

* THE HONOURABLE SRI JUSTICE P.NAVEEN RAO
+ W.P. NOs.21012, 21014 & 21148 of 2019

%15.10.2019

Mallaraset Rambabu s/o. Kotaiah, Aged about 46 years,
Occu: Inspector of Police (under suspension), (f) SHO,
Raidurgam PS, Cyberabad, r/o. Flat No.501, Block-A,
Ayyanna Prestige Apts, Masjid Banda, Ranga Reddy district.

...petitioner

Vs.

\$ State of Telangana, rep.by its Principal Secretary,
Home Department, Secretariat Buildings,
Telangana, Hyderabad and others.

.... Respondents

!Counsel for the petitioner : Sri D.Balkishan Rao

Counsel for the Respondents: G.P. for Services -I

< Gist :

> Head Note:

? Cases referred:

(1999) 3 SCC 679
(2006) 5 SCC 4546
AIR 1997 SC 13
(2012) 1 SCC 442
(2014) 3 SCC 636
(2016) 9 SCC 491

**IN THE HIGH COURT FOR THE STATE OF
TELANGANA**

WRIT PETITION NOs.21012, 21014 & 21148 of 2019.

Between :

Mallaraset Rambabu s/o. Kotaiah, Aged about 46 years,
Occu: Inspector of Police (under suspension), (f) SHO,
Raidurgam PS, Cyberabad, r/o. Flat No.501, Block-A,
Ayyanna Prestige Apts, Masjid Banda, Ranga Reddy district.

.... Petitioner

And

State of Telangana, rep.by its Principal Secretary,
Home Department, Secretariat Buildings,
Telangana, Hyderabad and others.

.... Respondents

JUDGMENT PRONOUNCED ON :15.10.2019

THE HON'BLE SRI JUSTICE P.NAVEEN RAO

1. Whether Reporters of Local Newspapers may :
Be allowed to see the Judgments ? : YES
2. Whether the copies of judgment may be marked :
To Law Reporters/Journals : YES
3. Whether Their Ladyship/Lordship wish to :
See fair Copy of the Judgment ? :NO

HONOURABLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION NOs.21012, 21014 & 21148 of 2019

Date: 15.10.2019

W.P.No.21012 of 2019:

Between:

Mallaraset Rambabu s/o. Kotaiah, Aged about 46 years,
Occu: Inspector of Police (under suspension), (f) SHO,
Raidurgam PS, Cyberabad, r/o. Flat No.501, Block-A,
Ayyanna Prestige Apts, Masjid Banda, Ranga Reddy district.

.....Petitioner

And

State of Telangana, rep.by its Principal Secretary,
Home Department, Secretariat Buildings,
Telangana, Hyderabad and others.

.....Respondents



The Court made the following:

HONOURABLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION NOS.21012, 21014 & 21148 of 2019

COMMON ORDER:

In these three Writ Petitions, common question of law arises for consideration and, therefore, they are disposed of by this common order.

2. Petitioners in W.P.Nos.21012 and 21014 of 2019 are working as Inspectors of Police and petitioner in W.P.No.21148 of 2019 is working as Deputy Superintendent of Police. Crime No.93 of 2019 was registered in Jubilee Hills Police Station for the offences under Sections 419, 342, 346, 348, 384, 302, 210 and 202 read with Section 34 of Indian Penal Code. Originally, this crime was registered in Nandigama Police Station of Krishna district and later on jurisdictional point, said case was transferred to State of Telangana. The sum and substance of the issue in the said crime is accused No.1, by name K.Rakesh Reddy illegally confined and murdered one NRI businessman, by name Dr. C.Jayaram. Though, petitioners were not shown in the First Information Report, during the course of investigation they are also added. After completion of investigation, charge sheet is filed in the Court of XVII Additional Chief Metropolitan Magistrate, Hyderabad. Petitioners are accused Nos. 11, 10 and 12 respectively.

3. Due to their involvement in criminal case and pending departmental proceedings, all the three officers were placed under suspension. On 28.05.2019 charge memos were drawn against the petitioners in W.P.Nos.21012 and 21148 of 2019 and on 29.05.2019, against petitioner in W.P.No.21014 of 2019. On

service of charge memos, petitioners filed their explanations. Not satisfied with the explanations offered by petitioners, departmental enquiry was ordered into the charges leveled against them by appointing Deputy Inspector General of Police, Nizamabad Range as Enquiry Officer. Enquiry Officer held sitting on 13.08.2019. All the petitioners attended the enquiry and submitted their representations to the Enquiry Officer requesting to defer enquiry as crime is registered against them, charge sheet is filed and the case is pending trial before the Court of XVII Additional Chief Metropolitan Magistrate, Hyderabad. By referring to the instructions issued by the Director General of Police, in Memorandum dated 07.08.1995 the request of petitioners to defer the departmental proceedings was rejected and petitioners were directed to attend the enquiry. At this stage, these writ petitions are filed challenging the charge memos issued to them. The primary challenge against charge memos is on the ground that on the very same issue criminal proceedings are pending and trial is yet to commence.

