

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.09.2019

CORAM

THE HONOURABLE Mr. JUSTICE M. DHANDAPANI

W.P.No.22004 of 2018
and
W.M.P.Nos.25802 and 40302 of 2018

C. Martin Premraj ... Petitioner

vs

1.The Deputy Inspector General of Police,
Vellore Range,
Vellore.

2.Mr.Sibi Chakravarthy, I.P.S.,
Superintendent of Police,
Enquiry Officer,
Thiruvannamalai District. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus, directing the 2nd respondent to defer from proceedings with the departmental proceedings initiated vide Charge Memo PR.No.61/2018 under Rule 3(b) dated 12.06.2018 issued by the 1st respondent and other related proceedings till the disposal of the criminal case pending on the file of the learned Principal District Judge, Vellore, in S.C.No.128 of 2017.

For Petitioner : Mr.Shivapal
for Dr. R. Sampathkumar

For Respondents : Mrs.A. Sri Jayanthi
Additional Government Pleader

ORDER

This petition has been filed seeking for a direction to the 2nd respondent to defer from proceedings with the departmental proceedings initiated vide Charge Memo PR.No.61/2018 under Rule 3(b) dated 12.06.2018 issued by the 1st respondent and other related proceedings till the disposal of the criminal case pending on the file of the learned Principal District Judge, Vellore, in S.C.No.128 of 2017.

2.The case of the petitioner is that the petitioner, while he was working in Pallikonda Police Station, has been assigned a special duty for sub-divisional crime and he was under "shadow duty" from 16.06.2015 to 18.06.2015 to guard the suspected accused with the assistance of police officials. One Mr.Palani has lodged a complaint on 24.05.2015 that his wife Mrs.Pavithra was missing from 24.05.2015 and one Shameel Basha might be behind the said missing of his wife. On the complaint received by SSI Ravi of Pallikonda Police Station, a case was registered in Crime No.140/2015 under women missing. The abovesaid SSI Ravi only was dealing with the said case, but the petitioner has seen the said Shameel Basha in the Police Station only on 19.06.2015. During his presence, the deceased Shameel Basha's father and father-in-law Mr.Gouse Basha have met the petitioner in the Police Station and requested to bind over him as the Ramzan fasting was to be started. The said SSI Ravi obtained a statement from his father-in-law and father in which both of them categorically stated that "on 19.06.2015 about 13.00 hours, we are taking my son-in-law Shameel Basha in good condition."

3.The petitioner was relieved on transfer from Pallikonda Police Station on 22.06.2015 and reported duty on 26.06.2015 in PEW Vaniyambadi. After relieving from the said Station, a criminal complaint was obtained on 27.06.2015 against the petitioner and six others from one Mr.Ali Akbar and registered in Crime No.158/2015 under Section 176 of Cr.P.C. on the file of Pallikonda Police Station. The allegation that the said Shameel Basha was tortured by the police officials but such allegation is false and imaginary for which 161 statement of Ali Akbar is available. However, a selective suspension was made and the petitioner was alone suspended on 28.06.2015 by order of the 1st respondent. Subsequently, the said investigation was transferred to CBCID and they filed another FIR No.5/2015 on 01.07.2015. Further, they concealed the statements recorded by the first Investigating Officer and created some false documents and filed an alteration memo on 03.08.2015 by altering the Section from 176 CrPC to 323 and 302 of IPC and remanded the petitioner to judicial custody. Subsequently, the CBCID filed a charge sheet on 26.05.2017 under Sections 323 and 304(ii) of IPC with created documents.

4.It is the further case of the petitioner that Annexure-IV of the Charge Memo in PR.No.61/2015 shows 40 witnesses and the charge sheet filed before the Criminal Court shows 82 witnesses. Under the abovesaid circumstances, facing the departmental enquiry initiated by the 1st respondent through 2nd respondent is very much difficult and the petitioner will not be able to place effective defence. Therefore, the petitioner has given a representation to the 1st respondent on 02.07.2018 requesting him

not to proceed further till the Criminal case in S.C.No.128 of 2017 is over. The reason stated in the representation is that the same set of facts are available in the charge memo as well as in the charge sheet filed before the criminal Court and the same set of witnesses are there. Further, the 1st respondent has appointed the 2nd respondent as Enquiry Officer to conduct the departmental proceedings knowing fully well that the criminal case is pending with the same sets of facts and the same set of witnesses and documents. Hence, the petitioner has filed this Writ Petition.

5.The learned counsel for the petitioner would submit that the facts in the charge memo as well as in the criminal case are one and the same and if the departmental proceedings is conducted before completion of the criminal case, the petitioner will not be in a position to place his defence effectively. He further submit that when the criminal case is pending before the learned Principal District Judge, Vellore, facing the departmental enquiry by disclosing his defence will cause damage to the criminal case.

