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**(2020) 09 TEL CK 0003**  
**In the Telangana High Court**  
**Case No : Writ Petition No. 12604 Of 2020**

K. Ebnezer

APPELLANT

Vs

State Of Telangana

RESPONDENT

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**Date of Decision :** 04-09-2020

**Acts Referred:**

Telangana State Civil Services (Conduct) Rules, 1964 — Rule 3

**Citation :** (2020) 09 TEL CK 0003

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

**Bench :** Single Bench

**Advocate :** V Ravidhandran, M V Rama Rao

**Final Decision :** Dismissed

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## Judgement

1. Petitioner is working as Head Constable. On 22.7.2019 charge memo was drawn and served on him. The substance of the charge is he picked up a women from bus station, kept her in a lodge involved in altercation at the lodge and entire episode was video-graphed and uploaded in the social media platforms, which brought bad reputation to the Police Department and also tarnished the image of the victim, violating Rule 3 of the Telangana State Civil Services (Conduct) Rules, 1964. On the same incident Crime No.198 of 2019 was registered under Sections 342 (wrongful confinement), 354 (Assault or criminal force to woman with intent to outrage her modesty) read with Section 511 (attempting to commit offences punishable with imprisonment for life or other imprisonment) of IPC in Nirmal Town Police Station. After completing the investigation, police filed charge sheet in the Court of Additional Judicial First-Class Magistrate, Nirmal. According to petitioner, the allegations leveled in the charge sheet by the police and the allegations leveled in the departmental proceedings concern the same incident and gravamen of the charge is same. Therefore, in response to the charge memo, petitioner submitted explanation on 30.8.2019 with specific request to Superintendent of Police, Nirmal district to keep the disciplinary proceedings pending till finalization of criminal case. The

said request was not considered and on 17.9.2019 Enquiry Officer was appointed to conduct enquiry into the allegations leveled against the petitioner in charge memo dated 22.7.2019. On 10.7.2020 Enquiry Officer issued notice directing the petitioner to appear before him on 11.7.2020. Petitioner attended before the Enquiry Officer and made oral request to defer the enquiry till conclusion of criminal proceedings. Enquiry Officer did not agree to the request of the petitioner and decided to proceed with the oral enquiry. In those circumstances, present writ petition is filed praying to declare the action of third respondent in continuing parallel disciplinary proceedings when criminal proceedings are pending on the same issue, on same set of material facts and evidence as illegal and unconstitutional and seeks direction to stay all further proceedings.

2. Heard learned counsel for petitioner and Sri M V Rama Rao for respondents.

3. Learned counsel for petitioner sought to emphasize that disciplinary proceedings and criminal proceedings are based on same set of facts and evidence. By relying on the annexures enclosed to the charge sheet in domestic enquiry, vis-à-vis, the witnesses cited in the criminal case, it is vehemently contended by the learned counsel for petitioner that the charges in the domestic enquiry are sought to be sustained based on the material gathered by the police in the process of investigation into Crime No.198 of 2019 and if the same evidence is produced in departmental proceedings, it would necessarily result in disclosure of defense by the petitioner and would therefore seriously prejudice his defense in the criminal case. Further, 24 witnesses have to be examined and during the course of recording their evidence, disclosure of any information may impact the defence of the petitioner in criminal proceedings. He is also required to deal with the video uploaded in the social media. Petitioner has to secure call data record to strengthen his defence. All this may have a direct bearing on the defence in criminal case. He would further submit that petitioner lacks skill and legal intricacies to face two proceedings simultaneously and even a small error committed by him in his defence in departmental proceedings would harm his defence before the competent criminal court. Therefore, continuation of the departmental proceedings would cause serious prejudice to petitioner. In support of his contentions, learned counsel placed reliance on the decisions of Captain M.Paul Anthony Vs Bharat Gold Mines Limited (1993) 3 SCC 679 and Mallaraset Rambabu Vs State of Telangana Manu/TL/0361/2019 =WP 21012 of 19 dt 15.10.2019.