4. Heard learned counsel Sri M.V.Pratap Reddy for petitioners in WP Nos.21014 and 21148 of 2019, and Sri D.Bala Kishan Rao learned counsel for petitioner in W.P.No.21012 of 2019 and learned Government Pleader for respondents in all cases.

5. According to learned counsel for petitioners, as charges framed in the departmental proceedings are directly arising out of the crime No. 93 of 2019 registered in Jubilee Hills Police Station on the allegation that K.Rakesh Reddy illegally confined and murdered Dr.C.Jayaram and in the said crime petitioners are also

implicated and charge sheet is filed and, therefore, at this stage, if departmental proceedings are conducted, grave prejudice would be caused to them in defending themselves in criminal case as they will be forced to disclose their defence in the departmental proceedings. According to the learned counsel, nature of the charge in the departmental proceedings is similar to that of the allegations made in criminal proceedings and, therefore, disciplinary authority ought to have deferred conducting of departmental proceedings till conclusion of trial in the criminal case. Not accepting the request of petitioners and proceeding to hold departmental proceedings amounts to arbitrary exercise of power.

6. In support of their contentions, learned counsel placed reliance on the decision of Hon'ble Supreme Court in **Capt. M. Paul Anthony v. Bharat Gold Mines Ltd., and another**¹ and **G.M. Tank v. State of Gujarat and others**².

7. *Per contra*, according to learned Special Government Pleader, there is no bar in conducting departmental proceedings merely because the petitioners are also involved in criminal proceedings. According to learned Government Pleader, criminal proceedings and departmental proceedings stand on different footing and are independent and, therefore, they can be proceeded simultaneously. Furthermore, the principle laid down by the Supreme Court is not attracted to the cases of petitioners as the allegations in the departmental proceedings are not the same as leveled in the criminal case and, therefore, departmental proceedings can be

¹ (1999) 3 SCC 679

² (2006) 5 SCC 4546

continued. There is no right for the petitioners to ask for deferment of departmental proceedings merely because criminal cases are pending.

8. I have carefully considered respective submissions and the precedent decisions on the subject.

9.1. In departmental proceedings, the following charges are framed against the petitioner in W.P.No.21012 of 2019:

“ARTICLE-I:

That, Sri S.Rambabu, Inspector of Police, Hyderabad Range, has worked as SHO, Raidurgam PS, Cyberabad from 04.01.2018 to 16.02.2019. While working as SHO, Raidurgam PS, being in responsible position, the charged officer has exhibited gross misconduct by maintaining close association with a criminal Sri K.Rakesh Reddy, despite knowing his criminal activities since May 2018 over phone and in person and by requesting the SHO, Adibatla Sri R.Govinda Reddy to extend his help to the accused in a land encroachment and also by providing CDRs of M.Shrika Showdary @ Pulivarthi Mahuri, girlfriend of accused on the request of accused on August 2018, a copy of which was recovered by police, Nandigama during search of residence of the accused at Jubilee Hills on 05.02.2018. His association with the accused is evident from CDRs of his official and other number of charged officer having (77) incoming calls and (147) outgoing calls totaling to 224 calls and call time 19568 seconds from May 2018 to 31st January 2019.

ARTICLE-II:

The charged officer has misused his official position in summoning one Mr. Kalyan of M/s. U-Media an event organizer to Raidurgam PS on the request of the accused Sri K.Rakesh Reddy and forcing him to do favour to the accused as he desired.

ARTICLE-III:

That, Sri S.Rambabu, (f) SHO, Raidurgam, Cyberabad now under suspension has exhibited gross dereliction to duty by indulging in official/willful misconduct by discussing with the accused on 29.01.2019 at Raidurgam PS about how to extort money from the victim/deceased Dr. C.Jayaram in the presence of his friend Sri B.Narasimha Reddy.

