

(2010) 12 GUJ CK 0063

In the Gujarat High Court

Case No : Special Civil Application No. 15247 of 2010

Bhanuprasad M. Joshi

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision : 22-12-2010

Acts Referred:

Constitution of India, 1950 — Article 226

Penal Code, 1860 (IPC) — Section 120B, 171, 406, 420, 465

Citation : (2010) 12 GUJ CK 0063

Hon'ble Judges : Abhilasha Kumari, J

Bench : Single Bench

Advocate : Sanjay D. Suthar, for N.K. Majmudar, for the Appellant; Anand L. Sharma, Asst. Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

Abhilasha Kumari, J.—Rule. Mr. Anand L. Sharma, learned Assistant Government Pleader waives service of notice of Rule on behalf of Respondents. On the facts and in the circumstances of the case, and with the consent of the learned Counsel for the respective parties, the petition is being heard and finally decided, today.

2. By way of this petition, under Article 226 of the Constitution of India, the Petitioner has prayed that the departmental proceedings initiated against him be kept in abeyance till the criminal case is decided.

3. Briefly stated, the facts of the case are that, the Petitioner is an Armed Police Constable. A criminal complaint came to be lodged against him vide C.R. No. I 158 of 2008 at Bharuch Police Station, for offences punishable under Sections 406, 420, 465, 467, 468, 471, 120B, 171, 506(1) of the Indian Penal Code. The Petitioner came to be arrested in connection with the above-mentioned offences and was released on bail by order dated 16.3.2009. In Criminal Case No. 1122/209 against the Petitioner, a chargesheet has been filed in the Court of learned Judicial Magistrate First Class, Bharuch and the case is pending trial. The

case of the Petitioner is that on the same set of allegations, the Respondents have initiated a departmental inquiry against the Petitioner. A chargesheet has been issued on 7.11.2009 and the Petitioner has made representation dated 5.7.2010 (3.7.2010) requesting the concerned authorities not to proceed further with the department inquiry till the criminal proceedings are over, as the nature of the charges in both proceedings as well as the evidence are the same. However, by order dated 6/14.9.2010, the representation of the Petitioner was rejected and the Assistant Commissioner of Police, A-Division, Vadodara City has been appointed as Inquiry Officer.

4. Aggrieved thereby, the Petitioner has approached this Court by filing the present petition.

5. Mr. Sanjay D. Suthar, learned advocate appearing for Mr. N.K. Majmudar, learned Counsel for the Petitioner has submitted that the nature of charges and evidence are similar in both the departmental inquiry and criminal proceedings and the witnesses would also be the same, therefore, if the departmental proceedings are permitted to be proceeded with, it would cause great prejudice to the Petitioner and it would affect his defence in the criminal case. It is further submitted that the Petitioner has been wrongly roped into the criminal case on the basis of a statement of a co-accused and there is ample evidence on record to substantiate the say of the Petitioner, that he was on duty when the alleged incident referred to in the F.I.R. had taken place. That in any case, the competent Criminal Court would be in a better position to adjudicate the matter rather than the Inquiry Officer. It is further contended that there are 51 witnesses in the criminal case and it is likely that the defence of the Petitioner would be prejudiced by the statements of witnesses, who are examined in the departmental proceedings. It is further contended that as per Circular of the Government dated 19.4.2004, if the incident and the evidence in the departmental proceedings and the criminal case are the same, the final outcome of the departmental proceedings would be subject to the final outcome of the competent Criminal Court, therefore, for this reason as well, it would have been appropriate if the departmental proceedings had been kept in abeyance till the conclusion of the criminal case.

6. In support of the above submissions, the learned Counsel for the Petitioner has placed reliance upon judgment of Supreme Court in Hindustan Petroleum Corporation Ltd. and Others Vs. Sarvesh Berry,

7. Mr. Anand L. Sharma, learned Assistant Government Pleader, while opposing the petition, has submitted that it is settled law that departmental proceedings and criminal proceedings can go on side-by-side as, there is nothing on the record to suggest that the Petitioner will be prejudiced if departmental proceedings are permitted to continue, therefore, prayers made in the petition may not be granted.

8. I have heard learned Counsel for the respective parties, perused the

averments made in the petition and other documents annexed thereto. In the departmental proceedings initiated against the Petitioner, the chargesheet dated 7.11.2010 has been issued to the Petitioner whereas in Criminal Case No. 1122/2009, which has been registered pursuant to filing of C.R. No. I-158 of 2008, for offences punishable under Sections 406, 420, 465, 467, 468, 471, 120B, 171, 506(1) of the Indian Penal Code, the chargesheet has been filed in March, 2010, but the trial has not begun.

