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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ **LPA 194/2019**

% *Date of Decision: 27th August, 2019.*

LALIT AGRAWAL ..... Appellant
Through: Mr.Ashok Bhalla, Adv.

Versus

THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA & ANR ..... Respondents
Through: Ms.Pooja Saigal, Adv. with Mr.Amit Kumar Yadav, Ms.Shivangi Malhotra, Advs. for R-1.

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE C.HARI SHANKAR

JUDGMENT

: **D. N. PATEL, Chief Justice** *(Oral)*

1. This Letters Patent Appeal has been preferred by the original petitioner whose writ petition W.P.(C) No.10020/2016 was dismissed by the learned Single Judge vide judgment and order dated 11th February, 2019 whereby the prayer of the appellant for setting aside the decision of the Board of Discipline of the respondent No.1 dated 6th November, 2015 was not accepted by the learned Single Judge.

FACTUAL MATRIX

2. The respondent No.2 has filed a complaint at Shalimar Bagh Police Station that the appellant had outraged the modesty of his daughter. There are several allegations in the said complaint which was later on investigated under the Code of Criminal Procedure, 1973 and which resulted into the filing of the charge sheet for the offence under Sections 354-B, 354-D, 511,

506 etc. read with Section 34 of the Indian Penal Code, 1860 ('IPC'). The appellant was in custody with effect from 1st July, 2013 to 26th October, 2013.

3. It appears from the facts of the case that along with proceedings on criminal side, the act committed by the appellant would also tantamount to misconduct on civil side and hence, the Director (Discipline) of the Institute of Chartered Accountants had held a preliminary inquiry and concluded that there was no need to enter into the controversy. This opinion was not accepted by the Board of Discipline of the Institute of Chartered Accountants in their meeting dated 6th November, 2015.

4. The detailed opinion of the Board of Discipline is mentioned at para-9 of page-30 of the memo of this LPA, which is dated 6th November, 2015. It was held by the Board of Discipline in the minutes of meeting dated 6th November, 2015 that the behaviour of the appellant would tantamount to misconduct as per Clause (2) of Part-IV of the First Schedule of the Chartered Accountant Act, 1949 (hereinafter referred to as 'the Act') and recommended to initiate action against the appellant.

5. Being aggrieved and feeling dissatisfied of this action of the Board of Discipline, the appellant filed W.P.(C) No.10020/2016 which was dismissed by the learned Single Judge vide impugned judgment and order dated 11th February, 2019 against which the present LPA has been preferred by the original petitioner.

ARGUMENTS CANVASSED BY COUNSEL FOR THE APPELLANT

6. Learned counsel for the appellant submitted that as per the opinion given by the Director (Discipline) of the Institute of Chartered Accountants,

they cannot enter into controversy looking into the pendency of the criminal case against the appellant and hence no action could be initiated on the civil side.

7. It is further submitted by learned counsel for the appellant that as the charge sheet is already filed on the criminal side by the concerned Investigating Officer, the appellant cannot be compelled to disclose his defences on civil side and hence also the decision of the Board of Discipline in their meeting dated 6th November, 2015 deserves to be quashed and set aside.

8. Learned counsel for the appellant has taken this Court through various annexures and also the decision dated 30th August, 2018 rendered by Additional Sessions Judge – IV (North – West), Rohini Courts, Delhi in the matter of C.R.No.18/2016, especially paragraph 7 onwards thereof, and submitted that once a charge sheet is filed against the appellant, no action can be initiated by the Board of Discipline on the Civil Side. He further submitted that these aspects of the matter have not been properly appreciated by the learned Single Judge while deciding W.P.(C) No.10020/2016 vide judgment and order dated 11th February, 2019 and hence the same deserves to be quashed and set aside.

9. Learned counsel for the appellant has also submitted that once the charge sheet is filed on the criminal side, the Board of Discipline of the Institute of Chartered Accountants cannot conduct further inquiry for “other misconducts” under Clause (2) of Part-IV of the First Schedule of the Act.

ARGUMENTS CANVASSED BY COUNSEL FOR RESPONDENT NO.1

10. It is submitted by the learned counsel for respondent No.1 that despite the fact that FIR has resulted into filing of a charge sheet by the concerned

investigating officer, the Board of Discipline of the Institute of Chartered Accountants of India can still hold an inquiry for the misconduct which is mentioned in Clause (2) of Part-IV of the First Schedule of the Act.

11. It is further submitted by the counsel for respondent No.1 that the act on the part of the appellant would tantamount to an offence and hence, the charge sheet is filed and at the same time, it would also be a misconduct as per Clause (2) of Part-IV of the First Schedule of the Act because it affects the prestige of the Institute of Chartered Accountants of India.