ARTICLE-IV:

That, Sri S.Rambabu, misused his official position by hiding the information given to him by the accused Sri K.Rakesh Reddy on 30.1.2019 over the phone about the confinement of Dr. C.Jayaram at the house of accused Plot No.122/A, Village, A-Block, Road No.10, Jubilee Hills,

Hyderabad and allowing the accused to meet him when he came to at Raidurgam PS seeking his advise after killing Dr. C. Jayaram, despite knowing he is a murderer. During the period of confinement of deceased till disposal of dead body i.e. from 29.1.2019 to 1.2.2019 he was having total (13) calls to his mobile Nos.9490617191 and 9550893555. It is evident that the charged officer deliberately supported the criminal/accused in the criminal activity.

Thus, Sri S.Rambabu, (f) SHO, Raidurgam, Cyberabad now Inspector of Police (u/s)., by his above mentioned acts exhibited gross misconduct, lack of integrity, devotion to duty by misusing his official power in aiding criminal K.Rakesh Reddy, in his criminal activities and hiding the information of confinement and murder of deceased from the superior officers and behaved in a manner unbecoming of member of service and thereby violated Rule 3 of TSCS (Conduct) Rules, 1964.

Hence, the charge.”

9.2. In departmental proceedings, the following charges are framed against the petitioner in W.P.No.21014 of 2019:

“ARTICLE-I:

That, Sri S.Srinivasulu, Inspector of Police, has worked as SHO, Nallakunta Hyderabad from 27.09.2018 to 06.02.2019 while working as SHO, Nallakunta, the charged officer being in responsible position, exhibited gross misconduct by maintaining close association with a criminal Sri K.Rakesh Reddy, despite knowing his criminal activities since April-2018 over phone and in person and visited the accused place twice, which is evidence from CDRs of his official and other number of charged officer having (18) incoming calls and (43) outgoing calls, call time totaling 8275 seconds, from April, 2018 to 31.01.2019.

ARTICLE-II:

That Sri S.Srinivasulu misused his official position by hiding the information of commissioning a serious cognizance offence of the brutal murder of Dr. C.Jayaram on 31.01.2019 morning at the house of accused Sri K.Rakesh Reddy Plot No.122/A, Villa, A-Block, Road No.10, Jubilee Hills, Hyderabad. Accused sought his advice and subsequently accused came in person in a car with dead body of deceased to meet him at Nallakunta while he was in bandobust. Instead of asking the accused to surrender before the CI in PS of jurisdiction of his residence, he has given suggestion to the accused to abandon the dead body of deceased somewhere in A.P. During the period of confinement of deceased till disposal of dead body i.e. from 29.1.2019 to 1.2.2019 he was having (12) calls to his phones. It is evident that the charged officer deliberately supported the accused in the criminal activity, by giving advise to him till the body of deceased was disposed of at Ithavaram (V) of Nandigama (M) of Krishna dist of AP on midnight of 31.1.2019.

Thus, Sri S.Srinivasulu, (f) SHO, Nallakunta PS now Inspector of Police (u/s) by his above mentioned acts exhibited gross misconduct, lack of integrity, devotion to

duty by misusing his official power in aiding criminal Rakesh Reddy in his criminal activity and suggesting him to take the dead of Dr. C.Jayaram to outside of the State and dispose by creating it as an accident and hiding the information from the superior officers and behaved in a manner unbecoming of member of service and thereby violated Rule 3 of TSCS (Conduct) Rules, 1964.

Hence the charge.”

9.3. In departmental proceedings, the following charges are framed against the petitioner in W.P.No.21014 of 2019:

“ARTICLE-I:

That, Sri S.Malla Reddy DSP worked as ACP, Ibrahimpatnam from 12.12.2016 to 8.3.2019, Adibatla Police Station is one among other PSs comes under the jurisdiction of ACP, Ibrahimpatnam. During his tenure one criminal case vide Cr.No.173/2018 U/s. 427, 447, 506, 147 r/w 149 IPC of Adibatla PS was registered against a criminal Sri K.Rakesh Reddy in connection with land settlement deals at Adibatla. Despite knowing the criminal activities of the accused in his jurisdiction, Sri S.Malla Reddy, DSP (u/s) being in a responsible position maintained close association with him since June 2018 over phone and in person, which is evident from CDRs of his official and other number of charged officer having (47) incoming calls and (94) outgoing calls, call time totaling 11989 seconds from June 2018 to 31st January 2019.

