 read thus :-

“12. Despite the well-settled position, it is painfully disturbing to note that the High Court has acted as an appellate authority in the disciplinary proceedings, re-appreciating even the evidence before the enquiry officer. The finding on Charge no. I was accepted by the disciplinary authority and was also endorsed by the Central Administrative Tribunal. In disciplinary proceedings, the High Court is not and cannot act as a second court of first appeal. The High Court, in exercise of its powers under Article 226/227 of the Constitution of India, shall not venture into re- appreciation of the evidence. The High Court can only see whether:

a. the enquiry is held by a competent authority;

- b. the enquiry is held according to the procedure prescribed in that behalf;*
- c. there is violation of the principles of natural justice in conducting the proceedings;*
- d. the authorities have disabled themselves from reaching a fair conclusion by some considerations extraneous to the evidence and merits of the case;*
- e. the authorities have allowed themselves to be influenced by irrelevant or extraneous considerations;*
- f. the conclusion, on the very face of it, is so wholly arbitrary and capricious that no reasonable person could ever have arrived at such conclusion;*
- g. the disciplinary authority had erroneously failed to admit the admissible and material evidence;*
- h. the disciplinary authority had erroneously admitted inadmissible evidence which influenced the finding;*
- i. the finding of fact is based on no evidence.*

13. *Under Article 226/227 of the Constitution of India, the High Court shall not:*

- (i). re-appreciate the evidence;*
- (ii). interfere with the conclusions in the enquiry, in case the*



same has been conducted in accordance with law;

(iii). go into the adequacy of the evidence;

(iv). go into the reliability of the evidence;

(v). interfere, if there be some legal evidence on which findings can be based.

(vi). correct the error of fact however grave it may appear to be;

(vii). go into the proportionality of punishment unless it shocks its conscience.

14. *In one of the earliest decisions in State of Andhra Pradesh and others V/s. S. Sree Rama Rao, AIR 1963 SC 1723, many of the above principles have been discussed and it has been concluded thus:*

"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. The High Court may undoubtedly interfere where the departmental authorities have held the proceedings against the delinquent in a manner inconsistent with the rules of natural justice or in violation of the statutory rules prescribing the mode of enquiry or where the authorities have disabled themselves from reaching a fair decision by some considerations extraneous to the evidence and the merits of the case or by allowing themselves to be influenced by irrelevant considerations or where the conclusion on the very face of it is so wholly arbitrary and capricious that no reasonable person could ever have arrived at that conclusion, or on similar grounds. But the departmental authorities are, if the enquiry is otherwise properly held, the sole judges of facts and if there be some legal evidence on which their findings can be based, the adequacy or reliability of that evidence is not a matter which can be permitted to be canvassed before the High Court in a proceeding for a writ under Article 226 of the Constitution."

15. *In State of Andhra Pradesh and others V/s. Chitra Venkata Rao, (1975) 2 SCC 557, the principles have been*



further discussed at paragraph-21 to 24, which read as follows:

"21. The scope of Article 226 in dealing with departmental inquiries has come up before this Court. Two propositions were laid down by this Court in State of A.P. V/s. S. Sree Rama Rao. First, there is no warrant for the view that in considering whether a public officer is guilty of misconduct charged against him, the rule followed in criminal trials that [pic] an offence is not established unless proved by evidence beyond reasonable doubt to the satisfaction of the Court must be applied. If that rule be not applied by a domestic tribunal of inquiry the High Court in a petition under Article 226 of the Constitution is not competent to declare the order of the authorities holding a departmental enquiry invalid. The High Court is not a court of appeal under Article 226 over the decision of the authorities holding a departmental enquiry against a public servant. The Court 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. Second, 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 to review the evidence and to arrive at an independent finding on the evidence. The High Court may interfere where the departmental authorities have held the proceedings against the delinquent in a manner inconsistent with the rules of natural justice or in violation of the statutory rules prescribing the mode of enquiry or where the authorities have disabled themselves from reaching a fair decision by some considerations extraneous to the evidence and the merits of the case or by allowing themselves to be influenced by irrelevant considerations or where the conclusion on the very face of it is so wholly arbitrary and capricious that no reasonable person could ever have arrived at that conclusion. The departmental authorities are, if the enquiry is otherwise properly held, the sole judges of facts and if there is some legal evidence on which their findings can be based, the adequacy or reliability of that evidence is not a matter which can be permitted to be canvassed before the High Court in a proceeding for a writ under Article 226.

