

(1994) 10 MAD CK 0078

In the Madras High Court

Case No : Writ Petition No. 1372 of 1994

Prema Simon

APPELLANT

Vs

Union Bank of India and Another

RESPONDENT

Date of Decision : 31-10-1994

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1994) 10 MAD CK 0078

Hon'ble Judges : K.A. Swami, C.J.;Somasundaram, J

Bench : Division Bench

Judgement

K.A. Swami, C.J.—The petitioner sought for issue of a writ in the nature of Mandamus to the respondents to forbear from holding enquiry pursuant to the charges framed against him in Ref. No. CO/IRD/AS/VIG/352/93 dated December 28, 1993 read with supplementary charge-sheet bearing Ref. No. GO/IRD/AS/VIG/352/1547/94 dated March 2, 1994 issued by the first respondent until the conclusion of the criminal proceedings in Crime No. 1441/93 registered with the Central Crime Branch, Egmore, Madras. The learned single Judge has dismissed the writ petition at the stage of admission, holding that it is too early, for the petitioner to seek stay of the proceedings, as the trial in the criminal case has not yet commenced and not even the charge sheet has been filed and the case is at the investigation stage.

2. The principle under which the proceedings before the disciplinary authority are stayed when both the criminal case and the disciplinary proceedings are founded on the same set of facts is that no prejudice should be caused to the party, who is facing both the proceedings, and if both the proceedings are simultaneously conducted, it is likely that the defence of the party in the criminal case would be affected, which may cause an incalculable damage. Therefore, normally when it is found that the criminal case and also the disciplinary proceeding are founded on the same set of facts, the disciplinary proceedings are stayed. In the instant case only the F.I.R is filed and the criminal case is at the investigation stage. It is

not known, whether it will result in the filing of the charge sheet or not. The investigation in the criminal case may go on for a long and indefinite time. It is not possible to say that it will be over within a particular period. Until the charge sheet is filed, it is not possible to say with certainty that both the proceedings are grounded on the same set of facts. In the instant case, it is not known as to when the charge sheet will be filed; whereas the disciplinary proceeding is already half-way through. Some of the witnesses have already been examined. In such a situation, if it is not possible to say that any prejudice will be caused to the petitioner. If the disciplinary proceedings is permitted to go on, because the stage of putting forth defence in the criminal case is not yet arrived, and as pointed out already, it is not known, whether the investigation would result in filing charge sheet. The Supreme Court, in *Kusheshwar Dubey v. M/s. Bharat Coking Coal Limited* 1988 I LLJ 170 referred to by the learned single Judge, has, after referring to several earlier decisions, held thus :

"Whether in the facts and circumstances of a particular case there should or should not be such simultaneity of the proceedings would then receive judicial consideration and the Court will decide in the given circumstances of a particular case as to whether the disciplinary proceedings should be interdicted, pending criminal trial. As we have already stated, it is neither possible nor advisable to evolve a hard and fast straight-jacket formula valid for all cases and of general application without regard to the particularities of the individual situation. For the disposal of the present case, we do not intend to lay down any general guideline."

In the instant case, we have already pointed out that in the facts and circumstances of the case, at present there is no justification to stay the disciplinary proceedings.

3. However, it is contended before us that in a similar case in *Indian Overseas Bank v. R. Lakshmi Narasimhan* (W.A. No. 832 of 1994 judgment dated July 4, 1994.) has affirmed an interim order of the learned single Judge, directing stay of further proceedings in the departmental enquiry till the termination of trial in the criminal case. It may be pointed out that the learned single Judge had passed an interim order pending disposal of the writ petition No. 7664 of 1993, staying further proceedings in the departmental enquiry till the termination of the trial in the criminal Court, in case, the case as registered against the petitioner by the C.B.I. result in a final report being filed. Thus, the interim order was conditional. In writ Appeal No. 832 of 1994, this Bench, on July 4, 1994, disposed of the appeal directing the writ petition to be posted for hearing on July 19, 1994. The Judgment reads thus :

"It is not necessary to go into the several contentions urged by learned counsel for the appellant against the interim order dated April 15, 1994 passed by the learned single Judge in W.M.P. No. 8197 of 1994 in W.P. No. 7664 of 1993. These contentions are to be decided in the writ petition. Therefore, in the interests of both parties, we are of the view that the writ petition itself requires to be heard at the earliest, so that no prejudice is caused to any of the parties. We,

accordingly, direct that W.P. No. 7664 of 1993 be posted for hearing on July 19, 1994. Subject to this observation, the writ appeal is disposed of."

Thus, nothing was decided in the aforesaid judgment. It is already pointed out with reference to a decision of the Supreme Court in Kusheshwar Dubey's case that it all depends upon the facts and circumstances of a particular case as to whether the disciplinary proceedings should be interdicted, pending criminal trial. In the instant case, not even the charge sheet is filed, leave alone the criminal trial. Therefore, we are of the view that the said decision cannot be applied to the case on hand.

4. In this view of the matter, we hold that the learned single Judge is justified in refusing to entertain the writ petition, and we see no ground to interfere with the same. Accordingly the Writ Appeal is dismissed. However, it is made clear that if the disciplinary proceeding is not concluded even before the charge sheet is filed and trial is commenced it is open to the appellant to invoke the Jurisdiction of this Court under Article 226 of the Constitution of India, for appropriate relief in the matter. Reserving this liberty, the Writ Appeal is dismissed.