ARTICLE-II:

That Sri S.Malla Reddy misused his official position by hiding the information given to him over phone by the accused Sri K.Rakesh Reddy on the brutal murder of Dr. C.Jayaram on 31.01.2019 morning at the house of accused i.e., Plot No.122/A, Villa, A-Block, Road No.10, Jubilee Hills, Hyderabad seeking his advise. Instead of properly guiding the accused to surrender in the PS of jurisdiction of his residence, he has given suggestion to the accused to abandon the dead body of deceased somewhere in AP. During the period of confinement of deceased to till disposal of dead body i.e. from 29.1.2019 to 1.2.2019 accused Sri K.Rakesh Reddy has made total (12) calls to his mobile Nos.9490617106 and 8886780000. It is evident that the charged officer deliberately supported the accused in the criminal activity, by giving advise to him till the body of deceased was disposed of at Ithavaram (V) of Nandigama (M) of Krishna district of AP on midnight of 31.1.2019. later, the Krishna District Police unearthed the case of murder vide Cr.No.46/2019 u/s 419, 342, 346, 348, 384, 302, 201, 202 r/w 34 IPC of Nandigama PS. Later, transferred to Jubilee Hills PS and investigated. In this case accused Sri K.Rakesh Reddy and other were arrested by Police.

Thus, Sri S.Malla Reddy (f) ACP, Ibrahimpatnam Division, Rachakonda now DSP (u/s), by his above mentioned acts exhibited gross misconduct, lack of integrity, devotion to duty by misusing his official position by aiding the truth of the brutal murder of Dr. C.Jayaram by criminal Rakesh Reddy from superior officers and suggesting the accused to dispose of dead of Dr.C.Jayaram,

outside of the State by creating it as an accident and behaved in a manner unbecoming of member of service and thereby violated Rule 3 of TSCS (Conduct) Rules, 1964.

Hence the charge.”

10. Gravamen of accusations in the charge sheet filed by Police in Crime No.93 of 2019 pertains to incident of wrongful confinement of person by name Dr. C.Jayaram Chigurupalli and killing him by K.Rakesh Reddy, accused No.1, and creating a scene that deceased died in a road accident. Totally 12 persons are shown as accused who are directly or indirectly alleged to have been involved. In the criminal case, petitioner in W.P.No.21012 of 2019 is shown as accused No.11; petitioner in W.P.No.21014 of 2019 is shown as accused No.10; and petitioner in W.P.No.21148 of 2019 is shown as accused No.12.

11. The charge sheet alleges that petitioner in W.P.No.21012 of 2019 (accused No.11) contacted accused No.1 over phone, this fact corroborated with call data report. The relevant portion of charge reads as under:

“Accused No.1 made a call to the cell phone of accused no.11 and informed him that the deceased agreed to pay 50 lakhs per month and also kept his passport with him, so he wanted to release him. Since, accused no.1 spoke to a police officer, LWs.32 to 35 got confidence on the accused no.1 that he would not kill the deceased so they left from the place. But later Accused No.1 killed the deceased.

12. Against petitioner in W.P.No.21014 of 2019 (accused No.10), it is alleged that:

“from there accused A1 went to Nallakunta Police Station in the said Car keeping the dead body in leg room of back seat covering the sun screen sheets to the side windows and on the way contacted A10 over phone. He told him that the head constable LW.38 at the Police Station will guide him to reach his place of duty at Dass Construction Company, near Fever Hospital. The LW.38 guided the A1 when he came to police station in a car. As per the guidance of LW.38, A1 went in his car to meet the A10 at the place of his bandobust duty. After having a brief discussion of A1

with A10, he proceeded towards Vijayawada highway
.....”.

13. Against petitioner in W.P.No.21148 of 2019, (accused No.12),
it is alleged that:

“Accused no.1 constantly contacting with the accused
no.12 till midnight and was taking his advise”.

14. It is therefore alleged that accused Nos.10 to 12 intentionally
omitted to give information on committing of offence and
harboured/concealed the offender attracting Sections 202 and 212
of IPC.

15. In the departmental proceedings against petitioner in W.P.
No. 21012 of 2019, four charges are leveled. Sum and substance
of allegations in the charges 1 and 2 relate to alleged conduct of
petitioner in maintaining close association with the criminal
despite knowing his criminal activities since May 2018 over phone
and in person and also requesting another Station House Officer to
extend his help to the accused in a land encroachment and
providing CDRs of M.Shrika Showdary, who was girl friend of
accused no.1, on his request. It is thus, alleged that his close
association with accused is evident from CDRs and other mobile
number of charged officer. It is further alleged that he misused his
official position in summoning person, by name, Kalyan, on the
request of the accused no.1 and forcing him to do favour to the
accused. Charges 3 and 4 relate to incidents that took place
between 29.1.2019 and 31.1.2019 i.e., day before the murder and
on the date of murder respectively. In charge-3, it is alleged that
petitioner discussed with the accused in the police station about
how to extort money from the victim. In charge-4, it is alleged that
he was hiding information given to him by the accused about

confinement of Dr.C.Jayaram and allowed to meet him when he came to police station seeking his advise after killing Dr. C.Jayaram, despite knowing that he is a murderer and during the period of confinement of deceased till disposal of dead body, the accused was in continuous contact with the petitioner on his two mobile numbers.

