



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 14.11.2018

CORAM:

WEB COPY

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

W.P(MD)No.797 of 2015 and
M.P(MD)No.1 of 2015

A.Paulraj Pandian

.. Petitioner

Vs.

1. The Commissioner of Police,
Madurai City, Madurai.
2. The Deputy Commissioner of Police
(Law and Order),
Madurai City, Madurai.

.. Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Mandamus directing the respondents to keep in abeyance all further proceedings on the Charge Memo PR No.147/2014 [Rule 3(b)] dated 04.12.2014 issued by the second respondent to the petitioner till the final disposal of the Criminal Case registered in FIR No.50 of 2014 dated 31.05.2014 on the file of the All Women Police Station, Thirupparankundram, Madurai.

For Petitioner	: Mr.A.Thirumurthy for M/s.Victory Associates.
For Respondents	: Mr.J.Gunaseelan Muthiah, Addl. Government Pleader.

ORDER

Heard the learned counsel appearing for the petitioner as well as the learned Additional Government Pleader representing the respondents.

2.The writ petitioner herein is a Police Constable attached to Tamil Nadu Special Police VI Battalion, Madurai, who was later transferred to Armed Reserve Police, Virudhunagar District and subsequently to Armed Reserve Police, Madurai Rural District. One Smt.Hemalatha lodged a complaint at All Women Police Station, Thirupparankundram against the writ petitioner and the case has been registered under Crime No.50 of 2014, dated 31.05.2014 under Sections 498-A, 406 and 506(i) IPC. The writ petitioner was issued charge memo on 04.12.2014 under Rule 3(b) of Tamil Nadu Police Subordinate Service (Disciplinary and Appeal) Rules, 1955. Out of three charges, one of the charges was in respect of the criminal complaint given by Smt.Hemalatha against the writ petitioner.



Alleging that there cannot be parallel proceedings for the same set of facts, the writ petition has been filed seeking mandamus to keep the enquiry proceedings in abeyance till the disposal of the criminal prosecution.

3. This Court at the time of admission, has passed an interim order to the effect that the respondents shall go ahead with the enquiry proceedings, but they shall not pass final orders.

4. The first respondent herein has filed counter, wherein misconduct of the petitioner which has led to framing charge and initiating departmental proceedings, has been narrated and also submitted that the charges 1 to 3 are framed based on the recorded evidence and the charges are different and not identical to that of the criminal prosecution and therefore, there is no merit in the writ petition.

5. The perusal of the charges 1 to 3 reveals that the writ petitioner herein has left the duty spot without proper intimation to the higher authorities on 31.05.2014 and the second charge is in respect of the harassment complaint given by Tmt. Hemalatha which has led to registration of a criminal complaint against the writ petitioner. The third charge is in respect of failure to report duty after medical leave between 04.04.2014 and 25.09.2014.

6. It is now submitted by the learned counsel appearing for the writ petitioner that the enquiry proceedings have already been completed and due to the interim order passed by this Court, the enquiry officer has not passed the order. It is also stated that the trial in the criminal case is yet to be completed.

7. It is now well settled by catena of Judgments that even if the criminal proceedings and the departmental proceedings are initiated based on the same set of facts, departmental proceedings cannot be stayed perpetually till the disposal of the criminal case. A fair balance should be struck between the criminal trial and the departmental proceedings which emanates from the same set of facts. Hence, an upper limit of one year has been prescribed to extend the benefit of postponing the departmental proceedings.

8. In some of the Judgments, the Hon'ble Supreme Court has prescribed six months to one year as limit for disposal of the criminal case and if the trial in the criminal case is not completed within that time, departmental proceedings can proceed. In this case, this Court finds that the charges framed against the petitioner is not identical to the charges which are framed against him in the criminal trial. Furthermore, the departmental proceedings have been completed, but for the interim order passed by this Court, the enquiry officer would have given his report for further action. Pendency of criminal prosecution in this case has exceeded four years. The Hon'ble Supreme Court in **Karnataka SRTC v. M.G. Vittal Rao** reported in **(2012) 1 SCC 442** has observed as below:



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

(ii) The only valid ground for claiming that the disciplinary proceedings may be stated 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 or 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."

9. The subsequent Judgment in **State Bank of India and Others v. Neelam Nag and Another** reported in (2016) 9 Supreme Court Cases 491, the Hon'ble Supreme Court has referred **Vittal Rao's Case** and in the interest of justice directed the criminal Court to decide the case expeditiously, but not later than one year from the date of the order was passed and if the trial is not completed, within one year from the date of the order, the disciplinary proceedings against the respondent shall be resumed by the enquiry officer concerned.

10. As far as the case in hand is concerned, the said protection has been given to the petitioner herein for nearly four years and there is no necessity to extend the protection any further. Hence, this Court finds no merit in the writ petition and accordingly, the writ petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is dismissed.

Sd/-

Assistant Registrar (P&A)

/True Copy/

Sub Assistant Registrar (CS-II)

To

1. The Commissioner of Police,
Madurai City, Madurai.
2. The Deputy Commissioner of Police
(Law and Order), Madurai City, Madurai.

+ 1 CC TO SPECIAL GOVERNMENT PLEADER IN SR No. 95435

SMN

TE/BK/SAR-2 : 10/12/2018 : 3P/4C

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ORDER MADE IN
W.P (MD) No. 797 of 2015 and
M.P (MD) No. 1 of 2015
14.11.2018