

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.11.2017

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
and
THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.A.No.1509 of 2017
and CMP No.19911 of 2017

G.S.Rajaneesh

Railway Protection Force Barracks,
Wall Tax Road,
Chennai - 3

... Appellant

versus

1. Senior Divisional Security Commissioner,
Railway Protection Force, Southern Railway,
5th Floor, NGO Complex, DRM Building,
Park Town, Chennai - 600 003.

2. Assistant Security Commissioner,
Railway Protection Force/TNPM, Southern Railway,
5th Floor, NGO Complex, DRM Building,
Park Town, Chennai - 600 003.

... Respondents

Writ Appeal filed against the order dated 21.09.2017 in W.P.No.25418
of 2017.

For Appellant : Mr.V.Stalin
For Respondents : Mr.P.T.Ramkumar

JUDGMENT

(Order of the Court was delivered by S.MANIKUMAR, J.)

Appellant is a policeman in Railway Protection Force. On 11.01.2017,

he was deputed to escort, Nilagiri Express train from Chennai to Salem

alongwith three other staff. He was alleged to have misbehaved and sexually harassed two minor girl children travelling in the same train. Principal of the School, who had travelled in the train alongwith the children gave a complaint to Government Railway Police Station, Salem. Accordingly, a case in Cr.No.6 of 2017 was registered under the Protection of Child From Sexual Offence Act, 2012 for alleged offence under Section 9 (m) (1) and 10 of the said Act. Criminal Case is stated to be under investigation and charge sheet is yet to be filed.

2. Based on the alleged incident reported, appellant was placed under suspension on 12.01.2017. After conducting a preliminary enquiry, a charge memo dated 10.03.2017 has been issued. Order of suspension was revoked on 28.06.2017 and the appellant was transferred from Chennai to Sulurpet in Andhra Pradesh. Charge framed against the petitioner vide proceedings dated 10.03.2017 under Rule 153 of the Railway Protection Force Rules, 1987, has been challenged in W.P.No.25418 of 2017.

3. After hearing the learned counsel for the parties, advertng to the facts and circumstances and tracing the history of POCSO Act, 2012 and catena of decisions, writ Court vide order dated 21.09.2017, declined to quash the Charge memorandum dated 10.03.2017. Testing the correctness of the order, instant writ Appeal has been filed.

4. Inviting the attention of this Court to the contents of FIR dated 12.01.2017 and the allegations in the charge memorandum dated 10.03.2017, Mr.V.Stalin, learned counsel for the appellant submitted that there is variance. Drawing the attention of this Court to paragraph No.9 of the order of the writ Court in W.P.No.25418 of 2017 dated 19.07.2017, Mr.V.Stalin, further contended that when the appellant had denied the very allegations made against him, observation of the writ Court, permitting examination of the Principal as well as teachers in the enquiry proceedings and thereafter granting permission to rely on the submissions, in the criminal case, would seriously prejudice the defence of the appellant in the criminal case.

5. Attention of this Court was also drawn to a decision of the Hon'ble Supreme Court in ***State Bank of India and others Vs. Neelam Nag and another***, reported in 2016 (9) SCC 491, wherein the Hon'ble Supreme Court has directed the disciplinary proceedings to be kept in abeyance, till the expiry of one year from the date of the order of the Hon'ble Supreme Court. For the abovesaid reasons, he prayed for interference.

6. Per contra, taking this Court to the nature of allegations, Mr.P.T.Ramkumar, learned counsel for the respondents submitted that

there is no bar for conducting departmental proceedings when the criminal case, is at the primitive stage of filing of FIR only. According to him, no charge sheet has been filed and that therefore, the contention of the appellant that his defence would be exposed, is not correct.

7. Mr.P.T.Ramkumar, learned counsel for the respondents further submitted that pursuant to the initiation of disciplinary proceedings in charge memorandum dated 10.03.2017, departmental enquiry had already commenced on 20.03.2017. So far there were nine hearings and that only two witnesses remain to be examined and at this juncture, there is no need to prevent continuation of departmental proceedings. He also submitted that there was an enquiry proceedings on 28.11.2017 in which the appellant participated without any demand.

8. Mr.P.T.Ramkumar, learned counsel for the respondents further submitted that when the appellant had participated in the departmental enquiry proceedings for nearly nine hearings, he has not averred the same in the supporting affidavit to W.P.No.25418 of 2017, filed to quash the same. Learned counsel for the respondents submitted that there is wilful and deliberate suppression. According to him, petitioner, who has not approached this Court with clean hands is not entitled to any equity.

9. During the course of hearing when a specific question was posted to Mr.P.T.Ramkumar, learned counsel for the respondents as to whether the observations, and directions contained in paragraph No.9 of the order of the writ Court had been acted upon, answer to the query was in the negative negative and added further Mr.P.T.Ramkumar, learned counsel for the respondents submitted that paragraph Nos.9 & 10 of the order made in the writ Court be eschewed and that the department be permitted to continue with the disciplinary proceedings.

