

Ramesh Chand Meena S/O Sughanlal Meena vs The Inspector General And Chief ... on 10 March, 2021

Bench: Sonia Gokani, Gita Gopi

C/SCA/22834/2019

JUDGMENT

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 22834 of 2019

With

CIVIL APPLICATION (FOR VACATING INTERIM RELIEF) NO. 1 of 2020
In R/SPECIAL CIVIL APPLICATION NO. 22834 of 2019

FOR APPROVAL AND SIGNATURE:

HONOURABLE MS. JUSTICE SONIA GOKANI

and

HONOURABLE MS. JUSTICE GITA GOPI

=====

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ? 3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?

=====

RAMESH CHAND MEENA S/O SUGANLAL MEENA Versus
THE INSPECTOR GENERAL AND CHIEF SECURITY COMMISSIONER

===== Appearance:

PRITHU PARIMAL (9025) for the Petitioner(s) No. 1 MS ARCHANA U AMIN (2462) for
the Respondent(s) No. 1, 2

=====

CORAM: HONOURABLE MS. JUSTICE SONIA GOKANI and HONOURABLE MS.
JUSTICE GITA GOPI Date: 10/03/2021 C/SCA/22834/2019 JUDGMENT
ORAL JUDGMENT (PER: HONOURABLE MS. JUSTICE SONIA GOKANI)

1. The petitioner is a constable of, Railway Protection Force (RPF) and is presently posted at Vadodara. This petition is preferred under Article 226 of the Constitution of India seeking the quashment of the charge memorandum dated 27.11.2019, bearing No.DAR/153/06/2019 issued by the respondent no.2 and all consequential proceedings arising therefrom.

2. The facts bereft of details leading to this petition are as follows:

2.1 On 06.11.2018, an FIR being FIR No.15/2018 came to be registered with A.C.B. Police Station, Surat City for the offences punishable under Sections 7A and 12 of the Prevention of Corruption Act, 1988 against the present petitioner. It is alleged therein that he had demanded Rs.6,000/- on 05.11.2018 from the complainant by way of bribe. The complainant's friend was found to be carrying out the business C/SCA/22834/2019 JUDGMENT of selling liquor, so as not to complain officially, this bribe was demanded by the petitioner. It is also the allegation on the part of the complainant that the total amount of demand was of Rs.10,000/- out of which the amount of Rs.4,000/- had already been paid to him as he did not have the remaining amount of Rs.6,000/- he had ensured to pay the same on a later date. A trap was organized on 05.11.2018, where he was caught red-handed and therefore an FIR to that effect came to be lodged.

2.2 After due investigation, the charge-sheet have been issued on 01.01.2019 and the trial is pending before the Special Judge in Special Case (A.C.B.) No.01/2019 before the Surat Court.

2.3 The petitioner had been arrested on

05.11.2019 and was sent to the judicial custody. On 11.01.2019, his application for grant of regular bail was preferred being Criminal Misc. Application No.139 of 2019, and learned Special C/SCA/22834/2019 JUDGMENT Judge, A.C.B., Surat enlarged him on regular bail in connection with the said F.I.R.

2.4 It is alleged that the place of offence was Kosad Railway Station, situated within District Surat, for the purpose of taking any actions, the jurisdiction is of the respondent no.2, the Senior Divisional Secretary, Railway Protection Force, Western Railway, Vadodara. It is alleged that on illegal exercise of powers under Rule 161 of the Railway Protection Force Rules, 1988 vide Divisional Order No.15/2018, the petitioner has been dismissed from the services with immediate effect on 30.11.2018.

2.5 The petitioner preferred an Appeal on 05.02.2019 before the Deputy Inspector General, Railway Protection Force, Western Railway, Church Gate, Mumbai. Since, there were no actions on the part of the respondent authorities, the petitioner was constrained to preferred Special Civil Application No.17706 of 2019. On C/SCA/22834/2019 JUDGMENT 16.10.2019, the Court issued notice for final disposal and placed the matter for hearing on 20.11.2019.

2.6 On 06.11.2018, on account of issuance of the notice by this Court, the appellate authority being Deputy Inspector General, Railway Protection Force, quashed and set aside the Divisional Order No.15/2018 and reinstated the petitioner into service. However, on 07.11.2019, the respondent no.2 - Divisional Security Commissioner, passed an order placing the petitioner under suspension till further order. Because of the order of the appellate authority, Special Civil Application No.17706 of 2019 was disposed of as having become infructuous. 2.7 During the pendency of the suspension, on 27.11.2019, the petitioner was issued the charge Memorandum being DAR/153/06/2019. It is the say of the petitioner that the special charges have been levelled against him in the FIR, registered against the petitioner arising from the alleged C/SCA/22834/2019 JUDGMENT incident dated 05.11.2019, hence, subsequent arrest has been made pursuant to the said FIR. Two charges are not sustainable under the law; since one of them is to the effect that his arrest has brought discredit to the Railway Protection Force.