22. Again, this Court in Railway Board, representing the Union of India, New Delhi V/s. Niranjana Singh said that the High Court does not interfere with the conclusion of the disciplinary authority unless the finding is not supported by any evidence or it can be said that no

reasonable person could have reached such a finding. In Niranjana Singh case this Court held that the High Court exceeded its powers in interfering with the findings of the disciplinary authority on the charge that the respondent was instrumental in compelling the shut-down of an air compressor at about 8.15 a.m. on May 31, 1956. This Court said that the Enquiry Committee felt that the evidence of two persons that the respondent led a group of strikers and compelled them to close down their compressor could not be accepted at its face value. The General Manager did not agree with the Enquiry Committee on that point. The General Manager accepted the evidence. This Court said that it was open to the General Manager to do so and he was not bound by the conclusion reached by the committee. This Court held that the conclusion reached by the disciplinary authority should prevail and the High Court should not have interfered with the conclusion.

23. The jurisdiction to issue a writ of certiorari under Article 226 is a supervisory jurisdiction. The Court exercises it not as an appellate court. The findings of fact reached by an inferior court or tribunal as a result of the appreciation of evidence are not reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may

appear to be. In regard to a finding of fact recorded by a tribunal, a writ can be issued if it is shown that in recording the said finding, the tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Again if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari. A finding of fact recorded by the Tribunal cannot be challenged on the ground that the relevant and material evidence adduced before the Tribunal is insufficient or inadequate to sustain a finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal. See Syed Yakoob V/s. K.S. Radhakrishnan.

24. The High Court in the present case assessed the entire evidence and came to its own conclusion. The High Court was not justified to do so. Apart from the aspect that the High Court does not correct a finding of fact on the ground that the evidence is not sufficient or adequate, the evidence in the present case which was considered by the Tribunal cannot be scanned by the High Court to justify the conclusion that there is no evidence which would justify the finding of the Tribunal that the respondent did not make the journey. The

Tribunal gave reasons for its conclusions. It is not possible for the High Court to say that no reasonable person could have arrived at these conclusions. The High Court reviewed the evidence, reassessed the evidence and then rejected the evidence as no evidence. That is precisely what the High Court in exercising jurisdiction to issue a writ of certiorari should not do."

16. *These principles have been succinctly summed-up by the living legend and centenarian Justice V. R. Krishna Iyer in State of Haryana and another V/s. Rattan Singh, (1977) 2 SCC 491. To quote the unparalleled and inimitable expressions:*

"4. in a domestic enquiry the strict and sophisticated rules 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. It is true that departmental authorities and Administrative Tribunals must be careful in evaluating such material and should not glibly swallow what is strictly speaking not relevant under the Indian Evidence Act. For this proposition it is not necessary to cite decisions nor text books, although we have been taken through case-law and other authorities by counsel on both sides. The essence of a judicial approach is objectivity, exclusion of extraneous materials or considerations and observance of rules of natural justice.

Of course, fairplay is the basis and if perversity or arbitrariness, bias or surrender of independence of judgment vitiate the conclusions reached, such finding, even though of a domestic tribunal, cannot be held good. ..."

17. *In all the subsequent decisions of this Court upto the latest in Chennai Water Supply and Sewarage Board V/s. T. T. Murali Babu, (2014) 4 SCC 108, these principles have been consistently followed adding practically nothing more or altering anything.*

18. *On Article I, the disciplinary authority, while imposing the punishment of compulsory retirement in the impugned order dated 28.02.2000, had arrived at the following findings:*

"Article-I was held as proved by the Inquiry authority after evaluating the evidence adduced in the case. Under the circumstances of the case, the evidence relied on viz., letter dated 11.12.92 written by Shri P. Gunasekaran, provides a reasonable nexus to the charge framed against him and he did not controvert the contents of the said letter dated 11.12.92 during the time of inquiry. Nor did he produce any defence witness during the inquiry to support his claims including that on 23.11.92 he left the office on permission. There is

nothing to indicate that he was handicapped in producing his defence witness. ..."

19. *The disciplinary authority, on scanning the inquiry report and having accepted it, after discussing the available and admissible evidence on the charge, and the Central Administrative Tribunal having endorsed the view of the disciplinary authority, it was not at all open to the High Court to re- appreciate the evidence in exercise of its jurisdiction under Article 226/227 of the Constitution of India.”*

Considering the aforesaid position of law and the facts of the present case, this Court would not reappreciate the evidence which was considered by the Disciplinary Committee while coming to the aforesaid decision. Undisputedly it is not even the case of the writ-applicant alleging malafide or any procedural irregularity. Once the decision making authority has followed the due procedure as embodied under the Act and the Rules, this Court would not sit in appeal against the decision which is arrived at by the competent authority after considering the material which was on record.