10. Finally, attention of this Court was drawn to a decision of a Hon'ble Division Bench in ***S.Kathhiravan Vs. The Commandant, Office of the DIGP, Group Center, CRPF, Chennai-600 065 and 2 others***, reported in **2017 (6) CTC 252**, wherein this Court, to which one of us is a party [Hon'ble Mr.Justice S.Manikumar], at paragraph No.20 and 21, held as follows:

"20.Since the petitioner is in the uniformed disciplined service, the authority is expected to perform his duty as per the Rules. When the petitioner is alleged to have committed misconduct, the respondents have no other choice except to proceed with the departmental enquiry and they need not wait for the decision of the criminal court. The department need not wait for the decision of the law enforcing agency.

21.Furthermore, discretionary jurisdiction under Article 226 of the Constitution of India should be exercised cautiously. In the

present case on hand, already department witnesses have been examined. It is for the petitioner to cross examine the witnesses. At this stage, if the department has to defer the departmental proceedings, till the criminal prosecution is over, then it will adversely affect the administrative functioning of the disciplined force."

11. Heard the learned counsel for the parties and perused the materials available on record.

12. As regards, the first contention that there is discrepancy in the charge dated 10.03.2017 and the FIR in Cr.No.6 of 2017 on the file of District Government Railway Police Station, Salem, the same are extracted hereunder.

" ... and train was between katpadi and salem junction A police security who was boarding our compartment walks several times along the compartment and disturbed a few staffs and children by touching light on their faces and even removed the buttons of the children dress and had a bad touch with them later children complained to the staff in charge and it was notice that he was Police Security of good heights and speaks Malayalam. Then we took this complaint to the TTE and Train captain Mr.Satish 9043192919). After discussing with the captain, we confined that he was Mr.Rajesh who tortured the staff and children I request you to take severe action over the respective person. The children victims are Sangami.T. age 12 years. Gr.6 Seat No.56 and Devika S. 12 years Gr.6, Seat No.53,

The staff witnessed are Sandhya and Manimegalai, Sd xxxx K.Vanitha 12.1.2017, Principal, B.V.Public School, Coimbatore."

13. Charge and statement of allegations in the Charge memo dated 10.03.2017, is as hereunder.

"Charge:

He was deputed for Train Escorting duty by Tr.No.12671 Nilagiri Exp./12624 Chennai Mail along with three other staff on 11/12.01.17. While performing Train escort duty by Train No.12671 Nilagiri Express from MAS to SA, at about 01.45 hrs on 12.01.17, he had repeatedly flashed torch light of his mobile phone on the faces of school girls / teacher of Brindavan Vidhyalaya Public School, Madukarai, Coimbatore District who travelled in S5 Coach of Tr.No.12671 Exp and also had sexually harassed two minor school girls of the said school travelling in S5 Coach.

This discreditable conduct of Sri.G.S.Rajaneesh, Con/NHC has led to lodge a complaint by Principal, Brindavan Vidyalaya Public School, Madukarai, Coimbatore District with GRP/CBE and thereby a Criminal case was registered against him by GRP/CBE in CRP/CBE Cr.No.09/14 U/Sec 9 a(iii) R/W 10 POCSO Act-2012 and the same was transferred to GRP/SA on the point of jurisdiction, who registered a case in Crime No.06/17 U/Sec 9 a(iii) R/W 10 POCSO Act-2012.

Thus he has brought discredit to the reputation of the Force and thereby contravened Rule 146.4 of RPF Rules and Rule 3 (1) (iii) of Railway Services Conduct Rules 1966/

Hence the charge.

Statement of allegations on the basis of which charge

is framed against Shri.G.S.Rajaneesh, Con/0520174/NHC.

It has been reported by IPF/KPD vide his preliminary enquiry report No.KPD/23/Con-GSR/NHC/17 dt.12.02.17 that Sri.G.S.Rajaneesh, Con/0520174/NHC alongwith Sri.C.Vimalan, Constable/0603043/NHC, Shri.D.S.Gurjar, Constable/1502366/NHC and Sri.Pankat, Constable/1501313/NHC were nominated for Train Escorting duty by Train No.12671 Nilagiri Express (Ex MAS MTP) from Chennai Central to Salem and return escort by Train No.12624 Chennai Mail (Ex TVC-MAS) from Salem to Chennai Central. Smt.K.Vanitha, Principal of Brindavan Vidyalaya Public School, Madukarai, Coimbatore District who travelled in S5 Coach, Berth No.42 alongwith a school children and staffs in, S5 Coach of Train No.12571 Express had lodged a complaint with GRP/CBE against Sri.G.S.Rajaneesh, Con/0520174/NHC stating that he had repeatedly flashed torch light of his mobile phone on the faces of school girls / teacher of Brindavan Vidhyalaya Public School, Madurkarai, Coimbatore District who travelled in Berth No.24 S5 Coach of Tr.No.12671 Nilagiri Exp and also had sexually harassed two minor school girls of the said school who travelled in Berth No.53 & 56 of S5 Coach. On receiving the complaint GRP/CBE registered a case against Sri.G.S.Rajaneesh, Con/0520174/NHC in GRP/CBE station Cr.No.09/17 U/Sec 9a(iii) R/w 10 POCSO Act-2012 and transferred the case to GRP/SA. In this connecting the IRP/SA registered a case in Cr.No.06/17 U/Sec 9a(iii) R/w 10 POCSO Act-2012, against him.

