SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com

Amar Singh and Another Vs. The Traffic Manager and Others

Amar Singh and Another Vs. The Traffic Manager and Others

SooperKanoon Citation : sooperkanoon.com/1183542

Court : Delhi

Decided On : May-02-2016

Judge : Ved Prakash Vaish

Appeal No. : W.P.(C) Nos. 3756 & 3757 of 2016

Appellant : Amar Singh and Another

Respondent : The Traffic Manager and Others

Judgement :

Ved Prakash Vaish, J.

C.M. Appl. No.15999/2016 in W.P.(C) No.3756/2016 C.M. Appl. No.16001/2016 in W.P.(C) No.3757/2016

Exemption allowed subject to all just exceptions. The applications stand disposed of. W.P. (C) No.3756/2016 W.P.(C) No.3757/2016

W.P.(C) Nos.3756/2016 and 3757/2016

1. By way of the present petitions, the petitioners apart from quashing and setting aside the charge sheet dated 16th July, 2012 also prays for stay of the departmental proceedings/inquiry till the conclusion of the criminal case pending against the petitioners on the same charges and allegations.

2. Since both the petitions involve similar question of law, therefore both the petitions are taken up together. For the sake of convenience the facts are being taken from W.P.(C) No.3576/2016.

3. The petitioner was employed with Haryana State Roadways as Car Driver at the office of Flying Squad Officer, Transport Department, Haryana State Roadways at ISBT, Kashmere Gate, Delhi. A raid was conducted on 27th March 2012 by the DSP, Gurgaon on the complaint of one Shri Bishan Singh, a jeep owner ferrying passengers between Sohna and Gurgaon for demand of bribe. FIR No.9 dated 27th March 2012 was registered at the Police Station State Vigilance Bureau, Gurgaon under Sections 7, 13 of the Prevention of Corruption Act. The petitioner was arrested on 28th March, 2012 and was placed under suspension vide order dated 18th May, 2012.

4. Thus, departmental enquiry and the criminal proceedings were started against the petitioner.

5. Insofar as the prayer for quashing the charge sheet is concerned, I do not find any ground to interfere with the charge sheet. The petitioner has also not been able to satisfy this Court the basis and grounds for quashing the charge sheet.

6. The petitioner, therefore, prays for staying the departmental proceedings against him contending that he has been wrongly and falsely framed and there is no evidence or allegations against the petitioner. It is contended that for the same charges the petitioner has been made to face two trials and proceedings i.e. in the criminal case before the trial court and for the departmental enquiry.

7. Learned counsel for the petitioner while placing reliance on the judgment of the Supreme Court in SLP (C) No.30371-30376 of 2012 in the case of M/s Stanzen Toyotetsu India P. Ltd. Vs. Girish V and Ors. decided on 21st January, 2014 argued that departmental proceedings against the petitioner be stayed pending till the conclusion of the criminal case.

8. The ratio of the judgment relied upon by the petitioner in the case of M/s Stanzen Toyotetsu (supra) does not apply to the facts of the present case. Rather

in the said judgment the Supreme Court observed that there is no legal bar in conducting the disciplinary proceedings and the criminal proceedings. The relevant paras of the judgments are reproduced as under:-

