

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 16.07.2018	Delivered on 30.07.2018
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CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
AND
THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

W.A.No.1280 of 2016
and

W.M.P.No.16587 of 2016

V.Senthilkumar

... Appellant

versus

1.The Superintendent of Police,
Coimbatore District,
Coimbatore.

2.The Additional Superintendent of Police,
Prohibition Enforcement Wing,
Coimbatore.

... Respondents

PRAYER: Appeal filed against the order passed by this Court dated 22.07.2016 passed in W.P.No.25570 of 2016.

W.P.No.25570 /16 : Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of mandamus directing the respondents to defer all further proceedings in relating to the charge memo issued in Na. Ka. No. J1/ Ta.Pa. No. 05/2016 & Vidhi. 3(Aa) dated 11.01.2016 on the file of the 1st respondent pending criminal proceedings in Crime. No. 541 of 2015 on the file of the Veerapandi Police Station Tiruppur.

For Appellant : Mrs.Chitra Sampath, Senior Counsel,
for Mr.R.Sunil Kumar

For Respondents: Mr.N.Manikandan,
Government Advocate

J U D G M E N T

R.SUBRAMANIAN, J.

1. The challenge in this intra-Court appeal is to the order of the learned Single Judge dated 22.07.2016 made in W.P.No.25570 of 2016, in and by which, the learned Single Judge

dismissed the Writ Petition filed by the appellant seeking to defer all further proceedings relating to the charge memo dated 11.01.2016 pending criminal proceedings in Crime No.541 of 2015 on the file of the Veerapandi Police Station, Tiruppur.

2. The appellant who was working as a Head Constable in the Economic Offences Wing at Coimbatore District was arrested and remanded to judicial custody for his involvement in the theft of articles worth about Rs.60,84,700/- from a sealed godown kept under the custody of the Special Court constituted under the Tamil Nadu Protection of Interest of Depositors Act. Since the appellant was arrested in relation to a crime, the Superintendent of Police, Coimbatore District placed him under suspension on 02.11.2015. It is stated that the criminal case is under investigation.

3. While so, the respondents issued a charge memo to the appellant on 11.01.2016 for the charge relating to theft of the goods from the godown which is also the subject matter of the criminal proceedings. The appellant had submitted his explanation and the Additional Superintendent of Police, Economic Offences Wing has been appointed as Enquiry Officer to conduct the enquiry based on the charge memo dated 11.01.2016. The appellant had made a representation to the enquiry officer on 19.02.2016 requiring him to keep disciplinary proceedings in abeyance inasmuch as the charges in both the criminal case as well as the disciplinary proceedings were one and the same and his interest will be jeopardized if he is to disclose his defence in the departmental enquiry.

4. The claim of the appellant was resisted by the respondents contending that the pendency of the criminal proceedings cannot be a ground to withhold the departmental enquiry proceedings. Even if the criminal case ends in acquittal, it is always open to the Authorities to continue the disciplinary proceedings and impose an appropriate punishment, if in the opinion of the disciplinary Authority, the charged employee is guilty of the delinquency.

5. The learned Single Judge who heard the Writ Petition dismissed the same relying upon the judgment of this Court in K.Annadurai Vs. The Deputy Inspector General of Police, Armed Police, Trichy and others reported in CDJ 2015 MHC 6611. In K.Annadurai's case, this Court had relied upon the judgment of the Hon'ble Supreme Court in Union of India and others Vs. Uday Narain reported in (1998) 5 SCC 535. Aggrieved the appellant is before us by way of this intra-Court Appeal.

6. We have heard Mrs.Chitra Sampath, learned Senior Counsel appearing for Mr.R.Sunil Kumar, learned counsel for the

appellant and Mr.N.Manikandan, learned Government Advocate for the respondents.

7. Since no counter affidavit was filed in the Writ Petition, we had directed the respondents to file a status report as to the stage at which the criminal investigation is pending. The Superintendent of Police, Coimbatore had filed a status report on 17.06.2018, wherein, it was stated that a draft charge sheet has been sent to the Assistant Director of prosecutions for opinion/ approval.

8. Admittedly, the occurrence took place on 07.09.2015 and First Information Report was registered in the year 2015. Despite lapse of nearly three years not even a charge sheet has been filed. Taking note of the above said inordinate delay we had required the Superintendent of Police, Coimbatore, Assistant Commissioner of Police, Tiruppur South, Tiruppur City and Inspector of Police, Veerapandi Police Station, Tiruppur to be present in Court to explain the delay. All the three officers had appeared before us. Dr.Pa.Moorthi, IPS, Superintendent of Police, Coimbatore informed us that a charge sheet has been laid and the case has been registered as C.C.No.167 of 2018 before the learned Judicial Magistrate - II, Tiruppur on 12.07.2018. The copy of the charge sheet was also produced before us.

