



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 15.02.2018

CORAM:

THE HONOURABLE **MR.JUSTICE T.S.SIVAGNANAM**
and
THE HONOURABLE **MRS.JUSTICE R.THARANI**

Writ Appeal (MD).No.263 of 2018
and
C.M.P. (MD).No.1545 of 2018

T.Senthilperumal ... Appellant
Vs.

1. The District Collector,
Ramanathapuram District,
Ramanathapuram.

2. The Revenue Divisional Officer,
Paramakudi,
Ramanathapuram District.

... Respondents

Prayer: Writ Appeal is filed under Clause 15 of Letters Patent, to set aside the order dated 25.01.2018 made in W.P(MD).No.12786 of 2009.

Prayer in WP(MD). 12786/ 2009 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a WRIT OF CERTIORARI, calling for the records relating in Na.Ka. 5/11877/2008 dated 06-11-2009 passed by the 2nd Respondent and quash the same.

For Appellant : Mr.T.S.Mohammed Mohideen

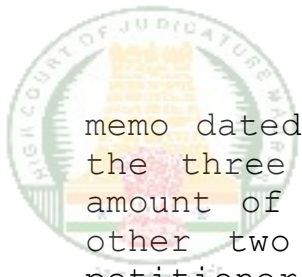
For Respondents : Mr.V.R.Shanmuganathan
Special Government Pleader

JUDGMENT

(Judgment of the Court was delivered by **T.S.SIVAGNANAM, J.**)

Heard Mr.T.S.Mohammed Mohideen, learned counsel appearing for the appellant and Mr.V.R.Shanmuganathan, learned Special Government Pleader appearing for the respondents.

2.This appeal by the writ petitioner, is directed against the order dated 25.01.2018, passed in W.P.(MD)No.12786 of 2009. The appellant filed the said writ petition, challenging the charge



memo dated 16.11.2009 containing 3 articles of charges. One among the three charges is one of corruption viz., accepting a bribe amount of Rs.1,000/- for issuance of legal heir certificate. The other two charges pertain to discharge of the duties of the petitioner as Village Administrative Officer.

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3. Three contentions were raised before the writ Court, challenging the charge memo. Firstly, the criminal case, which has been registered against the petitioner, is pending in Crime No.2 of 2008 and at the time when the disciplinary proceedings were initiated, trial has commenced, therefore, parallel proceedings cannot be initiated.

4. The second contention which was advanced is that the Revenue Divisional Officer issued the impugned charge memo. According to the petitioner, as the Revenue Divisional Officer has already dealt with the matter he cannot act as a disciplinary authority in the light of the statement given to the Vigilance and Anti Corruption Department on 19.05.2009 prior to the issuance of charge memo.

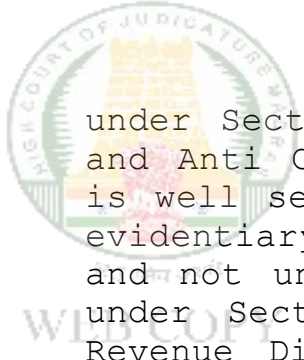
5. The third contention is that since the trial had already been commenced, the departmental proceedings should be deferred till the criminal case trial is concluded.

6. Out of the three contentions raised by the appellant before the writ Court, the first and second contentions were rejected. The writ Court elaborately considered the contentions and referred to various decisions of the Hon'ble Supreme Court, wherein it has been held that there is no legal bar for both proceedings viz., departmental proceedings and disciplinary proceedings to go on simultaneously. This legal position is well settled. The writ Court, was fully justified in rejecting the said contentions and accordingly we confirm the finding rendered by the Writ Court in this regard.

7. The only one question which remains to be answered is whether the Revenue Divisional Officer can act as a disciplinary authority. This aspect has been dealt with by the Writ Court in Paragraph No.6 of the impugned order wherein the Writ Court has rightly observed that mere issuance of charge memo by the higher official will not prevent such Officer to depose before the Criminal Court. Further it was observed that during the course of examination, the appellant would also be given an opportunity to examine the officials. Apart from that, it is pointed out that the departmental enquiry is to be conducted by an individual Enquiry Officer to be appointed for the purpose of proceeding with the disciplinary proceedings. Thus, we find the reasons recorded by the Writ Court in this regard is fully justified.

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8. Above all, the contention advanced by the appellant that the



under Section 161(3) Cr.P.C. Statement recorded by the Vigilance and Anti Corruption Department dated 19.05.2009 is concerned, it is well settled legal position that such statement does not have evidentiary value as it has been recorded by the police officer and not under oath. Therefore, based on such statement recorded under Section 161(3) of Cr.P.C, it cannot be stated that the Revenue Divisional Officer has already concluded the issue and therefore, he cannot conduct the disciplinary proceedings. In any event, during the disciplinary proceedings, sufficient opportunity will be granted to the appellant. Therefore, the petitioner need not have any apprehension that the matter will be decided one sided. Thus, we find that the reason assigned by the writ Court in Paragraph No.6 is fully justified. Apart from the reasons assigned by us observing that the statement recorded under Section 161(3) Cr.P.C. Is of no evidentiary value, we would reject the second contention raised by the appellant.

9.The learned counsel for the petitioner, in the course of argument submitted that if the Court is not agreeable to the contention advanced by the appellant, the Court may direct the disciplinary proceedings to proceed but final orders need not be passed and shall await result of the criminal trial. We are unable to accept the said submission in view of the settled legal position that there is no bar for parallel proceedings to go ahead as held by the Hon'ble Supreme Court in several decision, some of which have been referred by the Writ Court. Thus, for the above reasons, we find that the appellant has not made out any ground to interfere with the impugned order passed by the writ Court. The writ appeal fails and stands dismissed. No Costs. Consequently, C.M.P. (MD) No.1545 of 2018 is closed.

sd/
Assistant Registrar (W)

/True Copy/

Sub Assistant Registrar

To

1. The District Collector,
Ramanathapuram District, Ramanathapuram.
2. The Revenue Divisional Officer,
Paramakudi, Ramanathapuram District.

+1cc to The Special Government Pleader in SR.No. 49324
+1cc to Mr.T.S.Mohameed Mohideen, Advocate in SR.No. 49477

Ns/mrn
AE/RSK/SAR1/17.05.2018/3P/5C