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**Rajkumar Vs. the Assistant Commissioner of Police, Armed Reserve City Police**

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**SooperKanoon Citation : [sooperkanoon.com/838682](http://sooperkanoon.com/838682)**

**Court : Chennai**

**Decided On : Jan-31-2006**

**Reported in : (2006)1MLJ683**

**Judge : V. Dhanapalan, J.**

**Acts : Tamil Nadu Police Subordinate Service (Discipline and Appeal) Rules - Rule 3(1); ;Indian Penal Code (IPC) - Sections 109, 120, 212, 216, 302, 312 and 341**

**Appeal No. : W.P. No. 39537 of 2005 and W.P.M.P. No. 42377 of 2005**

**Appellant : Rajkumar**

**Respondent : The Assistant Commissioner of Police, Armed Reserve City Police**

**Advocate for Def. : Suresh Viswanath, Government Adv.**

**Advocate for Pet/Ap. : K. Venkataramani, Adv.**

**Disposition : Petition dismissed**

**Judgement :**

**ORDER**

## **V. Dhanapalan, J.**

1. It is the case of the petitioner that he was directly recruited Grade-II Police Constable on 15.04.1997. After undergoing training, the petitioner was serving in the T.N. Special Police X Battalion, Ulundurpet and after serving there for three years, he was transferred to AR Chennai City Police in March 2000. He has received a number of awards and has not come to adverse notice so far.

2. The petitioner submits that he has been implicated in a criminal case alleging that he has allowed Kalai, Karthi, Guna and Mani to stay at his residence situated at Police Quarters No. 10, E Block, Thiruvottiyur AR Police Quarters on 29 and 30.04.2005. He has been implicated as 9th accused in Crime No. 123/2005 on the file of Mangalam P.S., Thiruvannamalai District for offences Under Section 341, 312, 302, 212 and 216 IPC. The allegation against the petitioner is that he has allowed four accused who were involved in a murder case to stay at his residence situated at AR Police quarters, E Block, after knowing that they are involved in a murder case. He was ordered to be released on Anticipatory Bail by this Court in Crl. O.P. No. 20291 of 2005 dated 03.08.2005 on his surrendering before the concerned Court within 15 days and in the meanwhile, he was suspended from service by the orders of the Additional Commissioner of Police dated 09.08.2005.

3. The petitioner further submits that the Inspector of Police, Mangalam P.S., in whose jurisdiction the incident has taken place, has implicated him on the false ground that he has helped the principal accused to stay at his residence at the Police Quarters situated at Thiruvottiyur, on the instructions of his friend one Tamilmani, who is also made as an accused. The investigation in the Criminal Case is over and the charge sheet has already been laid before the Judicial Magistrate-II, Thiruvannamalai on 11.07.2005 and taken on file in PRC No. 10/2005 and the matter is in the state of being committed to the Sessions Court, Thiruvannamalai and he is also already appearing before the competent Court.

4. In the meanwhile, he has now been served with the Charge Memo containing a charge that he has harboured the accused involved in the murder case in the Police Quarters at Thiruvottiyur on 29 and 30.04.2005 and thereby, exhibiting irreprehensible conduct as a Police Constable. The petitioner submits that on the

same set of allegations, he is facing a Criminal Case No. 123 of 2005 of Mangalam P.S., Thiruvannamalai.

5. He further submits that there is no harm in proceeding simultaneously both in the disciplinary proceedings and in criminal case, but if the matter involves complicated question of facts and law, it is advisable that the departmental proceedings is stayed, pending disposal of the criminal case, otherwise the defence of the petitioner will be exposed and it would be difficult for him to defend himself effectively in the criminal case at a later stage. Moreover, the charge itself is the subject matter of criminal case and unless and until the charge in the criminal case is proved, it is highly unsafe to conduct the disciplinary proceedings.

6. He contends that there is no complaint against him for taking departmental action and no witness was cited for the alleged delinquency and that the Department is relying upon the reports of the officers for the purpose of proving the delinquency.

7. At this stage, the petitioner has filed this writ petition challenging the order of the proceedings of the Charge Memo dated 02.11.2005.

8. The petitioner has contended the impugned Charge Memo on the following grounds:

a. That he has been charge sheeted in the criminal case for a delinquency of harbouring four accused at his residence;

b. That the department enquiry is also on the same charge of harbouring of the accused in his residence for two days, after knowing that they are involved in a murder case and thereby showing irreprehensible conduct;

c. That the witnesses cited in the criminal case and the departmental enquiry are one and the same;

d. That if the petitioner is directed to defend himself in the departmental enquiry pending disposal of the criminal case on the same set of allegations, his defence will be exposed and it would be difficult for him to defend himself effectively in the

criminal case at a later stage;

e. That if the matter involves complicated question of facts and law, it is advisable that the departmental proceedings is stayed pending disposal of the criminal case, as per Apex Court ruling;

f. That the charge itself is to the fact that after knowing about the murder, he, on the advice of his friend Constable Tamilmani, has helped the four accused and allowed them to stay in the Police Quarters on 29.04.2005 and 30.04.2005. In the criminal case, the petitioner and his Constable friend Tamilmani have been arrayed as Accused 8 and 9 in the final report for having committed offences Under Section 120(b), 212 and 216 IPC, read with Section 120(b) and 109 IPC and unless it is proved through the prosecution witnesses that the petitioner has harboured the four accused, it is highly unsafe to come to the conclusion that the petitioner has committed the delinquency;

g. That if he is convicted in the criminal case, the Department, by a mere issuance of a Show Cause Notice can always punish him in the departmental enquiry invoking Rule 3(c)(i)(1) of the Tamil Nadu Police Subordinate Service (Discipline and Appeal) Rules;

h. That since he has been made an accused based on the confession given by one of the accused but the confession has not been shown as a document nor the person recorded the confession has been cited as a witness, a mere report of the Circle Inspector, Mangalam P.S. Thiruvannamalai Rural District, this Charge Memo came to be issued and

i. That there is no independent complaint against the petitioner for taking departmental action.