16. From the reading of these charges, as briefly noted above, charges 1 and 2 relate to the earlier relationship and the help extended by the petitioner to K.Rakesh Reddy, who was accused no.1, on various issues and the allegations in charges 3 and 4 are on the issue of knowing fully well about the activities undertaken by accused no.1, he helped the accused no.1 instead of discharging his official duties properly in preventing the crime.

17. As against this, what was alleged in the charge sheet filed by the Police in criminal case is on contacting the petitioner over phone and alleged assurance given to petitioner by accused no.11 that he would release the deceased and the deceased agreed to pay 50 lakhs per month and his passport is kept with him. In other words, from the narration of the involvement of petitioner, it appears that if petitioner was alert, he could have saved the deceased and because of that assurance given to the petitioner on phone in the presence of LWs.32 to 35, they were *bona fide*ly believed that accused no.1 would not kill the accused and they left the place. It is thus seen from the nature of the allegations leveled against petitioner in domestic enquiry and in the criminal case they are not same.

18. Similarly, in the domestic enquiry, the allegations against petitioner in W.P.No.21014 of 2019 are that he exhibited gross misconduct by maintaining close association with the criminal since April 2018 over phone, despite knowing his criminal activities and in person and visited the accused place twice. It is further alleged that he misused his official position by hiding the information of commissioning a serious cognizable offence of the brutal murder of Dr. C.Jayaram on 31.01.2019 morning. He offered his advise and when he came in person with dead body of deceased to meet him at Nallakunta while he was in bandobust instead of asking the accused to surrender, he advised him to abandon the dead body of the deceased somewhere in Andhra Pradesh and that during the period of confinement of deceased till disposal of dead body, he was having total 12 calls through his phones and, therefore, it is alleged that charged officer deliberately supported the accused in criminal activity. It is alleged that accused no.1 went in his Car to meet the accused no.10 at the place of bandobust and after having brief discussion, proceeded towards Vijayawada Highway. This allegation implies that though petitioner was aware of what was done by the accused, he let him off without ordering him to surrender to police.

19. In the domestic enquiry, the allegations against petitioner in W.P.No.21148 of 2019 is that though crime was registered against K.Rakesh Reddy in Adibatla P.S and despite knowing criminal activities of said person, petitioner being in responsible position, maintained close association with him since June, 2018 over phone and in person. It is further alleged that after murdering Dr. C.Jayaram, accused no.1 contacted the petitioner, at that stage

instead of advising the accused no.1 to surrender to police, he advised the accused to abandon the dead body of the deceased somewhere in AP and that during the period of confinement of deceased till his death, the accused no.1 was in consistent contact with the petitioner on his two mobile numbers.

20. The only issue for consideration is whether it is permissible to the Government/disciplinary authority to initiate and continue disciplinary proceedings on the charges levelled against the petitioners, impugned herein, even though the gravamen of charges relate to an alleged incident of kidnapping and murder of Dr C.Jayaram and filing of charge sheet in the Court of XVII Additional Chief Metropolitan Magistrate, Hyderabad in Crime No.93 of 2019 in Jubilee Hills Police Station, Hyderabad, where under petitioners are shown as accused Nos. 11,10 and 12 respectively.

21. Disciplinary proceedings and criminal proceedings operate in two different fields. Disciplinary action is set in motion if employer lost trust and confidence on the employee on alleged misconduct affecting the image and reputation of the employer. Criminal proceedings relate to committing of crime against society and if Government servant is involved in such crime in gross abuse of his position in the service, he will also be shown as accused and trial would be conducted. If employee indulges in acts of misconduct which also attract criminal prosecution, ordinarily employer not only initiates departmental action but also lodges complaint with the police. In the domestic enquiry, the employer wants to assess the conduct of Police Officers on the allegation of having close

association with the criminal, knowing fully well the conduct of criminal, not discharging their duties as Police Officers properly and allowed a criminal to illegally confine and kill a person and to create a scene as if person died in a road accident. The relationship of employee-employer is based on trust and confidence of the employer on the employee. If the employer has an element of doubt on the conduct and character of the employee, employer may not be willing to continue the employee in his service.