2.8 The petitioner preferred a representation on 02.12.2019 to the respondent no.2 - Divisional Security Commissioner, praying to revoke the departmental proceedings against the petitioner as also to stop the same. The said prayer has been declined vide order dated 13.12.2019. The request on the part of the petitioner to stop the proceedings pending the criminal prosecution against the petitioner, has not been acceded to. 2.9 The petitioner, therefore, is aggrieved by the action of the respondent authorities is before this Court seeking following reliefs:

A. The Hon'ble Court be pleased to admit and allow the Special Civil Application.

C/SCA/22834/2019

JUDGMENT

B. This Hon'ble Court be pleased to issue
a writ of mandamus and/or any other

appropriate writ/order/direction, to quash and set-aside the impugned memorandum bearing no.DAR/153/06/2019 dated 26.11.2019.

C. Pending admission, hearing and till final disposal of the present petitioner this Hon'ble Court be pleased to stay all further operation and implementation pursuant tot he charge memorandum bearing no.DAR/153/06/2019.

D. this Hon'ble Court be pleased to grant any other and further relief in the facts and circumstances of the present case and in the interest of justice."

3. According to the petitioner, the registration of an FIR, pursuant to which the petitioner has been arrested and sent to the judicial custody, would not constitute any misconduct on the part of the petitioner and that ground is not sustainable for the charges to be levllled against him departmentally. The criminal case is grave in nature and involves complicated question of facts C/SCA/22834/2019 JUDGMENT and law, therefore, it is desirable to stay the departmental proceedings in conclusion of the trial. It is further his case that the facts involved are identical in

both in criminal trial as well as the departmental proceedings, and therefore, during the pendency of the criminal trial the departmental proceedings were not proceeded with.

4. On issuance of the notice affidavit in reply has been filed by the respondent Senior Divisional Security Commissioner, R.P.F. According, to the respondent, the petitioner has been caught by the personnel of A.C.B., Surat, taking illegal gratification from the friend of the complainant and this was the bribe given for not lodging the criminal complaint for the illegal business of Sabirbhai.

4.1 The factual details given by the petitioner are not being disputed, so far as the chronology of details up to quashing and setting aside the C/SCA/22834/2019 JUDGMENT order of dismissal and issuance of the memorandum of charges on 27.01.2019. It is also not in dispute that on 07.11.2019, the petitioner had been suspended and thereafter, the departmental proceedings against him had been contemplated and therefore, following the rules, the charges have been framed. It is the say of the respondent that under Rule 153 of R.P.F. Rules 1987, the three charges have been framed (i) despite being a railway servant, he has violated Rule 3.1 (III) of the Railway Servant (conduct) Rules, 1966 by his indecent improper illegal act; (ii) he violated the Rule 146.4 for exhibiting untrustworthy conduct; and (iii) in daily diary entries, he did not put signatures on 03.11.2018 and 05.11.2018. 4.2 While handing and taking over the charge due to negligence and slackness, he thereby violated Rule 146.2 (1) of the R.P.F. Rules. It is also admitted that his representation came on 02.12.2019, however, the department since is of the opinion that the departmental inquiry can be C/SCA/22834/2019 JUDGMENT initiated simultaneously with the criminal proceedings and as the charges framed in the departmental proceedings are different from the charges in the criminal proceedings, they both can be simultaneously proceeded. The purpose of both departmental inquiry and criminal prosecution are distinct and separate. The inquiry in the departmental proceedings concerns the breach of duty of the delinquent and to punish the person for his misconduct where the standard of proof also would materially differ. Reliance is also placed on some of the decisions of this Court and also of the Apex Court to urge that stay of proceedings when both the criminal proceeding as well as departmental proceedings are pending should not be a matter of course. Accordingly, the department has urged to allow it to continue the departmental proceedings.

5. At the time of issuance of notice, the Court had permitted the petitioner to seek an adjournment in the departmental proceedings, till C/SCA/22834/2019 JUDGMENT now, the proceedings have not been started again and the stay has continued and time and again, his request is allowed in the departmental proceedings.

