



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 01.03.2021

CORAM:

THE HONOURABLE MR. JUSTICE M. S. RAMESH

W.P. (MD) No.13041 of 2018 and

WMP(MD) Nos.15781 & 11904 of 2018

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K.Ganeshkumar

Petitioner

Vs

The Superintendent of Police,
District Police Office,
Tirunelveli District.

Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, calling for the records relating to the proceedings in P.R.No.48/2018, dated 29.05.2018, under Rule 3(b) of the Tamil Nadu Police Subordinate Services (Discipline and Appeal) Rules 1955, on the file of the respondent and to quash the same.

For Petitioner : Ms.P.Jessi Jeeva Priya

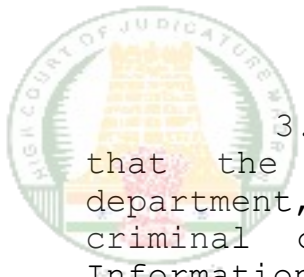
For Respondent : Mr.P.Mahendran

Additional Government Pleader

O R D E R

The petitioner herein, while serving as Grade II Constable at Kalakad Police station, was implicated for two charges by the first respondent herein. As per the charges, the petitioner had involved himself in a criminal case in Cr.No.488 of 2017, for the offences under Sections 452, 294(b), 323 and 506(ii) IPC and under Section 4 of Tamil Nadu Prohibition of Harassment of Woman Act, 2002, on the file of the Tenkasi Police Station. The second charge was that the petitioner had failed to act honestly and dutiful, since he is employed in the disciplined police station and thereby violated Rule 24(i) of Tamil Nadu Subordinate Police Conduct Rules, 1964. The said charge memo dated 29.05.2018 is put under challenge in the the present Writ Petition.

2.The learned counsel for the petitioner would submit that the criminal case itself is a false case, arising out of a civil property dispute and that the facts would reveal that the petitioner herein was falsely implicated, due to counter complaint given by his wife against the complainant. Even otherwise, the learned counsel for the petitioner would submit that the charges in the departmental action as well as the criminal case are one and the same, the authorities are not entitled to proceed against the same simultaneously, in view of the law laid down by the Honourable Supreme Court in the case of *Paul Antony*.



3. The learned Additional Government Pleader would submit that the petitioner herein hails from a disciplined police department, who is not expected to involve himself in acts of criminal offences. Further more, the averments in the First Information Report would indicate that the petitioner had personally involved himself in criminal acts of assaulting and insulting the modesty of the woman. The learned Additional Government Pleader would also submit that if the petitioner herein is of the view that the case is civil in nature, it would always open to him to establish the same during the course of the departmental enquiry.

4. I have given careful submissions made by the respective counsels.

5. The scope of Article 226 of the Constitution of India, to interfere with the Departmental proceedings and such charge memos have come up for consideration before the Honourable Supreme Court of India as well as various High Courts, wherein, it was held, barring few exceptions like incompetency of the authority, malafidness, delay, etc., the High Court would not normally interfere and quash a charge memo.

6. In this background, the only ground raised by the learned counsel for the petitioner is that the criminal case is purportedly civil in nature. I am unable to appreciate such a ground, since determining a case to be civil or criminal in nature, would involve appreciation of the evidence and this Court may not be justified in exercising such a venture and stepping into the shoes of an enquiry officer.

7. Insofar as the submission that departmental proceedings cannot simultaneously be proceeded with the criminal proceedings and that the dictum followed in **Paul Antony** case would be applicable is concerned, the Honourable Supreme Court in **Divisional Controller, Karnataka Vs. State Road Transport Corporation Vs. M.G.Vittal Rao, reported in (2012) 1 SCC Page 442**, had distinguished **Paul Antony's** case and held that the dictum laid therein does not have universal application. The relevant portion of the order reads as follows:-

23. In Pandiyan Roadways Corpn. Ltd. v. N. Balakrishnan, (2007) 9 SCC 755, this Court re-considered the issue taking into account all earlier judgments and observed as under:

"21. There are evidently two lines of decisions of this Court operating in the field. One being the cases which would come within the purview of Capt. M. Paul Anthony v. Bharat Gold Mines Ltd (supra), and G.M. Tank v. State of Gujarat, (2006) 5 SCC C446. However, the second line of decisions show that an honourable



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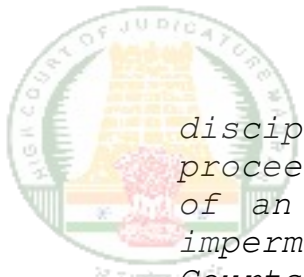
acquittal in the criminal case itself may not be held to be determinative in respect of order of punishment meted out to the delinquent officer, inter alia, when: (i) the order of acquittal has not been passed on the same set of facts or same set of evidence; (ii) the effect of difference in the standard of proof in a criminal trial and disciplinary proceeding has not been considered (See: Commr. of Police v. Narender Singh, (supra) or; where the delinquent officer was charged with something more than the subject-matter of the criminal case and/or covered by a decision of the civil court (See: G.M. Tank, (supra), Jasbir Singh v. Punjab & Sind Bank, (2007) 1 SCC 566; and Noida Entrepreneurs' Assn. v. Noida, (2007) 10 SCC 385, para

22. 41. We may not be understood to have laid down a law that in all such circumstances the decision of the civil court or the criminal court would be binding on the disciplinary authorities as this Court in a large number of decisions points out that the same would depend upon other factors as well. (See: e.g. Krishnakali Tea Estate (supra); and Manager, Reserve Bank of India v. S. Mani, (2005) 5 SCC 100). . Each case is, therefore, required to be considered on its own facts."

24. Thus, there can be no doubt regarding the settled legal proposition that as the standard of proof in both the proceedings is quite different, and the termination is not based on mere conviction of an employee in a criminal case, the acquittal of the employee in criminal case cannot be the basis of taking away the effect of departmental proceedings. Nor can such an action of the department be termed as double jeopardy. The judgment of this Court in Capt. M. Paul Anthony (supra) 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.

8. Likewise, the learned single judge of this Court in the case of **R.Kumar Vs The Superintending Engineer and another in W.P. (MD) No.371 of 2013, dated 26.02.2018**, had also considered this aspect and held as follows:

14. The point of delay argued on behalf of the writ petitioner that the impugned charge memo was issued belatedly, this Court is of an opinion that the criminal case was disposed of on 28.03.2012 and thereafter, the



disciplinary authorities framed the charge memo in proceedings dated 21.11.2012. The competent authority was of an erroneous opinion that simultaneous proceedings are impermissible. During the relevant point of time, the Courts were relying on the judgment of the Hon'ble Supreme Court of India in the case of Paul Antony. However, the Hon'ble Supreme Court in its subsequent judgments clarified that the principles laid down in Paul Antony case can never be followed as a rem. However, the Hon'ble Supreme Court clarified that simultaneous proceedings are certainly permissible. The departmental disciplinary proceedings shall be kept in abeyance only if the facts and circumstances are so complex and the disciplinary authority cannot proceed with the departmental disciplinary proceedings unless his criminal case is disposed of. Thus, the High Courts also in many number of cases, granted interim order that the departmental disciplinary proceedings are to be kept in abeyance during the pendency of the criminal case. However, the Hon'ble Supreme Court of India laid down the legal principles in the case of **G.Srinivasan vs The Deputy Inspector General of Police, Vellor and others** unambiguously that simultaneous proceedings are permissible and in this context, it is relevant to cite the following paragraphs, which is extracted here under:

15. In the case of Sri Bhagwan Ram v. The State of Jharkand, State of Bihar and others(2017), it is well-settled that a domestic enquiry and a criminal trial can proceed simultaneously and the decision in the criminal case would not materially affect the outcome of the domestic enquiry. The nature of both the proceedings and the test applied to reach a final conclusion in the matter, are entirely different.