6.The learned counsel for the petitioner in support of his contention has placed reliance on the Judgment of the Hon'ble Supreme Court of India in the case of State Bank of India and others v. Neelam Nag in Civil Appeal No.4715 of 2011. The Hon'ble Supreme Court allowed the appeal and at Paragraph 21, held as follows:

"21.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-today basis. In case any adjournment becomes inevitable, it should not be for more than a fortnight when necessary."

7.The learned Additional Government Pleader appearing for the respondents would submit that what being urged by the petitioner has been examined by the High Court and this being the settled principles of law that in a disciplinary inquiry, one has to proceed on the "preponderance of probability" whereas in the criminal case, the charge is to be "proved beyond

reasonable doubt" being based on two sets of fundamental principles which has been examined by the High Court in extenso needs no interference by this Court.

8.The legal position relates to whether departmental proceedings and the criminal case can go simultaneously. The difference between the departmental proceedings and the criminal proceedings was elaborately discussed by the Hon'ble Apex Court in various cases.

9.It is useful to refer few judgments of Hon'ble Apex Court hereunder:

(i) The principles underlined in Capt M. Paul Anthony v. Bharat Gold Mines Ltd. and another, reported in 1999 (3) SCC 679, at Paragraph 22, are extracted hereunder:

"(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 honour may be vindicated and in case he

is found guilty, the administration may get rid of him at the earliest."

13. Whether the disciplinary proceedings should be kept in abeyance. Legal position has been made clear by the Hon'ble Supreme Court in the decision reported in 2004 (7) Supreme Court Cases 27 [State Bank of India and others v. R.B.Sharma]. In paragraph 8, the Supreme Court held as follows:-

"8. The purpose of departmental enquiry and of prosecution are two different and distinct aspects. Criminal prosecution is launched for an offence for violation of a duty the offender owes to the society, or for breach of which law has provided that the offender shall make satisfaction to the public. So crime is an act of commission in violation of law or of omission of public duty. The departmental enquiry is to maintain discipline in the service and efficiency of public service. It would, therefore, be expedient that the disciplinary proceedings are conducted and completed as expeditiously as possible. It is not, therefore, desirable to lay down any guidelines as inflexible rules in which the departmental proceedings may or may not be stayed pending trial in criminal case against the delinquent officer. Each case requires to be considered in the backdrop of its own facts and circumstances. There would be no bar to proceed simultaneously with departmental enquiry and trial of a criminal case unless the charge in the criminal trial is of grave nature involving complicated questions of fact and law. Offence generally implies infringement of public duty, as distinguished from mere private rights punishable under criminal law. When trial for criminal offence is conducted it should be in accordance with proof of the offence as per the evidence defined under the provisions of the Indian Evidence Act, 1872 (in short "the Evidence Act"). Converse is the case of departmental enquiry. The enquiry in a departmental proceeding relates to conduct or breach of duty of the delinquent officer, to punish him for his misconduct defined under the relevant statutory rules or law. That the strict standard of proof or applicability of the Evidence Act stands excluded is a settled legal position. Under these circumstances, what is required to be seen is whether the departmental enquiry would seriously prejudice the delinquent in his defence at the trial in a criminal case. It is always a question of fact to be

considered in each case depending on its own facts and circumstances."

(ii) The above said principle has been reiterated in a subsequent decision reported in 2005 (10) Supreme Court Cases 471 (Hindustan Petroleum Corporation Ltd., and others v. Sarvesh Berry).

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(iii) In 2007 (5) CTC 632 (Indian Overseas Bank, Anna Salai and Another Vs. P.Ganesan and Others), the Hon'ble Supreme Court, having regard to the legal position that there is no need for automatic stay in the departmental proceedings, has observed that the discretionary Writ jurisdiction under Article 226 of the Constitution of India should be exercised, keeping in view of the conduct of the parties, stage of the criminal case and whether it would expose the defence of the delinquent, if he is constrained to acquiesce himself to the departmental enquiry, pending disposal of the trial before the Court of competent jurisdiction. Relevant portion is as follows:

26. Furthermore the discretionary writ jurisdiction under Article 226 of the Constitution of India should be exercised keeping in view the conduct of the parties. Respondents made a representation that in the event the order of suspension is revoked, they would cooperate with the Enquiry Officer. They kept on filing applications for extension of time which were allowed. They took benefit thereof. Without, however filing show cause, they moved the High Court. Furthermore before the Enquiry Officer also, as noticed hereinbefore, although they had appointed the defence counsel, did not cross-examine the witnesses examined on behalf of the Management. A large number of witnesses had already been examined on behalf of the appellants. The disciplinary proceedings, as we have noticed hereinbefore, have proceeded to a great extent. In such a situation we are of the firm view that the discretionary jurisdiction should not have been exercised in favour of Respondents 1 to 4 by the High Court.