8. This Court has considered the order passed by the respondent No.1 wherein the Committee considered the charge framed against the respondent No.3 and on due verification of the certificate which was enclosed duly verified by the officers of the Bank including Mr. Devang Soni who took charge on 12.02.2009. The Committee found merit in the contention of the respondent No.3. The officials of the firm of the respondent No.2 also retracted the statement before the learned Magistrate under Section 164 of the Criminal Procedure Code and the same was not objected. The Committee noted that the learned Magistrate acquitted the Cashier by order dated 21.8.2012, at the relevant point of time the appeal was pending. The Committee also noted that as per normal procedure adopted, in cash verification the auditors are to verify the bundle of notes rather than each and every note. The Committee also considered the case of the respondent No.3 taking into consideration the relevant rules i.e. prevailing at the same time and came to the conclusion that cash in hand matched with the books of account. Further the Committee



also considered that the cash in hand could not be physically tallied with individual cash chest rather than cash in hand and cash in both the cash chest were found to be correct and no discrepancy was noticed on their part. Considering the aforesaid, the Committee passed an order of closure of case against the respondent No.3 under the provisions of Rule 19(2) of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007.

9. This Court deems it fit to deal with the decisions relied upon by Mr. Gandhi, the learned Senior Counsel to substantiate the submissions of the writ-applicant as referred above :-

(a) In the case of C. A. Rajesh V. Dudhwala vs. Disciplinary Committee, reported in 2013(0) GLHEL-HC-229415, the Institute of Chartered Accountants, the aforesaid appeal was filed at the instance of Chartered Accountant was debarred by the Council. The quantum of punishment imposed by the



Council which was not interfered by the Hon'ble Division Bench on the ground that the Court declined to interfere in the concurrent findings by three authorities.

In the facts of the present case, the writ-applicant herein is the complainant whose complaint has been rejected. The aforesaid decision is not applicable in the facts of the present case. The writ-applicant herein being the complainant and the Council has considered after following due process of law, the Chartered Accountant not guilty.

(b) In the case of T. O. Aleyas, S/o Late Kuruvilla Unittan vs. The Institute of Chartered Accounts of India, High Court of Kerala in W.P.(C) No.29211 of 2011 (B), the issue involved in the said writ-application was whether on a complaint received from the aggrieved person the Board of Discipline and the Disciplinary Committee constituted under the ICAI under Sections 21A and 21B of the Act can without giving any reason can decide not to initiate any disciplinary action against two Chartered Accountants especially when the Director (Discipline)

without giving reasons on exercise of powers under Section 21(2) of the Act arrives at a prima facie opinion commission of misconduct by one of them who are partners of the Chartered Accountant firm which was engaged in auditing of accounts of a Company in respect of which audit complaint were raised while exercising powers under Section 21(3) of the Act and whether in respect of identical misconduct by one of the partners whether the other can be absolved when the allegation with respect to audit of allegations are in respect to the audit or the firm was engaged.

The aforesaid decision could not be applicable in the facts of the present case, in view of the fact that in the facts of the present case both, the complainant and the respondent No.3 were accorded opportunity of hearing and prima facie opinion was formed and after considering the same disciplinary proceedings came to be initiated against the respondent No.3 wherein the complaint came to be closed against the respondent No.3.



(c) In the case of Council Of Institute Of Chartered Accountants Of India Versus Manubhai A.Panchal And Co, reported in 2018 GLR (2) 1110, the facts of the present case pertains to audit carried out by the firm of the Bank. The Hon'ble Division Bench was considering an LPA at the instance of the ICAI wherein the Council found the respondent guilty of certain misconduct and decided to recommend to the Court that the name of the respondent be removed from the Register of members for a period of two years. The Hon'ble Division Bench in the aforesaid considered the aforesaid reference and accepted the recommendation of the Council wherein it was recommended that the name of the respondent No.2 be removed from the Register of members for a period of two years. While coming to the aforesaid conclusion the Hon'ble Division Bench considered the word "misconduct" in light of the provisions of Section 21 of the Act and held that the conduct which is wrong/improper/unlawful and transgression from an established and definite Code of Conduct and Hon'ble Division Bench proceeded further to accept that the contention



of the Council that the conduct of the respondent would fall within the domain of the misconduct and accordingly allowed the reference.