9. Mrs.Chitra Sampath, learned Senior Counsel appearing for the appellant would vehemently contend that since the disciplinary proceedings and the criminal case related to one and the same charge, the disciplinary proceedings cannot be allowed to go on to the prejudice of delinquent employee. She would further contend that by going ahead with the disciplinary proceedings the department would gather the defence of the delinquent employee in the criminal case and use it against him. She would also rely upon the judgments of the Hon'ble Supreme Court in State Bank of India and others Vs. Neelam Nag and another reported in (2016) 9 SCC 491 and Stanzen Toyotetsu India Private Limited Vs. Girish V. and others reported in (2014) 3 SCC 636 in support of her submissions.

10. In both the judgments relied upon by the learned Senior Counsel, the Hon'ble Supreme Court has very categorically held that there is no legal bar for conduct of the disciplinary proceedings and criminal trial simultaneously. The Hon'ble Supreme Court has observed that unless it is shown that complicated questions of law and fact are involved in the proceedings, there cannot be a bar to continue the disciplinary proceedings de horse the pendency of the criminal case. In fact in Stanzen Toyotetsu India Private Limited Vs. Girish V. and others reported in (2014) 3 SCC 636, the Hon'ble Supreme Court had referred to the judgment in Karnataka SRTC Vs. M.G.Vittal

Rao reported in (2012) 1 SCC 442, wherein the Hon'ble Supreme Court had spelt out the parameters to be considered while permitting disciplinary enquiry proceedings to go on pending the criminal case. The principles as set out in Karnataka SRTC Vs. M.G.Vittal Rao reported in (2012) 1 SCC 442 case are as follows:

"(i) There is no legal bar for both proceedings to go on simultaneously.

(ii) The only valid ground for claiming that the disciplinary proceedings may be stayed would be to ensure that the defence of the employee in the criminal case may not be prejudiced. But even such grounds would be available only in cases involving complex questions of facts and law.

(iii) Such defence ought not to be permitted to unnecessarily delay the departmental proceedings. The interest of the delinquent officer as well as the employer clearly lies in a prompt conclusion of the disciplinary proceedings.

(iv) Departmental Proceedings can go on simultaneously to the criminal trial, except where both the proceedings are based on the same set of facts and the evidence in both the proceedings is common."

11. In Capt. M.Paul Anthony Vs, Bharat Gold Mines Ltd., reported in (1999) 3 SCC 679, the Hon'ble Supreme Court while considering the law relating to simultaneous prosecution of the criminal case as well as Departmental enquiry had observed as follows:

"(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 honor may be vindicated and in case he is found guilty, administration may get rid of him at the earliest."

12. In *State Bank of India and others Vs. Neelam Nag* and another reported in (2016) 9 SCC 491, the Hon'ble Supreme Court had taken note of the delay and had observed that there cannot be a straight jacket formula spelt out with reference to continuance of disciplinary proceedings during the pendency of the criminal case. After referring to *Karnataka SRTC Vs. M.G.Vittal Rao* reported in (2012) 1 SCC 442, the Hon'ble Supreme Court had observed that on the peculiar facts of that case, where the employee was charged with criminal breach of trust under Section 409 and 34 of Indian Penal Code, the order passed in *Stanzen Toyotetsu India Private Limited Vs. Girish V. and others* reported in (2014) 3 SCC 636 could be followed. If we examine the case on hand, in light of the law laid down by the Hon'ble Supreme Court as above there can be no doubt that this is not a fit case where disciplinary enquiry proceedings should be suspended or deferred till the completion of the criminal case. The charge is one of theft of goods that were kept in the custody of the Court. We do not see any substantial or intricate question of law involved so as to necessitate deferral of the disciplinary proceedings awaiting disposal of the criminal case.

13. The prosecution of the criminal case has already been

delayed and now that the charge sheet has been filed and taken on file as C.C.No.167 of 2018, we can hope that the same could be disposed of at an early date. We however do not see any reason or compelling circumstances to defer the disciplinary enquiry proceedings pending disposal of the criminal case.

14. For the foregoing reasons, we do not see any merit in the appeal and the appeal is accordingly dismissed confirming the order of the learned Single Judge. However, in the circumstances we direct the parties to bear their own costs. Consequently, the connected Miscellaneous Petition is also closed.

Sd/-
Assistant Registrar(CS IX)

//True copy//

Sub Assistant Registrar

dsa

To

- 1.The Superintendent of Police,
Coimbatore District,
Coimbatore.
- 2.The Additional Superintendent of Police,
Prohibition Enforcement Wing,
Coimbatore.

+lcc to Mr.R.Sunil Kumar, Advocate SR.No.57493
+lcc to Government Pleader SR.No.52427

सत्यमेव जयते

W.A.No.1280 of 2016

VBA (CO)
GN (09/08/2018)

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