22. Before acting against an employee, the employer is required to follow due process and on establishment of charges leveled against him, appropriate punishment can be imposed. In domestic enquiry to establish charge, what is required is proof based on principle of *preponderance of probabilities*. Circumstantial evidence can be taken into consideration to hold the charge as proved and to impose appropriate punishment. On the contrary, criminal law requires that the charges leveled against a person must be proved beyond reasonable doubt and burden lies on the prosecution to establish the charges. Any deficiency and element of doubt in evidence will go against the prosecution.

23. There is long line of precedents on the issue of desirability to continue domestic enquiry pending criminal investigation/trial. A brief recapitulation of precedent decisions is as under:

23.1. In **State of Rajasthan v. B.K.Meena and others**³, Supreme Court held as under:

“14. It would be evident from the above decisions that each of them starts with the indisputable proposition that there

³ AIR 1997 SC 13

is no legal bar for both proceedings to go on simultaneously and then say that in certain situations, it may not be 'desirable', 'advisable' or 'appropriate' to proceed with the disciplinary enquiry when a criminal case is pending on identical charges. The staying of disciplinary proceedings, it is emphasised, is a matter to be determined having regard to the facts and circumstances of a given case and that no hard and fast rules can be enunciated in that behalf. The only ground suggested in the above decisions as constituting a valid ground for staying the disciplinary proceedings is that "the defence of the employee in the criminal case may not be prejudiced". This ground has, however, been hedged in by providing further that this may be done in cases of grave nature involving questions of fact and law. In our respectful opinion, it means that not only the charges must be grave but that the case must involve complicated questions of law and fact. Moreover, 'advisability', 'desirability' or 'propriety', as the case may be, has to be determined in each case taking into consideration all the facts and circumstances of the case.

.....

One of the contending considerations is that the disciplinary enquiry cannot be — and should not be — delayed unduly.

.....

While it is not possible to enumerate the various factors, for and against the stay of disciplinary proceedings, ***we found it necessary to emphasise some of the important considerations in view of the fact that very often the disciplinary proceedings are being stayed for long periods pending criminal proceedings. Stay of disciplinary proceedings cannot be, and should not be, a matter of course. All the relevant factors, for and against, should be weighed and a decision taken keeping in view the various principles laid down in the decisions referred to above.***

(emphasis supplied)

23.2. In **Capt M.Paul Anthony**, Supreme Court has delineated the principles on the desirability of continuing disciplinary proceedings during the pendency of the criminal proceedings. The parameters of judicial intervention are set out in para 22. They read as under:

"22. The conclusions which are deducible from various decisions of this Court referred to above are:

- (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.***

(emphasis supplied)

23.3. In **Divisional Controller, Karnataka State Road Transport Corporation Vs M.G.Vittal Rao**⁴, Supreme Court held that **Capt M Paul Anthony** does not lay down the law of universal application. Facts, charges and nature of evidence, etc., involved in an individual case would determine as to whether decision of acquittal would have any bearing on the findings recorded in the domestic enquiry. (Para 24).

23.4. In **Stanzen Toyotestsu India Private Limited v. Girish V and others**⁵, Supreme Court reviewed the entire case law on the subject and held as under:

“8. The law on the subject is fairly well settled for similar issues and has often engaged the attention of this Court in varied fact situations. Although the pronouncements of this Court have stopped short of prescribing any straitjacket formula for application to all cases, the decisions of this Court have identified the broad approach to be adopted in such matters leaving it for the courts concerned to take an appropriate view in the peculiar facts and circumstances of each case

⁴ (2012) 1 SCC 442

⁵ (2014) 3 SCC 636

that comes up before them. Suffice it to say that there is no short-cut solution to the problem. ***What is, however, fairly well settled and was not disputed even before us is that there is no legal bar to the conduct of the disciplinary proceedings and a criminal trial simultaneously.***

.....

13. It is unnecessary to multiply decisions on the subject for the legal position as emerging from the above pronouncements and the earlier pronouncements of this Court in a large number of similar cases is well settled that disciplinary proceedings and proceedings in a criminal case can proceed simultaneously in the absence of any legal bar to such simultaneity. It is also evident that while seriousness of the charge levelled against the employees is a consideration, the same is not by itself sufficient unless the case also involves complicated questions of law and fact. ***Even when the charge is found to be serious and complicated questions of fact and law that arise for consideration, the court will have to keep in mind the fact that departmental proceedings cannot be suspended indefinitely or delayed unduly.***

.....

