

(2009) 07 AP CK 0007

In the Andhra Pradesh High Court

Case No : Writ Petition No. 11223 of 2009

P. Venka Reddy

APPELLANT

Vs

The Senior Divisional Security Commissioner, Railway
Protection Force and Sri B. Sai Chandra Shekar Singh,
Assistant Security Commissioner

RESPONDENT

Date of Decision : 03-07-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 243
Prevention of Corruption Act, 1988 — Section 13(1), 22
Railways Act, 1989 — Section 154

Citation : (2009) 6 ALD 111 : (2009) 5 ALT 644

Hon'ble Judges : Nooty Ramamohana Rao, J

Bench : Single Bench

**Advocate : J.M. Naidu, for the Appellant; R.S. Murthy, Add. CGSC and A.
Krishnam Raju, for the Respondent**

Judgement

Nooty Ramamohana Rao, J.—Both these writ petitions can be conveniently dealt with together and decided as they arise out of common set of facts and also raise common questions of law.

2. The writ petitioner in W.P. No. 11193 of 2009 has been functioning as the Inspector while the petitioner in W.P. No. 11223 of 2009 has been functioning as a constable, attached to the Railway Protection Force. It is stated that the petitioners while working at Nellore have received a message that one S. Dasaradha Ramaiah was responsible for causing a railway accident at Venkateswarapuram at K.M. No. 176/14 between Nellore - Padugupadu railway stations, as the said Sri S. Dasaradha Ramaiah left on the railway track his Hero Honda Motor cycle bearing Registration No. AP26 TR 5815 while trying to cross the railway lines. The petitioner in W.P. No. 11193 of 2009 being Inspector, directed the Assistant Sub-Inspector of the Railway Protection Force by name Sri K. Ramana Kumar to proceed to the accident spot and to take action as per law. Accordingly, the Assistant Sub-Inspector of Railway Protection Force, Nellore

registered a crime u/s 154 of the Railways Act, 1989 and took up the matter for further investigation. The Assistant Sub-Inspector appears to have arrested the accused Sri S. Dasaradh Ramaiah at about 04-00 p.m. on 11-01-2009. The apprehended accused has been sent to the court of Special Judicial Magistrate of I Class for Railways at Nellore on 12-01-2009 informing the court about the arrest of the accused. It is alleged that the said Sri S. Dasaradha Ramaiah with a view to escape from the criminal liability has sent up a false complaint to the C.B.I, as if the petitioner in W.P. No. 11193 of 2009 has demanded illegal gratification for releasing him from the crime. Based upon such a complaint, the C.B.I., Visakhapatnam registered a crime in R.C. No. 4(A)/2009. The C.B.I, has registered a case and laid a trap against the petitioner in W.P. No. 11193 of 2009. But, they have trapped the other petitioner in W.P. No. 11223 of 2009 while he was found accepting a sum of Rs. 3,500/- (Rupees three thousands five hundred only) in pursuance of the crime registered and the trap organized. Both the petitioners were arrested and they were produced before the Special Judge for A.C.B. and C.B.I, cases who have enlarged them on bail later on. Based upon the said information received by the Railway Protection Force, the Senior Divisional Security Commissioner the 1st respondent herein has initiated disciplinary proceedings through the impugned Memorandum dated 06-04-2009 against the writ petitioners. Identical nature of charges and imputations have been made against both the petitioners, the validity of these proceedings dated 06-04-2009 of the first respondent/Senior Divisional Security Commissioner is challenged in these two writ petitions.

3. I have heard Sri J.M. Naidu, the learned Counsel for the petitioners and Sri A. Krishnam Raju, Learned Counsel for the respondents and with his consent the matters are taken up for disposal. This is a case, according to the learned Counsel for the petitioners, that the petitioners are facing a criminal case on the very same nature of allegations and simultaneously subjected to disciplinary proceedings. Now, even before the criminal court has taken up the matter for further consideration, the disciplinary proceedings have been initiated, which is illegal. The learned Counsel further submits that the very same material constituted the background for registration of a crime against both the petitioners by the C.B.I, and has also been made the background for the present disciplinary action. Consequently, the disciplinary proceedings are sought to be pursued simultaneously along with the criminal case. According to the learned Counsel for the petitioners, such a course of action would cause irreparable damage to the right of liberty of the petitioners, and it would greatly prejudice their cause in the criminal case. If the petitioners were made to disclose the whole of their defense right at this stage, they will be exposed to a greater peril in the criminal court as the C.B.I, would come to know well in advance of their defense as well as the material which the petitioners are likely to produce in defense of the charge leveled against them in the disciplinary proceedings. Since grave consequences are likely to flow from the criminal case, the writ petitioner shall not be compelled to disclose their defense right at this stage.

