

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.10.2019

CORAM

THE HONOURABLE Mr.JUSTICE M.DHANDAPANI

W.P.No.29982 of 2019
and
W.M.P.No.29880 of 2019

P.Grace Selvarani ... Petitioner

Vs

1.The Deputy Commissioner of Police,
Central Crime Branch-II,
Greater Chennai Police,
Vepery, Chennai- 600 007.

2.The Assistant Commissioner of Police,
Forgery Wing,
Central Crime Branch,
Greater Chennai Police,
Vepery, Chennai-600007.

... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India, praying to issue a Writ or an order or direction in the nature of writ, particularly a Writ of Mandamus directing the respondents to defer the departmental proceedings in P.R.No.517/PR2(1)/2018 dated 31.08.2018 issued by the first respondent till the conclusion of the criminal cases in C.C.No.7243/2018 pending trial on the file of the learned XIV Metropolitan Magistrate since the evidences for both the proceedings are one and the same by considering the petitioner's representation dated 18.09.2018.

For Petitioner : Mr.N.Manokaran

For Respondents : Mr.R.S.Selvam
Government Advocate

O R D E R

This Writ Petition has been filed for the issuance of Writ of Mandamus, directing the respondents to defer the departmental proceedings in P.R.No.517/PR2(1)/2018 dated 31.08.2018 issued by

the first respondent till the conclusion of the criminal cases in C.C.No.7243/2018 pending trial on the file of the learned XIV Metropolitan Magistrate since the evidences for both the proceedings are one and the same by considering the petitioner's representation dated 18.09.2018.

2. The petitioner was working as Head Constable CCTS, Crime Branch, Chennai. A criminal case in F.I.R.No.200 of 2018 was registered against her for the offences under Section 448, 294 (B), 323, 506(1) IPC on a complaint lodged by one Tmt.Sumithra and her family. Thereafter, the said case was taken on file as C.C.No.7243 of 2018 on the file of XIV Metropolitan Magistrate, Egmore, Chennai, on filing the Final Report therein. While so, on 31.08.2018, the petitioner was issued with a charge memo leveling three charges against her. Pursuant to the charge memo, the petitioner submitted her detailed explanation to the first respondent and also requested that the departmental proceedings and criminal case proceedings are identical and hence the departmental proceedings may be withheld. However, vide order dated 26.09.2018, the first respondent appointed the second respondent as Enquiry Officer. Aggrieved by the same, it appears that the petitioner moved Writ Petition before this Court in W.P.No.26426 of 2018 which came to be dismissed by this Court vide order dated 26.09.2018. Now, the petitioner has come forward with the present Writ Petition to direct the first respondent to consider her representation dated 18.09.2019, wherein she requested the first respondent to defer the departmental proceedings dated 31.08.2018 till the conclusion of the criminal case in C.C.No.7243 of 2018 pending trial on the file of the XIV Metropolitan Magistrate, Egmore, Chennai. Since, despite her representation, no action is forthcoming from the respondents, the petitioner is before this Court.

3. Learned counsel for the petitioner would submit that for the same set of allegations against which already the criminal case has been registered against the petitioner and the same was taken on file. Pending trial in the Criminal case on the file of the XIV Metropolitan Magistrate, Egmore, Chennai, the petitioner was proceeded with the departmental proceedings and therefore, it is desirable to defer the departmental proceedings till the conclusion of the criminal case. Learned counsel would also implore this Court to issue direction as sought for in the Writ Petition.

4. Learned Government Advocate appearing on behalf of the respondents would submit that pendency of the criminal proceedings against the petitioner is not a bar to proceed against the petitioner departmentally even though the allegations are one and the same. He would point out that in criminal proceedings, the petitioner may be acquitted on giving

benefit of doubt, whereas in departmental proceedings, such benefit would not arise. Therefore, the petitioner is not entitled to the relief as sought in the Writ Petition.

5. The Bombay High Court in its judgment cited 2008 (3) MhLj 484 [Babulal Verma Vs. Union of India] has dealt with the same case and the relevant paragraphs of the case are extracted hereunder:

"...It is settled principle of law that the departmental proceedings in all the cases cannot be stayed till the conclusion of the proceedings before the criminal court merely on the ground the articles of charges and charges before the criminal court have the similarities. It will have to be decided keeping in view the facts and circumstances of each case. (emphasis added)

The rules governing a criminal trial are so stringent that a delinquent officer as an accused may get benefit of doubt and resultant acquittal, but that necessarily may not entitle him clearance in the departmental enquiry. The department would be well within its right to conduct an enquiry and pass appropriate orders in accordance with law. In the present case the evidence of the petitioner has still to start and it is not certain as to when the criminal proceedings pending before the Court of competent jurisdiction would attain finality. To keep the departmental proceedings in abeyance for such an indefinite period even otherwise would not be in consonance with the settled canons of service jurisprudence."

6. In this regard, it is worthwhile to refer the decision of the Hon'ble judgment of the Supreme Court in the case of NOIDA Entrepreneurs Association v. NOIDA and Ors., wherein the Supreme Court held as under:

".. the order of the State Government initiated the departmental proceedings against the delinquent pending inquiry by C.B.I., which was passed on the basis of the report of the Commission appointed by it on some points and that the administrative decision that the departmental inquiry was not required was set aside by the Supreme Court as untenable and liable to be quashed. In this very case, the Court clearly stated the principle that it was not possible to lay down any guideline as inflexible rules in which the departmental proceedings may or may not be stayed pending trial

in a criminal case against the delinquent officer. Each case would have to be decided on its own facts. The Court held as under:

"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." (emphasis added)

7. In view of the above, this Court does not find any merits to entertain the Writ Petition. Hence the same is dismissed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

- 1.The Deputy Commissioner of Police,
Central Crime Branch-II,
Greater Chennai Police,
Vepery, Chennai- 600 007.
- 2.The Assistant Commissioner of Police,
Forgery Wing,
Central Crime Branch,
Greater Chennai Police,
Vepery, Chennai-600007.
- 3.The Learned XIV Metropolitan Magistrate,
Egmore, Chennai.
- 4.Through' The Chief Metropolitan Magistrate,
Egmore, Chennai.

+1cc to the Government Pleader Sr.88752
+1cc Mr.N.Manokaran, Advocate Sr.88466

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and
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