16. In the case of Dr.Bharathi Pandey-Deputy General Manager V. Union of India[Special Civil Application No.15602 of 2013], the Apex Court held that it is clear that the departmental inquiry proceedings in every case need not be stayed till the criminal proceedings against the petitioner are concluded. It may be done in case of grave nature involving complicated questions of facts and law. The advisability and desirability has to be determined considering facts of each case.

17. In the case of Ajith Kumar Das v. Union of India and Others[W.P.(C) NO.4036 of 2017], the Court held that the departmental enquiry is to maintain discipline in 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 guideline as inflexible rules in which the



departmental proceeding may or may not be stayed pending trial in criminal case against the delinquent officer. There would be no bar to proceed simultaneously with the departmental proceeding and trial of a criminal case unless the charge in a criminal trial is of grave nature involving complicated questions of fact and law. Offence generally implies infringement of public as distinguished from mere private right punishable under criminal law, when trial for criminal offence is conducted it should be in accordance with the proof of offence as per the evidence defined under the provisions of the evidence act. Converse in the case of departmental enquiry in a departmental proceeding relates to conduct of breach of duty of the delinquent officer who punish him for his misconduct defined under the relevant statute/rule or law that strict standard of rule or applicability of Evidence Act stands excluded in a settled legal position.

18. In the case of Avinash Sadashiv Bhosale v. Union of India[(2012) 13 SCC 142], the Court held that there is no legal bar for both proceedings to go on simultaneously. The only valid ground for claiming that the disciplinary proceedings may be stayed would be to ensure that the defence of the employee in the criminal case may not be prejudiced but even such grounds would be available only in cases involving complex question of fact and law. Such defence ought not to be permitted to unnecessarily delay the departmental proceedings. The interest of the delinquent officer as well as the employer clearly lies in a prompt conclusion of the disciplinary proceedings.

19. The Supreme Court in the case of Karnataka State Road Transport Corporation v. M.G.Vittal Rao[(2012) 1 SCC 442] gave a timely reminder of the principles that are applicable in such situations succinctly summed up in the following words:

(i) There is no legal bar for both proceedings to go on simultaneously.

(ii) The only valid ground for claiming that the disciplinary proceedings may be stayed would be to ensure that the defence of the employee in the criminal case may not be prejudiced. But even such grounds would be available only in cases involving complex questions of facts and law.

(iii) Such defence ought not to be permitted to unnecessarily delay the departmental proceedings. The interest of the delinquent officer as well as the employer clearly lies in a prompt conclusion of the disciplinary proceedings.

(iv) Departmental Proceedings can go on simultaneously to the criminal trial, except where both



the proceedings are based on the same set of facts and the evidence in both the proceedings is common.

20. In the case of NOIDA Entrepreneur Association v. NOIDA and the others[JT 2001 (2) SC 620], the Court held that the standard of proof and nature of evidence in the departmental inquiry is not the same as in criminal case. The purpose of departmental enquiry and of prosecution is 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.

21. In the case of State Bank of India & Ors. Versus R.B.Sharma, [AIR 2004 SC 4144], the Hon'ble Supreme Court reiterated observing that both proceedings can be held simultaneously. It held, the purpose of departmental inquiry and of prosecution is to put a distinct aspect. Criminal prosecution is launched for an offence for violation of 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 a public duty. The departmental inquiry is to maintain discipline in the service and efficiency of public service.

22. In the case of Ajith Kumar Nag v. General Manager(PJ), Indian Oil Corporation Ltd., Haldia[2005-7-SCC-764], the Honourable Apex Court considered the issue of validity of conducting departmental proceeding when the criminal case was pending against the official and held as follows:

Acquittal by a criminal court would not debar an employer from exercising power in accordance with Rules and Regulations in force. The two proceedings, criminal and departmental, are entirely different. They operate in different fields and have different objectives. Whereas the object of criminal trial is to inflict appropriate punishment on offender, the purpose of enquiry proceedings is to deal with the delinquent



departmentally and to impose penalty in accordance with service Rules. In criminal law, burden of proof is on the prosecution and unless the prosecution is able to prove the guilt of the accused 'beyond reasonable doubt', he cannot be convicted by a court of law. In departmental enquiry, on the other hand, penalty can be imposed on the delinquent officer on a finding recorded on the basis of 'preponderance of probability'.