12. Learned counsel for respondent No.1 has also relied upon several decisions rendered by Hon'ble Supreme Court and on the basis of which, it is submitted that if a proceedings on the criminal side is filed and it leads to acquittal even then action on the civil side can always be taken up, if the said action is a 'misconduct'.

REASONS:-

13. Respondent No.2 is a complainant. He filed a complaint before Shalimar Bagh Police Station against the appellant alleging that he has outraged the modesty of his daughter. The details of the complaint are referred to in the judgment delivered by the learned Single Judge in paragraphs 2 and 3 of the impugned judgment. The respondent No.2 has further alleged that the appellant has distributed pamphlets on which the photograph of daughter of respondent No.2 was printed. There are several other allegations in the complaint filed by respondent No.2.

14. On the basis of this complaint, an FIR was lodged and criminal law was put in motion. Investigation was carried out by the concerned Investigating officer and it resulted into filing of the charge sheet under several sections of the Indian Penal Code including Sections 354-B, 354-D,

511, 506 etc. read with Section 34 thereof. The appellant was in custody with effect from 1st July, 2013 to 26th October, 2013.

15. It further appears from the facts of the case that the Institute of Chartered Accountants of India had also referred the matter to the Director (Discipline) of the same Institute to look into the misconduct of the appellant. The Director (Discipline) was of the opinion that there was no need to entertain the said controversy with which the Board of Discipline of the Institute had disagreed. In the meetings of the Board of Discipline of the Institute of Chartered Accountants of India dated 6th November, 2015, it was observed in the minutes as under:-

> "The Board considered the prima facie opinion dated 18th October, 2015 of the Director along with the Complaint, Written Statement of the Respondent and Rejoinder of the Complainant.
>
> The Board, on consideration of the same, was of the view that the charges alleged against the Respondent are grave and his alleged acts clearly bring disrepute to the profession of Chartered Accountancy.
>
> Thus, the Board did not agree with the prima facie opinion of the Director that the Respondent is not guilty of Other Misconduct falling within the meaning of Clause (2) of part IV of the First Schedule to the Charted Accountants Act, 1949 [as amended from time to time] and decided to proceed further under chapter IV of these Rules. The Board also directed the Directorate that in terms of the provisions of sub-rule (2) of Rule 14, the prima facie, opinion formed by the Director including particulars or documents relied upon by the Director, if any, during the course of formation of prima facie opinion be sent to the Respondent and he be asked to submit his Written Statement."

16. Thus, it appears from the aforesaid minutes of the meeting dated 6th November, 2015 of the Board of Discipline of the Institute that they are not in agreement with the opinion given by the Director (Discipline) and as per the opinion of the Board of Discipline, the act of the appellant tantamount to a misconduct as per Clause (2) of Part-IV of the First Schedule of the Act. For ready reference, Clause (2) of Part-IV of the First Schedule of the Act is extracted hereinbelow:-

> "**PART IV : Other misconduct in relation to members of the Institute generally**
>
> A member of the Institute, whether in practice or not, shall be deemed to be guilty of other misconduct, if he-
>
> (1) xxxx xxxx xxxx
>
> (2) in the opinion of the Council, brings disrepute to the profession or the Institute as a result of his action whether or not related to his professional work."

17. In view of the aforesaid provision of the Act, Board of Discipline can look into the misconduct of the appellant and go into the details of the allegations which tantamount to a misconduct as per the Chartered Accountants Act, 1949 irrespective of the fact that a charge sheet is already filed and also irrespective of the fact that Director (Discipline) has given a different opinion.

18. Looking into the facts and circumstances as narrated hereinabove and looking to the aforesaid provision of the Act, no error has been committed by the learned Single Judge while deciding W.P.(C) No.10020/2016 vide judgment and order dated 11th February, 2019. We are in full agreement with the reasons given by the learned Single Judge.

19. Much has been argued by the counsel for the appellant that once a charge sheet is already filed, the appellant cannot be compelled to disclose his defence on the civil side. This argument is not accepted by this Court mainly for the reason that:

(i) The charges on criminal side and the charge on the civil side are entirely different.

(ii) What is alleged in the charge sheet, are the offences under Sections 354-B, 354-D, 511, 506 read with Section 34 of the IPC, whereas on the civil side the behaviour of the appellant may fall within Clause (2) of Part-IV of the First Schedule of the Act which is regarding disrepute to the respondent No.1-Institute.

(iii) In the present case, nothing has been crystallized on the civil side. Board of Discipline has disagreed with the opinion given by the Director (Discipline) as per the minutes of meeting dated 6th November, 2015.