The statement of Smt.K.Vanitha, Principal of Brindavan Vidyalaya Public School, Madukarai, Coimbatore District has been corroborated by Smt.Manimegalai W/o.A.Ranjit Kumar,

working as Teacher, Principal of Brindavan Vidyalaya Public School, Smt.A.T.Sandhya, D/o.A.Thangavel, Madukarai, Coimbatore District working as Teacher, Sri.L.N.Tiwari/TTI/SA who performed duty in S4, S5, S6 Coach of Train No.1271 on 11/12.02.2017, Sri.S.Sathish, Train Captain/SA who performed duty in Train No.12671 on 11/12.02.2017.

By this discreditable conduct, he has given room to register a criminal case against him by GRP/CBE in CRP/CBE station Cr.NO.09/117 U/Sec 9 a(iii) R/W 10 POCSO Act, 2012, thereby brought discredit to the reputation of the Force."

14. Though, Mr.V.Stalin, learned counsel for the appellant submitted that there is discrepancy in the allegations and for that reason, discrepancy proceedings required to be quashed, we are not inclined to accept the said contention, as charge memorandum is required to be proved, by considering the statement of witnesses and documents filed in the departmental enquiry. Even taking it for granted that there is a variance, it is the matter for evidence.

15. As regards the observations and directions, contained in paragraph 9 of the judgment impugned before us, reply of Mr.P.T.Ramkumar, learned counsel for the respondents is that except two witnesses mentioned in the charge memorandum, others have been examined/

16. In so far as reliance to the decision of *State Bank of India and others Vs. Neelam Nag and another*, reported in 2016 (9) SCC 491, it could be seen from the facts and circumstances of the said case, the delinquent therein was alleged to have committed breach of trust and embezzlement and that the trial was pending for nearly 10 years. Disciplinary proceedings were also instituted. Protesting the institution of disciplinary proceedings, 2nd respondent therein has approached the High Court. Adverting to clause No.4 of the memorandum of settlement pressed into service, in the above reported case, at paragraph No.21 in *Neelam Nag's* case cited supra, Hon'ble Supreme Court observed, as hereunder:

"21. On the plain language of Clause 4, in our opinion, it is not a stipulation to prohibit the institution and continuation of disciplinary proceedings, much less indefinitely merely because of the pendency of criminal case against the delinquent employee. On the other hand, it is an enabling provision permitting the institution or continuation of disciplinary proceedings, if the employee is not put on trial by the prosecution within one year from the commission of the offence or the prosecution fails to proceed against him for want of any material."

17. Further taking note of the long period with no effective progress in the trial, at paragraph No.23, the Hon'ble Supreme Court observed as hereunder.

"23... In the last six years, evidence of only two additional prosecution witnesses has been recorded. The respondent has not pointed out any material on record to even remotely suggest that she had tried her best to dissuade the criminal court from adjourning the trial, in breach of direction given by the Division Bench of the High Court to proceed on day-to-day basis and to conclude the trial within one year from 28.6.2010. Pendency of criminal trial for around 10 years, by no means, can be said to be a reasonable time-frame to withhold the disciplinary proceedings. We are fortified in taking this view on the principle underlying the former part of the same clause, which envisages that if the Authority which has to start the prosecution refuses (read fails) to do so within one year from the commission of the offence, the departmental action can proceed under the provisions as set out in Clauses 11 and 12 of the settlement."

18. At paragraph Nos. 25, 27 to 29, the Hon'ble Supreme Court ordered as hereunder.

"25. Be that as it may, the remedy of writ being an equitable jurisdiction and keeping in mind the larger public interests (at least in cases of involvement of the employees of the public sector banks in offence of breach of trust and embezzlement), the arrangement predicated in Stanzen Toyotetsu India (P) Ltd Vs. Girish V., reported in 2014 (3) SCC 636, would meet the ends of justice. For, the disciplinary proceedings instituted against the respondent cannot brook any further delay which is already pending for more than 10 years.

26.....

27. Accordingly, we exercise discretion in favour of the respondent of staying the ongoing disciplinary proceedings until the closure of recording of evidence of prosecution witnesses cited in the criminal trial, as directed by the Division Bench of the High Court and do not consider it fit to vacate that arrangement straightaway. Instead, in our opinion, interests of justice would be sufficiently served by directing the criminal case pending against the respondent to be decided expeditiously but not later than one year from the date of this order. The trial court shall take effective steps to ensure that the witnesses are served, appear and are examined on day-to-day basis. In case any adjournment becomes inevitable, it should not be for more than a fortnight, when necessary.

28. We also direct that the respondent shall extend full cooperation to the trial Court for an early disposal of the trial, which includes cooperation by the advocate appointed by her.

