



W.P(MD)No.26136 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 18.11.2022

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)Nos.26136 to 26138 of 2022

S.Ravichandran ... Petitioner in W.P.(MD)No.26136 of 2022

C.Sathis Kumar ... Petitioner in W.P.(MD)No.26137 of 2022

R.Ravichandran ... Petitioner in W.P.(MD)No.26138 of 2022

Vs.

The Commissioner of Police,
Madurai City,
Madurai.

... Respondent in all W.Ps.

Prayer in W.P.(MD)No.26136 of 2022 : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, to direct the Respondent to defer the departmental proceedings in Tha.Pa.No.D1(1) /Tha.Pa.No.40/22 dated 05.05.22 on the file of the Respondent till the disposal of the criminal case in S.C.No. 289/21 on the file of the V Additional Sessions Court, Madurai.

Prayer in W.P.(MD)No.26137 of 2022 : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, to direct the Respondent to defer the departmental proceedings in Tha.Pa.No.D1(1) /Tha.Pa.No.41/22 on the file of the Respondent till the



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disposal of the criminal case in S.C.No.289/21 on the file of the V Additional Sessions Court, Madurai.

Prayer in W.P.(MD)No.26138 of 2022 : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, to direct the Respondent to defer the departmental proceedings in Tha.Pa.No.D1(1) /Tha.Pa.No.39/22, on the file of the Respondent till the disposal of the criminal case in S.C.No. 289/21 on the file of the V Additional Sessions Court, Madurai.

For Petitioner : Mr.C.Prabhu Rajadurai

For Respondent : Mr.R.Suresh Kumar
Additional Government Pleader

COMMON ORDER

Heard the learned counsel on either side.

2. The petitioners are employed as Police Personnel. They are facing prosecution in S.C.No.289 of 2021 on the file of the 5th Additional Sessions Court, Madurai. It is a case of custodial death. The case is presently pending at the stage of framing of charge. Final report was filed primarily for the offence under Section 304(ii) of IPC. Now the petitioners have been visited with the impugned charge memo. Final report laid against the petitioners alleges that the petitioners herein along with A1 had beaten the deceased Muthu Karthick



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by using hands and legs and that he died as a consequence. The petitioners are figuring as A2 to A4 in the criminal case.

3. I went through the contents of the final report. I also went through the contents of the articles of charge. It cannot be in dispute that the criminal case as well as the departmental enquiry are predicated on the same set of facts. Now the question that arises for consideration is whether disciplinary action initiated against the petitioners can be parallely continued during the pendency of the criminal prosecution.

4. The learned Additional Government Pleader appearing for the respondents submits that this issue had been settled in the decision reported in **(2016) 9 SCC 491 (SBI Vs. Neelam Nag)**. He reminded this Court that there has been a paradigm shift in judicial approach and the writ courts no longer stay the departmental proceedings, even if the criminal prosecution is parallely going on. The contention advanced by the learned Additional Government Pleader is well founded. However, it is relevant to note that the Hon'ble Apex Court in the aforesaid decision followed the earlier decision reported in **(2014) 3 SCC 636 (Stanzen Toyotetsu India Private Limited Vs. Girish V.)**. Paragraph No.13 of the said Judgment reads that while there is no legal bar to



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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 defence before the criminal court. Of-course, the said decision further adds that gravity of the charge is however not by itself enough to determine the question unless the charge involves complicated question of law and fact. It cannot be in dispute that custodial death is a grave charge.

5. In the very nature of things, a case of this nature would involve complicated question of law and fact. I am therefore satisfied that case for stay has been made out. However, as laid down by the Hon'ble Apex Court, it is not in the interest of the employer to continue to keep the disciplinary action pending for an indefinitely long time. This is because, criminal cases do not get over early. In the case on hand, the petitioners are not under suspension. In these circumstances, I am inclined to adopt the approach set out in *Stanzen case*.

6. The Writ Petitions are disposed of with the following directions:-

(i) Before me, A2 to A4 alone are the petitioners. The first



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accused is not before me. The charges have not been framed. It may not therefore be advisable for this Court to issue any time bound direction to the trial Judge.

(II) If the trial is not completed within one year, the disciplinary proceedings initiated against the petitioners will be taken up. In other words, the impugned action initiated against the petitioners is put on hold for a period of one year.

No costs.

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Index : Yes / No
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