6. An application came to be moved seeking vacation of interim relief noticing that the matter is of the year 2019. With the request of learned advocates on both the sides, we have taken up the matter to be heard finally and more particularly, the main matter being Special Civil Application No.22834 of 2019.

7. Learned advocate, Mr.Prithu Parimal appearing for the petitioner has emphatically urged before this Court that there will be a serious prejudice to the right of the petitioner of disclosure of his defence, once the departmental inquiry is permitted to be conducted pending the criminal trial. According to him, not only both the proceedings cannot be permitted to proceed simultaneously, the

nature of the charges in the memorandum of charge is also unsustainable. He C/SCA/22834/2019 JUDGMENT has further urged that it is a settled position of law that departmental proceeding cannot be permitted to be proceeded with, if the disclosure of the defence in departmental proceeding is going to seriously prejudice the employee in the criminal proceedings. According to him, the office memorandum dated 01.08.2007 issued by the Department of Personal and Training Ministry of Personnel, Public Grievances and Pensions, Government of India also states that if there is a criminal case of a grave nature which involves the complicated questions of facts and law, departmental proceedings be desirably be stayed. It is further his emphasis that the charge memorandum which is impugned in this matter also provide that the filing a registration of FIR and arrest pursuant to the same has given discredit to the department. This cannot amount to the misconduct and this charge is unsustainable. The main charge as laid against the petitioner in the charge memorandum is looked at, according to the learned advocate, it is a mere allegation and C/SCA/22834/2019 JUDGMENT cannot amount to the misconduct presently and hence also, his request is to be acceded to. He has heavily relied on the various decisions on this point and particularly the decision rendered in Special Civil Application No.10811 of 2019 and allied matters on 06.01.2020. This according to him is not further challenged and questioned by the department, but, in the very matter, the Court has analyzed the chronology of events and also Rules 146.1, 146.2 and 146.4 where the charge memo did not disclose any other facts other than the involvement in the criminal case which are yet to be proved in the court of law for invoking the charge of neglect of duty or discredited conduct and therefore, it is urged that the said action of the department needs to be held unsustainable.

8. We have heard the learned advocate, Ms.Archana Amin appearing as a standing Counsel for the respondent authority. She has argued along the line of the reply tendered before this C/SCA/22834/2019 JUDGMENT Court. She has emphatically urged that the charges framed in the departmental proceedings are different than the charges in the criminal proceedings and the standard of proof also would materially differ, wherein in the criminal proceedings it is the proof beyond reasonable doubt whereas in departmental proceedings, the preponderance of probabilities, shall need to be regarded. And therefore, continuing the departmental proceedings, would not in any manner prejudice the petitioner. According to her, the petitioner is having the charge of indulging into corrupt activities. Therefore, the charge framed against the petitioner in the departmental proceedings is of neglect of his duty discreditable conduct and violation of Rule 3.1 (3). The relevant extract of Rule 146.2(1) and 146.4 of the R.P.F. Rules also according to her, are to be pressed into service. She has further argued that the legal position is quite clear that simultaneous conduct of departmental proceedings and the criminal proceedings would be C/SCA/22834/2019 JUDGMENT permissible. There is in fact no legal bar, unless there are very complicated questions of law and facts, which are missing here. 8.1 She has chosen to rely on the decision of this Court rendered in Special Civil Application No.6270 of 2011 where relying on the judgment of the Apex Court the Court thus held that the departmental proceedings cannot be delayed indefinitely awaiting the outcome of the criminal case. She has also placed the reliance on the decision where Special Civil Application No.20521 of 2016 is a clearly held that nature of evidence in criminal trial is entirely different from the departmental proceedings. The only aspect needs to be regarded is as to whether the departmental inquiry would seriously prejudice the delinquent in his defence at the trial in a criminal case and this being a question of fact, the same

shall need to be regarded in each case depending on the facts and the law. She has also relied on the decision of the Apex Court rendered C/SCA/22834/2019 JUDGMENT in case of M/s. Stanzer Toyotetsu India Pvt. Ltd., Versus Girish V. & Ors., reported in 2004 (3) SCC 636.

9. Having thus heard the learned advocates on both the sides, the query was raised by this Court as to whether the decision of the Division Bench rendered in Special Civil Application No.10811 of 2019 and allied matters has been challenged before the Apex Court. Rule 139.2 of the R.P.F. Rules permits modification in the order of suspension there is no specific reason as to why this order has been revoked. It is possibly, according to Ms.Amin on account of completion of 180 days and non-review of the decision of suspension; however, without entering into that realm presently, the only question that begs attention of this Court is as to whether the departmental proceedings could be permitted to be proceeded along with the criminal proceedings which are pending before the Surat Court.