29. If the trial is not completed within one year from the date of this order, despite the steps which the trial court has been directed to take, the disciplinary proceedings against the respondent shall be resumed by the enquiry officer concerned. The protection given to the respondent of keeping the disciplinary proceedings in abeyance shall then stand vacated forthwith upon expiry of the period of one year from the date of this order."

19. Decision rendered in *Neelam Nag's* case cannot be treated as

precedent on the facts and circumstances of the instant case. In *Bihar School Examination Board v. Suresh Prasad Sinha* reported in (2009) 8 MLJ 1306 (SC), Their Lordships of the Hon'ble Apex Court, considered some of the earlier decisions, on the law of Precedent, as follows:

"14. The Courts should guard against the danger of mechanical application of an observation without ascertaining the context in which it was made. In C.I.T v. Sun Engg. Works(P)Ltd. AIR 1993 SC43 : (1992) 4 SCC 363 this Court observed:

"It is neither desirable nor permissible to pick out a word or a sentence from the judgment of this Court, divorced from the context of the question under consideration and treat it to be complete 'law' declared by this Court. The judgment must be read as a whole and the observations from the judgment have to be considered in the light of the questions which were before this Court. A decision of this Court takes its colour from the questions involved in the case in which it is rendered and while applying the decision to a later case, the Courts must carefully try to ascertain the true principle laid down by the decision of this Court and not to pick out words or sentences from the judgment, divorced from the context of the questions under consideration by this Court, to support their reasonings."

It is also necessary to keep in mind the following principles laid down in *Government of Karnataka and Others v. Gowramma and Others* AIR 2008 SC 863, with reference to precedential value of decisions:

"Reliance on the decision without looking into the factual background of the case before it is clearly impermissible. A decision is a precedent on its own facts. Each case presents its own features. It is not everything said by a Judge while giving a judgment that constitutes a precedent. The only thing in a Judge's decision binding a party is the principle upon which the case is decided and for this reason it is important to analyse a decision and isolate from it the ratio decidendi. According to the well-settled theory of precedents, every decision contains three basic postulates (i) findings of material facts, direct and inferential. An inferential finding of facts is the inference which the Judge draws from the direct, or perceptible facts; (ii) statements of the principles of law applicable to the legal problems disclosed by the facts; and (iii) judgment based on the combined effect of the above. A decision is an authority for what it actually decides. What is of the essence in a decision is its ratio and not every observation found therein nor what logically flows from the various observations made in the judgment. The enunciation of the

reason or principle on which a question before a Court has been decided is alone binding as a precedent. (See: State of Orissa v. Sudhansu Sekhar Misra and Others AIR 1968 SC 647 and Union of India and Others v. Dhanwanti Devi and Others (1996) 6 SCC 44. A case is a precedent and binding for what it explicitly decides and no more. The words used by Judges in their judgments are not to be read as if they are words in an Act of Parliament. In Quinn v. Leathern (1901) AC 495 (H.L.), EARL OF HALSBURY LC observed that every judgment must be read as applicable to the particular facts proved or assumed to be proved, since the generality of the expressions which are found there are not intended to be exposition of the whole law but governed and qualified by the particular facts of the case in which such expressions are found and a case is only an authority for what it actually decides.

Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of Courts are neither to be read as Euclid's theorems nor as provisions of the statute and that too taken out of their context. These observations must be read in the context in which they appear to have

been stated. Judgments of Courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for judges to embark into lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes; their words are not to be interpreted as statutes.

The following words of LORD DENNING, in the matter of applying precedents have become locus classicus:

"Each case depends on its own facts and a close similarity between one case and another is not enough because even a single significant detail may alter the entire aspect, in deciding such cases. One should avoid the temptation to decide cases (as said by Cardozo) by matching the colour of one case against the colour of another. To decide therefore, on which side of the line a case falls, the broad resemblance to another case is not at all decisive.

.. ..

Precedent should be followed only so far as it marks the path of justice, but you must cut the dead wood and trim off the side branches else you will find yourself lost in thickets and branches. My plea is to keep the path to justice clear of obstructions which

could impede it."

15. In *Sarva Shramik Sanghatana (K.V), Mumbai v. State of Maharashtra and Others*, AIR 2008 SC 946 : (2008) 1 MLJ 137, this Court cited the following passage from *Quinn v. Leathern* (1901 AC 495), with approval at p.141 of MLJ:

"15. Now before discussing the case of *Allen v. Flood* (1898) AC 1 and what was decided therein, there are two observations of a general character which I wish to make, and one is to repeat what I have very often said before, that every judgment must be read as applicable to the particular facts proved, or assumed to be proved, since the generality of the expressions which may be found there are not intended to be expositions of the whole law, but are governed and qualified by the particular facts of the case in which such expressions are to be found. The other is that a case is only an authority for what it actually decides. I entirely deny that it can be quoted for a proposition that may seem to follow logically from it. Such a mode of reasoning assumes that the law is necessarily a logical Code, whereas every lawyer must acknowledge that the law is not always logical at all."

