

(2022) 03 MP CK 0127

In the Madhya Pradesh High Court

Case No : Writ Appeal No. 224 Of 2022

Jaypal Singh Rathore And Others

APPELLANT

Vs

State Of M.P And Others ?

RESPONDENT

Date of Decision : 16-03-2022

Acts Referred:

Madhya Pradesh Civil Service (Conduct) Rules, 1965 — Rule 3(1)(i)(ii)(iii), 3A(c)
Prevention Of The Corruption Act 1988 — Section 7
Indian Penal Code, 1860 — Section 34

Citation : (2022) 03 MP CK 0127

Hon'ble Judges : Ravi Malimath, CJ;Purushaindra Kumar Kaurav, J

Bench : Division Bench

Advocate : Sanjay Kumar Agrawal, B.D. Singh

Final Decision : Dismissed

Judgement

Purushaindra Kumar Kaurav, J

1. This intra Court appeal is filed being aggrieved by the order dated 16.02.2022 passed by the learned Single Judge in dismissing the Writ Petition No.3622 of 2022 filed by the appellants herein,

2. The facts of the case are that on 23.07.2021, an FIR No.107 of 2021 was registered against the appellants by Special Police Establishment for the offence punishable under Section 7 of the Prevention of the Corruption Act 1988 (in short "The PC Act, 1988") read with Section 34 of IPC. The appellants were working on the date of FIR as Sub Inspector, Assistant Sub-Inspector and Constables at Police Station Shikarpura District Burhanpur respectively. According to FIR lodged by complainant Mr. Kadir Patel, it is alleged that between 15.07.2021 to 20.07.2021, the appellants have committed an offence under Section 7 of the P.C Act 1988 while accepting illegal gratification for releasing his vehicles. It is alleged that the complainant is in the business of buying and selling cattle. As and when any vehicle carrying cattle were plying on the road, the appellants would intercept them and demand illegal gratification for releasing the vehicles.

It is the specific allegation in the FIR that on 15.07.2021, the appellant No.2 accepted bribe of Rs.8,000/-. A bribe of Rs.45,000/- has been accepted by appellant No.1 through appellant No.3. After registration of the FIR, the investigation is in progress.

3. The respondents-Department taking into consideration the conduct of the appellants, issued the charge sheet on 08.01.2022 alleging therein the following misconduct:

4. The appellants have challenged the charge sheet dated 08.01.2022 before the learned Single Judge on the ground that the charges in criminal case and the departmental enquiry are similar, therefore, the proceedings of the departmental enquiry should be kept in abeyance till the criminal trial is finally disposed off. The learned Single Judge while placing reliance on a decision of the Hon'ble Supreme Court in the case of Union of India & others vs. Dalbir Singh Civil Appeal No.5848 of 2021 did not find any substance in the petition and hence dismissed the same.

5. Learned counsel appearing for the appellants submit that the Hon'ble Supreme Court in the matter of Noida Entrepreneurs Association vs. Noida and others (2007) 10 SCC 385 has held that if the charges in the criminal trial are of a grave nature involving complicated questions of facts and law, normally, the proceedings of the departmental enquiry should be kept in abeyance. According to him, the learned Single Judge has committed an error in not considering the facts of the present case in right perspective and hence, the order passed by the learned Single Judge deserves to be set aside.

6. The only question that falls for consideration is whether the learned Single Judge has erred in dismissing the petition and allowing the trial of the criminal case and the departmental proceedings to go on simultaneously.

7. The answer to that question would primarily depend upon whether there is any legal bar to the continuance of the disciplinary proceedings against the employee based on an incident which is also the subject matter of criminal case against such employee. It would also depend upon the nature of charges in the criminal case filed against the employee and whether the case involves complicated questions of law and facts. The possibility of prejudice to the employee accused in the criminal case on account of the parallel disciplinary enquiry going ahead is another dimension which will have to be addressed while permitting or staying such disciplinary enquiry proceedings.