C/SCA/22834/2019

JUDGMENT

10. This Court in Special Civil Application

No.6270 of 2011 was considering the matter of member of Railway Protection Force, who was discharging his duty as Inspector. A trap was laid against him for demanding bribe from the complainant on the basis of a preliminary complaint, the FIR was lodged and it was alleged that area of railway is granted for parking and when the demand of bribe was not paid he got his contract cancelled. In this premises, the chargesheet was issued, which contained identical allegations as those levelled in the criminal proceedings. And the department further alleged that his conduct violated Rule 3.1 (i)(ii)and

(iii) of the Railway Service Conduct Rules, 1966 and that he had acted in a manner prejudicial to the discipline and his conduct has discredited the reputation of the Force as he acted for his personal gain and his conduct was unbecoming of a railway servant.

11. The proceedings since were parallel, it was C/SCA/22834/2019 JUDGMENT alleged that they may prejudice his defence in criminal proceedings and in this background the Court relied on the decisions rendered by the Apex Court rendered in case of Kusheshwar Dubey vs. M/s. Bharat Coking Coal Ltd. and ors., reported in (1988) 4 SCC 319, and of State of Rajasthan vs. B.K.Meena and ors., reported in (1996) 6 SCC 417, Depot Manager, A.P.State Road Transport Corporation vs. Mohd. Yousuf Miya and ors. reported in (1997) 2 SCC 699 and Capt. M.Paul Anthony vs. Bharat Gold Mines Ltd. and another, reported in (1999) 3 SCC page 679 to eventually hold that the departmental proceedings cannot be delayed indefinitely, awaiting outcome of the criminal case which as is experienced may take a considerable time to complete. By the time, the Court concludes the trial, much period may have progressed and the petitioner's service needs continuity or he draws pay without rendering any work. Criminal proceedings insulate the society from crime and criminals and C/SCA/22834/2019 JUDGMENT departmental proceedings render a shield to the institution in its pursuits of maintaining discipline and institutional values. The petition was not entertained by

this Court. Relevant discussion in this matter needs to be profitably reproduced.

"6. The incident involved is one. Obviously therefore, the allegations which formed the foundation of the departmental proceedings and the criminal case would be same. We, therefore, proceed on such basis. However, in order to stay the departmental proceedings pending criminal trial, this itself would not be sufficient. The nature of allegations, the complexity of the law and facts involved and the time likely to be consumed in the criminal case are some of the relevant factors which need to be examined. The prime consideration being whether by allowing the department to proceed further, would the employee who is also an accused in a criminal case be prejudiced in his defense in such criminal case.

7. Such issues have come up before the Supreme Court on number of occasions. In case of *Kusheshwar Dubey vs. M/s. Bharat Coking Coal Ltd. and ors.* reported in (1988) 4 SCC 319 the Court observed as under:

"7. The view expressed in the three cases of this Court seem to support the position that while there could be no legal bar for simultaneous proceedings being taken. yet, there may be cases where it would be appropriate to defer disciplinary C/SCA/22834/2019 JUDGMENT proceedings awaiting disposal of the criminal case In the latter class of cases it would be open to the delinquent employee to seek such an order of stay or injunction from the Court. 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 that 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 think it necessary to say, anything more, particularly when we do not intend to lay down any general guideline."

8. In case of *State of Rajasthan vs. B.K.Meena and ors.* reported in (1996) 6 SCC 417 the Supreme Court observed as under:

"14. It would be evident from the above decisions that each of them starts with the indisputable proposition that there is no legal bar for both proceedings to go on simultaneously and then say that in certain situations, it may not be 'desirable', 'advisable' or 'appropriate' to proceed with the disciplinary enquiry when a criminal case is pending on identical charges. The staying of disciplinary proceedings, it is emphasised, is a matter disciplinary proceedings, it is emphasised, is a matter to be determined having regard to the facts and circumstances of a given case ad that no hard and fat rules can enunciated C/SCA/22834/2019 JUDGMENT in that behalf. The only ground suggested in the above questions as constitution 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. In our respectful opinion, 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, has to be determined in each case taking into consideration all the facts and circumstances of the case. The ground indicated in D.C.M. and Tata Oil Mills is not also an invariable rule. It is only a factor which will go into the scales while judging the advisability or desirability of staying the disciplinary proceedings. One of the contending consideration is that the disciplinary enquiry cannot be □and should not be delayed unduly. So far as criminal cases are concerned, it is wellknown that they drag on endlessly where high officials or persons holding high public offices involved. They get bogged down on one or the other ground. They hardly ever reach a prompt conclusion. That is the reality inspite of repeated advice and admonitions from this Court and the High Courts. If a criminal case is unduly delayed that may itself be a good ground for going ahead with the disciplinary enquiry even where the disciplinary proceedings are held over at an earlier stage. The interests of administration and good government demand that these proceedings are concluded expeditiously. It must be remembered that interests of administration demand C/SCA/22834/2019 JUDGMENT that the undesirable elements are thrown out and any charge of misdemeanor is enquired into promptly. The disciplinary proceedings are meant not really to punish the guilty but to keep the administrative machinery unsullied by getting rid of bad elements. The interest of the delinquent officer also lies in a prompt conclusion of the disciplinary proceedings. If he is not guilty of the charges, his honour should be vindicated at the earliest possible moment and if he is guilty, he should be dealt with promptly according to law. It is not also in the interest of administration that persons accused of serious misdemeanor should be continued in office indefinitely, i.e., for long periods awaiting the result of criminal proceedings. It is not in the interest of administration. It only serves the interest of the guilty and dishonest. While it is not possible to enumerate the various factors, for and against the stay of disciplinary proceedings, we found it necessary to emphasise some of the important considerations in view of the fact that very often the disciplinary proceedings are being stayed for long periods pending criminal proceedings. 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 decisions referred to above.

15. We are quite aware of the fact that not all the disciplinary proceedings are based upon true charges; some of them may be unfounded. It may also be that in some cases, charges are levelled with oblique motives. But these possibilities do not C/SCA/22834/2019 JUDGMENT detract from the desirability of early conclusion of these proceedings. Indeed, in such cases, it is all the more in the interest of the charged officer that the proceedings are expeditiously concluded. Delay in such cases

really works against him."

9. In case of Depot Manager, A.P.State Road Transport Corporation vs. Mohd. Yousuf Miya and ors. reported in (1997) 2 SCC 699 referring to its decision in case of State of Rajasthan vs. B.K.Meena (supra), the Apex Court observed that:

8. We are in respectful agreement with the above view. The purpose of departmental enquiry and of prosecution are two different and distinct aspects. The criminal prosecution is launched for an offence in 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 C/SCA/22834/2019 JUDGMENT 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, 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 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 of 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. The enquiry in the departmental proceedings relates to the conduct of the delinquent officer and proof in the 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 Evidence Act. The evidence required in the departmental enquiry is not regulated by Evidence Act. Under these circumstances, what is required to be seen is whether the departmental enquiry would seriously C/SCA/22834/2019 JUDGMENT 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. In this case, we have seen that the charge is failure to anticipate the accident and prevention thereof. It has nothing to do with the culpability of the offence under Sections 304A and 338 IPC. Under these circumstances, the High Court was not right in staying the proceedings."

10. In case of Capt. M. Paul Anthony vs. Bharat Gold Mines Ltd. and another reported in (1999) 3 SCC page 679 the Supreme Court culled out following principles:

"22. The conclusions which are deducible from various decisions of this Court referred to above are : (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 C/SCA/22834/2019 JUDGMENT 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, administration may get rid of him at the earliest.

1. These decisions have been later on referred to and relied upon in number of judgements of the Supreme Court. It is not necessary to refer to all of them in this judgement.

2. Coming to the facts of the case, simple allegations against the petitioner are that he demanded bribe from the complainant who had a contract for parking on railway property. A trap was laid where he was caught accepting bribe. The departmental proceedings cannot be delayed indefinitely awaiting outcome of the criminal case which often times, as we are all aware, likely to take considerable time to complete.

3. In the present case, additional feature is that, as informed to us by the counsel for the petitioner, even the trial has progressed and the petitioner would enter his defense before the trial court shortly. Proceeding further with the C/SCA/22834/2019 JUDGMENT departmental inquiry, therefore, no way would prejudice the petitioner in his defense in the criminal case. Considering such facts, petition is dismissed. Rule is discharged. Interim relief stands vacated."

12. In Special Civil Application No.2052 of 2016, the Criminal complaint was filed against the petitioner for the offences punishable under the Prevention of Corruption Act, more particularly under Sections 7, 8, 12 13 (10(d)) 1, 2, 3 and 13(2) of the Prevention of Corruption Act, he came to be

arrested and was released later on, on regular bail. In the interregnum, the departmental proceedings were initiated against him where the allegations, according to him, were identical as were levelled in the criminal proceedings. It was alleged that his conduct violated Rule 3(1) (I) (ii) (iii) of the Railway Service Conduct Rules, 1966 and he acted in a manner prejudicial to the discipline and his conduct discredited the reputation of the Force.