16. In *Bhavnagar University v. Pali tana Sugar Mills Pvt. Ltd* AIR2003 SC511 : (2003) 2 SCC 111, this Court observed:

"It is well settled that a little difference in facts or additional facts may make a lot of difference in the precedential value of a decision."

17. As held in *Bharat Petroleum Corporation Ltd. and Another v. N.R. Vairamani and Another* AIR 2004 SC 4778 : (2004) 8 SCC 579 : (2004) 4 MLJ 147, a decision cannot be relied on without disclosing the factual situation. In the same judgment, this Court also observed at p. 151 of MLJ:

"9. Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of Courts are neither to be read as Euclid's theorems nor as provisions of the statute and that too taken out of the context. These observations must be read in the context in which they appear to have been stated."

20. Per contra, decision in *S.Kathhiravan Vs. The Commandant, Office of the DIGP, Group Center, CRPF, Chennai-600 065 and 2 others*, reported in 2017 (6) CTC 252, is proximate and appropriate.

21. On the submission of the respondents, as to whether there was suppression of the material fact of acquiescence to the departmental proceedings, in attending the hearings, and failure to disclose the same amounts to suppression, perusal of the supporting affidavit filed in W.P.No.25418 of 2017 dated 17.09.2017, does not disclose the

commencement of the enquiry on 20.03.2017 and examination of witnesses, except, to plead that there should not be simultaneous departmental proceedings, when FIR has been filed. So far, nine hearings, in the departmental enquiry are over and only two more witness, have to be examined. Appellant has suppressed the abovesaid facts. Suppression of the material fact, in participating the enquiry proceedings, is per se apparent. Appellant who has suppressed the material facts, is not entitled to any equitable remedy. Reference can be made to few decisions.

(i) In **Prestige Lights Ltd., v. State Bank of India** reported in **2007 (8) SCC 449**, at Paragraphs 27, 33, 34 and 35, held as follows:

"26. In **Gorden v. Gorden**, (1904) 73 LJ 41 : 90 LT 597 : 16 Dig 90, 1128, Cozens Hardy, L.J. put the principle succinctly in the following words; "I desire expressly to limit my judgment to a case in which the [party in contempt] is saying that the order complained of is outside the jurisdiction of the court, as distinguished from the case of an order which, although it is within the jurisdiction of the court, ought not, it is said, to have been made.

.....

33. It is thus clear that though the appellant-Company had approached the High Court under Article 226 of the Constitution, it had not candidly stated all the facts to the Court. The High Court is exercising discretionary and extraordinary jurisdiction under Article 226 of the Constitution. Over and above, a Court of Law

is also a Court of Equity. It is, therefore, of utmost necessity that when a party approaches a High Court, he must place all the facts before the Court without any reservation. If there is suppression of material facts on the part of the applicant or twisted facts have been placed before the Court, the Writ Court may refuse to entertain the petition and dismiss it without entering into merits of the matter.

34. The object underlying the above principle has been succinctly stated by Scrutton, L.J., in **R v. Kensington Income Tax Commissioners**, [(1917) 1 KB 486 : 86 LJ KB 257 : 116 LT 136], in the following words: "(I)t has been for many years the rule of the Court, and one which it is of the greatest importance to maintain, that when an applicant comes to the Court to obtain relief on an ex parte statement he should make a full and fair disclosure of all the material facts, not law. He must not misstate the law if he can help the Court is supposed to know the law. But it knows nothing about the facts, and the applicant must state fully and fairly the facts, and the penalty by which the Court enforces that obligation is that if it finds out that the facts have not been fully and fairly stated to it, the Court will set aside, any action which it has taken on the faith of the imperfect statement". (emphasis supplied)

34. It is well settled that a prerogative remedy is not a matter of course. In exercising extraordinary power, therefore, a Writ Court will indeed bear in mind the conduct of the party who is invoking such jurisdiction. If the applicant does not disclose full facts

or suppresses relevant materials or is otherwise guilty of misleading the Court, the Court may dismiss the action without adjudicating the matter. The rule has been evolved in larger public interest to deter unscrupulous litigants from abusing the process of Court by deceiving it. The very basis of the writ jurisdiction rests in disclosure of true, complete and correct facts. If the material facts are not candidly stated or are suppressed or are distorted, the very functioning of the writ courts would become impossible."

(ii) In **Arunima Baruah v. Union of India** reported in 2007 (6) SCC 120, the Hon'ble Supreme Court held, as follows:

"12.It is also trite that a person invoking the discretionary jurisdiction of the court cannot be allowed to approach it with a pair of dirty hands. But even if the said dirt is removed and the hands become clean, whether the relief would still be denied is the question.

