
(1995) 09 KAR CK 0055
In the Karnataka High Court
Case No : Writ Petition No. 12608 of 1995

Kajal Kumar Das

APPELLANT

Vs

Kudremukh Iron Ore Co. Ltd. and Others

RESPONDENT

Date of Decision : 08-09-1995

Acts Referred:

Citation : (1995) 6 KarLJ 295 : (1998) 3 LLJ 724

Hon'ble Judges : M.F. Saldanha, J

Bench : Single Bench

Advocate : Vigneswar S. Shastri, for the Appellant; Subha Ananthi and K. Kasthuri, for the Respondent

Judgement

M.F. Saldanha, J.—The petitioner before the Court is an employee of the Kudremukh Iron Ore Company Ltd.(hereinafter referred to as "the KIL"). Disciplinary proceedings have been instituted against him on an allegation that he has committed theft of the company's property. There is also a prosecution pending against the petitioner and the two reliefs that have been prayed for are that the disciplinary proceedings should be stayed until disposal of the criminal prosecution and, secondly, that the order of suspension passed against the petitioner on the ground that the criminal proceedings are pending should be reviewed.

2. The petitioner's learned advocate has advanced an usual plea that if the petitioner discloses his defense in the departmental proceedings that the witnesses who are common will be forewarned and that, therefore, he will be prejudiced in his defense in the criminal trial wherein an adverse verdict could result in a jail sentence. She further submits that the Court of competent jurisdiction should be the first of the two forums to decide the charges against the petitioner and once that takes place, that the scope of the departmental enquiry will be considerably less.

3. The grant of reliefs is seriously opposed by the respondents. The learned

advocate places reliance on the well known decision of the Supreme Court reported in. 1991 SCC 675, wherein the Supreme Court had occasion to observe that it is perfectly permissible for criminal prosecutions and disciplinary proceedings to be instituted and to go on simultaneously. There is no dispute with regard to this principle but what needs to be taken cognizance of is that the Supreme Court has in a large number of other decisions, while considering the advisability of the criminal trial preceding the disciplinary proceedings, have upheld the principle that generally it is advisable that the disciplinary proceedings should await the disposal of the criminal trial. The petitioner's learned advocate has relied on in *Kusheshwar Dubey Vs. Bharat Coking Coal Ltd. and Others*, The Supreme Court in that case had occasion to consider the law threadbare and had relied on the following decisions:

Project Manager, ONGC v. Lal Chand Wazir Chand Chandna 1981 Lab IC 160 , Ali Mohd. v. Chairman, T. A. and C., Udampur 1981 Kar LJ 185, Kushi Ram v. Union of India 1974 Lab IC 553 , Moulindra Singh v. Deputy Commissioner 1973 Lab IC 1564 , Jang Bahadur Singh Vs. Baij Nath Tiwari, P.C. Rama v. Superintendent of Police, Kolar AIR 1967 Mys 220; Tata Oil Mills Co. Ltd. Vs. Its Workmen, Shaik Kasim Vs. The Superintendent of Post Offices, Chingleput Dn. and Another, , The Delhi Cloth and General Mills Ltd. Vs. Kushal Bhan, and Shri Bimal Kanta Mukherjee v. Newman's Printing Works 1956 Lab IC 188 (LATI-Cal)

Before coming to the conclusion that even though there is no bar to the disciplinary proceedings preceding the criminal trial or for that matter in so far as there is no fixed order in which the proceedings should be taken up and disposed of, that as a general principle, having regard to the consequences to the accused and the possibility of rare prejudice resulting, the Court held that the disciplinary proceedings must wait until the criminal trial is over.