12.1 The Court also regarded the treatment to

C/SCA/22834/2019

JUDGMENT

the very issue adjudicated in Special Civ

Application No.6270 of 2011 and the petition was not entertained and was dismissed.

13. Before the Apex Court, in case of M/s. Stanzer Toyotetsu India Pvt. Ltd., Versus Girish V. & Ors., reported in 2004 (3) SCC 636 the question was whether the High Court as also the other Courts were right in holding that the disciplinary proceedings initiated by the company against its employees to remain stayed pending conclusion of the criminal case instituted against the respondents in respect of the very same incident.

13.1 The appellant company in the manufacture of automobile parts while the respondent workman engaged by the appellant in connection with the said business. They were governed by the Standing Orders certified Industrial Employees (Standing Orders) Act, 1946.

According to the appellant, the respondents with

C/SCA/22834/2019

JUDGMENT

the help of other Trade Union functionaries stage managed an accident making it appear that one of the employees had slipped and fallen in the press area and this incident was used as an excuse by

the respondents to rush to the place of alleged fall only to create a ruckus and although the person did not sustain any injury he was sent to the hospital in ambulance and the respondents stopped the production activity and started abusing their superiors, damaged property of the company and even assaulted senior managerial personnels. These acts of indiscipline created an atmosphere of fear and tension in the factory and brought the production activities to a grinding halt.

13.2 FIR was also lodged under sections 143,

147, 323, 324, 356, 427, 504, 506,

114 read with Section 149 I.P.C and charge sheet was led. The competent authority had placed the respondents under suspension and issued the charge sheet. A disciplinary inquiry was C/SCA/22834/2019 JUDGMENT initiated and one witness also was examined in one of the inquiries. Since the disciplinary inquiry and the criminal case both were pending, the respondents preferred a suit seeking permanent injunction against the appellant and the Inquiry Officers restraining them from proceeding with the inquiry pending conclusion of the criminal case and in this background, the disciplinary inquiry had been stayed by the Court by virtue of the order of the Principal Senior Civil Judge and when challenged before the High Court, it confirmed the same and correctness of the said judgment and order had been assailed before the Apex Court which determined in the above backdrop whether the courts were justified in staying the ongoing disciplinary proceedings pending conclusion of the trial in the criminal case registered and filed against the respondents. The court answered that there is no legal bar to the continuance of the disciplinary proceedings against the employees based on an incident which is also the subject matter of C/SCA/22834/2019 JUDGMENT criminal case against such employees. 13.3 It also reiterated that It would also depend upon the nature of the charges in the criminal case filed against the employees and whether the case involves complicated questions of law and fact. The possibility of prejudice to the employees accused in the criminal case on account of the parallel disciplinary inquiry going ahead is another dimension which will have to be addressed while permitting or staying such disciplinary inquiry proceedings.

14. The Apex Court, therefore, said that there can not be any strait jacket formula for application in all cases the decisions of the Court where the broad approach had been adopted leaving it to the concerned Courts to take an appropriate view in peculiar facts and circumstances of each case and there cannot be any short cut or piecemeal solution to this. The Apex Court also held that the purpose for C/SCA/22834/2019 JUDGMENT underlying departmental proceedings is distinctly different from the purpose behind prosecution of offenders for commission of offences by them. The criminal prosecution, according to the Apex Court, is lodged for violation of a duty that the offender owes to the society, whereas the departmental inquiry is aimed at maintaining discipline and efficiency in service. The difference also is in the standard of proof and the application of the rules of evidence to one and inapplicability to the other and thus, there two operate in different spheres and are intended to serve distinctly different purposes. Relevant findings and observations of the Apex Court in case of M/s. Stanzer Toyotetsu India Pvt. Ltd. (supra) requires reproduction at this stage:

"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.

C/SCA/22834/2019 JUDGMENT

(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."

10. We 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 C/SCA/22834/2019 JUDGMENT to stay the departmental proceedings till the conclusion of the criminal case.

(iii) 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.

(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.

11. 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 a criminal charge being examined by the competent criminal Court. Allowing the appeal of the employer Corporation this Court held:

A crime is an act of commission in violation of law or of omission of C/SCA/22834/2019 JUDGMENT 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. (emphasis supplied).