(iv) In the decision reported in (2007) 10 SCC 385 (Noida Entrepreneurs Association Vs. Noida and others), the Hon'ble Supreme Court has held as follows:

16. The standard of proof required in departmental proceedings is not the same as required to prove a criminal charge and even if there is an acquittal in the criminal proceedings the same does not bar departmental proceedings. That being so, the order of the State Government deciding not to continue the departmental proceedings is clearly untenable and is quashed. The departmental proceedings shall continue.

20. Since the petitioner is in the uniformed disciplined service, the authority is expected to perform his duty as per the Rules. When the petitioner is alleged to have committed misconduct, the respondents have no other choice except to proceed with the departmental enquiry and they need not wait for the decision of the criminal court. The department need not wait for the decision of the law enforcing agency.

21. Furthermore, discretionary jurisdiction under Article 226 of the Constitution of India should be exercised cautiously. In the present case on hand, already department witnesses have been examined. It is for the petitioner to cross examine the witnesses. At this stage, if the department has to defer the departmental proceedings, till the criminal prosecution is over, then it will adversely affect the administrative functioning of the disciplined force.

22. Further, in view of the categorical decision held by the Hon'ble Supreme Court, we do not find any error or need to interfere with the order dated 24.08.2017 passed in W.P.No.22696 of 2017. Accordingly, the writ appeal is dismissed. No costs. Consequently, the connected miscellaneous petition is also closed."

Hence, this Writ Petition filed to direct the 2nd respondent to defer from proceedings with the departmental proceedings initiated vide Charge Memo dated 12.06.2018 issued by the 1st respondent and other related proceedings till the disposal of the criminal case, is dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

mps

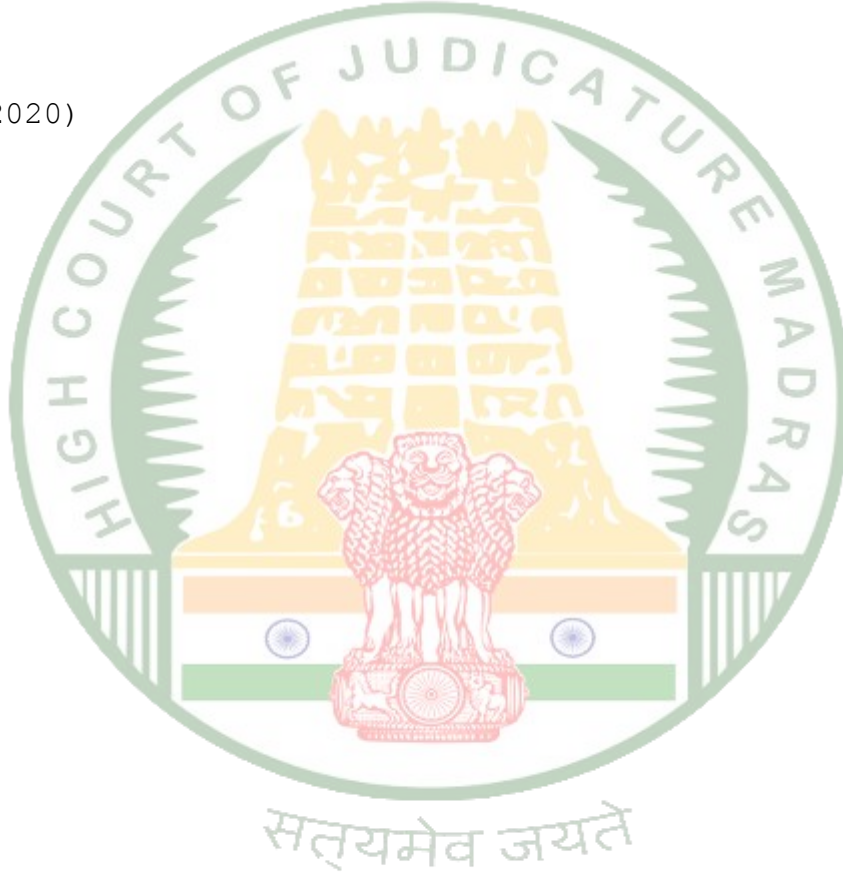
To

1.The Deputy Inspector General of Police,
Vellore Range,
Vellore.

+1cc to the Government Pleader, S.R.No. 79386

W.P.No.22004 of 2018 &
W.M.P.Nos.25802&40302/2018

MP (CO)
GN(28/02/2020)



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