9. In view of the above grounds, the petitioner has prayed that the impugned Charge Memo issued by the respondent P.R. No. 336/Tha.Pi.2(2)/2005 dated 02.11.2005 is liable to be quashed.

10. The learned counsel for the petitioner, in support of the above-mentioned contentions of the petitioner, has placed reliance on Paragraph 12 of a decision of

the Apex Court reported in (Hindustan Petroleum Corporation Ltd. and Ors. v. Sarvesh Berry) which reads as follows:

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 Paragraph 22 of Capt. Paul Anthony's case : (1999)ILLJ 1094 SC , conclusions which are deducible from various decisions were summarized and they are as follows: (SCC Page 691).

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.

11. The learned counsel for the petitioner has placed further reliance on Paragraph 9 of a decision of the Supreme Court reported in : (1964)111LLJ113SC (Tata Oil Mills Company Limited v. The Workmen) wherein, it was held as under:

There is yet another point which remains to be considered. The Industrial Tribunal appears to have taken the view that since criminal proceedings had been started against Raghavan, the domestic enquiry should have been stayed, pending the final disposal of the said criminal proceedings. As this Court has held in the Delhi Cloth and General Mills Ltd. v. Kaushal Bhan : (1960)111LLJ520SC , 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 anything (sic) 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.

In fairness, we ought to add that Mr. Menon did not seek to justify this extreme position. Therefore, we must hold that the Industrial Tribunal was in error when it characterized the result of the domestic enquiry as mala fide partly because the enquiry was not stayed pending the criminal proceedings against Raghavan. We accordingly hold that the domestic enquiry in this case was properly held and fairly conducted and the conclusions of fact reached by the Enquiry Officer are based on evidence which he accepted as true. That being so, it was not open to the Industrial Tribunal to reconsider the same questions of fact and come to a contrary conclusion.

12. In the light of the above decisions, the learned counsel for the petitioner has contended that the impugned Charge Memo has to be quashed.

13. The learned counsel for the respondent, on notice and on instruction has submitted that the respondent can very well conduct the departmental proceedings against the petitioner when a criminal case is pending against him as there is no bar in their being conducted simultaneously, though separately.

14. The learned counsel for the respondent has contended that there is no question of any disclosure of defence in the departmental proceedings and that in the criminal case, the accused has to prove his innocence.

15. The learned counsel for the respondent has further contended that this is not a case where trial of the case can be prolonged by the dilatory method adopted by the delinquent official and he cannot be permitted to, on one hand, to 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.

16. The learned counsel for the respondent has also rebutted the contention of the petitioner and the cases relied on by the petitioner. He has placed reliance on the very same Paragraph 12 of the very same decision of the Supreme Court reported in which refers to Paragraph 22 of Capt. Paul Anthony's case which reads as follows:

Departmental proceedings and proceedings in a criminal case can proceed simultaneously as there is no bar in their being conducted simultaneously, though separately.

17. The learned counsel for the respondent has further stated that the decision reported in : (1964)11LLJ113SC also is in support of his contention and therefore, reliance of the petitioner cannot have any support of the this decision of the Supreme Court and in such a situation, the writ petition challenging the impugned Charge Memo has to be dismissed in limini.

18. Heard both sides.

19. The learned counsel for the petitioner has admitted that he is challenging the impugned Charge Memo dated 02.11.2005 and the charges in the criminal case as well as the charges in the departmental proceedings are one and the same. He

has contended that the departmental proceedings and the criminal case are based on identical and similar set of facts and as 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.

20. In the decision of the Supreme Court in wherein Paragraph 22 of Capt. M. Paul Anthony's case is referred to : (1999)ILLJ 1094 SC , it was held that where there is a delay in the disposal of a criminal case, the departmental proceedings can be proceeded with, so that the conclusion can be arrived at, at an early date. If ultimately, the employee is found not guilty, his honour may be vindicated and in case, he is found guilty, the employer may get rid of him at the earliest.

21. Therefore, this decision in Capt. Paul Anthony's case reported in : (1999)ILLJ 1094 SC has no application to the petitioner's case and in my view, there is no justification in directing the respondent to stop the departmental proceedings, pending completion of the criminal charge.

22. In such a situation, having regard to the facts and circumstances of the case, and in view of the submissions made by the learned counsel for the petitioner and the learned Government Advocate, who on notice and on instruction has submitted his contentions, there is no justification in stopping the departmental proceedings, pending conclusion of the criminal case and in conclusion, it is decided that there is nothing wrong if the departmental proceedings and proceedings in criminal case proceed simultaneously, as there is no bar in their being conducted simultaneously though separately and therefore, the impugned Charge Memo challenged in this writ petition need not be quashed and in such view of the matter, the writ petition is liable to be dismissed.

23. However, considering the facts and circumstances of the case, the way in which the respondent has issued the impugned Charge Memo immediately, the decisions of the Supreme Court as discussed earlier and the submissions made by the learned counsel on either side, I am inclined to direct the respondent to conclude the departmental proceedings within a period of twelve weeks from the date of receipt of a copy of this order.

With the above limited direction, the writ petition is dismissed. No costs. Consequently, the connected W.P.M.P. is also dismissed.

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