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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 03.08.2017

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
and
THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.A(MD)No.1537 of 2014
and
M.P.(MD)No.2 of 2014

1. The Commissioner of Police,
   Madurai City,
   Madurai.

2. The Assistant Commissioner of Police/Enquiry Officer
   Office of the Assistant Commissioner of Police
   Thilagarthidal,
   Madurai City. .. Appellants

Vs.

Venkatesh
Police Constable Grade.II (PC.3584),
No.146, Ramaiah Thevar Street,
Natarajnagar, Madurai. .. Respondent

PRAYER: This Writ Appeal is filed under Clause 15 of Letters Patent Act, against the order dated 29.11.2013 made in W.P.(MD) No.19158 of 2013, dated 29.11.2013, passed by this Court.

Prayer in WP(MD). 19158/ 2013 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a writ of mandamus directing the 2nd respondent/enquiry officer to keep the disciplinary proceedings initiated against the petitioner in abeyance pursuance of the charge memo no.Tha.Pu.100/2013 under section 3(b) of Tamil Nadu Police Subordinate Services Discipline and Appeal Rules dt.21.08.2013 till disposal of the criminal case registered in crime no.156/2013 on the file of Inspector of Police, Kudal Nagar Police Station, Madurai.

For petitioners : Mr.T.S.Md.Mohideen
Additional Government Pleader
For Respondent : Mr.F.Deepak

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JUDGMENT

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[Judgment of the Court was made by **G.R.SWAMINATHAN, J.**]

This writ appeal is directed against the order dated 29.11.13 made in W.P.(MD) No.19158 of 2013 filed by the respondent herein.

2.According to the respondent, he was working as Police Constable Grade-II and that he was implicated in Crime No.156/2013. On account of the involvment of the respondent herein in the criminal case, he was suspended from service. A charge memo dated 21.08.2013 was issued. An enquiry was also initiated. Therefore, the respondent moved this court by filing the said writ petition for keeping the disciplinary proceedings initiated against him in abeyance till the disposal of the criminal case. The learned Single Judge by order dated 29.11.2013 allowed the writ petition with a direction to keep the disciplinary action in abeyance till the disposal of the criminal case in Crime No.156/2013. Aggrieved by the said direction, this intracourt appeal has been filed. We have carefully gone through the order passed by the learned Single Judge.

3.The learned Single Judge has referred to the decision of the Honourable Supreme Court in ***Captain M.Paul Anthony vs.Bharath gold Mines Limited and another*** reported in ***(1999) 3 SCC 679***, and proceeded to grant relief in favour of the writ petitioner. A reading of the said decision would show that the Honourable Supreme court has permitted that the departmental action and criminal prosecution can proceed parallely and even simultaneously; only if both are founded on the same set of facts and complicated question of fact and law are involved, then and then only, the question of keeping disciplinary action in abeyance would arise. In the present case, it is true that an observation has been made that the allegations are the same and the witnesses are also almost common. But it is not the case of the respondent that complicated questions of fact and law are involved and that therefore, the disciplinary action must be stayed till the conclusion of the criminal case. In the grounds of appeal, it has been specifically contended that the witnesses in the disciplinary proceedings and the witnesses in the criminal case are not one and the same. In any event, we are of the view that tests laid down in ***Captain M.Paul Anthony*** case cannot be merely cited and relief granted straight away. It must be shown that the principles set out in the said decision are applicable to the facts and circumstances of the present case. But such an exercise was not

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undertaken in this case. The order allowing the writ petition is cryptic. Therefore, we are inclined to set aside the order dated 29.11.2013 allowing the writ petition. Accordingly, the writ appeal stands allowed. No costs. Consequently, M.P.(MD)No.2 of 2014 is closed.

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Sd/-

Assistant Registrar (AE)

/True copy/

Sub Assistant Registrar

To

1. The Commissioner of Police,
   Madurai City,
   Madurai.

2. The Assistant Commissioner of Police/Enquiry Officer
   Office of the Assistant Commissioner of Police
   Thilagarthidal,
   Madurai City.

+ 1 CC TO SPECIAL GOVERNMENT PLEADER IN SR No. 70955

vs/vsg

MK/GT/SAR-2/098.09.2017/3P/4C

ORDER MADE IN
W.A(MD)No.1537 of 2014
and
M.P.(MD)No.2 of 2014

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