



W.P.(MD) No.21790 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Date of Reserving the Order	Date of Pronouncing the Order
04.02.2022	04.07.2022

CORAM

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

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and

W.M.P(MD)Nos.18399 and 18400 of 2021

M.Vasanthi,
W/o.Saravanakumar,
Formerly Inspector of Police(u/s),
Nagalmalai Pudukottai Police Station,
Madurai District.

... Petitioner

Vs.

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

2.The Additional Superintendent of Police,
Cyber Crime, Virudhunagar District,
Virudhunagar.

... Respondents

Petition filed under Article 226 of the Constitution of India
praying for issuance of Writ of Certiorarified Mandamus, calling for the



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records relating to the impugned order dated 10.11.2021 in Na.Ka.No. 228-3-கூ.கா.க(கணினி வழி.கு.பி) விருது-2021 passed by the 2nd respondent and quash the same as illegal and consequentially direct the respondents to keep the disciplinary proceedings against the petitioner in P.R.No.50 of 2021 u/r 3(b) of the TNPSS (D & A dated) Rules 06.09.2021 in abeyance, pending disposal of the Criminal case registered in Crime No. 18 of 2021 u/s 384, 420, 409 and 506(I) of IPC on the file of District Crime Branch, Madurai and grant such other further relief as this Court may deem fit in the circumstances arising out of the case.

For Petitioner : Mr.M.Ravi
For Respondents : Mr.S.Shaji Bino
Special Government Pleader

ORDER

This writ petition is filed as against the proceedings of the second respondent dated 10.11.2021, in and by which, the request of the petitioner to defer the departmental enquiry is rejected and directed the petitioner to appear for enquiry before the Enquiry Officer on 17.11.2021.



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2. The petitioner/Inspector of Police is facing a criminal case and also a departmental proceedings pending and she made a request to defer the departmental proceedings pending a criminal case that was rejected and therefore, she filed the present writ petition.

3. The brief facts of the case are that the petitioner while was working as Inspector of Police, Nagamalai Pudukkottai Police Station, on 05.07.2021, received an information about the exchange of fake currency. Based on the information, she intercepted a vehicle and recovered a sum of Rs.10,00,000/- (Rupees Ten Lakhs only) from the defacto complainant namely, Arsath. She took the defacto complainant for enquiry and released him and in the bags recovered from the defacto complainant, only white papers and some documents alone were found. Whereas the defacto complainant lodged a complaint before the Superintendent of Police, Madurai District that this petitioner/Inspector of Police threatened him that she would foist a case against him and extorted a sum of Rs.10,00,000/- (Rupees Ten Lakhs only) from him. Based on this complaint, a discreet enquiry was ordered and the Additional Superintendent of Police, CWC,



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Madurai District, conducted an enquiry and filed a report that that a *prima facie* case is made out as against this petitioner to register the criminal case against her. Based on this report and on the complaint of Arsath, a case was registered against this petitioner and other accused in D.C.P.Cr.No.18 of 2021 for the offences punishable under Sections 384, 420, 409 and 506(i) of IPC. The petitioner was also arrested on 26.08.2021 and released on bail on 08.10.2021.

4. The petitioner was placed under suspension and a charge memo dated 06.09.2021 was also issued to the petitioner in P.R.No.50 of 2021 under Rule 3(b) of TNPSS (Discipline & Appeal) Rules. The Additional Superintendent of Police, Cyber Cell, Virudhunagar District was nominated as an Enquiry Officer and the Enquiry Officer also fixed a date for enquiry. But, the petitioner did not appear for enquiry and had taken a stand that the criminal case is pending and if the departmental enquiry is proceeded first, then she would be deprived of defence in the criminal case. Therefore, she made a request to postpone the enquiry pending criminal case and that request was rejected. Hence, this Writ petition has been filed.



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5. The learned counsel for the petitioner submits that the allegation in the criminal complaint and the departmental proceedings are one and the same and therefore, the departmental proceedings has to be kept in abeyance till the disposal of the criminal case. The subject matter of the charge memo and the subject matter of the criminal case in Crime No. 18 of 2021, which is pending on the file the District Crime Branch, Madurai, has arisen out of the same transaction and the witnesses proposed to be examined in the departmental enquiry are one and the same. The charges involved are complicated questions of law and facts and therefore, in all fairness, the departmental proceedings ought to be kept in abeyance pending disposal of the criminal case, otherwise the right of the delinquent to defend herself effectively in the departmental proceedings will be jeopardized by exposing her defence, if the departmental proceedings is proceeded before the cross-examination of the witnesses in the criminal case.

6. The learned counsel for the petitioner reiterated his submission that the Hon'ble Apex Court has already decided the issue in the case of



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Capt M.Paul Anthony Vs.Bharat Gold Mines Limited and another
reported in 1999(2) CTC 579 (SC) : 1999 (3) SCC 679.

