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Ct. No. 04

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M.A.T. 1016 of 2023
CAN 1 of 2023

Amarjit Kumar Singh
Vs.
Union of India & Ors.

Mr. Krishna Das Poddar.
... for the appellant.
Mr. Sukumar Bhattacharyya,
Mr. Ajit Kumar Chowbey.
... for the respondents.

The seminal point involved in the instant appeal is whether the departmental proceeding shall be allowed to continue pending the criminal case.

The facts emanates from the record that the criminal proceeding is initiated against the petitioner under Section 30(a) of the Bihar Prohibition and Excise (Amendment) Act, 2018 allegedly on the ground of having possessed nearly 17.64 litres of foreign liquor. The petitioner was taken into custody and ultimately was released on bail on 10th March, 2023 upon furnishing a bond of Rs.15,000/- with two sureties of like amount each subject to the conditions as laid down under Section 437(3) of the Code of Criminal Procedure with further condition that one of the bailers shall be close relative of the petitioner.

According to the appellant/petitioner, since he was kept in custody for about a month and such incident was duly published in Newspaper for drawing attention of public at large, a departmental proceeding was initiated against him simultaneously with an order of suspension. The petitioner filed a writ petition assailing the charge sheet dated 1st March, 2023 and prayed for stay of the departmental proceeding till the

completion of the criminal case lodged against him. It is averred that the petitioner is the victim of circumstances and the bag from where the aforesaid quantity of foreign liquor was recovered, was never carried by him and, in fact, demanded disclosure of CCTV footage before the enquiry officer.

On the backdrop of the aforesaid fact an interim order was sought before the Trial Court and by the impugned order the Trial Court has refused to pass the interim order; meaning thereby there shall not be a stay of departmental proceeding pending the criminal proceeding.

Learned Advocate appearing for the appellant/petitioner vehemently submits before us that when both the departmental proceeding and the criminal proceeding are initiated on the self-same charges and one appears to be a replica of another, the law prevalent as of now requires the stay of departmental proceeding pending the criminal case. In support of the same reliance is placed upon the judgement of the Apex Court rendered in case of *Capt. M. Paul Anthony vs. Bharat Gold Mines Ltd & Anr.* reported in (1999) 3SCC 679; the Division Bench judgement of this Court in case of *Sri Balai Kumar Sanfui vs. The State of West Bengal & Ors.* reported in (2014) 4 WBLR (Cal) 260 and another judgement of the Apex Court in case of *State of Rajasthan vs. B. K. Meena & Ors.* reported in (1996) 6 SCC 417.

The learned Advocate appearing for the appellant vociferously submits that the Trial Court have misinterpreted and misread the judgement delivered by the Supreme Court in case of *Shashi Bhushan Prasad*

vs. Inspector General, Central Industrial Security Force & Ors. reported in (2019) 7 SCC 797 while denying an interim order, as the fact involved in the said case is totally different. According to him, it was a case of supplying firearms for committing a murder, which cannot be equated with the facts of the instant case and, therefore, the decision taken therein cannot be applied to the instant case. Lastly it is submitted that the petitioner is under suspension for a longtime and it is imperative on the part of the authority to take a further decision on the continuance of suspension and placed reliance upon a judgement of the Apex Court in case of *Gurpal Singh vs. High Court of Judicature for Rajasthan* reported in (2013) 2 WBLR (SC) 477.

It is arduously submitted that since the recovery of foreign liquor, which is an offence under the Excise Law at Bihar, is the sole reason for initiation of the departmental proceeding, it is appropriate that the Court should stay the departmental proceeding pending the criminal case.

The learned Counsel for the respondents opposes the aforesaid contention of the learned Advocate appearing for the appellant. According to them, since the petitioner being an employee of RPF, which is a disciplined organization, his conduct must be above board and any dereliction in discharging the duties is always viewed seriously. It is further submitted that the stand of the petitioner is unfounded for the reason that the charges have not been framed solely on the ground of recovery of foreign liquor but on other grounds as well, which would be evident from the memorandum of charges served upon the petitioner.

