

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.12.2020

CORAM :

THE HONOURABLE MR.JUSTICE V.PARTHIBAN

W.P.No.19975 of 2020 and
W.M.P.No.24655 of 2020

R.Ganesh Kumar

... Petitioner

-Vs-

The Superintendent of Prisons,
Central Prison,
Vellore-2.

... Respondent

Prayer : Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, directing the respondent to keep the disciplinary proceedings initiated by the respondent in his Ref.No.823/KC.U/2020 dated 10.10.2020 in abeyance pending disposal of the criminal case registered in crime No.18/2020 dated 28.08.2020 pending on the file of AWPS, Vellore.

For Petitioner
For Respondent

: Mr.K.Krishnamoorthy
: Mr.V.Kathirvelu, SGP

O R D E R

This writ petition has been filed to direct the respondent to keep the disciplinary proceedings initiated by the respondent in his Ref.No.823/KC.U/2020 dated 10.10.2020, in abeyance pending disposal of the criminal case registered in crime No.18/2020 dated 28.08.2020 pending on the file of AWPS, Vellore.

2. The petitioner is working as Grade II Warder under the control of the respondent. He was placed under suspension by order of the respondent dated 09.09.2020 for an allegation that he sexually exploited one lady and living with her in the Government quarters without the permission of the higher officials. The affected lady preferred a complaint against the petitioner in All Women Police Station, Vellore, on 28.08.2020, in Crime No.18 of 2020, for the offences under Sections 417, 506(1) of IPC.

3. According to the petitioner, the investigation in the criminal case is already over and the charge sheet is likely to be filed any time. While so, the respondent has issued a charge memo under Rule 17(b) of the Tamil Nadu Police Subordinate Service (Discipline and Appeal) Rules dated 10.10.2020, in respect of the same allegation which was the subject matter of criminal case under investigation. Therefore, the petitioner is before this Court seeking issuance of writ of mandamus directing the respondents to keep the disciplinary proceedings pending till the disposal of the criminal case registered against him.

4. The learned counsel for the petitioner reiterated the above averments and submitted that the Hon'ble Supreme Court and this Court have consistently held that the departmental action ought not to proceed on the same set of facts when the criminal case is pending before the Criminal Court. The principles laid down by the Courts are that if the delinquent employee is compelled to disclose his defence in the departmental proceedings, that would certainly affect his defence before the criminal trial. Therefore, in all cases where the departmental proceedings are initiated on the same set of facts and grounds as that of the criminal case, the departmental proceedings has always been deferred till the completion of the criminal trial.

5. This Court is not inclined to accept the sweeping arguments advanced by the learned counsel for the petitioner. The Courts have never held that in all matters where the criminal case is pending, the departmental action ought to be deferred or stayed. It all depends on case to case basis and only when prejudice is shown to be caused to the delinquent employee, the departmental proceedings would be deferred. As far as the case on hand is concerned, this Court does not see as to why the departmental action should be deferred when the criminal case is only at the FIR stage and what kind of charge sheet is going to be laid against the petitioner and who are the witnesses to be cited and the documents to be relied on, are all not known as on date and therefore, on mere registration of FIR, the departmental proceedings need not be kept pending for an indefinite period of time, till the criminal case is over.

6. In any event, this Court is of the view that there is nothing legally amiss with the department proceeding against the petitioner in the facts and circumstances of the case and the departmental action cannot be indefinitely stalled till the conclusion of the criminal case which has not yet commenced at all as the criminal case is under investigation and no charge sheet has been filed.

7. Therefore, this Court is of the view that the legal principles projected by the learned counsel for the petitioner would have no application to the facts of this case and hence, this writ petition is dismissed as being not maintainable and also devoid of merits. No costs. Consequently, connected miscellaneous petition is closed.

-s/d-
Assistant Registrar

True Copy

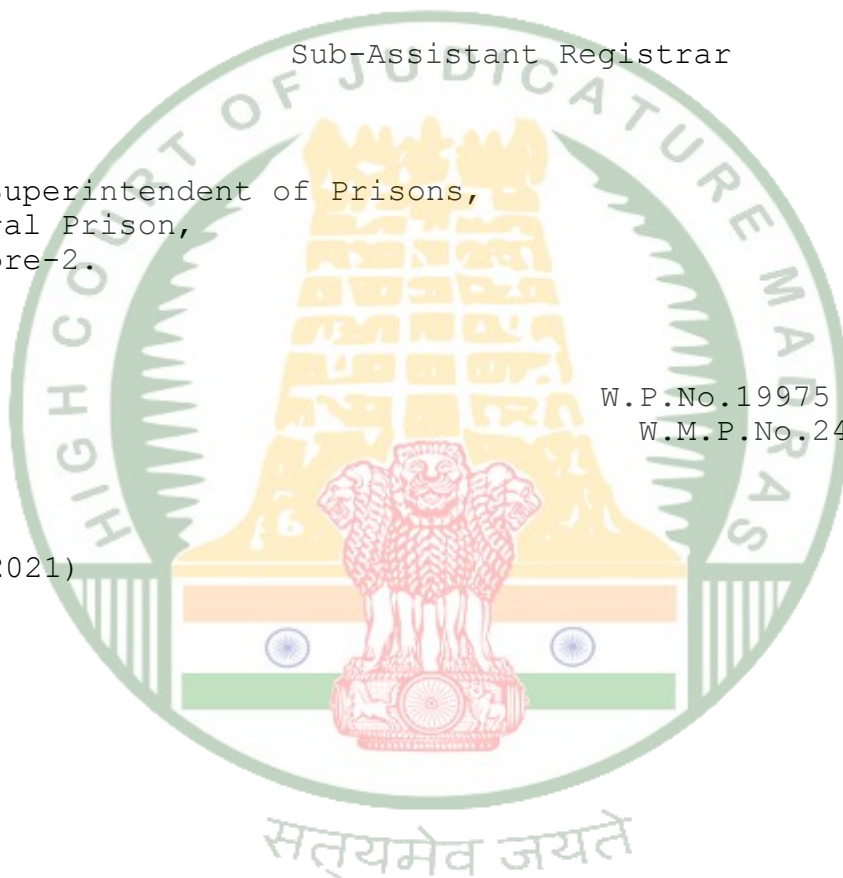
Sub-Assistant Registrar

gsk
To

The Superintendent of Prisons,
Central Prison,
Vellore-2.

W.P.No.19975 of 2020 and
W.M.P.No.24655 of 2020

RSI (CO)
SP(25/03/2021)



WEB COPY