

(1972) 10 KL CK 0003
In the High Court Of Kerala

P.K. Rajappan Pillai

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 26-10-1972

Acts Referred:

Industrial Disputes Act, 1947 — Section 33
Penal Code, 1860 (IPC) — Section 379

Citation : (1973) 1 LLJ 498

Hon'ble Judges : V. Khalid, J

Bench : Single Bench

Judgement

1. This is an application u/s 561-A of the Code of Criminal Procedure, in which the petitioner, an employee of the Travancore-Cochin Chemicals, Ltd., Eloor, prays that the departmental enquiry pending against him be suspended pending disposal of C.C.No. 884 of 1972 on the file of the Sub-Magistrate's Court, Parur, on identical facts.

2. The facts of the case are: On 30-4-1972 at about 8-15 a.m. the petitioner was intercepted by the gateman when he was going on his scooter when it was found that he had committed theft of mercury. Disciplinary proceedings were taken against him by the 2nd respondent. The accused was also charge-sheeted u/s 379 I.P.C. on a complaint made to the police. On 30-4-1972 the petitioner was suspended pending enquiry,

3. The 2nd respondent issued a notice to the petitioner to which the latter replied on 4-5-72 asking for time upto 17-5-72 on account of alleged ill-health. Accordingly, the enquiry was adjourned to 18-5-1972. The enquiry was adjourned from time to time, all at the request of the petitioner, and ultimately on 13-7-1972 the petitioner presented himself before the enquiry officer, the 2nd respondent here, and one witness was examined from the side of management. The enquiry was adjourned to 17-7-1972 on which date the first witness was re-examined and the 2nd witness was also examined. Thereafter, the enquiry stood posted to 20-7-1972. Again, the petitioner adopted delaying tactics and the case

ultimately was posted to 7-8-1972. On that day, six witnesses were examined on the side of management. At the petitioner's request the enquiry was adjourned to 28-8-1972. Thereafter, he made this application to this Court and obtained stay of further proceedings before the 2nd respondent.

4. The questions for consideration are : (1) whether the pendency of a criminal case on identical facts constitutes a bar for proceeding with the domestic enquiry ; and (2) whether this is a fit case for the exercise of jurisdiction by this Court u/s 561-A, Criminal Procedure Code.

5. The learned Counsel for the 2nd respondent submitted that both the questions have to be answered against the petitioner. According to him, this is not a fit case for interference u/s 561-A, Criminal Procedure Code. The powers of the Court under the said section should not be invoked against orders and proceedings strictly administrative in character. The 2nd respondent in dealing with the domestic enquiry is not acting as a criminal Court. It is also submitted that the nature and scope of the domestic enquiry and the case before the criminal Court are entirely different.

6. The learned Counsel for the 2nd respondent brought to my notice the following decisions of the Supreme Court bearing on this question. In *Delhi Cloth and General Mills, Ltd. v. Kushal Bhan* 1960¹ L.L.J. 520, their Lordships of the Supreme Court had to consider a more or less identical case. The Supreme Court observed:

It is true that very often employers stay enquiries pending decisions of the criminal trial Courts and that is fair. But it could not be said that principles of natural justice require that an employer must wait for the decision at least of the trial Court before taking action against an employee. If the case is of a grave nature or involves questions of facts or law, which are not simple, it would be advisable for the employer to await the decision of the trial Court so that the defence of the employee in the criminal Court may not be prejudicial.

When the concerned workman was charged with the misconduct of theft, his refusal to participate in the domestic enquiry on the ground that criminal proceedings were pending against him in respect of the same subject-matter, could not be held justified. When the employer found such workman guilty of the misconduct alleged against him on the basis of the evidence recorded at such ex parte enquiry, his application for approval of his action u/s 33(2) of the Industrial Disputes Act could not be rejected on the ground that they ought to have awaited the decision of the criminal Court, which was given pending the approval application, acquitting the concerned workman....

The matter again came up before the Supreme Court in *Tata Oil Mills Co. v. Its Workmen* 1964¹¹ L.L.J. 113, wherein the Supreme Court observed that it will be desirable if the domestic enquiry is stayed pending final disposal of the criminal case. The relevant extract from the judgment is given below :

As held in *Delhi Cloth and General Mills Ltd. v. Kushal Bhan* 1960¹ 1 L.L.J. 520, it is desirable that if the incident giving rise to a charge framed against a workman in a domestic enquiry is being tried in a criminal Court, the employer should stay the domestic enquiry pending the final disposal of the criminal case, it would be particularly appropriate to adopt such a course where the charge against the workman is of a grave character, because in such a case it would be unfair to compel the workman to disclose the defence which he may take before the criminal Court. But to say that domestic enquiries may be stayed pending criminal trial is very different from saying that if an employer proceeds with the domestic enquiry in spite of the fact that the criminal trial is pending, the enquiry for that reason alone is vitiated and the conclusion reached in such an enquiry is either bad in law or mala fide.

7. In *J. K. Cotton Spg. & Wvg. Co. v. Its Workmen* 1965 L.L.J. 153, it was held that the domestic Tribunal can go into the question of theft when the same matter was pending before the criminal Court.

