



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 27.04.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P.(MD) No.8560 of 2021

and

W.M.P(MD)No.6445 of 2021

Kelistus Rajkumar

... Petitioner

-Vs-

1.The Deputy Inspector General of Police,
O/o.Deputy Inspector General of Police,
Madurai Range,
Madurai.

2.The Deputy Superintendent of Police,
Peraiyur Sub Division,
Peraiyur,
Madurai District.

3.The Inspector of Police,
Vigilance and Anti Corruption Wing,
Madurai.
(Crime No.5 of 2017).

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Mandamus, directing the second respondent to defer the departmental proceedings initiated vide proceedings in P.R.No.127/2020, dated 16.12.2020 till the conclusion of the pending criminal trial in Special S.C.No.2 of 2018 on the file of the Special Court for Prevention of Corruption Act, Madurai.

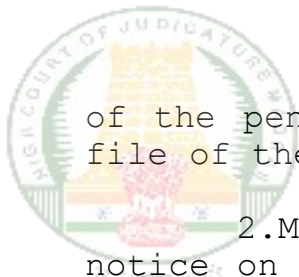
For Petitioner : Mr.R.Karunanidhi

For Respondents: Mr.C.Ramesh

Special Government Pleader

ORDER

This Writ Petition is filed to direct the second respondent to defer the departmental proceedings initiated by him, vide proceedings in P.R.No.127/2020, dated 16.12.2020 till the conclusion



of the pending criminal trial in Special S.C.No.2 of 2018, on the file of the Special Court for Prevention of Corruption Act, Madurai.

2.Mr.C.Ramesh, learned Special Government Pleader takes notice on behalf of the respondents. By consent of both parties, this Writ Petition is taken up for final disposal at the stage of admission itself.

3. According to the petitioner, while he was working as Sub Inspector of Police in Kadupatti Police Station, he registered a case, against one Kumaravel based on the complaint given by one Vimala @ Jayasubha, who is the sister-in-law of one Selvendran, in Cr.No.69 of 2017 and also registered a case in Cr.No.131 of 2017, on the file of the Kadupatti Police Station against one Selvendran, his co-brother and his brother's wife namely Vimala, who is the defacto complainant in Cr.No.69 of 2017. The said Selvendran gave a complaint, dated 29.05.2017 to the Inspector of Police, Vigilance and Anticorruption, Madurai, against the petitioner alleging that on 29.05.2017, the petitioner demanded Rs.30,000/- for deleting the names of his two brothers and his sister-in-law from the case in Cr.No.131 of 2017, registered against Selvendran and others. The petitioner subsequently reduced the amount to Rs.15,000/-. Based on the complaint, a case in Cr.No.5 of 2017 was registered against the petitioner under Section 7 of Prevention of Corruption Act, 1988. Therefore, the petitioner was arrested and the case was handed over to Tmt.Suriyakala, for further proceedings. In spite of the case handed over to Tmt.Suriyakala for further proceedings, a criminal case was taken on file in Special S.C.No.2 of 2018, on the file of the Special Court for Prevention of Corruption Act, Madurai. After four years of registering the criminal case, the first respondent issued a charge memo, dated 16.12.2020. The petitioner submitted an explanation on 21.03.2021 for the charges levelled against him stating that both the criminal case and the departmental proceedings are one and the same and the same set of facts and most of the witnesses are common. The said Selvendran is Star witness in the criminal case and he was cited as witness No.1 in the disciplinary proceedings. Hence, the petitioner has come out with the present writ petition to defer the departmental proceedings initiated on 16.12.2020 till the conclusion of the criminal case in Special S.C.No.2 of 2018, pending on the file of the Special Court for Prevention of Corruption Act, Madurai.

4. The learned counsel appearing for the petitioner submitted that criminal case was posted for trial on 20.04.2021 and subsequently, it was adjourned to 05.06.2021 for further examination of P.W.16. If the departmental enquiry is proceeded with, the petitioner will be forced to disclose his defence in the criminal case and it will prejudice his defence in the criminal case. He relied on the judgment of the Hon'ble Apex Court in **State Bank of India & Others vs. Neelam Nag** reported in **2016(9) SCC 491**. The



relevant portions of the said judgment is extracted hereunder:-

"21. Accordingly, we exercise discretion in favour of the respondent of staying the ongoing disciplinary proceedings until the closure of recording of evidence of prosecution witnesses cited in the criminal trial, as directed by the Division Bench of the High Court and do not consider it fit to vacate that arrangement straightway. Instead, in our opinion, interests of justice would be sufficiently served by directing the criminal case pending against the respondent to be decided expeditiously but not later than one year from the date of this order. The Trial Court shall take effective steps to ensure that the witnesses are served, appear and are examined on day-to-day basis. In case any adjournment becomes inevitable, it should not be for more than a fortnight when necessary.