8. The Hon'ble Supreme Court in the matter of Depot Manager, Andhra Pradesh State Road Transport Corporation vs. Mohd. Yousuf Miyan(1997) 2 SCC 699 has held that the purpose of departmental proceedings is distinguishable from the purpose of prosecution of offender for commission of offence by them. While criminal prosecution is launched for an offence for violation of a duty, the offender owes to the society. The departmental enquiry is aimed at maintaining discipline and efficiency in service. The difference in the standard of proof and

the application of the rule of evidence to one and in applicability to the other was also explained and highlighted only to explain that conceptually the two operate in different spheres and are intended to serve distinctly different purposes.

9. The Hon'ble Supreme Court in its decision in the case of Capt. M. Paul Anthoney vs. Bharat Gold Mines Limited, (1999) 3 SCC 679 has laid down the broad principles on the subject for application in the facts and circumstances of the given case. It has been held that departmental proceedings and the proceedings in criminal case can proceed simultaneously as there is no bar in their conduction simultaneously, though separately. However, it is only in a given case if both the proceedings are based on identical and similar set of facts and the charge in the criminal case against the delinquent employee is of grave nature which involves complicated questions of facts and law, it would be desirable to stay the departmental proceedings till the conclusion of the criminal case. However, this would depend upon nature of offence, 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.

10. The Hon'ble Supreme Court in another decision The Divisional Controller, KSRTC vs. Vittal Rao, (2012) 1 SCC 442 has observed gravity of charge, however, not by itself enough to determine the question unless the charge involves complicated question of law and facts.

11. The Hon'ble Supreme Court in its decision in the matter of State Bank of India and others vs. Neelam Nag (2016) 9 SCC 491 has considered the long pendency of trial for ten years and has held that balance has to be struck between fair criminal trial and expeditious disciplinary proceedings, which cannot be stayed for indefinite period and under the circumstances of that case while exercising its discretion stayed the disciplinary proceedings until the closure of recording of prosecution witnesses. The trial Court was directed to examine the witnesses on day today basis and the directions were given to complete the trial within a period of one year from the date of passing of the order by the Hon'ble Supreme Court.

12. Taking into consideration the aforesaid legal position, it can safely be concluded that there is no legal bar to conduct the disciplinary proceeding and criminal trial simultaneously. However, no straight jacket formula can be spelled out and Court has to keep in mind the broad approach to be adopted in such matters on case to case basis.

13. If the facts of the present case are analyzed in view of the aforesaid legal position, we find that from perusal of the charges against the appellants that the charges in the disciplinary proceedings are for violation of Rule 3 (1) (i) (ii) (iii) and Rule 3 A (c) of Madhya Pradesh Civil Service (Conduct) Rules, 1965 and violation of para 64 (2) and 64 (3) of Madhya Pradesh Police Regulations. Precisely, it is alleged against the appellants that they have failed to maintain absolute integrity; devotion to duty and their conduct is of unbecoming of a

Government servant which denotes indiscipline. It is also alleged against the appellants that they have violated the general conditions of police service while not faithfully and honestly using their best abilities to fulfill their duties as a police officer and have failed to confirm themselves implicitly to all rules and Regulations which shall cultivate a proper regard for the honour and respectability of the post. The violations of the Rules and Regulations is based on the fact that on 14.07.2021 when the vehicle bearing number MP09-GH-2333 was intercepted with three bullocks, the appellants instead of taking any action have released the same vehicle without taking any legal action. It is also alleged that when the conduct of the appellants was came into the notice of Senior Officers, an effort was made to twist the fact while over writing vehicle challan book no.2754 serial no.68 of Police Station Shikarpura. It is alleged that in past, vehicle of Kadir Patel were released by the appellant No.2 twice while accepting the bribe. The appellant No.3 assisted the appellant No.2 on 14.07.2021 ensuring that no legal action is taken against the vehicle No. MP09-GH-2333.

14. We have perused the allegations made in the FIR also which relate to illegal demand and acceptance of bribe by the appellants. If the charges of the departmental proceedings and of the FIR are analyzed, it cannot be said that any prejudice would be caused to the appellants if the departmental proceedings are conducted before the trial of a criminal case is concluded.

15. In view of the aforesaid, we do not find any substance in the instant writ appeal and the learned single Judge has rightly declined to entertain the writ petition. Accordingly the appeal is dismissed.