13. In **Moody v. Cox [(1917) 2 Ch. 71: (1916-17) All ER Rep 548 (CA)]**, it was held: (All ER pp. 555 I-556 D)

"When one asks on what principle this is supposed to be based, one receives in answer the maxim that anyone coming to equity must come with clean hands. I think the expression "clean hands" is used more often in the textbooks than it is in the judgments, though it is occasionally used in the judgments, but I was very much surprised to hear that when a contract,

obtained by the giving of a bribe, had been affirmed by the person who had a primary right to affirm it, not being an illegal contract, the courts of equity could be so scrupulous that they would refuse any relief not connected at all with the bribe. I was glad to find that it was not the case, because I think it is quite clear that the passage in *Dering v. Earl of Winchelsea* [(1787) 1 Cox Eq Cas 318: 2 Bos & P 270], which has been referred to, shows that equity will not apply the principle about clean hands unless the depravity, the dirt in question on the hand, has an immediate and necessary relation to the equity sued for."

14. In *Halsbury's Laws of England*, 4th Edn., Vol. 16, pp. 874-76, the law is stated in the following terms:

"1303. *He who seeks equity must do equity.*—In granting relief peculiar to its own jurisdiction a court of equity acts upon the rule that he who seeks equity must do equity. By this it is not meant that the court can impose arbitrary conditions upon a plaintiff simply because he stands in that position on the record. The rule means that a man who comes to seek the aid of a court of equity to enforce a claim must be prepared to submit in such proceedings to any directions which the known principles of a court of equity may

make it proper to give; he must do justice as to the matters in respect of which the assistance of equity is asked. In a court of law it is otherwise: when the plaintiff is found to be entitled to judgment, the law must take its course; no terms can be imposed.

1305. *He who comes into equity must come with clean hands.*—A court of equity refuses relief to a plaintiff whose conduct in regard to the subject-matter of the litigation has been improper. This was formerly expressed by the maxim ‘he who has committed iniquity shall not have equity’, and relief was refused where a transaction was based on the plaintiff’s fraud or misrepresentation, or where the plaintiff sought to enforce a security improperly obtained, or where he claimed a remedy for a breach of trust which he had himself procured and whereby he had obtained money. Later it was said that the plaintiff in equity must come with perfect propriety of conduct, or with clean hands. In application of the principle a person will not be allowed to assert his title to property which he has dealt with so as to defeat his creditors or evade tax, for he may not maintain an action by setting up

his own fraudulent design.

The maxim does not, however, mean that equity strikes at depravity in a general way; the cleanliness required is to be judged in relation to the relief sought, and the conduct complained of must have an immediate and necessary relation to the equity sued for; it must be depravity in a legal as well as in a moral sense. Thus, fraud on the part of a minor deprives him of his right to equitable relief notwithstanding his disability. Where the transaction is itself unlawful it is not necessary to have recourse to this principle. In equity, just as at law, no suit lies in general in respect of an illegal transaction, but this is on the ground of its illegality, not by reason of the plaintiff's demerits."

(iii) In **Udayami Evan Khadi Gramodyog Welfare Sanstha v. State of U.P.**, reported in **2008 (1) SCC 560**, at Paragraph 16, the Hon'ble Supreme Court held as follows:

"15. A writ remedy is an equitable one. A person approaching a superior court must come with a pair of clean hands. It not only should not suppress any material fact, but also should not take recourse to the legal proceedings over and over again which amounts to abuse of the process of law.
In **Advocate General, State of Bihar v. M/s.Madhya Death**

Khair Industries and Anr. [1980 (3) SC 311, this Court was of the opinion that such a repeated filing of writ petitions amounts to criminal contempt."

22. Though, Mr.V.Stalin, learned counsel for the appellant submitted that the order made in W.P.No.25418 of 2017 has to be set aside, on the submissions made, we are not inclined to accept the same for the reasons that the writ Court has considered the gravity of the alleged charge, duties and responsibilities of the appellant, a member of disciplinary force and held that departmental proceedings can be simultaneously be conducted and that there is no need to quash the charge memorandum.

23. In the light of the submission of the learned counsel for the respondent that charge can be proved, on the basis of documents and the statement of witnesses, mentioned in the charge memorandum and that only two witnesses are yet to be examined, there is no need to examine others. Hence, Para No.9 of the order in W.P.No.25418 of 2017, dated 19.07.2017, is struck down.

24. Scrutinizing the averments made in the supporting affidavit filed in support of the writ petition, in the light of the decisions considered, we are of the view that there is a clear suppression on the appellant, participating in the departmental enquiry for nine hearings, without demur

and towards the close of disciplinary proceedings, has approached this Court, with a prayer to quash the charges, framed vide proceedings, dated 10.03.2017, under Rule 153 of the Railway Protection Force Rules, 1987. Appellant, who has suppressed the above facts, is not entitled to seek for the above prayer.

25. Decisions considered by the writ Court are reproduced.

"18.The legal position relates to whether departmental proceedings and the criminal case can go simultaneously. The difference between the departmental proceedings and the criminal proceedings was elaborately discussed by the Hon'ble Apex Court in various cases.

19.It is useful to refer few judgments of Hon'ble Apex Court hereunder:

(i) The principles underlined in **Capt M. Paul Anthony v. Bharat Gold Mines Ltd. and another**, reported in **1999 (3) SCC 679**, at Paragraph 22, are extracted hereunder:

"(i) Departmental proceedings and proceedings in a criminal case can proceed simultaneously as there is no bar in their being conducted simultaneously, though separately.