4. Per contra, according to Sri M.V.Rama Rao, learned counsel appearing for respondents, though basis of the charge is the incident of picking up a lady from bus stand, and taking her to lodge, the gravamen of the charges in the domestic enquiry are entirely different from what is alleged in the crime registered against the petitioner. According to learned counsel, in substance the allegation is that he ought not to have taken a lady to a lodge and ought not to have involved in altercation; on account of his action of taking the lady to the lodge and involving in altercation with private persons, which incidents were video graphed and

uploaded into the social media, tarnished the image of the Police and also the lady concerned and being a police officer, he ought to have been careful in dealing with such matters. Learned counsel would submit that petitioner being on petrol duty, in the late night, if he has seen a lady in a bus stand without any companion, he ought to have taken her to the police station and ought to have made efforts to trace her relatives but could not have taken her to a lodge. Allegations in the domestic enquiry are confined to this aspect of the incident, whereas in the criminal proceedings, it is alleged that the petitioner indulged in wrongful confinement and attempt to rape. He would therefore submit that there is clear distinction in the charges leveled against the petitioner in the domestic enquiry and in criminal proceedings. He would submit that nature of evidence in the domestic enquiry is entirely different from what is required in criminal proceedings. He, therefore, submits that there is no bar in continuing the disciplinary proceedings. According to learned counsel this very issue was considered by this Court in W.P.No.5001 of 2020 dated 20.3.2020 and view taken by this Court in the said judgment applies to the facts of this case.

5. I have carefully considered respective submissions and the precedent decisions on the subject. The only issue for consideration is whether disciplinary proceedings should be stayed pending criminal proceedings.

6. If a public servant in discharge of his duties is involved in an offence, crime would be registered against him, investigation is conducted and if prima facie material is found on alleged involvement in crime, he would be charged and tried. If what is alleged also attract conduct rules, employer can initiate disciplinary action referring to very same incident. Disciplinary proceedings and criminal proceedings operate in two different fields. Disciplinary action is set in motion if employer entertains doubt on trust and confidence of the employee. Criminal proceedings relate to committing of crime against society.

7. Before acting against an employee, the employer is required to follow due process and on establishment of charges levelled against him, appropriate punishment can be imposed. In domestic enquiry to establish charge, what is required is proof based on principle of preponderance of probabilities. Circumstantial evidence can be taken into consideration to hold the charge as proved and to impose appropriate punishment. On the contrary, criminal law requires that the charges levelled against accused must be proved beyond reasonable doubt and burden lies on the prosecution to establish the charges. Any deficiency and element of doubt in evidence will go against the prosecution.

8. Issue that frequently visits this Court is on continuation of disciplinary proceedings when the basis to initiate disciplinary proceedings is founded on crime registered against the employee. When employee is facing two-pronged action, he knocks the doors of this Court to mandate employer to defer disciplinary action till criminal proceedings are concluded.

9. It is settled principle of law that disciplinary action should not be stopped

merely because criminal case is pending and should be concluded as expeditiously as possible. Differing of disciplinary proceedings on the ground that criminal case is pending is an exception to normal rule and to be exercised in a case where the criminal proceedings involve complicated questions of law and facts. There is long line of precedents on the issue of desirability to continue domestic enquiry pending criminal investigation/trial.

9.1. In *State of Rajasthan v. B.K.Meena and others* AIR 1997 SC 13, 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.

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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."

(emphasis supplied)

9.2. In *Capt M.Paul Anthony*, 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."

(emphasis supplied)

9.3. In *Divisional Controller, Karnataka State Road Transport Corporation Vs M.G.Vittal Rao* (2012) 1 SCC 442, Supreme Court held that Capt M Paul Anthony does not lay down the law of universal application. Facts, charges and nature of evidence, etc., involved in an individual case would determine as to whether decision of acquittal would have any bearing on the findings recorded in the domestic enquiry. (Para 24).

