

(2005) 03 MAD CK 0102

In the Madras High Court

Case No : W.A. No"s. 110 and 111 of 2005 and WAMP. No"s. 131 and 132 of 2005

S. Manoharan

APPELLANT

Vs

The Deputy Chief Security Commissioner, Railway Protection Force, The Divisional Security Commissioner, Railway Protection Force and The Assistant Security Commissioner, Railway Protection Force

RESPONDENT

Date of Decision : 15-03-2005

Acts Referred:

Penal Code, 1860 (IPC) — Section 397

Citation : (2005) 03 MAD CK 0102

Hon'ble Judges : P.K. Misra, J;AR. Ramalingam, J

Bench : Division Bench

Advocate : V. Bharathidasan, for the Appellant; Party-in-Person, for the Respondent

Final Decision : Dismissed

Judgement

P.K. Misra, J.—Heard Mr. Bharathidasan, learned counsel appearing for the appellant, and Mr.S. Manohar, learned counsel appearing for the respondents.

2. The present appellant is working as a Constable (now under suspension) under the Railway Protection Force. A charge memo dated 21.6.2004 had been issued against him, which was to the following effect :-

" CHARGE:

Shri S. Manoharan, Cons.154/TEN charged for serious misconduct and negligence on duty in that while working as Constable.

1. He failed to prevent the Dacoity occurred in the Train No. 6124 of 04.3.2004, Ananthapuri Express at TEN though he was present at that time, where the gold, valued Rs.18,00,000/- and a cash of Rs.2,80,000/- were stolen.

2. Even though, he was aware of the Dacoity incident, he failed to inform the incident to his superiors.

3. During the investigation by IRP/TEN into the Dacoity case, Shri S. Manoharan, Cons.154/TEN suppressed the fact to IRP who is the investigating official, even though he was fully aware of the case.

4. Shri S. Manoharan, Cons.154/TEN has been included as one of the accused in a criminal case registered by IRP/TEN in his station Cr. No. 44/2004 U/S 397 IPC in connection with the Dacoity incident in Tr. No. 6124. Thereby he brought discredit to the reputation of the Force.

"Hence, the charge."

The said charge memo was challenged by the petitioner by filing W.P. No. 1311 of 2004.

3. The petitioner had also been issued with another charge memo dated 28.6.2004, which was to the following effect :-

"Charge:

For his gross negligence and remissness on duty in that Shri.S. Manoharan RPF/ Con/154/TEN absented himself unauthorisedly from 12.04.2004 to 21.04.2004 and suspension from 22.04.2004 to 21.05.2004 and again absent from 22.05.2004 to 21.06.2004. During the suspension period also he has failed to report before IPF/TEN. So the Constable Shri.S. Manoharan, absented himself unauthorisedly from 12.04.04 to 21.06.04 without any authority."

The petitioner filed W.P. No. 1312 of 2004 for quashing the aforesaid charge memo. The main contention in the said writ petition was to the effect that there should not be a parallel departmental proceeding when a criminal case is pending.

4. One Mr.M. Thangavelu, who was serving as Sub Inspector of Police under the Railway Protection Force, was also issued with similar charges and he had filed W.P.Nos.1309 & 1310 of 2004.

5. All the writ petitions were taken up together and disposed of by a common order dated 31.1.2005 by a learned single Judge of this Court. The main contention raised by the petitioner in the two writ petitions, namely, W.P.Nos.1311 & 1312 of 2004, relate to the question of desirability of proceeding with the departmental proceeding during pendency of a criminal case. Learned single Judge negatived the contentions raised by the petitioner and dismissed both the writ petitions. W.A. No. 110 of 2005 is filed against the order relating to W.P. No. 1311 of 2004 and W.A. No. 111 of 2005 is filed against the order relating to W.P. No. 1312 of 2004.

6. The only contention which has been raised in the present writ appeals is relating to desirability of continuing a departmental proceeding even though a criminal case is pending. In support of the contention raised by the appellant,

reliance has been placed upon the decision in Capt. M. Paul Anthony Vs. Bharat Gold Mines Ltd. and Another, and the subsequent decision in State Bank of India and Others Vs. R.B. Sharma, .

7. In the decision reported in Capt. M. Paul Anthony Vs. Bharat Gold Mines Ltd. and Another, , it has been held that :

"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."

8. The aforesaid decision was also one of the decisions referred to in the latter decision reported in State Bank of India and Others Vs. R.B. Sharma, relied upon by the counsel for the appellant. In the latter decision, the Supreme Court has, inter alia, observed as under :

"8. The purpose 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 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 a departmental proceeding 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 defence 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."

9. The aforesaid decisions, do not lay down any inexorable rule that in every case where a criminal case is pending, departmental proceedings should be stayed. As observed in the latter decision, the question as to whether departmental proceedings should be stayed would always depend upon the facts and circumstances of each case. As observed by the Supreme Court in the decision in *Kendriya Vidyalaya Sangathan and Others Vs. T. Srinivas*, :

"9. In *State of Rajasthan v. B.K. Meena* (1996) SCC 417 this Court held: (SCC p.417)

"The only ground suggested in the decisions of the Supreme Court 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. 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, of staying the departmental enquiry has to be determined in each case taking into consideration all the facts and circumstances of the case. 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 Supreme Court's decisions."

10. From the above, it is clear that the advisability, desirability or propriety, as the case may be, in regard to a departmental enquiry has to be determined in each case taking into consideration all facts and circumstances of the case. This judgment also lays down that the stay of departmental proceedings cannot be and should not be a matter of course."

The question as to whether departmental proceedings should be quashed should be considered in the light of the observation made in the aforesaid Supreme Court decisions.

10. We, on a careful perusal of the relevant papers, find that the charges in the departmental proceedings are very much different from the charges in the criminal case. The charges in the departmental proceedings basically indicate about the alleged negligence of the delinquent and his failure to inform about the incident. There is nothing in the charges to indicate that the Department was proceeding against him for his involvement in the criminal case. In other words, the charges are different from the charges in the criminal case.

11. Moreover, as observed in the Supreme Court decisions, the question of stay would arise only if it is found that the delinquent is likely to be prejudiced in his defence in the criminal case. In the present case, it is apparent that the defence of the delinquent is one of denial. Therefore, there is no possibility of being prejudiced in his defence. Keeping in view of this aspect, we do not think that this is a fit case where the departmental proceedings should be stayed or quashed for the pendency of the criminal case.

12. In the above view of the matter, the contention of the appellant fails and the writ appeals are dismissed. No costs. The connected W.A.M.Ps are also dismissed.