7. In view of the above decision of the Hon'ble Apex Court, he would further submit that the criminal case was registered in the month of July 2021 and even before the investigation in the criminal case is concluded, the departmental proceedings is initiated in a hurried manner to wreak vengeance against her. The learned counsel for the petitioner has also relied on the dictum laid down by the Hon'ble Apex Court in ***Stanzen Toyotetsu India Private Limited Vs. Girish and others***, reported in ***2014 (3) SCC 6363*** and submits that the charge memo shall be kept in abeyance till the criminal proceedings are concluded. However, the request of this petitioner to keep the departmental proceedings pending the criminal proceedings was rejected by the Enquiry Officer. The second respondent without considering the principles laid down by the Hon'ble Apex Court in the above cited judgment, passed the impugned order.



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8. The learned Special Government Pleader appearing for the respondents submits that this petitioner/Inspector of Police has committed a grave offence, for which, a criminal case has been registered in Crime No. 18 of 2021 for the Offence punishable under Sections 384, 420, 409 and 506(i) IPC. For the conduct of the petitioner as an Officer of the Department, a separate departmental proceedings was initiated in P.R.No.50 of 2021 on 06.09.2021 under Rule 3(b) of TNPSS (Discipline & Appeal) Rules and an Enquiry Officer was also appointed on 11.10.2021. The Enquiry Officer sent notices of enquiry to the petitioner on 25.10.2021, 08.11.2021, 10.11.2021 and 01.12.2021 but this petitioner has made this request in order to delay the departmental proceedings. The witnesses in the criminal case and disciplinary proceedings are not one and the same. However, the petitioner has made this request to protract the departmental proceedings and therefore, the request of this petitioner to defer the departmental proceedings was rejected by the second respondent by the order impugned in this writ petition.



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9. He further submits that apart from this departmental proceedings in P.R.No.50 of 2021, as per the Service Register of the petitioner, the petitioner was involved in 5 delinquencies and out of which, 2 disciplinary proceedings are pending against this petitioner as on date. The petitioner, an Inspector of Police in the disciplinary force has taken the accused to the Police Station and extorted money by placing him under threat and CCTV footage is available in the Police Station and the other oral and documentary evidence are sufficient to establish the case that the occurrence has taken place on 05.07.2021. Based on the complaint of the defacto complainant to the Superintendent of Police, a discreet enquiry was ordered and the Additional Superintendent of Police filed his report on 13.07.2021 that there are *prima facie* materials on the compliant against the petitioner. Based on the report, the criminal case was registered on 27.07.2021. The petitioner, who is the Police Officer, knowing that the case has been registered, absconded and went to Kothagiri in order to escape from the clutches of law. As an Inspector of Police, she is expected to be available in the headquarters and without prior permission from the higher officials, she is not supposed to leave the headquarters. However, the



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petitioner absconded and the police with great difficulty secured her only on 26.08.2021, after one month from the registration of the case in Crime No. 18 of 2021.

10. The learned Special Government Pleader has also relied on the following judgments in support of his contentions:

1. *State of Rajasthan Vs. Shri B.K. Meena & Others* reported in *1996 (6) SCC 417*

2. *State Bank of Hyderabad and another Vs. P.Kata Rao* reported in *2008 (15) SCC 657*.

3. *Sri Bhagwan Ram Vs. The State of Jharkand, State of Bihar and others*

4. *Avinash Sadashiv Bhosale Vs. Union of India* reported in *2012 (13) SCC 142*

5. *State Bank of India and others Vs. R.B. Sharma* reported in *AIR 2004 SC 4144*

6. *Ajith Kumar Nag Vs. General Manager (PJ), Indian Oil Corporation Limited, Haldia* reported in *2005 (7) SCC 764*



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7. *West Bokaro Colliery (Tisco Limited) Vs. Ram Parvesh Singh*
reported in **2008 (3) SCC 729**

11. This Court considered the rival submissions and also perused the materials placed on record.

12. The petitioner who is the Inspector of Police, is facing a criminal case in Crime No.18 of 2021 on the file of the District Crime Branch for the offences punishable under Sections 384, 420, 409 and 506 (i) IPC. The allegation against this petitioner is that based on a tip-off about the exchange of counterfeit currency, the petitioner/Inspector of Police has intercepted a vehicle and arrested the defacto complainant and extorted a sum of Rs.10,00,000/- (Rupees Ten Lakhs only) from the defacto complainant under threat. The investigation has also been completed and chargesheet was also laid. On the conduct of the petitioner, the Department has also proceeded with the departmental proceedings by issuing a charge memo in P.R.No.50 of 2021 under Rule 3(b) of TNPSS (Discipline & Appeal) Rules. An Enquiry Officer was also



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nominated and the Enquiry Officer has also issued notice for enquiry on various dates. The petitioner's request to defer the departmental proceedings pending the criminal case is rejected by the impugned proceedings and aggrieved over the same, the present writ petition has been filed.

