(2016) 01 AP CK 0024

In the Andhra Pradesh High Court

Case No : Writ Petition No. 43044 of 2015

A.X. Edwin APPELLANT

Vs

State Bank of Hyderabad and Others RESPONDENT

Date of Decision : 20-01-2016

Acts Referred:

Penal Code, 1860 (IPC) — Section 34, Section 409, Section 420, Section 464, Section 465, Section 467, Section 471

Citation : (2016) 5 AndhLD 50 : (2016) LIC 1422

Hon'ble Judges : P. Naveen Rao, J.

Bench : Single Bench

Advocate : G.S.V. Prasad, for the Appellant;

Final Decision : Dismissed

Judgement

P. Naveen Rao, J.

1. This writ petition is filed praying to grant direction to defer holding of disciplinary proceedings pending conclusion of criminal proceedings.

2. Facts relevant for consideration of this case are as under. Petitioner is presently holding Middle Management Grade Scale-III cadre post. Petitioner worked as Branch Manager of Kankal Branch from 29.06.2009 to 22.05.2012 and Branch Manager, Rangampet Branch from 12.06.2012 to 02.02.2014.

3. Alleging that grave illegalities were committed while functioning as Branch Manager in the above two Branches, petitioner was served with two separate charge memos dated 20.01.2015 and 23.02.2015. Alleging that grave financial irregularities committed by the petitioner as Assistant General Manager, respondent bank lodged complaint dated 03.02.2014 with the Station House Officer, Kulcharam Police Station, Medak District. Crime No. 07 of 2014 was registered under Sections 409, 420, 464, 465, 467, 471 read with 34 of Indian Penal Code and police have taken up investigation. Petitioner contends that the case is now entrusted to the Central Bureau of Investigation (CBI) and CBI is

investigating into the allegations leveled against the petitioner and other co-employees.

4. The substance of the allegations in the charge memo dated 20.01.2015 is disbursement of 246 fictitious agricultural term loans during the period of his tenure in Rangampet branch violating the laid down extant guidelines regarding sanction, release and conduct of agricultural loans and without obtaining loan documents in some cases and in majority of cases obtained multiple documents with ulterior motive and defrauded the bank for an amount of Rs. 8,80,79,000/-. In charge memo dated 23.02.2015, the substance of the allegations is petitioner sanctioned and disbursed 86 fictitious, benami/fraudulent/multiple crop loans and that loan accounts were opened without collateral and documentary support during the period of his tenure in Kankal branch.

5. Alleging that request of the petitioner for deferment of the disciplinary proceedings is not acceded and petitioner was asked to participate in the enquiry, this writ petition is filed.

6. Learned counsel for petitioner contended that the charges leveled in the disciplinary proceedings and the complaint lodged with the Kulcharam Police Station are one and the same and when the police are investigating into the allegations leveled against him in the complaint lodged by the respondent bank, there is no justification to simultaneously conduct disciplinary proceedings without waiting for the outcome of investigation by the police. If petitioner is compelled to participate in the disciplinary proceedings, the disclosure of his defense in the enquiry would cause serious prejudice in the investigation by the police. Learned counsel further contended that nature of allegations being identical and based on the same set of facts and are complicated, it is but necessary to defer the disciplinary proceedings pending investigation by the police.

7. In support of the said contention, learned counsel for petitioner placed reliance on the following decisions:

"i) Delhi Cloth and General Mills Ltd. V. Kushal Bhavan , AIR 1960 SC 806 (1)

ii) Tata Oil Mills Co.Ltd., v. The Workmen , AIR 1965 SC 155 (1)

iii) Capt. M.Paul Anthony v. Bharat Gold Mines Ltd. and another , AIR 1999 SC 1416(1)

iv) State Bank of India and others v. R.B. Sharma , AIR 2004 SC 4144

v) Kendriya Vidyalaya Sangathan and others v. T. Srinivas , AIR 2004 SC 4127

vi) State of Rajasthan v. B.K. Meena and others , AIR 1997 SC 13

vii) Kusheshwar Dubey v. M/s. Bharat Coking Coal Ltd. and others , AIR 1988 SC 2118."

8. The issue for consideration in this writ petition is whether a mandamus can be

issued to disciplinary authority to defer the disciplinary proceedings pending investigation into Crime No. 07 of 2014 ?

9. Disciplinary proceedings and criminal proceedings operate in two different fields. Disciplinary action relates to employer losing trust and confidence on the employee on account of alleged misconduct affecting the image and reputation of the employer. Criminal proceedings relate to committing of crime by a person who is in public employment, during the course of his employment and in gross abuse of his position in the service. If employee indulges in acts of misconduct which also attract criminal prosecution, ordinarily employer not only initiates departmental action but also lodges complaint with the police.

10. The relationship of employee employer is based on trust and confidence of the employer on the employee. If the employer has an element of doubt on the conduct and character of the employee, employer may not be willing to continue the employee in his service. However, before taking action against an employee in public service, the employer is required to follow due process and on establishment of charges leveled against him, appropriate punishment can be imposed. In domestic enquiry on the charges leveled against the employee what is required is preponderance of probabilities of the charges leveled against him. Circumstantial evidence can be taken into consideration to hold that the charge is proved and to impose appropriate punishment.

11. Nature of evidence required in the departmental proceedings is quite different from the nature of evidence that is required in criminal proceedings. Criminal law requires that the charges leveled against a person must be proved beyond reasonable doubt and burden lies on the prosecution to establish the charges. Any deficiency and element of doubt will go against the prosecution.

12. There is long line of precedents on the issue of desirability to continue domestic enquiry pending criminal investigation/trial.