(iv) The Board of Discipline will issue a notice to the appellant to verify whether the act of the appellant tantamounts to misconduct as per Clause (2) of Part-IV of the First Schedule of the Act.

20. Thus, no question whatsoever arises to quash the proceedings on civil side which has been initiated now by the Board of Discipline as stated hereinabove.

21. The peculiar facts of the present case as stated hereinabove that charge sheet has been filed on the criminal side and on the civil side also, the behaviour of the appellant may tantamount to misconduct as per Clause

(2) of Part-IV of the First Schedule of the Act for which further proceedings will be initiated by the Board of Discipline before taking any action upon the appellant under the Chartered Accountants Act, 1949. To make the present case different from the facts of the case upon which reliance is placed by the learned counsel for the appellant as mentioned in the memo of appeal and hence the judgment upon which the reliance is placed by the counsel for the appellant is of no help to the case of the appellant.

22. The Hon'ble Supreme Court in the case of **Capt. M. Paul Anthony v. Bharat Gold Mines Ltd.,** <u>(1999) 3 SCC 679</u> held as under:-

> "**13.** As we shall presently see, there is a consensus of judicial opinion amongst the High Courts whose decisions we do not intend to refer to in this case, and the various pronouncements of this Court, which shall be copiously referred to, <u>on the basic principle that proceedings in a criminal case and the departmental proceedings can proceed simultaneously with a little exception.</u> As we understand, the basis for this proposition is that proceedings in a criminal case and the departmental proceedings operate in distinct and different jurisdictional areas. Whereas in the departmental proceedings, where a charge relating to misconduct is being investigated, the factors operating in the mind of the disciplinary authority may be many such as enforcement of discipline or to investigate the level of integrity of the delinquent or the other staff, the standard of proof required in those proceedings is also different than that required in a criminal case. While in the departmental proceedings the standard of proof is one of preponderance of the probabilities, in a criminal case, the charge has to be proved by the prosecution beyond reasonable doubt. The little exception may be where the departmental proceedings and the criminal case are based on the same set of facts and the evidence in both the proceedings is common without there being a variance.

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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. Further in the case of **Hindustan Petroleum Corpn. Ltd. v. Sarvesh Berry** **(2005) 10 SCC 471**, it was held by the Hon'ble Supreme Court as under:-

> "**7.** It is a fairly well-settled position in law that on basic principles, proceedings in criminal case and departmental proceedings can go on simultaneously, except in some cases where departmental proceedings and criminal case are based on the same set of facts and the evidence in both the proceedings is common. It is in these cases, the court has to decide, taking into account the special features of the case, whether simultaneous continuance of both would be proper.
>
> **8.** The purposes 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 a 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 departmental proceedings 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."

(emphasis supplied)

24. Similarly, in the case of **NOIDA Entrepreneurs Assn. v. NOIDA, (2007) 10 SCC 385,** the Hon'ble Supreme Court was of the opinion that:-

"**11.** A bare perusal of the order which has been quoted in its totality goes to show that the same is not based on any rational foundation. The conceptual difference between a departmental enquiry and criminal proceedings has not been kept in view. Even orders passed by the executive have to be tested on the touchstone of reasonableness. [See *Tata Cellular* v. *Union of India* and *Teri Oat Estates (P) Ltd.* v. *U.T., Chandigarh*.] The conceptual difference between departmental proceedings and criminal proceedings have been highlighted by this Court in several cases. Reference may be made to *Kendriya Vidyalaya Sangathan* v. *T. Srinivas*, *Hindustan Petroleum Corpn. Ltd.* v. *Sarvesh Berry* and *Uttaranchal RTC* v. *Mansaram Nainwal*.

"*8.* … The purpose of departmental enquiry and of prosecution are two different and distinct aspects. The 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 proceedings 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."

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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."

(emphasis supplied)

25. In view of the aforesaid decisions, despite the fact that charge sheet has been filed, in the facts of the present case, the Board of Discipline of the Institute can always proceed further on civil side against the appellant and after following due procedure a decision will be arrived at by the Board of Discipline under the Chartered Accountants Act, 1949.

26. In view of the aforesaid facts, reasons and judicial pronouncements, we see no reason to entertain this LPA as no error has been committed by the learned Single Judge in appreciating the aforesaid aspects of the matter while deciding W.P.(C) No.10020/2016 vide impugned judgment and order dated 11th February, 2019.

27. The appeal is accordingly dismissed along with the pending application.

C.M.No.12791/2019 *(stay)*

In view of the order passed above, the interim order passed earlier is vacated and the application stands disposed of.

CHIEF JUSTICE

C.HARI SHANKAR, J

AUGUST 27, 2019
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