22. We also direct that the respondent shall extend full cooperation to the Trial Court for an early disposal of the trial, which includes cooperation by the Advocate appointed by her.

23. If the trial is not completed within one year from the date of this order, despite the steps which the Trial Court has been directed to take the disciplinary proceedings against the respondent shall be resumed by the enquiry officer concerned. The protection given to the respondent of keeping the disciplinary proceedings in abeyance shall then stand vacated forthwith upon expiring of the period of one year from the date of this order."

5. Mr.C.Ramesh, learned Special Government Pleader appearing for the respondents submitted that both criminal proceedings and departmental proceedings are entirely different and distinct and both can be simultaneously proceeded with. Further, even after acquittal in the criminal case, the respondents can initiate the departmental proceedings against the petitioner. In the present case, criminal case was pending for more than 4 years and therefore, the first respondent may be permitted to proceed with the departmental proceedings and prayed for dismissal of the writ petition.

6. Heard the learned counsel appearing for the petitioner and the learned Special Government Pleader appearing for the respondents.

7. It is an admitted case that the criminal case is pending against the petitioner in Special S.C.No.2 of 2018, on the file of the Special Court for Prevention of Corruption Act, Madurai. The first respondent has issued a charge memo, dated 16.12.2020. The issue now to be decided in the writ petition is whether domestic enquiry to be deferred till



the disposal of the criminal case. A departmental proceeding pending a criminal proceeding does not warrant an automatic stay. The Court must consider whether the charges in the criminal case and in the domestic enquiry are one and same and based on the identical set of facts. The Court must also taken into account whether witnesses cited in the criminal case as well as in the domestic enquiry are common and whether the proceeding with domestic enquiry before the trial of the criminal case, will prejudice the petitioner.

8. In the present case, the charge sheet in the criminal case and the chargememo issued by the first respondent are filed in the typed set of papers. A reading of both charges clearly shows that both the charges are based on same set of facts i.e., complaint by one Selvendran. The charges are that the petitioner demanded bribe of Rs.30,000/- to delete the names of three relatives of Selvendran from Cr.No.131 of 2017. A comparison of witnesses cited in the criminal case as well as chargememo, reveals that 14 witnesses are common.

9. According to the petitioner, criminal case is ripe for trial and the same is posted for recording the evidence of witnesses on 05.06.2021. If before recording the evidence in the criminal case, the domestic enquiry is proceeded with, the same witnesses are examined in the domestic enquiry, the petitioner will be forced to disclose his defence and it will prejudice his defence in the criminal case. The witnesses subsequently examined in the criminal case will be well prepared to meet out the defence taken by the petitioner. The criminal trial may take long time for conclusion. In the judgment relied on by the learned counsel for the petitioner in ***State Bank of India & Others vs. Neelam Nag*** reported in **2016(9) SCC 491**, the Hon'ble Apex Court has directed the trial Court to conclude the criminal trial as expeditiously as possible and in any event, not later than one year from the date of order of the Hon'ble Apex Court. The Hon'ble Apex Court has held that if criminal case is not completed within one year, it is open to the respondent to proceed with the domestic enquiry.

10. In view of the above facts and judgment of the Hon'ble Apex Court in ***State Bank of India & Others vs. Neelam Nag*** reported in **2016(9) SCC 491**, the respondents are directed to defer the domestic enquiry for one year from today. The Special Judge for Prevention of Corruption Act, Madurai, is directed to conduct the trial in Special S.C.No.2 of 2018 as expeditiously as possible on day-to-day basis, in any event, within one year from today. The first respondent is directed to take effective steps for conclusion of trial as expeditiously as possible. The petitioner is also directed to co-operate for conducting criminal case trial and should not drag on the proceedings by seeking unnecessary adjournments.



10. With the above observations and directions, the writ petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

WEB COPY

Sd/-

Assistant Registrar (CSIII)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

Note :

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

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To

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

2.The Deputy Superintendent of Police,
Peraiyur Sub Division,
Peraiyur,
Madurai District.

3.The Inspector of Police,
Vigilance and Anti Corruption Wing,
Madurai.

+1 CC to M/s.R.KARUNANIDHI, Advocate (SR-17635[F] dated 27/04/2021)

+1 CC to M/s.SPL GP (SR-17954[F] dated 28/04/2021)

W.P. (MD) No.8560 of 2021
27.04.2021

GS (11.06.2021) 5P 6C