8. In *Jang Bahadur Singh v. Baijnath Tewari* 1969 1 L.L.J. 567, the Supreme Court has held that the fact that the same issue arises for decision in a civil or criminal proceeding simultaneously with the disciplinary proceedings would not constitute a bar for the domestic authority to proceed with the action. The relevant portion from the judgment is extracted below:

The issue in the disciplinary proceedings is whether the employee is guilty of the charges on which it is proposed to take action against him. The same issue may arise for decision in a civil or criminal proceeding pending in a Court. But the pendency of the Court proceeding does not bar the taking of disciplinary action. The power of taking such action is vested in the disciplinary authority. The civil or criminal Court has no such power. The initiation and continuation of disciplinary proceedings in good faith is not calculated to obstruct or interfere with the course of justice in the pending Court proceeding. The employee is free to move the Court for an order restraining the continuance of the disciplinary proceedings. If he obtains a stay order a wilful violation of the order would of course amount to contempt of Court. In the absence of a stay order the disciplinary authority is free to exercise its lawful powers.

9. The above decisions clearly lay down the general principle that the pendency of a criminal case on identical facts will not operate as a bar for a domestic enquiry on the same facts.

10. It is thus clear that the departmental enquiry or the domestic enquiry need not be stayed or directed to be stayed on the ground that on the same set of facts the criminal Court is seized of the matter. This is so for various reasons; the employer has an interest to see the finality of the proceedings initiated by him. If in the domestic enquiry the employee is found to be guilty, the employer can absolve himself of the various demands on him by the employee. If, on the other hand, the employee is found to be innocent the employer will be put on guard

against the demands by the employee. To ask the employer to wait till the finalisation of the case before the civil or criminal Court is, in such circumstances, hazardous and onerous on the employer. I, therefore, hold that the domestic enquiry initiated by the 2nd respondent can proceed simultaneously with the criminal case.

11. It was contended by the learned Counsel for the petitioner that under the standing orders of the company (item 28) an employee is liable to be dismissed if he is found guilty of offence involving moral turpitude, that in this case the petitioner is charged with the offence of theft and that if convicted for this charge, even without an enquiry, he can be dismissed. This argument is specious but at the same time fallacious. It is one of the enabling provisions for the employer to get rid of the employee. This argument if pushed further would be to deny an employer to hold a domestic enquiry and to drive him to wait till the disposal of the criminal trial. As stated above the character of the two proceedings is entirely different from one another. A criminal Court requires a high standard of proof for convicting the accused. The case must be proved beyond reasonable doubt. The acquittal of 1 an accused by a criminal Court only means that the case against him has not been proved beyond reasonable doubt. Such a standard of proof is not required for finding a person guilty in a disciplinary proceeding. It would be enough if there is a preponderance of probability of his guilt. An employer may respect the finding in a criminal case. But an acquittal in a criminal case will not always fetter the hands of an employer to take appropriate action consequent upon the finding in a domestic enquiry. Therefore, when a domestic enquiry is provided for, it is not always necessary for the employer to wait till the criminal Court disposes of the case against the petitioner.

12. The next question is whether it is proper for this Court to exercise jurisdiction u/s 561-A, Criminal Procedure Code. From the facts enumerated above, it is clear that this is not a fit case for exercise of jurisdiction under the section. There is neither abuse of the process of Court nor a bar for the domestic enquiry. The criminal case is charged by the police and the domestic enquiry is initiated by the employer. Both are validly instituted and it is not the function of this Court to interfere with either of them unless for compelling reasons. Besides, the 2nd respondent is not a criminal Court in dealing with the domestic enquiry.

13. In AIR 1945 18 (Privy Council) , the principles underlying Section 561-A have been clearly laid down by the Privy Council thus;

It is not correct to say that Section 561-A has given increased powers to the Court which it did not possess before that section was enacted. The section gives no new powers, it only provides that those which the Court already inherently possesses shall be preserved and is inserted, lest it should be considered that the only powers possessed by the Court are those expressly conferred by the Criminal Procedure Code and that no inherent power had survived the passing of the Criminal Procedure Code.

14. In R.P. Kapur Vs. The State of Punjab, , the Supreme Court has considered the jurisdiction of High Courts u/s 561-A, Criminal Procedure Code and has clearly laid down thus :

The inherent power of High Court u/s 561-A, Criminal Procedure Code cannot be exercised in regard to matters specifically covered by the other provisions of the Code. The inherent jurisdiction of the High Court can be exercised to quash proceedings in a proper case either to prevent the abuse of the process of any Court or otherwise to secure the ends of justice. Ordinarily, criminal proceedings instituted against an accused person must be tried und(r the provisions of the Code, and the High Court would be reluctant to interfere with the said proceedings at an interlocutory stage. It is not possible, desirable or expedient to lay down any inflexible rule which would govern the exercise of this inherent jurisdiction.

On the principles enunciated in these decisions, 1 hold that the case in hand does not attract the provisions of Section 561-A, Criminal Procedure Code.

15. In the result, this criminal miscellaneous petition is dismissed.