13. In CAPT M.PAUL ANTHONY v. BHARAT GOLD MINES LTD AND ANOTHER, Supreme Court has delineated the principles on the desirability of continuing disciplinary proceedings during the pendency of the criminal proceedings. The parameters of judicial intervention are set out in para 22. They read as under:

"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."

14. In State of Rajasthan (supra), Supreme Court held as under:

"14. It would be evident from the above decisions that each of them starts with the indisputable proposition that there is no legal bar for both proceedings to go on simultaneously and then say 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. The staying of disciplinary proceedings, it is emphasised, is a matter to be determined having regard to the facts and circumstances of a given case and that no hard and fast rules can be enunciated in that behalf. The only ground suggested in the above decisions as constituting a valid ground for staying the disciplinary proceedings is that the defence of the employee in the criminal case may not be prejudiced. This ground has, however, been hedged in by providing further that this may be done in cases of grave nature involving questions of fact and law. In our respectful opinion, it means that not only the charges must be grave but that the case must involve complicated questions of law and fact. Moreover, advisability, desirability or propriety, as the case may be, has to be determined in each case taking into consideration all the facts and circumstances of the case.

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One of the contending considerations is that the disciplinary enquiry cannot be and should not be delayed unduly.

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."

15. In Stanzen Toyotestsu India Private Limited v. Girish V and others (1993) 3 SCC 679, Supreme Court reviewed the entire case law on the subject and held as under:

"8.. The law on the subject is fairly well settled for similar issues and has often engaged the attention of this Court in varied fact situations. Although the pronouncements of this Court have stopped short of prescribing any straitjacket formula for application to all cases, the decisions of this Court have identified the broad approach to be adopted in such matters leaving it for the courts concerned to take an appropriate view in the peculiar facts and circumstances of each case that comes up before them. Suffice it to say that there is no short-cut solution to the problem. What is, however, fairly well settled and was not disputed even before us is that there is no legal bar to the conduct of the disciplinary proceedings and a criminal trial simultaneously.

(emphasis supplied)

13. It is unnecessary to multiply decisions on the subject for the legal position as emerging from the above pronouncements and the earlier pronouncements of this Court in a large number of similar cases is well settled that disciplinary proceedings and proceedings in a criminal case can proceed simultaneously in the absence of any legal bar to such simultaneity. It is also evident that while seriousness of the charge levelled against the employees is a consideration, the same is not by itself sufficient unless the case also involves complicated questions of law and fact. Even when the charge is found to be serious and complicated questions of fact and law that arise for consideration, the court will have to keep in mind the fact that departmental proceedings cannot be suspended indefinitely or delayed unduly.

(emphasis supplied)

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16...The court examining the question must also keep in mind that criminal trials get prolonged indefinitely especially where the number of accused arraigned for trial is large as is the case at hand and so are the number of witnesses cited by the prosecution. The court, therefore, has to draw a balance between the need for a fair trial to the accused on the one hand and the competing demand for an expeditious conclusion of the ongoing disciplinary proceedings on the other. An early conclusion of the disciplinary proceedings has itself been seen by this Court to be in the interest of the employees."

16. In several decisions including Stanzen Toyotetsu, Supreme Court held that if the employer has already disclosed the defence in the explanation submitted by him, he is not entitled to ask to defer enquiry. Broad principle evolved is

ordinarily disciplinary action should not be stayed even when criminal case is pending on the same set of facts and law.

17. Burden is on the employee to satisfy the Court that the charges leveled in both proceedings are same; the material facts and evidence relied on by the employer is same; that there are complicated questions of law and facts involved; and he has not disclosed his defense so far. Even if employee satisfies above parameters, Court may refuse to stay the domestic enquiry if there is a likelihood of delay in commencement and conclusion of criminal proceedings.

18. In the instant case, except for saying that the continuation of the disciplinary proceedings would seriously impact the defence of the petitioner in the criminal proceedings, petitioner has not highlighted as to how it would impact his defence. The affidavit filed in support of the writ petition is also silent as to whether petitioner has filed his explanation to two charge memos. Prima facie reading of the charge memo dated 23.02.2015 would disclose that the charges relate to the period between 29.06.2009 to 22.05.2012 and do not concern with the complaint filed before the police. The allegations levelled in the two charge memos are on the question of issuance of agricultural term loans in violation of procedural norms for granting of agricultural loans. It is also alleged that the loan proceeds were misused by the petitioner. In Crime No. 7 of 2014, it appears that so far investigation is not completed.

19. As seen from the precedent decisions, the parameters to stay the disciplinary proceedings pending criminal proceedings depends on facts and circumstances of given case. Ordinarily, the disciplinary proceedings should not be stayed. In the instant case, the criminal complaint lodged by the respondent bank is only at the stage of investigation. Thus, in the instant case even the parameters set out by the Supreme Court in the precedent cases referred to above within the limited scope to stay the domestic enquiry are not attracted. Instant case does not fall into the category where disciplinary proceedings should be stayed since so far the investigation by the police is not completed and charge sheet is not laid. I do not seen error in the decision of the disciplinary authority in proceeding with the disciplinary action. I see no merit in the writ petition warranting interference by this Court.

20. The writ petition is accordingly dismissed. If the investigation into Crime No. 7 of 2014 results in laying of charge sheet and domestic enquiry is not completed before the charge sheet is laid before the competent Court, it is left open to the petitioner to apply to the disciplinary authority to stay the domestic enquiry till the criminal case is disposed of and the dismissal of the writ petition do not come in the way of consideration of such request. It is also made clear that the discussion in the above paragraphs is for the purpose of disposal of the issue for consideration in this case and cannot be seen as expression of opinion on merits of the allegations and the defence of the petitioner is preserved.

Miscellaneous petitions if any pending in the writ petition shall stand closed.

There shall be no order as to costs.

