



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 07.01.2022

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THE HONOURABLE MR.JUSTICE B.PUGALENDHI

W.P (MD) No.231 of 2022

S.G.Kalidas

... Petitioner

Vs.

The Sub-Collector,
Periyakulam,
Theni District.

... Respondent

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, to direct the respondent authority to keep the departmental proceedings in reference No.ROC.497/2020/A2, on the file of the respondent, in abeyance till the culmination of the case in Special CC No.1 of 2021 on the file of the learned Chief Judicial Magistrate(Special Judge for DV and AC Cases), Theni.

For Petitioner : Mr.N.Ananthapadmanabhan
For Respondent : Mr.A.Kannan, AGP

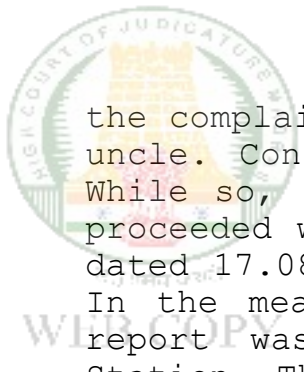
ORDER

This Writ Petition has been filed seeking for issuance of a Writ of Mandamus, to direct the respondent authority to keep the departmental proceedings in reference No.ROC.497/2020/A2, on the file of the respondent, in abeyance till the culmination of the case in Special CC No.1 of 2021 on the file of the learned Chief Judicial Magistrate(Special Judge for DV and AC Cases), Theni.

2. Heard Mr.N.Ananthapadmanabhan, learned counsel appearing for the petitioner and Mr. A.Kannan, learned Additional Government Pleader appearing for the respondent.

3. By consent of both parties, this writ petition is taken up for final disposal at the admission stage itself.

4. According to the petitioner, while he was working as Village Administrative Officer, Thimarasanaiyackanur Bit-1 of Aundi Patti taluk, Theni District, a case was registered against him by the Department of Vigilance and Anti-Corruption, Theni in Crime No.1 of 2020 for the offences under Section 7(A) of Prevention of Corruption Act, alleging that he demanded Rs.16,000/- for including the name of

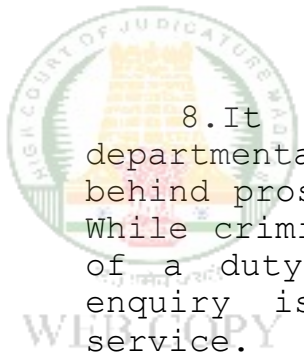


the complainant in the patta which stood in the name of his paternal uncle. Consequently, he was arrested and placed under suspension. While so, for the same set of allegations, the petitioner was also proceeded with by departmental proceedings by issuing a charge memo dated 17.08.2020 and the petitioner also submitted his explanation. In the mean time, after completion of the investigation, a final report was filed by the Investigating Officer of DVAC Police Station, Theni in the criminal case on 31.12.2020 and the same was taken cognizance as Spl.C.C.No.1 of 2021 by the learned Judicial Magistrate, Theni.

5.The learned counsel appearing for the petitioner submits that the petitioner has been proceeded simultaneously by initiating criminal and disciplinary proceedings and in both cases, the list of witnesses and documents are similar and in the criminal case, trial is yet to be commenced and in such circumstances, whatever defence taken in the departmental proceedings by the petitioner, it will get exposed and the witnesses would get acquainted with the defence which enable them to fill up the lacunae and rectify defects while adducing evidence in the criminal case before the trial Court and in such event, the petitioner will be highly prejudiced. Therefore, the learned Senior Counsel submits that in the interest of justice, it would be appropriate to keep the departmental proceedings in abeyance till the culmination of the criminal case in Spl.C.C.No.1 of 2021 on the file of the Chief Judicial Magistrate (Special Judge for DV and AC cases), Theni. In support of his contentions, the learned Senior Counsel also relied upon a decision of the Hon'ble Apex Court in "**Stanzen Toyotetsu India Private Limited v. Girish V. And Other**" reported in (2014) 3 SCC 636, wherein, 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.

6.On the other hand, the learned Addl.Government Pleader appearing for the respondents would submit that 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. Therefore, he submits that there is no bar in continuing the disciplinary proceedings against the petitioner based on an incident which is also the subject matter of criminal case and hence, keeping the disciplinary proceedings in abeyance, does not arise.

7.This Court paid its anxious consideration to the rival submissions made and perused the materials placed on record.



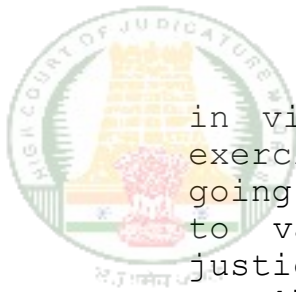
8.It is pertinent to note that the purpose underlying departmental proceedings is distinctly different from the purpose behind prosecution of offenders for commission of offences by them. While criminal prosecution for an offence is launched for violation of a duty that the offender owes to the society, departmental enquiry is aimed at maintaining discipline and efficiency in service. 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.
- (ii) 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.
- (iii) 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.

9. Though there is no bar for both proceedings to go on simultaneously, in the present case, as rightly submitted by the learned Senior counsel for the petitioner that the allegation, list of witnesses and documents cited in the criminal case are common in the departmental proceedings also, the petitioner would be certainly prejudiced as there is every likelihood of witnesses getting tutored after the defence taken by the petitioner is exposed and also rectifying the lacunae. Considering similar situation, in **"Stanzen Toyotetsu India Private Limited v. Girish V. And Other"** reported in (2014) 3 SCC 636, the Hon'ble Supreme Court has held as under in paragraphs 13 and 16 :

"13. 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 an advisable course in cases where the criminal charge against the employee is grave and continuance of the disciplinary proceedings is likely to prejudice their defense before the criminal Court. Gravity of the charge is, however, not by itself enough to determine the question unless the charge involves complicated question of law and fact. ..."

"16. In the circumstances and taking into consideration all aspects mentioned above as also keeping



in view the fact that all the three Courts below have exercised their discretion in favour of staying the on-going disciplinary proceedings, we do not consider it fit to vacate the said order straightaway. Interests of justice would, in our opinion, be sufficiently served if we direct the Court dealing with the criminal charges against the respondents to conclude the proceedings as expeditiously as possible but in any case within a period of one year from the date of this order. We hope and trust that the Trial Court will take effective steps to ensure that the witnesses are served, appear and are examined."

10. Having regard to the decision of the Hon'ble Supreme Court, this Court feels it appropriate to direct the learned Chief Judicial Magistrate (Special Judge for DV and AC Cases), Theni to conclude the proceedings pending in Special C.C.No.1 of 2021 as expeditiously as possible, preferably within a period of one year from the date of receipt of a copy of this order. Till such time the departmental proceedings may be deferred. In case, however, the trial is not completed and not disposed of within the period of one year from the date of this order, the disciplinary proceedings initiated against the petitioner shall be resumed and concluded by the Inquiry Officer concerned.

11. With the above direction, the Writ Petition is disposed of. No costs.

Sd/-

Assistant Registrar

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/ /2022

Sub Assistant Registrar

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. To

The Sub-Collector,
Periyakulam, Theni District.

+1 CC to M/s.SPL.GP (SR-806[F] dated 07/01/2022)

W.P (MD) No.231 of 2022
07.01.2022

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