13. The case of the petitioner is that the issue involved in both the proceedings are same with complicated questions of law and facts arising out of the same transaction and if the departmental proceedings are not deferred, her right of defence in the criminal case would be jeopardized. The learned counsel for the petitioner relied on the Hon'ble Apex Court in ***Capt M.Paul Anthony Vs.Bharat Gold Mines Limited and another*** reported in ***1999(2) CTC 579 (SC) : 1999 (3) SCC 679*** and the relevant paragraph is extracted hereunder:

“(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



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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



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at the earliest.”

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14. The Hon'ble Division Bench of this Court in ***S.Kathhiravan Vs. The Commandant Office of the DIGP and others*** reported in **2017 (6) CTC 252** has discussed the legal position of the judgment of the Hon'ble Apex Court in ***Capt M.Paul Anthony Vs.Bharat Gold Mines Limited and another*** reported in **1999(2) CTC 579 (SC) : 1999 (3) SCC 679**, ***Hindustan Petroleum Corporation Limited, and others Vs. Sarvesh Berry*** reported in **2005 (10) SCC 471**, ***Indian Overseas Bank, Anna Salai and another Vs. P.Ganesan and others*** reported in **2007 (5) CTC 632 (SC)** and ***Noida Entrepreneurs Association Vs. Noida and others*** reported in **2007 (3) CTC 211 (SC) :2007 (10) SCC 385** and held that since the petitioner is in the Uniformed Disciplined Service, the Authority is expected to perform his duty as per the Rules. When the petitioner is alleged to have committed misconduct, the respondents have no other choice except to proceed with the Departmental Enquiry and they need not wait for the decision of the Criminal Court.

15. In the decision in ***Hindustan Petroleum Corporation Limited and others Vs. Sarvesh Berry*** reported in **2005 (10) SCC 471**, the Hon'ble



Apex Court held as follows:-

“8. The purposes of departmental enquiry and of prosecution is 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 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 department 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."

16. In the decision in ***Indian Overseas Bank, Anna Salai and another Vs. P.Ganesan and others*** reported in **2007 (5) CTC 632 (SC)**, the Hon'ble Apex Court held as follows:-

"26. Furthermore the discretionary writ jurisdiction under Article 226 of the Constitution of India should be exercised keeping in view the conduct of the parties. Respondents made a representation that in the event the order of



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suspension is revoked, they would cooperate with the Enquiry Officer. They kept on filing applications for extension of time which were allowed. They took benefit thereof. Without, however filing show cause, they moved the High Court. Furthermore before the Enquiry Officer also, as noticed hereinbefore, although they had appointed the defence counsel, did not cross-examine the witnesses examined on behalf of the Management. A large number of witnesses had already been examined on behalf of the appellants. The disciplinary proceedings, as we have noticed hereinbefore, have proceeded to a great extent. In such a situation we are of the firm view that the discretionary jurisdiction should not have been exercised in favour of Respondents 1 to 4 by the High Court.”

17. In the decision in ***Noida Entrepreneurs Association Vs. Noida and others*** reported in **2007 (3) CTC 211 (SC) :2007 (10) SCC 385**, the Hon'ble Apex Court has held as follows:-

“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.



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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.”

18. In this case, the Inspector of Police is facing the serious charge that she misused the information received from the police informer and extorted money from the defacto complainant. Though the case was registered on 27.07.20221, the petitioner absconded from the headquarters and she was secured at Kothagiri after one month from the date of registration of FIR. Apart from this proceedings, the petitioner also involved in 5 delinquencies and is facing 2 disciplinary proceedings as on date. The Enquiry Officer sent notices to the petitioner on 25.10.2021, 08.11.2021, 10.11.2021 and 01.12.2021 to appear for enquiry. But, the petitioner failed to appear and the petitioner has not made out specifically who are all the witnesses similar in the criminal case and in the departmental proceedings. It is not known as to the time required for the conclusion of the criminal proceedings and if the departmental proceedings is deferred as requested by the petitioner for the conclusion of criminal proceedings, it may also lead to



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loss of evidence as discussed above. The Hon'ble Apex Court and this Court have consistently held that the departmental proceedings and the criminal proceedings of the very same fact can be proceeded simultaneously and domestic enquiry need not be stopped pending disposal of the criminal case. The departmental disciplinary proceedings can be kept in abeyance only in exceptional circumstances which involves complicated questions of law and facts. The petitioner has not projected any such complicated questions of facts and law before this Court warranting an interference.

19. Considering the above position of law, the conduct of the petitioner and her position, this Court is not inclined to interfere with the impugned proceedings. Accordingly, this writ petition is dismissed. No Costs. Consequently, the connected Miscellaneous Petitions are closed.

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To

1. The Deputy Inspector General of Police,
Madurai Range,
Madurai.
2. The Additional Superintendent of Police,
Cyber Crime, Virudhunagar District,
Virudhunagar.



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