12. It is unnecessary to multiply decisions on the subject for the legal position as emerging from the above pronouncements and the earlier pronouncements of this Court in a large number of similar cases is well settled that disciplinary proceedings and proceedings in a criminal case can proceed simultaneously in the absence of any legal bar to such simultaneity. It is also evident that while seriousness of the charge leveled against the employees is a consideration, the same is not by itself sufficient unless the case also involves complicated questions of law and fact. Even when the charge is found to be serious and complicated questions of fact and law that arise for consideration, the Court will have to keep in mind the fact that departmental proceedings cannot be suspended indefinitely or delayed unduly. In *Paul Anthony* (supra) this Court went a step further to hold that departmental proceedings can be resumed and proceeded even when they C/SCA/22834/2019 JUDGMENT may have been stayed earlier in cases where the criminal trial does not make any headway. To the same effect is the decision of this Court in *State of Rajasthan v. B.K.Meena* 1996(6) SCC 417, where this Court reiterated that there was no legal bar for both proceedings to go on simultaneously unless there is a likelihood of the employee suffering prejudice in the criminal trial. What is significant is that the likelihood of prejudice itself is hedged by providing that not only should the charge be grave but even the case must involve complicated questions of law and fact.

Stay of proceedings at any rate cannot and should not be a matter of course. The following passage is in this regard apposite:

there is no legal bar for both proceedings to go on simultaneously and then say that in certain situations, it may not be 'desirable', 'advisable' or 'appropriate' to proceed with the disciplinary enquiry when a criminal case is pending on identical charges. The staying of disciplinary proceedings, is a matter to be determined having regard to the facts and circumstances of a given case and that no hard and fast rules can enunciated in that behalf. The only ground suggested in the above questions as constitution 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. In our respectful opinion, 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, has to be determined in each case taking into consideration all the facts and circumstances of the case. While it is not possible to enumerate the various factors, for and against the stay of disciplinary proceedings, we found it necessary to emphasize some of the important considerations in view of the fact that very often the disciplinary proceedings are being stayed C/SCA/22834/2019 JUDGMENT for long periods pending criminal proceedings. 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 decisions referred to above. Indeed, in such cases, it is all the more in the interest of the charged officer that the proceedings are expeditiously concluded. Delay in such cases really works against him. (emphasis supplied)

15. The Court after considering that there was no legal bar to the holding of the disciplinary proceedings and the criminal trial simultaneously where stay of disciplinary proceedings may be an advisable course in cases where the criminal charge against the employee is grave and continuance of the disciplinary proceedings is likely to prejudice the defense before the criminal Court, also held while looking at the peculiar facts in the matter on hand, that the parameters of the question of law and facts being complicated was not satisfied.

The FIR also did not suggest any complication or complexity either on facts or law to necessitate halt of the disciplinary proceedings.

C/SCA/22834/2019

JUDGMENT

15.1 The Court further has held that the

criminal proceedings did not proceed for a long time despite the direction issued by the High Court, nearly 15 months had rolled by. It also further held that Disciplinary proceedings cannot remain stayed for an indefinitely long period. Such inordinate delay is neither in the interest of the company nor the respondents who are under suspension and surviving on subsistence allowance. The number of accused were also large before the Apex Court. On account of the three Courts below having exercised their discretion in favour of the on going disciplinary proceedings, the Apex Court directed the trial Court to take effective steps to examine the rest of the witnesses and conclude the trial immediately; however, it further directed that the trial has not been completed within the period of one year from the date of this order, despite the steps taken by the trial Court, the disciplinary proceedings initiated should be resumed and C/SCA/22834/2019 JUDGMENT concluded.

16. So far as Special Civil Application No.10811 of 2019 and allied matters are concerned, we notice that the challenge in the group of petition was to the issuance of the charge sheet to the petitioner in respect of the incident alleged to have occurred on 01.07.2011, which had resulted into lodging of complaint on the very day and arrest of the petitioners before this Court on different dates. The petitioners were released on bail and thereafter, reinstated on 02.03.2012 and they were serving at different stations and they all were working as constables and head constables in Railway Protection Force when incident of theft of railway property said to have occurred on 01.07.2011. They were all shown as accused in the complaint which resulted into initiation of Criminal Case No.1980 of 2012 pending before the Judicial Magistrate, First Class, Railway Court, Godhra. They were all suspended on 02.03.2012 by the competent C/SCA/22834/2019 JUDGMENT authority. They approached the Court for expeditious disposal of the trial, where certain directions were issued by the Court. However, after a long time in the year 2019, the petitioners were visited with the charge memos of imposing of major punishment which indicate that the petitioners tarnished the image of Railway Protection Force and committed a misconduct under Rule 146.2(i), 146.4 and sub Rule 3.1 (i), (ii),