In the facts of the present case, the respondent No.3 considering the documents on record held that there was no material on record to hold the respondent No.3 guilty.

10. Ms. Raval, the learned advocate appearing for the respondents No.1 and 2 has placed on record the Manual of Concurrent Audit of the Bank and submitted that the aforesaid decision was taken by the respondent Committee taking into consideration the prevalent rules for concurrent audit of the bank at the relevant point of time.

11. In the opinion of this Court, the proceedings against a member of the ICAI are in the nature of disciplinary proceedings with an object, whether a member/firm is guilty of offence prescribed under First Schedule or Second Schedule. In the facts of the present case, the Director (Discipline) formed an opinion that prima facie case was made out against the



respondent No.3 and the same was referred to the Committee i.e. respondent No.1. On considering the documents on record and the facts of the documents on record the Committee held the respondent No.3 not guilty of misconduct. Scope of interference in such decision arrived by the respondent authority under Articles 226 and 227 of the Constitution of India is very limited considering the facts of the present case and position of law as referred above.

12. In the case of Baldevbhai Maganbhai Patel vs. Mukeshbhai Aatmaram Patel order dated 10.2.2021 passed in the Letters Patent Appeal No.50 of 2021 in the Special Civil Application No.10522 of 2020, wherein the Hon'ble Division Bench held that the complainant would have no right to maintain appeal as the role of the complainant is confined for lodging of complaint before the competent authority beyond that the complainant would not have any role to challenge the order passed not accepting the complaint. Paragraphs No.3 to 6 read thus :-



“3. In our opinion, the present appellant, who is only the complainant, would not have right to maintain this appeal as his role was confined for lodging the complaint before the complainant authority in appropriate manner and to assist or provide evidence before the competent authority in support of his complaint. Beyond that, the complainant would not have any role to challenge an order passed not accepting the complaint.

4. The law on the point is well settled. According to us, reference may be had to the following judgments:-

(1) In the case of Maharaj Singh v. State of Uttar Pradesh & Ors., reported in (1977) 1 SCC 155.

(2) A decision rendered in Special Appeal No.177 of 2008, decided on 05.03.2008 of the Allahabad High Court.

(3) In the case of Ravi Yashwant Bhoir v. District Collector, Raigad & Ors., reported in (2012) 4 SCC 407; and

(4) In the case of Poonam v. State of Uttar Pradesh & Ors., reported in (2016) 2 SCC 779.

5. Accordingly, we DISMISS the appeal on the ground of the appellant having no locus to maintain the appeal. Consequently, the connected Civil Application also stands DISPOSED OF.

6. We make it clear that we have not examined the merits of the appeal and we have dismissed the same only on the ground of locus.”

13. In view of the aforesaid position of law as referred above and the facts of the present case the writ-applicant herein is the original complainant having preferred complaint before the Instituted of Chartered Accountants of India (ICAI) alleging that the respondent No.4 was appointed as Concurrent Auditor of the writ-applicant i.e. the original complainant Bank since the year 2004-05. During the financial years 2007-08 and 2008-09 the respondent No.4 without actual cash verification gave clean chit for number of months and due to this the Cashier of the complainant Bank misappropriated cash to the tune of Rs.43 lakhs. The respondent No.1 herein considering the documents on record held that there was no material found by the respondent No.1 to hold the respondent No.3 guilty.

14. In the opinion of this Court, the complainant essentially act as a realtor that provide information to the ICAI regarding



misconduct. The Act also provides for appeal to the delinquent against whom the disciplinary authority would pass an adverse order, however the same right is not available to the complainant. Under such circumstances, where the Statute itself does not provide for appeal to the complainant who acts as an informant to the ICAI with respect to the alleged incident, thereafter it is for the respondent authority to consider the said complaint in accordance with the Act and Rules. The same is also a rational for not providing a remedy of appeal to a complaint under Section 22(g) of the ICAI Act against the decision of the ICAI absolving the member of allegation of any misconduct in terms of Section 22(g) of the ICAI Act remedy of appeal is only available to a member of ICAI against the decision of the Board Discipline or Disciplinary Committee imposing any penalty. The same is not available to the complainant or informant. Considering the aforesaid, this Court is not inclined to accept or entertain the writ-application filed at the instance of the original complainant – writ-applicant herein. The writ-application fails on the ground of



the writ-applicant having no locus to maintain the present writ-application. The present writ-application stands dismissed accordingly.

K.K. SAIYED

(VAIBHAVI D. NANAVATI,J)