



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 26.09.2018

CORAM:

WEB COPY

THE HONOURABLE Mr.JUSTICE S.VAIDYANATHAN

W.P. (MD) No.20215 of 2018
and
W.M.P. (MD) No.17961 of 2018

M.Suresh Kumar

... Petitioner

Vs.

1. The Superintendent of Police,
Thoothukudi District,
Thoothukudi.
2. The Deputy Superintendent of Police,
District Crime Branch,
Thoothukudi.

... Respondents

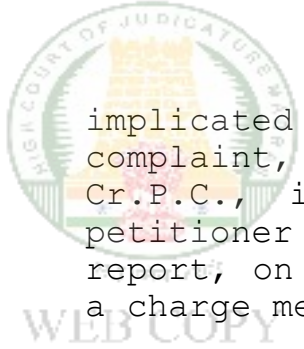
PRAYER: Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the respondents herein to defer the departmental proceedings initiated against the petitioner based on the charge memo of the 1st respondent in C.No.F1/PR.No.39 of 2018, dated 31.07.2018 till the disposal of criminal case in Crime No.110 of 2017 on the file of Sawyerpuram Police Station, Thoothukudi District.

For Petitioner	: Mr.D.Srinivasaragavan
For Respondents	: Mr.R.Sethuraman Spl.Govt.Pleader

O R D E R

The Writ Petition has been filed praying to issue a Writ of Mandamus, directing the respondents herein to defer the departmental proceedings initiated against the petitioner based on the charge memo of the 1st respondent in C.No.F1/PR.No.39 of 2018, dated 31.07.2018 till the disposal of criminal case in Crime No.110 of 2017 on the file of Sawyerpuram Police Station, Thoothukudi District.

<https://hcservices.ecourts.gov.in/hcservices/>
2. The petitioner, who is under suspension, by an order of the 1st respondent, dated 17.04.2017, on the ground that his wife died on account of dowry death in which the petitioner has been



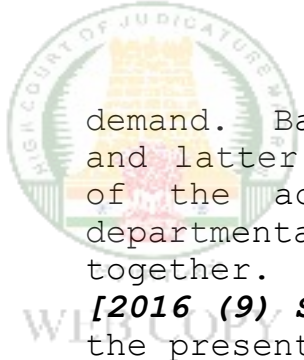
implicated by a complaint given by his father-in-law. Based on the complaint, an FIR was initially registered under Section 174 Cr.P.C., in Crime No.110 of 2017 and after investigation, the petitioner was included as one of the accused in the alteration report, on 02.02.2018. After placing the petitioner under suspension a charge memo, dated 31.07.2018, was issued.

3. According to the petitioner, the charge before the criminal Court and the one pending for enquiry under the respondents are identical and that departmental proceedings shall not proceed, unless the criminal case is concluded. The petitioner has also made a representations on 14.08.2017 and 17.09.2017, but it fell in deaf ears. That apart, the petitioner has filed CrI.O.P(MD)No.13635 of 2018 wherein, this Court, by an order dated 02.08.2018, had directed the respondents Police to expedite the investigation and file a final report, within a period of three months before the concerned Judicial Magistrate so that a finality could be decided in the criminal case. It is not his intention that the petitioner should escape from the clutches of law and he wanted to prove his innocence that he is not guilty.

4. According to him, the Apex Court has categorically held that when the criminal case and departmental proceedings are based on identical and similar set of facts, the departmental enquiry has got to be stopped. In support of his contention, the learned counsel has relied on a Judgment of the Apex Court in **State Bank of India and Others Vs. Neelam Nag and Another** reported in **[2016 (9) SCC 491]**, wherein in paragraph 27, it has been held as follows:

"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 straightway. 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. "

5. Though no counter has been filed by the respondents, Mr.R.Sethuraman, the learned Special Government Pleader for the respondents would contend that for bringing disrepute to the institution a charge memo has been issued. The petitioner is one of the accused, as caused a death of his wife, on account of dowry



demand. Based on the RDO's report, an FIR registered, on 01.07.2017 and latter altered on 02.02.2018 implicating the petitioner as one of the accused. There is no hard and fast rule that the departmental proceedings and criminal proceedings cannot go on together. A reference to the decision of the Apex Court reported in **[2016 (9) SCC 491]** cited supra may not be applicable to the facts of the present case, as there was a clause in byparted settlement that the enquiry proceedings shall not proceed for a period of one year, when a criminal case is initiated. The petitioner, who is drawing subsistence allowance and if for any reasons, the enquiry is delayed, the subsistence allowance has got to be reduced and to be maintained at 50% and isolating the criminal proceedings, departmental proceedings can go on. Hence, the writ petition has got to be dismissed.