4. Per contra, the learned standing counsel for the first respondent would submit that the degree of proof normally adopted by a criminal court is one of proof beyond doubt whereas the degree of proof required for sustaining a charge in disciplinary proceedings is slightly at variance with that principle. If there is sufficient evidence brought on record, the findings can be appropriately drawn in a disciplinary proceedings. He further contends that the force being a disciplined one, it cannot admit any improper conduct on the part of its members. Until and unless they are dealt with sternly and immediately the morale of the force will be affected badly. It was further contended that unlike in an ordinary criminal case, a person facing a criminal charge under the Prevention of Corruption Act was required to disclose his defense right at the beginning itself and hence the writ petitioners will not suffer any grave prejudice if they are called upon to disclose their defense during the course of disciplinary proceedings. The learned Counsel for the respondents has also placed strong reliance upon the judgment rendered by the Supreme Court in *Hindustan Petroleum Corporation Ltd. and Others Vs. Sarvesh Berry*, in support of his contention that the disciplinary proceedings can go on simultaneously.

5. The issue relating to proceedings being initiated simultaneously against Public Servants who are facing criminal charges has fallen for consideration consistently before the Supreme Court in a number of cases such as *State of Rajasthan Vs. B.K. Meena and others*, , *Depot Manager, Andhra Pradesh State Road Transport Corporation Vs. Mohd. Yousuf Miya, etc.*, , *Ajit Kumar Nag Vs. General Manager (P.J.), Indian Oil Corporation Ltd., Haldia and Others*, and the in *Capt. M. Paul Anthony Vs. Bharat Gold Mines Ltd. and Another*, , *G.M. Tank Vs. State of Gujarat and Another*, .

6. It will be appropriate and relevant to notice that after analyzing the principles enunciated in various cases, the Supreme Court in *G.M. Tank v. State of Gujarat* has pointed out the following:

The judgments relied on by the learned Counsel appearing for the respondents are distinguishable on facts and on law. In this case, the departmental proceedings and the criminal case are based on identical and similar set of facts and the charge in a Departmental case against the appellant and the charge before the Criminal Court are one and the same. It is true that the nature of charge in the departmental proceedings and in the criminal case is grave. The nature of the case launched against the appellant on the basis of evidence and material collected against him during enquiry and investigation and as reflected in the charge sheet, factors mentioned are one and the same. In other words, charges, evidence, witnesses and circumstances are one and the same. In the present case, criminal and departmental proceedings as already noticed are grounded on the same set of facts namely, raid conducted at the appellant's residence, recovery of articles therefrom. The Investigating Officer, Mr. V.B. Raval and other departmental witnesses were the only witnesses examined by the Enquiry Officer who by relying upon their statement came to the conclusion that

the charges were established against the appellant. The same witnesses were examined in the criminal case and the criminal court on the examination came to the conclusion that the prosecution has not proved the guilt alleged against the appellant beyond any reasonable doubt and acquitted the appellant by his judicial pronouncement with the finding that the charge has not been proved. It is also to be noticed, the judicial pronouncement was made after a regular trial and on hot contest. Under these circumstances, it would be unjust and unfair and rather oppressive to allow the findings recorded in the departmental proceedings to stand.

7. Therefore, if the same material is traversed both by the Enquiry Officer and the Criminal Court and if the Criminal Court were to come to an independent conclusion which could be possibly different from the one reached by the Enquiry Officer, primacy has got to be accorded to the finding recorded by the Criminal Court.

8. Similarly, all the principles relating to simultaneous proceedings have been culled out by the Supreme Court in Sarvesh Berry's case as under:

The purposes of departmental enquiry and of prosecution are two different and distinct aspects. 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 a 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 departmental enquiry would seriously prejudice the delinquent in his defense 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.

A three-Judge Bench of this Court in *Depot Manager, A.P.S.R.T.C. v. Mohd. Yousuf Miya* analyzed the legal position in great detail on the above lines.

The aforesaid position was also noted in *State of Rajasthan v. B.K. Meena*.

There can be no straitjacket formula as to in which case the departmental proceedings are to be stayed. There may be cases where the trial of the case gets prolonged by the dilatory method adopted by the delinquent official. He cannot be permitted to, on one hand, prolong the criminal case and at the same time contend that the departmental proceedings should be stayed on the ground that the criminal case is pending.

In *Capt. M. Paul Anthony* case this Court indicated some of the fact situations, which would govern the question whether departmental proceedings should be kept in abeyance during pendency of a criminal case. In para 22 conclusions, which are deducible from various decisions, were summarized. They are as follows: (SCC p.691)

22. (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 is supplied).