.....

16.The court examining the question must also keep in mind that criminal trials get prolonged indefinitely especially where the number of accused arraigned for trial is large as is the case at hand and so are the number of witnesses cited by the prosecution. **The court, therefore, has to draw a balance between the need for a fair trial to the accused on the one hand and the competing demand for an expeditious conclusion of the ongoing disciplinary proceedings on the other. An early conclusion of the disciplinary proceedings has itself been seen by this Court to be in the interest of the employees.**

(emphasis supplied)

24. Same principle is echoed in **State Bank of India Vs. Neelam Nag and another**⁶. From several precedent decisions including **Stanzen Toyotetsu**, broad principle evolved is, ordinarily disciplinary action should not be stayed even when criminal case is pending on the same set of facts and law and even if it is stayed, if

⁶ (2016) 9 SCC 491

there is delay in concluding trial, the employer should be permitted to hold domestic enquiry. Burden is on the employee to satisfy the Court that the charges levelled in both proceedings are same; the material facts and evidence relied on by the employer is same; that there are complicated questions of law and facts involved; and he has not disclosed his defense so far. Even if employee satisfies above parameters, Court may refuse to stay the domestic enquiry if there is a likelihood of delay in commencement and conclusion of criminal proceedings. Each case is required to be considered on its merits, by the Constitutional Courts whenever an issue of this nature comes up before the Court.

25. From the Memorandum dated 07.08.1995 policy of the Department is clear. There is no need to wait for conclusion of criminal proceedings and departmental proceedings should go on even when on identical issue criminal proceedings are pending.

26. Petitioners are working in very high positions in the Police Department. Petitioners in W.P.Nos.21012 and 21014 of 2019 are working as Inspectors of Police and petitioner in W.P.No.21148 of 2019 is working as Deputy Superintendent of Police. They have rendered long service and are well acquainted with all aspects for enforcement of law and order. They are responsible Police officers, whose primary duty is to prevent crime and if crime is committed to proceed against the offender and to enforce law strictly. Their primary responsibility is to enforce law and to protect the innocents. People repose great faith and confidence in the Police Force. The Police Officers must have impeccable character and integrity. Harboursing a known offender, showing complacency

and not preventing a heinous crime goes against the very role of a Police Officer, holding responsible positions.

27. To sustain the charges, the disciplinary authority places reliance on various reports of police officers, the material collected during the course of investigation into the crime No.93 of 2019. They also cited several persons as witnesses. Few of whom are also cited as witness in the criminal case. Based on the annexures enclosed to the charge sheet in domestic enquiry, vis-à-vis, the witnesses cited in the criminal case, it is vehemently contended by the learned counsel for petitioners that the charges in the domestic enquiry are sought to be sustained based on the material gathered by the police in the process of investigation into Crime No.93 of 2019 and if the same evidence is produced in departmental proceedings, it would necessarily result in disclosure of defence of the petitioners and would therefore seriously prejudice their defence in the criminal case.

28. Fundamentally, it is settled principle of law that disciplinary action should not be stopped merely because criminal case is pending and should be concluded as expeditiously as possible. Differing of disciplinary proceedings on the ground that criminal case is pending is an exception to normal rule and to be exercised in a case where the criminal proceedings involve complicated questions of facts and law. As noted above the sum and substance of the allegation in the criminal case against petitioners is they intentionally omitted to give information about committing of offence and harbouring the offender attracting Sections 202 and 212 of IPC. These provisions of law are applicable to any person

and need not be a Police Officer. They require a person to report committing of crime and should not harbour any offender.

29. The pleadings in the affidavits filed in support of writ petitions are vague. It is not asserted as to how prejudice would be caused to them and what are the complicated questions of law and facts. Thus, petitioners failed in discharging their burden to pray for stalling departmental proceedings. In the criminal case, there is no allegation against petitioners on their direct involvement in illegal confinement and killing of deceased. It is not stated how their defense in criminal case would affect by relying on that material/ witnesses. As noted above, in criminal case, prosecution has to prove that by their actions petitioners have committed offence under Sections 202 and 212 of IPC. Burden is on prosecution to prove the charges with clear evidence.