(ii) If the departmental proceedings and the criminal case are based on identical and similar set of facts and the charge in the criminal case against the delinquent employee is of a grave nature which involves complicated questions of law and fact, it would be desirable to stay the departmental proceedings till the conclusion of the criminal

case.

(iii) Whether the nature of a charge in a criminal case is grave and whether complicated questions of fact and law are involved in that case, will depend upon the nature of offence, the nature of the case launched against the employee on the basis of evidence and material collected against him during investigation or as reflected in the charge sheet.

(iv) The factors mentioned at (ii) and (iii) above cannot be considered in isolation to stay the Departmental proceedings but due regard has to be given to the fact that the departmental proceedings cannot be unduly delayed.

(v) If the criminal case does not proceed or its disposal is being unduly delayed, the departmental proceedings, even if they were stayed on account of the pendency of the criminal case, can be resumed and proceeded with so as to conclude them at an early date, so that if the employee is found not guilty his honour may be vindicated and in case he is found guilty, the administration may get rid of him at the earliest."

13. Whether the disciplinary proceedings should be kept in abeyance. Legal position has been made clear by the Hon'ble Supreme Court in the decision reported in **2004 (7) Supreme Court Cases 27 [State Bank of India and others v. R.B.Sharma]**. In paragraph 8, the Supreme Court held as follows:-

"8. The purpose of departmental enquiry and of prosecution are two different and distinct aspects. Criminal prosecution is launched for an offence for violation of a duty the offender owes to the society, or for breach of

which law has provided that the offender shall make satisfaction to the public. So crime is an act of commission in violation of law or of omission of public duty. The departmental enquiry is to maintain discipline in the service and efficiency of public service. It would, therefore, be expedient that the disciplinary proceedings are conducted and completed as expeditiously as possible. It is not, therefore, desirable to lay down any guidelines as inflexible rules in which the departmental proceedings may or may not be stayed pending trial in criminal case against the delinquent officer. Each case requires to be considered in the backdrop of its own facts and circumstances. There would be no bar to proceed simultaneously with departmental enquiry and trial of a criminal case unless the charge in the criminal trial is of grave nature involving complicated questions of fact and law. Offence generally implies infringement of public duty, as distinguished from mere private rights punishable under criminal law. When trial for criminal offence is conducted it should be in accordance with proof of the offence as per the evidence defined under the provisions of the Indian Evidence Act, 1872 (in short "the Evidence Act"). Converse is the case of departmental enquiry. The enquiry in a departmental proceeding relates to conduct or breach of duty of the delinquent officer, to punish him for his misconduct defined under the relevant statutory rules or law. That the strict standard of proof or applicability of the Evidence Act stands excluded is a settled legal position. Under these circumstances, what is required to be seen is whether the departmental enquiry would seriously prejudice the

delinquent in his defence at the trial in a criminal case. It is always a question of fact to be considered in each case depending on its own facts and circumstances."

(ii) The above said principle has been reiterated in a subsequent decision reported in 2005 (10) Supreme Court Cases 471 (Hindustan Petroleum Corporation Ltd., and others v. Sarvesh Berry).

"8. The purposes of departmental enquiry and of prosecution is two different and distinct aspects. Criminal prosecution is launched for an offence for violation of a duty the offender owes to the society, or for breach of which law has provided that the offender shall make satisfaction to the public. So crime is an act of commission in violation of law or of omission of public duty. The departmental enquiry is to maintain discipline in the service and efficiency of public service. It would, therefore, be expedient that the disciplinary proceedings are conducted and completed as expeditiously as possible. It is not, therefore, desirable to lay down any guidelines as inflexible rules in which the departmental proceedings may or may not be stayed pending trial in criminal case against the delinquent officer. Each case requires to be considered in the backdrop of its own facts and circumstances. There would be no bar to proceed simultaneously with departmental enquiry and trial of a criminal case unless the charge in the criminal trial is of grave nature involving complicated questions of fact and law. Offence generally implies infringement of public duty, as distinguished from mere private rights punishable under criminal law. When trial for criminal

offence is conducted it should be in accordance with proof of the offence as per the evidence defined under the provisions of the Indian Evidence Act 1872 (in short the 'Evidence Act'). Converse is the case of departmental enquiry. The enquiry in a departmental proceedings relates to conduct or breach of duty of the delinquent officer to punish him for his misconduct defined under the relevant statutory rules or law. That the strict standard of proof or applicability of the Evidence Act stands excluded is a settled legal position. Under these circumstances, what is required to be seen is whether the department enquiry would seriously prejudice the delinquent in his defence at the trial in a criminal case. It is always a question of fact to be considered in each case depending on its own facts and circumstances."