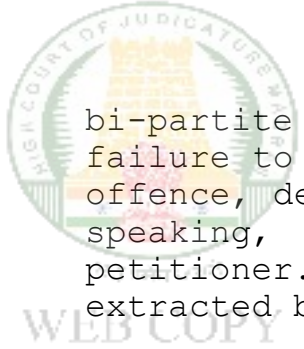
6. I have heard the learned counsels appearing on either side and perused the materials available on record.

7. It is not in dispute that unfortunate death of the petitioner's wife in which the petitioner has been implicated in Crime No.110 of 2017 wherein in the alteration report he has been made as one of the accused. The petitioner has also been suspended on 17.04.2018 and drawing 50% of subsistence allowance and that the charge memo, dated 31.07.2018 has been issued for proceeding departmentally. Admittedly, there is no rule prohibiting the departmental enquiry to be stalled during the pendency of the criminal proceedings. The petitioner has also drew the attention of this Court to Paragraph 22(ii) of the Judgment of the Hon'ble Supreme Court in **Capt.M.Paul Anthony Vs. Bharat Gold Mines Ltd., and Another** reported in **(1999 (3) SCC 679)**, wherein it has been held as follows:-

"22. (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."

8. Eventhough the petitioner has drew the attention of this Court to Paragraph 22(ii) of the Judgment of the Hon'ble Supreme Court in **Capt.M.Paul Anthony's** case (cited supra), it cannot be read in isolation and the entire paragraph 22 has got to be read as a whole. If the criminal case does not proceed or undue delay, even if the departmental proceedings stayed, it can be resumed and proceeded with to bring the issue to a logical end.

9. A reference to paragraphs 21 & 29 of the decision of the Apex Court reported in **[2016 (9) SCC 491]** cited supra alone is not suffice, as the entire case decided by the Apex Court is based on



bi-partite settlement, wherein Clause No.4 envisages that in case of failure to put an employee on trial within one year of commission of offence, departmental proceedings can go on. In this case, strictly speaking, the decision may not be applicable to the case of the petitioner. For the sake of convenience, paragraphs 21 and 29 are extracted below:-

"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.

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 expiring of the period of one year from the date of this order."

10. As the petitioner has approached this Court to prove his innocence and that he wanted final report to be filed by the Police before the concerned jurisdictional Court, applying the analogy in paragraph 22(2) of the Judgment of the Hon'ble Supreme Court in **Capt.M.Paul Anthony's** case (cited supra), for the time being the enquiry proceedings can be kept in abeyance till 01.02.2019. Taking note of the analogy from the aforesaid decisions of the Apex Court, the intention of the Apex Court and also with regard to administration of justice, the enquiry proceedings and the criminal proceedings will have to go on simultaneously, unless there is a specific bar in the statute or Rules or Regulations or settlement between the parties, as has been said in State Bank of India's case, reported in **[2016 (9) SCC 491]** cited supra. It is needless to mention that in terms of the order made in Crl.O.P.(MD)No.13635 of 2018, dated 02.08.2018, this Court expect the final report to be filed and proceed with the enquiry on and from 02.02.2018 and bring the issue to a logical end. The enquiry shall go on, on day-to-day basis. The matter shall not be adjourned beyond seven working days, at any point of time. This Court further makes it very clear that the petitioner shall not be permitted to approach the Court intermittently to stall the enquiry.



11. In case, if the petitioner participate after 02.01.2019 subsistence allowance can be increased to 75%, if there is no delay on part of the employee. By approaching the Court and stalling the enquiry proceedings would amount to delay on the part of employee and subsistence allowance can be reduced to 50% from 75%. Dehors the criminal case, the departmental proceeding needs to proceed expeditiously as the result in criminal case is based on proving the guilt beyond reasonable doubts whereas preponderance of probabilities is sufficient to prove the charges in the departmental enquiry.

12. With the above direction, the Writ Petition stands dismissed No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (Crl.side)

/True Copy/

Sub Assistant Registrar (CS-I)

To

1. The Superintendent of Police,
Thoothukudi District,
Thoothukudi.
2. The Deputy Superintendent of Police,
District Crime Branch,
Thoothukudi.

+ 1 CC TO Mr.D.SRINIVASA RAGHAVAN, ADVOCATE IN SR No. 87277
+ 1 CC TO SPECIAL GOVERNMENT PLEADER IN SR No. 87164

MPK

TE/SV/SAR-1 : 26/11/2018 : 5P/5C

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