30. Petitioners being Police Officers are not only required to control crime by effectively enforcing law and order, they are also duty bound to take all steps to prevent occurring of crime and save the life of a person. In the domestic enquiry the competent authority is alleging that petitioners failed to discharge their basic duty, allowed an offender to commit heinous crime, whereas, they could have saved the life of deceased and thus failed to discharge their duties and responsibilities properly and also failed the employer on the confidence reposed on them and brought disrepute to the Department. The charges do not confine to the incidents leading to death of Dr Jayaram. Thus, what is required to be seen in the departmental proceedings is whether petitioners knew the offender, were having close intimacy with him much prior

to the incident and whether they were complacent in discharging their duties before and after the incident. This examination is on the perspective of breach of trust and confidence of employer on employee and does not concern the crime alleged against them. Merely because the call data collected by the Police in the process of investigation into Crime No. 93 of 2019, Jubilee Hills Police Station and witnesses cited by police is relied upon to sustain the charges in the domestic enquiry, cannot be a ground to differ domestic enquiry.

31. In criminal case, having regard to allegations leveled against petitioners, there is no complicated question of law involved. Similarly, facts are also not complicated as sought to be contended.

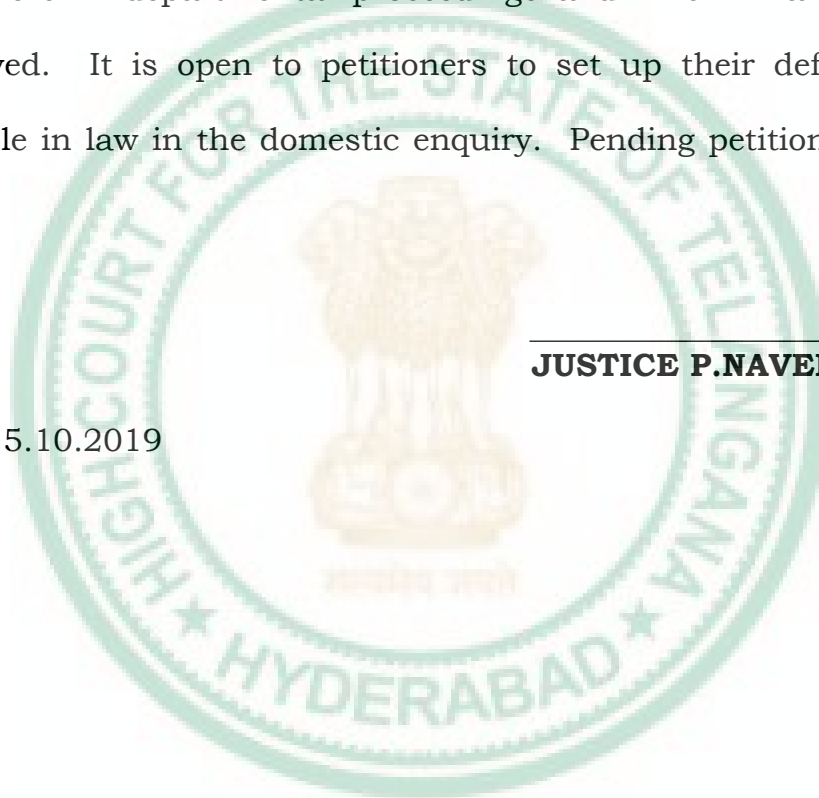
32. Even otherwise in criminal case, totally 12 persons are shown as accused; cited voluminous material and 60 witnesses to sustain the charges. Thus, recording of evidence is likely to take considerable time. Further, as per the directions of the High Court on administrative side, Sessions Courts/ Judicial First Class Magistrates are required to assign high priority to cases which are pending for more than 5 years. The criminal case is of the year 2019 and thus, it may take considerable time for the trial Court to commence trial in the criminal case. As consistently held by Apex Court and this Court, it is not desirable to keep the disciplinary proceedings pending for long time and should be concluded expeditiously. More so, as allegations in Departmental proceedings concern primary role of police department as law enforcing arm of

the State, it is in the interest of State as well as petitioners to conclude the disciplinary proceedings expeditiously.

33. In the facts of these cases and in view of settled principle of law, petitioners are not entitled to stall the disciplinary proceedings merely on the ground that criminal case is pending against them. The writ petitions are dismissed. Petitioners shall cooperate in early conclusion of disciplinary proceedings. It is made clear that there is no expression of opinion on merits and the defense of petitioners in departmental proceedings and in criminal case is preserved. It is open to petitioners to set up their defense as available in law in the domestic enquiry. Pending petitions stand closed.

JUSTICE P.NAVEEN RAO

Date: 15.10.2019
tvk



HONOURABLE SRI JUSTICE P.NAVEEN RAO



WRIT PETITION NOs.21012, 21014 & 21148 of 2019

Date:15.10.2019

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