23. In the case of West Bokaro Colliery (Tisco Ltd.) v. Ram Parvesh Singh (2008) 3 SCC 729, the Hon'ble Supreme Court has held in the case of that since standard of proof required in criminal case are beyond reasonable doubt and what is required in departmental inquiry is only of finding the guilt on the basis of preponderance of probability, there is no bar in continuing both simultaneously.

24. In the case of S.A.Venkatraman v. Union of India, AIR 1954, SC 375 it has been held by the Supreme Court that taking recourse to both, does not amount to double jeopardy.

1. In Stanzen Toyotetsu India Private Limited v. Girish V. And Other (2014) 3 SCC 636. It was held that suffice it to say that while there is no legal bar to the holding of the disciplinary proceedings and the criminal trial simultaneously, stay of disciplinary proceedings may be advisable course in cases where the criminal charge against the employee is grave and continuance of the disciplinary proceedings is likely to plagiarize their defence before the criminal court.

2. The Supreme Court in State of Rajasthan v. B.K.Meena and Others (1996) 6 SCC 417 held 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.

Therefore, stay of disciplinary proceedings cannot be, and should not be, a matter of recourse.

3. It is also to note that acquittal in criminal proceedings on the same set of charges, per se, does not entitle the delinquent to claim immunity from disciplinary proceedings, as observed by the Supreme Court in the case of C.M.D.U.C.O. vs. P.C.Kakkar, AIR 2003 SC 1571. In the same way, departmental proceedings may be continued even after retirement of the employee. (U.P.S.S.Corp.Ltd. vs. K.S.Tandon, AIR 2008 SC 1235)

25. Considering the above judgments, this Court is of the firm opinion that the procedure for taking disciplinary action against a Government servant is lengthy and detailed one, giving maximum opportunity to the government servant to prove his innocence. A Government employee is expected to perform his duties with utmost diligence, efficiency, economy and effectiveness. The Government procedures are lengthy in order to



ensure that the Government employees perform their responsibilities without any pressure or exterior considerations. However, at the same time, it ensures discipline amongst the employees and shows the door to the employees who have become dead wood and do not perform as per expectations of public in general and his department in particular. Disciplinary proceedings are conducted to ensure that the morale of the employees as a whole is boosted. It ought to be noted that criminal proceedings will last for years and this can lead to loss of evidences and thereby staying departmental disciplinary proceedings from being conducted simultaneously would lead to gross miscarriage of justice. Also, it is pertinent to note the fact that the object of such departmental proceedings is not to penalise but to assist in restoring the morale of Government servants. Thus, it is of utmost importance that the Court has to strike a balance between the need for a fair trial to the accused on one hand and the competing demand for an expeditious conclusion of the ongoing disciplinary proceedings on the other which will not have any adverse impact if is conducted simultaneously.

9. The aforesaid extract is self explanatory. As such, it would not be permissible for the respondent to proceed against the petitioner through departmental action. However, it would always be open to the petitioner to establish his innocence before the enquiry officer. It is needless to point out that when the enquiry officer proceeds with the enquiry against the petitioner, the principles of natural justice requires to be followed by extending ample opportunities to the delinquent.

10. In view of the fact that the grounds raised by the petitioner herein does not fall under any of the the exceptions, this Court may not be justified in exercising its power under Article 226 of Constitution of India, for the purpose of quashing the charge memo and hence the Writ Petition does not deserve consideration.

11. In the above circumstances, the Writ Petition is dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (P&A)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)



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.

To

The Superintendent of Police,
District Police Office,
Tirunelveli District.

+1 CC to M/s.SPL GP (SR-8203[F] dated 02/03/2021)

+1 CC to M/s.P.JESSI JEEVA PRIYA, Advocate (SR-8187[F] dated 02/03/2021)

Order made in
W.P. (MD) No.13041 of 2018 and
WMP (MD) Nos.15781 & 11904 of 2018
01.03.2021

RK (22.04.2021) 9P 4C