On the backdrop of the aforesaid facts and the arguments having advanced as succinctly narrated hereinabove, the core issue involved in the instant appeal is whether the departmental proceeding as well as the criminal proceeding are launched on the same allegation or the same events which warrant the stay of departmental proceeding pending the criminal case.

The article of charges and the statement of allegation in support thereof have been annexed with the instant application. It appears therefrom that not only the incident of recovery of foreign liquor and the petitioner being taken into custody is included in the article of charges, but also other serious misdeeds and misconduct committed by the petitioner have also been included in the said article of charges.

It cannot be said that the said departmental proceeding is entirely based upon the alleged criminal offence for which the criminal proceeding has been initiated against the petitioner, but there are other lapses and negligence or misconduct allegedly committed by the petitioner. It would be apposite to quote those misconduct from the article of charges, wherein it is indicated that the petitioner, who was supposed to perform duty on 12th February, 2023 in "C" shift as per roaster as he performed his "A" shift duty on 11th February, 2023 up to six hours, left the headquarter without obtaining permission from the competent authority. The other charges relate to allotment of quarter to the petitioner for his residence with family members, but his family members have been residing at Jashidih and an outsider has been found living with his family members in the said allotted quarter and on enquiry it is declared that he

has no relation with the petitioner and he is living there upon payment of some money including the electricity charges.

Such being the article of charges, upon which the departmental proceeding has been initiated, we are afraid whether the principles of law laid down in case of *Capt. M. Paul Anthony (supra)* can be applied in the present case. In *Capt. M. Paul Anthony (supra)*'s case the Apex Court was considering the cases where both the departmental proceeding and the criminal proceeding was initiated on the self-same charges, self-same facts, same witnesses to be examined and the same set of documentary evidences; in such perspective it was held that if the departmental proceeding and the criminal case are allowed to continue simultaneously, it would not be proper and it is desirable that the departmental proceeding should be stayed in the following:

“22. *The conclusions which are deducible from various decisions of this Court referred to above are:*

- (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 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 at the earliest.”*

Even in the aforesaid Report the Apex Court have held that it is not a rule of rigidity that in every case the departmental proceeding should be stayed pending the criminal case, as both the proceedings can run simultaneously though separately. Thus there is no fetter on the part of the administrative authority in continuing with the departmental proceeding pending

the criminal case unless the factors as enumerated in the above Report are eminent and evident from the record.

The contention of the learned Advocate for the appellant is that the moment the charge sheet is challenged, the Court should stay the departmental proceeding as the criminal proceeding is also pending against the petitioner; which does not appear to be the law laid down by the Apex Court in the above noted decision. The Court should not stay the departmental proceeding simply on the ipsi dixit of filing a petition under Article 226 of the Constitution of India before the High Court, as every case has to be decided on the basis of the facts involved therein and such rule of law if pressed in service shall not only oppose to the Constitutional ethos but also frustrate the very purpose of the Administrative Law and the statutory Rules framed in this regard.

The Apex Court in case of *State of Rajasthan vs. B. K. Meena & Ors.* reported in (1996) 6 SCC 417 was considering a case of like nature where both the criminal proceeding and the disciplinary proceeding were initiated on the self-same facts. The Apex Court was conscious of the proposition of law that while there is no legal bar for simultaneous proceedings being continued, yet there may be cases where the Court may find appropriate to defer the disciplinary proceeding awaiting the result of the criminal case. Ultimately it is held that whether a particular case requires such an order to be passed depends upon a particular case and the facts involved therein and, therefore, the Court has to record the reasons in relation to the parity of the charges in both the proceedings. The Apex Court held:

“It must be remembered that interests of administration demand that undesirable elements are thrown out and any charge of misdemeanour is enquired into promptly. The disciplinary proceedings are meant not really to punish the guilty but to keep the administrative machinery unsullied by getting rid of bad elements. The interest of the delinquent officer also lies in a prompt conclusion of the disciplinary proceedings. If he is not guilty of the charges, his honour should be vindicated at the earliest possible moment and if he is guilty, he should be dealt with promptly according to law. It is not also in the interest of administration that persons accused of serious misdemeanour should be continued in office indefinitely, i.e., for long periods awaiting the result of criminal proceedings. It is not in the interest of administration. It only serves the interest of the guilty and dishonest. While it is not possible to enumerate the various factors, for and against the stay of disciplinary proceedings, we found it necessary to emphasise some of the important considerations in view of the fact that very often the disciplinary proceedings are being stayed for long periods pending criminal proceedings. Stay of disciplinary proceedings cannot be, and should not be, a matter of course. All the relevant factors, for and against, should be weighed and a decision taken keeping in view the various principles laid down in the decisions referred to above.”

