

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 29.07.2019

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THE HON'BLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.22167 of 2019
and
W.M.P.No.21441 of 2019

K.P.Tamilmaran

... Petitioner

Vs.

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

2. The Superintendent of Police,
Cuddalore,
Cuddalore District.

... Respondents

Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, forbearing the first respondent from further proceeding with the charge memo bearing PR.No.9 of 2019 under rule 3(b) dated 02.05.2019 issued by the first respondent against the petitioner until conclusion of the criminal trial in S.C.No.7 of 2019 on the file of the Chief Judicial Magistrate-cum-Special Judge, Cuddalore.

For Petitioner : Mr.M.Radhakrishnan

For Respondents : Mr.K.K.Ramesh
Government Advocate

ORDER

This Writ Petition has been filed seeking for a direction, forbearing the first respondent from further proceeding with the charge memo bearing PR.No.9 of 2019 under rule 3(b) dated 02.05.2019 issued against the petitioner until conclusion of the criminal trial in S.C.No.7 of 2019 on the file of the Chief Judicial Magistrate-cum-Special Judge, Cuddalore.

2. Mr.K.K.Ramesh takes notice for the Respondents. By consent, this Writ Petition is taken up for final disposal at the admission stage itself.

3. The case of the petitioner is that he was appointed as Sub Inspector of Police and Joined duty on 01.03.1996 and was subsequently, promoted as Inspector of Police on 01.10.2006. When he was working in the said post, he was placed under suspension vide an order dated 27.07.2017 passed by the second respondent for certain misconduct and a criminal case in Crime No.7 of 2017 under Sections 7, 9 and 13(2) read with 13 (1)(d) of the Prevention of Corruption Act, 1988 was also registered against him. He challenged the order of suspension by way of Writ Petition in W.P.No.10146 of 2018, which was disposed of by this Court on 15.02.2019 with a direction to the competent authority to review the order of his suspension. In the criminal case, a final report was filed before the learned Chief Judicial Magistrate-cum-Special Judge, Cuddalore District, on 21.02.2019 and the same was taken on file in S.C.No.7 of 2019 on 03.05.2019. During the pendency of the said criminal case, the petitioner has been issued a charge memo dated 02.05.2019 by the first respondent, alleging that he has committed misconduct under Rule 24 of the Tamil Nadu Subordinate Police Officers Conduct Rules, 1964, and disciplinary proceedings were initiated against him. Therefore, he has filed this petition before this Court.

4. The main contention of the learned counsel for the Petitioner is that when the criminal case is pending against the petitioner, the initiation of departmental proceedings will cause much prejudice to the petitioner and therefore, it is necessary to forbear the respondents from proceeding with the departmental enquiry till the conclusion of the criminal case.

5. On the contrary, the learned Government Advocate appearing for the Respondents has submitted that in the light of the judgment of the Hon'ble Supreme Court in the case of Stanzen Toyotetsu India Private Limited vs. Girish v. and others, reported in (2014) 3 SCC 636, there is no bar for the Respondents from proceeding with departmentally when the criminal case is pending and therefore, no direction as sought for by the Petitioner is required in this case and the petition is liable to be dismissed.

6. Heard the learned counsel on either side and perused the material documents available on record.

7. It is not in dispute that the petitioner was suspended from service and pursuant to which, the Respondents issued charge memo for initiating departmental proceedings. It is seen that in the criminal case, charge sheet was already filed before the learned Chief Judicial Magistrate-cum-Special Judge, Cuddalore District, in S.C.No.7 of 2019 and the case is pending

for trial. The learned Government Advocate has referred to the judgment of the Hon'ble Supreme Court in the case of Stanzen Toyotetsu India Private Limited vs. Girish v. and others (cited supra) to the effect that the Respondents are entitled to proceed against the Petitioner departmentally, pending criminal case. I find force in the contention raised by the learned Government Advocate and I have myself followed the said judgment of the Hon'ble Supreme Court in W.P.(MD)No.17116 of 2014 dated 10.07.2015 and held that there is no hindrance on the part of the employer to proceed with the departmental proceedings pending criminal case. For the sake of convenience, the relevant Paragraph of the judgment of the Hon'ble Supreme Court reads as under:

"19. In the circumstances and taking into consideration all aspects mentioned above as also keeping in view the fact that all the three Courts below have exercised their discretion in favour of staying the on-going disciplinary proceedings, we do not consider it fit to vacate the said order straightaway. Interests of justice would, in our opinion, be sufficiently served if we direct the Court dealing with the criminal charges against the respondents to conclude the proceedings as expeditiously as possible but in any case within a period of one year from the date of this order. We hope and trust that the Trial Court will take effective steps to ensure that the witnesses are served, appear and are examined. The Court may for that purpose adjourn the case for no more than a fortnight every time an adjournment is necessary. We also expect the accused in the criminal case to co-operate with the trial Court for an early completion of the proceedings. We say so because experience has shown that trials often linger on for a long time on account of non-availability of the defense lawyers to cross-examine the witnesses or on account of adjournments sought by them on the flimsiest of the grounds. All that needs to be avoided. In case, however, the trial is not completed within the period of one year from the date of this order, despite the steps which the Trial Court has been directed to take the disciplinary proceedings initiated against the respondents shall be resumed and concluded by the Inquiry Officer concerned. The impugned orders shall in that case stand vacated upon expiry of the period of one year from the date of the order.

20. In the result, we allow these appeals but only in part and to the extent indicated above. The parties are left to bear their own costs."

8. Following the judgments of the Hon'ble Supreme Court and this Court, I am of the view that both the departmental proceedings and the criminal case shall go on simultaneously and there is no need to stall the departmental proceedings.

9. Accordingly, this Writ petition is disposed of, with a direction to the first respondent to proceed against the petitioner departmentally and bring the issue to a logical end within six months from the date of receipt of a copy of this order by conducting the enquiry on a day-to-day basis without adjourning the same beyond seven working days at any point of time. It is made clear that the petitioner will have to participate in the departmental proceedings without fail and shall not attempt to adopt dilatory tactics. No costs. Consequently, connected miscellaneous petition is closed.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1. The Deputy Inspector General of Police,
Viluppuram Range,
Viluppuram.
2. The Superintendent of Police,
Cuddalore,
Cuddalore District.

+1 cc to M/s.M.Radha krishnan advocate sr80852

W.P.No.22167 of 2019
and
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