(iii) In 2007 (5) CTC 632 (*Indian Overseas Bank, Anna Salai and Another Vs. P.Ganesan and Others*), the Hon'ble Supreme Court, having regard to the legal position that there is no need for automatic stay in the departmental proceedings, has observed that the discretionary Writ jurisdiction under Article 226 of the Constitution of India should be exercised, keeping in view of the conduct of the parties, stage of the criminal case and whether it would expose the defence of the delinquent, if he is constrained to acquiesce himself to the departmental enquiry, pending disposal of the trial before the Court of competent jurisdiction. Relevant portion is as follows:

"26. Furthermore the discretionary writ jurisdiction under Article 226 of the Constitution of India should be exercised keeping in view the conduct of the

parties. Respondents made a representation that in the event the order of suspension is revoked, they would cooperate with the Enquiry Officer. They kept on filing applications for extension of time which were allowed. They took benefit thereof. Without, however filing show cause, they moved the High Court. Furthermore before the Enquiry Officer also, as noticed hereinbefore, although they had appointed the defence counsel, did not cross-examine the witnesses examined on behalf of the Management. A large number of witnesses had already been examined on behalf of the appellants. The disciplinary proceedings, as we have noticed hereinbefore, have proceeded to a great extent. In such a situation we are of the firm view that the discretionary jurisdiction should not have been exercised in favour of Respondents 1 to 4 by the High Court.”

(iv) In the decision reported in (2007) 10 SCC 385 (Noida Entrepreneurs Association Vs. Noida and others), the Hon'ble Supreme Court has held as follows:

“16.The standard of proof required in departmental proceedings is not the same as required to prove a criminal charge and even if there is an acquittal in the criminal proceedings the same does not bar departmental proceedings. That being so, the order of the State Government deciding not to continue the departmental proceedings is clearly untenable and is quashed. The departmental proceedings shall continue.”

26. Going through the entire material on record, we are of the view

that though it is always open to the department to examine any additional witness, in the case on hand, it has not been done.

27. Except deletion of paragraph No.9 of the judgment, the remaining portion is sustained. Writ Appeal is partly allowed, as indicated above. No costs. Consequently, the connected Civil Miscellaneous Petition is closed.

[S.M.K., J.] [R.S.K., J.]
29.11.2017

Index : Yes
Internet : Yes
Speaking/Non-speaking orders
ars

To

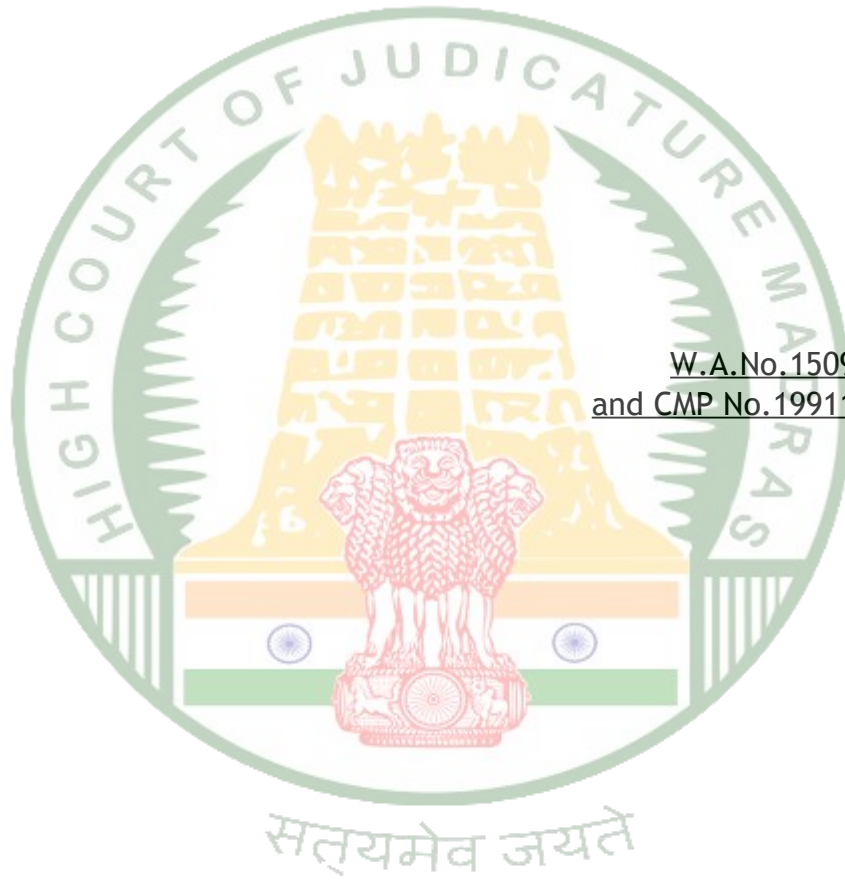
1. Senior Divisional Security Commissioner,
Railway Protection Force, Southern Railway,
5th Floor, NGO Complex, DRM Building,
Park Town, Chennai - 600 003.

2. Assistant Security Commissioner,
Railway Protection Force/TNPM, Southern Railway,
5th Floor, NGO Complex, DRM Building,
Park Town, Chennai - 600 003.

WEB COPY

S. MANIKUMAR, J.
AND
R.SURESH KUMAR, J.

ars



W.A.No.1509 of 2017
and CMP No.19911 of 2017

WEB COPY

29.11.2017