..What is, however, fairly well settled and was not disputed even before us is that there is no legal bar to the conduct of the disciplinary proceedings and a criminal trial simultaneously. In Depot Manager, Andhra Pradesh State Road Transport Corporation vs. Mohd. Yousuf Miyan (1997) 2 SCC 699, this Court declared that the purpose underlying departmental proceedings is distinctly different from the purpose behind prosecution is distinctly different from the purpose behind prosecution of offenders for commission of offences by them. While criminal prosecution for an offence is launched for violation of a duty that the offender owes to the society, departmental enquiry is aimed at maintaining discipline and efficiency in service. The difference in the standard of proof and the application of rules of evidence to one and inapplicability to the other was also explained and highlighted only to explain that conceptually the two operate in different sphere and are intended to serve distinctly different purposes. The relatively recent decision of this Court in Divisional Controller, Karnataka State Road Transport Corporation v. M.G.Vittal Rao (2012) 1 SCC 442, is a timely reminder of the principles that are applicable in such situations succinctly summed up in the following words: - (i) There is no legal bar for both proceedings to go on simultaneously. (ii) The only valid ground for claiming that the disciplinary proceedings may be stayed would be to ensure that the defence of the employee in the criminal case may not be prejudiced. But even such grounds would be available only in cases involving complex questions of facts and law. (iii) Such defence ought not to be permitted to unnecessarily delay the departmental proceedings. The interest of the delinquent officer as well as the employer clearly lies in a prompt conclusion of the disciplinary proceedings. (iv) Departmental proceedings can go on simultaneously to the criminal trial, except where both the proceedings are based on the same set of facts and the evidence in both the proceedings is common.

9. I may also refer to the decision of this Court in Capt. M. Paul Anthony v. Bharat Gold Mines Ltd. , (1999) 3 SCC 679, where this Court reviewed the case law on

the subject to identify the following broad principles for application in the facts and circumstances of a given case:

(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 honor may be vindicated and in case he is found guilty, administration may get rid of him at the earliest.

10. In HPCL v. Sarvesh Berry , (2005) 10 SCC 471, the respondent was charged with possessing assets disproportionate to his known sources of income. The question was whether disciplinary proceedings should remain stayed pending till vc criminal charge being examined by the competent criminal Court. Allowing the appeal of the employer-corporation the Court held:

A 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 .. 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.

11. Further, in the case of Ajay Kumar Choudhary Vs. Union of India through its secretary and another , (2015) 7 Supreme Court Cases 291, the Supreme Court superseded the directions issued by the Central Vigilance Commission that pending criminal investigation departmental enquiry could not commence, and laid down the that criminal proceedings and departmental proceedings can proceed simultaneously.

12. I am of the view that if the observations made by the Supreme Court in the case of Depot Manager, A.P.S.R.T. Corporation v. Mohd. Yousuf Miya , are kept in mind, there is absolutely no justification to stay the departmental proceedings. The Supreme Court in paragraph 7 of the said judgment, observed at 905, 906 of LLJ as under:

"7. ... The purpose of departmental enquiry and of prosecution are two different and distinct aspects. The 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 (sic 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 Evidence Act. Converse is the case of departmental enquiry. The enquiry in a 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 or applicability of the Evidence Act stands excluded is a settled legal position. The enquiry in the departmental proceedings relates to the conduct of the delinquent officer and proof in that behalf is not as high as in an offence in criminal charge. It is seen that invariably the departmental enquiry has to be conducted expeditiously so as to effectuate efficiency in public administration and the criminal trial will take its own course. The nature of evidence in criminal trial is entirely different from the departmental proceedings. In the former, prosecution is to prove its case beyond reasonable doubt on the touchstone of human conduct. The standard of proof in the departmental proceedings is not the same as of the criminal trial. The evidence also is different from the standard point of the Evidence Act. The evidence required in the departmental enquiry is not regulated by the Evidence Act. Under those 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."

13. In the present like situation, the petitioners in all fairness should come forward to avail the opportunity to get their honour vindicated in the departmental proceedings and not to get the departmental proceedings stalled by relying upon the pendency of the criminal proceedings, more so when it is uncertain when the criminal proceedings would ultimately conclude.

14. A delinquent cannot be permitted to, on the one hand, prolong criminal case and at the same time argue that departmental proceedings should be stayed on

the ground that the criminal case is pending. This Court finds that no prejudice would be caused to the petitioners if the departmental proceedings and the criminal trial proceedings are allowed to continue simultaneously.

15. In the light of the aforesaid proposition of law laid down by the Supreme Court and having regard to the facts and circumstances of the present case, the departmental proceedings initiated against the petitioners cannot be stayed till disposal of criminal case pending against them.

16. The writ petitions are, accordingly, dismissed. No costs.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com