9.4. In *Stanzen Toyotestsu India Private Limited v. Girish V and others* (2014) 3 SCC 636, 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."

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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.

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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."

(emphasis supplied)

9.5. Same principle is echoed in *State Bank of India Vs. Neelam Nag and another* (2016) 9 SCC 491.

9.6. From several precedent decisions including *Stanzen Toyotetsu*, 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 and even if it is stayed, if there is delay in concluding trial, the employer should be permitted to hold domestic enquiry. Burden is on the employee to satisfy the Court that the charges levelled 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. Each case is required to be considered on its merits, by the Constitutional Courts whenever an issue of this nature comes up before the Court.

(j) The disciplinary authority framed the following charge against the petitioner:

"Article: That, Sri K.Ebnezer, HC 2227 of PS CCS Nirmal, has exhibited gross misconduct with D.Sujatha by taking advantage of her loneliness and innocence took her to Lodge, Some Muslim persons video graphed and altercations took place at Venkateshwara Lodge, Nirmal and unloaded in social media, which brings very bad reputation to the Police Department, and the image of victim also drastically damaged due to viral of video ellipse in the social media. It is clearly violation of Rule 3 of APCS (Conduct) Rules 1964 (TS Adaptation Rules 2016)."

11. The sum and substance of the allegation in the criminal case against petitioner is wrongful confinement, assault and intent to outrage the modesty of a women. These provisions of law are applicable to any person and need not be a Police Officer. Whereas, the nature and scope of charge in departmental proceedings is only to assess the conduct of petitioner as Head Constable in the entire episode.

12. On a careful reading of the charge levelled in the departmental proceedings and charge levelled in the criminal proceedings, there is a clear distinction. In departmental proceedings, what is pointed out is the conduct of the petitioner in taking advantage of a woman standing alone in the bus stand in the late hours, taking her to a lodge which was witnessed by some private persons and altercation that took place at the lodge that was video graphed and uploaded in to social media, causing embarrassment to the police department and also tarnished the image of the victim. There is no allegation of wrongful confinement, assault and outraging the modesty of a woman. The nature of charges levelled against the petitioner in the departmental proceedings and nature of charges in criminal proceedings are entirely different. Having regard to the nature of allegations made in the departmental proceedings, the outcome in the criminal proceedings would have no impact. Even if petitioner is acquitted in criminal proceedings, the disciplinary authority can still proceed against him.

13. From the Memorandum Rc.No.1295/T1/95, dated 07.08.1995 issued by the office of the Director General of Police, policy of the Department is clear. All the disciplinary authorities were instructed not to differ the departmental proceedings on the ground that the employee is facing criminal proceedings. It was ordered that there is no need to wait for conclusion of criminal proceedings and departmental proceedings may go on even when on identical issue criminal proceedings are pending.

14. Further, as per the directions of the High Court on administrative side, Criminal Courts are required to assign high priority to cases which are pending for more than 5 years and cases involving under trial prisoners. Having regard to

huge pendency of cases, the present pandemic further crippled functioning of the courts, it may take considerable time for the trial to commence. Further, in the criminal case, conducting trial may take time as witnesses are more. Thus, as consistently held by Apex Court and this Court, it is not desirable to keep the disciplinary proceedings pending for long time and should be concluded expeditiously. More so, as allegations in Departmental proceedings concern primary role of the petitioner as Head Constable working in the law enforcing arm of the State, it is in the interest of State as well as petitioner to conclude the disciplinary proceedings expeditiously.

15. In the facts of this case and in view of settled principle of law, petitioner is not entitled to stall the disciplinary proceedings merely on the ground that criminal case is pending against him. The Writ Petition is dismissed. Petitioner shall cooperate in early conclusion of disciplinary proceedings. It is made clear that there is no expression of opinion on merits and the defense of petitioner in departmental proceedings and in criminal case is preserved. It is open to petitioner to set up his defense as available in law in the domestic enquiry. Pending miscellaneous petitions, if any, shall stand closed.