(iii) of the Railway Services (Conduct) Rules, 1966. These charge memos were triggered off on account of the alleged incident of offence which was pending as the criminal case before the competent court. They, therefore, approached this Court under Article 226 of the Constitution of India and the Court after considering the chronology of events, more particularly, because of the delay of nearly nine years where the departmental charge memo had been issued against them, allowed the petitions and the charge memos in the present form were not held sustainable and were accordingly quashed and set aside by holding C/SCA/22834/2019 JUDGMENT that this would not affect the criminal proceedings nor would it affect the respondents' liberty under the law to reframe the charges based upon the appropriate material without prejudice to the petitioners' rights to challenge the same.

17. The legal position as has emerged from the aforementioned pronouncements of this Court and of the Apex Court being well settled, it can be said that there is no absolute bar to the departmental proceedings and the proceedings under the criminal law to be simultaneously proceeded with. What is required to be considered by the Court is as to whether there is an involvement of complicated questions of law and fact and whether permitting the departmental proceedings would in any manner seriously prejudice the right of the employee and his defence in the criminal trial. The Court cannot be also oblivious of the findings and observations in various decisions including in

C/SCA/22834/2019 JUDGMENT the decision of M/s. Stanzer Toyotetsu India Pvt. Ltd.(supra) where the Apex Court had also disapproved the long stay of the disciplinary proceedings for an indefinitely period by specifically holding that inordinate delay is neither in the interest of the employer nor the employee. Since in a matter of allegation against the employer may not be wanting to continue such person with serious allegations of corruption, whereas the employee may have to survive on subsistence allowance. There could be no certainty of completion of the trial of criminal proceedings under the anti corruption law which can linger on for a long time, on account of non□ availability of the witnesses, the defence lawyer for the cross examination or on account of various adjournments that might be sought by the either side.

18. So far as the present case on hand is concerned, this is essentially premised on the departmental proceedings and the criminal case on C/SCA/22834/2019 JUDGMENT hand having been based on identical and similar set of facts so also on the basis that the delinquent employee is facing grave nature of charges which involve complicated question of law and therefore, it is desirable to stay the departmental proceedings till conclusion of the criminal case. Yet another ground raised is of the memorandum of charges being unsustainable inasmuch as it has been laid down because of the filing of the registration of FIR and his arrest, which does not amount any misconduct.

19. We notice that the criminal trial pending against the present petitioner as well as the departmental proceedings initiated are having as the base essentially the FIR lodged against him. We notice that the ratio laid down in Special Civil Application No.6270 of 2011 has also been relied on in Special Civil Application No.20521 of 2016. The facts in both the matters were almost identical and so are they in the present case, where the two Division Benches on identical C/SCA/22834/2019 JUDGMENT set of facts had permitted the departmental proceedings to be continued on the ground that the same cannot prejudice the petitioner as there are no complicated question of facts and law, we have no reason to differ from the ratio in those two decisions and hold otherwise than already done and, accordingly, we hold this aspect against the petitioner.

19.1 There is no delay in issuance of the memorandum of the charges as the FIR is of 06.11.2018 and without issuance of any charges straightway initially, the petitioner was dismissed from the service. The appellate authority by virtue of the order dated 06.11.2019 had set aside the order passed on 13.11.2018 dismissing the petitioner from service with immediate effect. While setting aside this order of dismissal, it had also held that this would act without prejudice to the departmental inquiry as may be contemplated and order of suspension was passed on 07.11.2019 and memorandum of charges had been issued on 27.11.2019.

C/SCA/22834/2019

JUDGMENT

20. In absence of any complicated question

facts and law and in absence of anything having been shown to this Court as to how the defence of the petitioner is likely to be affected if the departmental proceedings are permitted to be proceeded with. We see no reason to stay the proceedings, we also notice further that ACB Case No.1 of 2019

has not proceeded as yet, the charges have also not been framed by the court concerned.

21. Resultantly, this petition fails and dismissed. The trial court concerned is directed to expedite the proceedings of ACB Case No.1 of 2019 and complete the same within a period of four months from the date of receipt of a copy of this order. Parties shall cooperate.

22. In view of the order passed in main matter, Civil Application is also accordingly dismissed.

(SONIAGOKANI, J.) (GITAGOPI, J.) M.M.MIRZA