9. In *Sarvesh Berry*, the Supreme Court has further went a step ahead and pointed out that in cases involving Section 13{(i)(e)} of the Prevention of Corruption Act, the onus is on the accused to prove that the assets found were

not disproportionate to the known sources of income. Hence, that being the position, the High Court was not found justified in directing stay of proceedings against the charge sheeted employees.

10. The learned Counsel for the writ petitioner has tried to point that u/s 13{(1)(e)} of the Prevention of Corruption Act, which dealt with the issue relating to the acquisition of disproportionate assets and hence the burden of proof was initially made to rest upon the accused officer, whereas in all other cases including those cases booked u/s 13{(1)(b)} of the Prevention of Corruption Act, the normal rule of Criminal law is that the burden shifts on to the accused only after the prosecution leads the necessary evidence and brings home the charge, should be adopted and followed. In this context, it will be relevant to notice that Section 22 of the Prevention of Corruption Act has amended the Code of Criminal Procedure, 1973. The said code in the modified form, with particular reference to Section 243 of the said code, is applicable to the trial of offences under the prevention of Corruption Act. As per Section 22 of the Prevention of the Corruption Act, the accused is required to make in writing at once or within such time as the court may allow him, the list of persons whom he proposes to examine as witnesses and of the document's on which he proposes to rely and then he will be called upon to enter his defense. In other words, the accused will have to make clearly known his defense in the matter even before the prosecution begins unfolding its side of the case but, nonetheless, the time for the accused, facing a charge under the Prevention of Corruption Act, would be called upon to disclose his defense would arise only when the prosecution files its charge sheet but not earlier thereto. Therefore prior to this stage, the defense need not be disclosed by the accused.

11. Therefore, though the disciplinary proceedings are not required to be stayed until the criminal prosecution launched against the petitioner is over, but nonetheless, forcing or rendering such accused to disclose their defense at a stage earlier than the time when he is required to disclose the same before the criminal court, is bound to cause certain degree of prejudice to the accused. When once he spells out the entire evidence in the disciplinary proceedings, it is very likely that the matter and material will somehow come to the notice of the prosecuting agency and consequently the prosecuting agency will come to know ahead of the defense of the accused. Instead if the disciplinary proceedings are stayed till such time, the accused disclosed his defense before the criminal court, no such prejudice can visit him. When once the accused has already disclosed his defense before the criminal court where he is facing the criminal charge under the Prevention of Corruption Act, he can no longer justifiably resist the disciplinary proceedings.

12. I therefore, consider it appropriate to direct the first respondent to withhold conducting the disciplinary proceedings in furtherance of the impugned Memorandum dated 06-04-2009 till such time that the accused in the criminal case/the writ petitioners are called upon by the criminal court to disclose the list

of witnesses and the documents to be examined on their behalf in terms of Section 22 of the Prevention of Corruption Act. It might be possible that the disciplinary authority may not be informed by the prosecuting agency about the further developments that take place in the criminal court from stage to stage, but however the writ petitioners who are also the accused in the criminal case would nonetheless come to know of every such stage. Therefore, the respondents need not apprehend that the disciplinary proceedings would unnecessarily get prolonged and on the other hand if the writ petitioners are directed to keep informing the first respondent disciplinary authority as to the developments in the criminal case from stage to stage, without fail, the 1st respondent can always regulate the disciplinary proceedings. No sooner the writ petitioners who are the "accused in the criminal court disclose their evidence as is required u/s 22 of the Prevention of the Corruption Act, they should bring the said fact to the notice of the 1st respondent, so that the 1st respondent will be in a position to draw up the schedule for the disciplinary proceedings immediately and without waiting for the trial to be completed in the Criminal Court, as keeping the writ petitioners under suspension for prolonged periods will be of no help to the organization. It will unnecessarily cause dislocation to the functioning of the force, as the manpower strength will get depleted and simultaneously it will be causing a financial strain by paying up subsistence allowances periodically to the writ petitioners.

13. Further, by coming to know of the developments in the Criminal Court from stage by stage, if the 1st respondent is reasonably satisfied that the accused are prolonging the criminal case, he can take immediate steps to commence the disciplinary proceedings, without any further reference to this court.

14. Hence, the writ petitioners are directed to inform the first respondent promptly and faithfully the various developments that are taking place in the criminal case pending against them. As soon as they disclose the list of witnesses, and the list of documents which they propose to rely upon in the criminal case, they must bring the same to the notice of the first respondent so that the disciplinary proceedings will be taken up without waiting any further for the outcome of the criminal case. Till such stage is reached, the disciplinary proceedings are stayed.

With these both the writ petitions stand disposed of, no costs.