4. The Respondent's learned advocate has relied on another decision of this Court reported in *T.V. Gowda Vs. State of Mysore and Others*, wherein the effect of a verdict from a Court on disciplinary proceedings was considered and the Court had occasion to observe that the decision of the Court does not necessarily bind or limit the disciplinary authority. The Respondents' learned advocate submitted that as far as the company is concerned, since this was a case of theft that the company was duty bound to lodge a complaint with the law enforcement authority as there was certain property involved and as a criminal offence had taken place. She points out that having conformed to this obligation, the company cannot be virtually punished for the next several years on the ground that the criminal proceedings could not be disposed of by the Court. It is her submission that this Court must take a realistic view of the matter in so far as criminal proceedings where the accused is on bail inevitably take many years for disposal. She reinforces her argument by submitting that the outcome of that trial has no bearing on the disciplinary proceedings because the company is fully justified in holding its independent enquiry and passing independent orders which is the position in law. Most importantly, what is submitted is that the

company is seriously prejudiced by the fact that if the disciplinary proceedings are stayed and final orders cannot be passed that the company is required to pay subsistence allowance to the accused without his having done any work which is a heavy drain on the company and that too in the case of a person who has been accused of serious criminal acts. Under these circumstances, a strong plea is made that the disciplinary proceedings should be allowed to be completed as they are quite independent and further more on the ground that the accused will not at all be prejudiced. The learned advocate has emphasised the fact that even if an adverse verdict results in the disciplinary proceedings, that it will not have any bearing whatsoever on the criminal case because the Court is not bound by the decision in view of that fact that the charges are required to be independently proved.

5. There is much substance in the submissions canvassed on behalf of the respondents. In the large number of decisions with regard to this aspect of the matter, to my mind two aspects seem to have been so far overlooked. The first of them is as rightly pointed out by the Respondents' advocate the drain on the employer of having to pay subsistence allowance for long periods of time and, secondly, the inevitable prejudice caused to the employer in so far as if the disciplinary proceedings are to be held something like 5 to 10 years after the date of the incident, the proceedings themselves may be prejudiced if some of the vital witnesses have retired or are not available at that point of time. On the other hand, the second aspect of the matter which does not appear to have been gone into in the earlier decisions is that undoubtedly the usual argument is canvassed that the accused will be prejudiced if he "discloses his defense". One has to take a very practical and realistic view of the matter as in actual fact the burden of establishing the charges in the disciplinary proceedings is entirely on the employer and the employee like an accused in a criminal trial is only required to defend himself. The defense invariably consists of denials. I have yet to come across proper justification for the connotation "disclosure of defense" because there are no secrets involved in a defense and under these circumstances to my mind the law with regard to this aspect of the matter will have to be seriously reconsidered. I do concede that in criminal trials where the consequences are serious to the accused, a lot depends on the cross-examination of the prosecution witnesses, if the same witnesses have earlier been cross-examined in the disciplinary proceedings and for instance in cross-examination, if a witness has broken down in matters such as inconsistency, contradictions, etc., undoubtedly the witness will have to be forewarned and will take the necessary precaution to ensure that the evidence is of a better quality. On the second occasion, this is possibly one of the justifications on the basis of which the Courts have time and again held that even though there is no bar, that it is desirable for the criminal trial to be concluded before the departmental enquiries. Also, one needs to take cognizance of the fact that the evidence recorded in Court is an "evidence on oath and, therefore, the level of sanctity would be slightly higher. Undoubtedly, these are aspects of the matter that have been thrown up for

consideration in this proceeding and on which serious reconsideration of the earlier principles may require to be done.

6. Coming to the facts of the present case, having regard to the state of the law as it now exists, it will be necessary to direct that the disciplinary proceedings will have to be stayed until disposal of the criminal trial. However, having regard to the consequences to the company, liberty is granted to the Respondents to apply to the criminal Court on the basis of a copy of this judgment for an immediate expedited disposal of the trial in view of the fact that the company is otherwise required to continue paying the subsistence allowance almost indefinitely. If such an application is made, the learned magistrate shall consider the same and pass appropriate orders. With these directions, the petition to stand disposed of.