The Division Bench judgement of this Court in *Balai Kumar Sanfui (supra)* is the case where the alleged delinquent was found allegedly demanding bribes for

releasing a citizen who was in the lock up and First Information Report was lodged against the petitioner therein under Section 7/13(2) read with Section 13(1)(d)(i)(ii) of the Prevention of Corruption Act, 1988 read with Section 384 of the IPC. However, another proceeding was initiated alleging his disproportionate asset having found to his known source of income. The Division Bench after considering the facts involved in the said case and various decisions rendered in this regard observed that there is no straitjacket formula prescribed for staying departmental proceeding when the criminal case is continuing simultaneously against the delinquent employee. The obvious reason for such observation is that both the criminal proceeding as well as the departmental proceeding are distinct and separate, and different considerations are required for determining the cause. The criminal proceeding is decided on a principle that the charges have been proved beyond any reasonable doubt; on the other hand the departmental proceeding is determined on the basis of preponderance of probability.

The moment the Court found from a case that both the criminal proceeding as well as the departmental proceeding are founded upon the self-same charges, self-same facts, self-set of evidence and same witnesses, it would be desirable that the departmental proceeding should remain stayed until the criminal case is decided. However, if the Court found that there is a disparity in the article of charges as well as the charges on which the criminal proceeding has been initiated, it is neither advisable nor desirous that the departmental proceeding should remain stayed until the decision is taken in the criminal case.

The Trial Court has relied upon the judgement of the Apex Court in case of *Shashi Bhushan Prasad (supra)* , which according to the learned Advocate for the petitioner is based on different facts does not appear to us bear any substance. Although the facts may be different but it is an ardent duty of the Court to decipher the ratio to be culled out therefrom. The ratio of the decision has its binding effect as two cases may not have similar facts. The only point which makes the said decision inapplicable when the Court finds a special fact involved therein and on the basis thereof the law has been laid down.

Although the aforesaid decision is based on the fact that the delinquent facilitated the person by providing a country made revolver to commit a murder and the Court found that not only the criminal case is launched against the delinquent but also the departmental proceeding initiated by the authority under the relevant Rules, after meticulous examination of both the charges the Apex Court found that the initiation of a criminal proceeding as well as a departmental proceeding are grounded upon different facts and, therefore, the ratio laid down in Capt. M. Paul Anthony (*supra*) cannot be applied in an abstract manner.

In the instant case as indicated above the disciplinary proceeding is initiated against the appellant/petitioner alleging the misconduct that there was a dereliction in discharge of the duty entrusted upon him and he allegedly left without intimating to the headquarter; secondly the official quarter allotted to the petitioner was let out to a third party on monetary consideration; which is distinct and separate from the

criminal case initiated against him having allegedly committed an offence under Section 30(a) of Bihar Prohibition and Excise (Amendment) Act, 2018.

The facts are distinct and separate and the contention of the petitioner is unacceptable nor the ratio laid down in this regard has any manner of applicability in the instant case. There is no hesitation in our mind that an attempt is made to forestall the progress of the departmental proceeding and, therefore, the Trial Court, in our opinion, has correctly refused to pass any interim order pending the said writ petition.

Since the writ petition is pending before the Trial Court, so far as the contention in relation to the order of suspension is concerned, we do not intend to make any comment and if such point is raised the Trial Court will decide the same in accordance with law.

The appeal is thus dismissed. Consequently the connected application is also dismissed.

(Harish Tandon, J.)

(Prasenjit Biswas, J.)