9. Before proceeding to examine the legality and validity of the contentions raised by the learned Counsel for the Petitioner, it would be fruitful to advert to the settled legal position in this regard. In *State of Rajasthan, Appellants Vs. B.K. Meena and others, Respondents* AIR 1997 SC 13, the Apex Court has laid down the following principles of law:

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 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. The ground indicated in *The Delhi Cloth and General Mills Ltd. Vs. Kushal Bhan, and Tata Oil Mills Co. Ltd. Vs. Its Workmen*, is not also an invariable rule. It is only a factor which will go into the scales while judging the advisability or desirability of staying the disciplinary proceedings. One of the contending consideration is that the disciplinary enquiry cannot be and should not be delayed unduly. So far as criminal cases are concerned, it is well known that they drag on endlessly where high officials or persons holding high public offices are involved. They get bogged down on one or the other ground. They hardly ever reach a prompt conclusion. That is the reality in spite of repeated advice and admonitions from this Court and the High Courts. If a criminal case is unduly delayed that may itself be a good ground for going ahead with the disciplinary enquiry even where the disciplinary proceedings are held over at an earlier stage. The interests of administration and good Government demand that these proceedings are concluded expeditiously. It must be remembered that interests of administration demand that the undesirable elements are thrown out and any charge of misdemeanor 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 misdemeanor 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.

10. Further, in Capt. M. Paul Anthony Vs. Bharat Gold Mines Ltd. and Another, the Supreme Court, after noticing various judgments on the issue whether departmental proceedings and criminal proceedings can be carried on side by side, has summarized its findings 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, administration may get rid of him at the earliest.

11. In *Hindustan Petroleum Corporation Ltd. and Ors. v. Sarvesh Berry (Supra)*, relied upon by the learned Counsel for the Petitioner, the Supreme Court has held that :

7. It is a fairly well-settled position in law that on basic principles, proceedings in criminal case and departmental proceedings can go on simultaneously, except in some cases where departmental proceedings and criminal case are based on the same set of facts and the evidence in both the proceedings is common. It is in these cases, the Court has to decide, taking into account the special features of the case, whether simultaneous continuance of both would be proper.

8. The purposes of departmental enquiry and of prosecution are two different and distinct aspects. The 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 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.

In paragraph 12 of the said judgment, the Court has reproduced the conclusions arrived at in the case of *Capt. M. Paul Anthony v. Bharat Gold Mines Ltd. and Anr. (Supra)*, which has already been reproduced hereinabove.

12. If the case of the Petitioner is considered in the light of the principles of law laid down in the above-mentioned judgments, it is seen that no complicated questions of fact or law are involved therein, so as to warrant a stay of the departmental proceedings, till the conclusion of the criminal proceedings. Though the same incident has put into motion both the departmental and the criminal proceedings, the nature and standard of proof required in both proceedings are different. Apart from a bald statement to this effect, there is no material on record to indicate in what manner prejudice could be caused to the Petitioner if the Departmental Inquiry is allowed to continue pending the trial. In *Hindustan Petroleum Corporation Ltd. and Ors. v. Sarvesh Berry*, which has been relied upon by the learned Counsel for the Petitioner, it has been laid down that the purpose of departmental inquiry and prosecution are different and distinct aspects. Whereas the purpose of departmental inquiry is to maintain discipline in service and efficiency of public life, criminal prosecution is launched for an offence for violation of a duty the offender owes to the society or for breach of law. The Supreme Court has further observed that each case requires to be considered in the facts and circumstances obtaining therein, however there is no bar to proceed simultaneously with the departmental inquiry and trial of a criminal case unless the charge in the criminal trial is of grave and serious nature involving complicated questions of fact and law.

13. From the above legal position, it can be seen that the initiation of departmental proceedings flows from the alleged misconduct committed by the Petitioner whereas the criminal case has arisen from the alleged commission of offences under the Indian Penal Code. The nature and scope of both proceedings is different. In the departmental inquiry, the action of the Petitioner qua his duties and the required norms and standards of discipline to be maintained by him would be inquired into, whereas in the criminal case, the Court would adjudicate whether the Petitioner is guilty of criminal offences, or not. Moreover, the criminal case would require a much higher standard of proof, that is, proof beyond any reasonable doubt, whereas in departmental proceedings the standard of proof would be based upon a preponderance of probabilities.

14. Though the learned Counsel for the Petitioner had submitted that there are about 51 witnesses in the criminal case, at this stage, it cannot be said with any certainty whether the same set of witnesses will be summoned in the departmental inquiry. However, the fact still remains that the departmental proceedings have already been initiated, whereas in the criminal proceedings, the trial is yet to begin and the criminal proceedings may take a long time to conclude. Apart from a bald statement to this effect, the learned Counsel for the Petitioner has not been able to successfully show how prejudice would be caused to the Petitioner if departmental proceedings and criminal case go on simultaneously.

15. Considering that no complicated questions of law or fact are involved in the case, and in view of the principles of law laid down in the judgments of the

Supreme Court referred to hereinabove, in my considered view, there is no justification for exercise of discretion under Article 226 of the Constitution of India by granting the prayers made in the petition. Insofar as the Circular dated 19.4.2004 is concerned, it states that if the incident and evidence in the departmental proceedings and the criminal case are the same, the departmental proceedings would be subject to the final outcome of the criminal case. As such, there is no embargo in the said circular upon the departmental proceedings being continued during the pendency of the criminal case. Therefore said circular would be of no help to the case of the Petitioner for keeping the departmental proceedings in abeyance.

16. For the aforesaid reasons, the petition fails, and is rejected. Rule is discharged. There shall be no orders as to costs.