

(2013) 05 AHC CK 0354

Allahabad High Court

Case No: Civil Miscellaneous Writ Petition No. 54159 of 2012

Mohd. Ismail Naqvi

APPELLANT

Vs

High Court of Judicature at
Allahabad and Another

RESPONDENT

Date of Decision: May 23, 2013

Citation: (2013) 6 ALJ 757 : (2013) 101 ALR 145 : (2014) LabIC 926

Hon'ble Judges: Rajes Kumar, J

Bench: Single Bench

Advocate: J.J. Munir, for the Appellant; Yashwant Verma and Manish Goyal, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

Rajes Kumar, J.

Heard Sri. J.J. Munir, learned counsel for the petitioner and Sri. Manish Goyal, learned counsel, appearing on behalf of the respondents. The brief facts, giving rise to the present writ petition, are that the petitioner is a Review Officer of this Hon'ble Court and was appointed in the service on 9.6.1990. It is the case of the petitioner that on 2.8.2008, after arriving at the office at 09:30 a.m., the petitioner received an urgent call from his brother that his wife Smt. Shailee had received injuries in an incident of assault and was in the hospital. The petitioner, on receiving this information from his brother, applied for urgent leave to the Assistant Registrar, Accounts, of this Court under whom he was working, which was sanctioned by the Assistant Registrar. Thereafter, the petitioner proceeded to his home at about 02:00 p.m. in the afternoon. On reaching at home, he came to know that one Fazal Abbas alias Rajjan, a resident of Lucknow, who had come to attend some function at the house of one Sri Zafar Abbas, Advocate, on 02.08.2008, while proceeding to the place of venue stopped at the residence of the petitioner and finding the wife of the petitioner alone at home tried to take advantage of the situation and assaulted her

with the intention to ravish her and outrage her modesty. The wife of the petitioner resisted the attempt with all her might at her command in reaction to which Rajjan set her ablaze. However, struggle continued even thereafter between the petitioner's wife and said Rajjan and somehow wife of the petitioner succeeded in pushing the aggressor into a bathroom and she locked the bathroom and came outside. In between the incident invited the attention of the neighbours of the petitioner, who rushed to the aid of the petitioner's wife, who by that time was badly burnt. The neighbours rushed the wife of the petitioner to the hospital. The family of the petitioner, including the petitioner and his brother, also rushed to the hospital. The petitioner also informed the police about the incident. According to the petitioner, while he and his brother, Mohd. Haider, and his other family members were busy at the hospital, attending to the petitioner's wife, who was in a very critical condition, a crowd comprising largely his neighbours, barged into the petitioner's house where Rajjan, the aggressor, was confined in the bathroom, and made him the victim of their fury. The crowd gave Rajjan a severe beating. The incident so happened at the petitioner's residence behind his back and what has been done by the enraged crowd to Rajjan, who died in consequence thereof, was a reaction to what has been done by Rajjan. The deceased Rajjan was an outsider, who trespassed into the house of the petitioner and had attempted to rape the lady of the house while she was alone at her home during his attempt to rape the lady, he also made a murderous attempt on her. The crowd assembled, after the shocking and daring attempt made by Rajjan, an intruder, who was locked in the bathroom, and battered him severely which resulted in his death. The petitioner's wife Shailee, as a result of burn injuries, inflicted upon her by the deceased aggressor, Rajjan, on 2.8.2008, succumbed to her bum injuries during the course of the treatment at the hospital on 04.09.2008. However, before passing away, the petitioner's wife got her dying declaration recorded before a Magistrate on 02.08.2008 where she clearly mentioned that the nature of the incident was to assault her, an attempt to rape her and even an attempt to kill her by setting her ablaze was made by the deceased Rajjan. A first information report was lodged on 2.8.2008 by the brother of the victim, one Alamdar Hussain, which according to the petitioner was anti-dated, against the petitioner, his late wife and the petitioner's brothers, Mohd. Haider and Mohd. Ibrahim. A case crime No. 132 of 2008, under Sections 302 and 201 IPC, Police Station Kareily, District Allahabad has been registered. The petitioner, along with his brothers, have been charge-sheeted and committed to the Sessions where they are being tried, vide Sessions Trial No. 719 of 2009, State v. Mohd. Ismail and others, pending before the Additional Sessions Judge, Court No. 10, Allahabad. The petitioner has been arrested, however, on second bail application, being Criminal Miscellaneous Bail Application No. 5296 of 2012, the petitioner, vide order dated 04.05.2012, has been granted bail by this Court. The petitioner has been served with a departmental charge-sheet, being Departmental Enquiry No. 04/11, dated 15.05.2012, issued by the respondent No. 2, charging the petitioner for a service misconduct, under rule 3(2) of the U.P.

(Government Servant Conduct) Rules, 1956 for his alleged involvement in an offence of murder. On the receipt of the charge-sheet, the petitioner moved an application on 19.06.2012, seeking stay of the departmental proceeding initiated against the petitioner on the ground that the charges in the departmental proceeding and charges in the criminal case are identical and involve complicated questions of fact and law. When the departmental proceeding has not been stayed, the petitioner filed present writ petition with the prayers for quashing the charge-sheet dated 15.5.2012, giving rise to the Departmental Enquiry No. 04/11 and all further proceedings arising from the said charge sheet issued by the respondent No. 2 and further for a mandamus restraining the respondents from proceeding with the Departmental Enquiry No. 04/11, based on the charge-sheet dated 15.05.2012, issued by the respondent No. 2, until conclusion of trial and judgment in Session Trial No. 716/09, State v. Mohd. Ismail, under Sections 302 and 201 IPC, pending before the Additional Sessions Judge, Court No. 10, Allahabad.

2. Counter and rejoinder affidavits have been exchanged.

3. With the consent of the parties, the present writ petition is being disposed of at this stage.

4. Learned counsel for the petitioner submitted that the charges in the criminal proceeding and in the departmental proceeding are identical and involve complicated question of law and fact, which will be finally adjudicated and decided in the criminal proceeding, therefore, the impugned departmental proceeding is liable to be stayed, till the disposal of the criminal case. He further submitted that the petitioner has been falsely implicated in the alleged crime. He was not at all involved in the alleged crime. In any view of the matter, the alleged crime was not committed inside the court premises and, therefore, there was no service misconduct within the purview of Rule 3(2) of the Rules of 1956. The reliance is being placed on the decision of the Apex Court in the case of Capt. M. Paul Anthony Vs. Bharat Gold Mines Ltd. and Another, and the decision of the learned single Judge in the case of Subhash Chandra Sengar v. G.B. Pant Agricultural Technology University, Pant Nagar, Nainital and another, reported in 1995 (3) ESC 571 (All).

5. Sri. Manish Goyal, learned counsel for the respondent submitted that in the departmental enquiry, the question for consideration is whether the conduct of the delinquent employee falls within the parameters of Rule 3(2) of the Rules of 1956. The criminal proceedings and the departmental proceedings are two different and distinct proceedings. The criminal case is pending since 2009 in which even evidence has yet not been concluded and as such the criminal proceeding may yet take time to conclude and till conclusion of the criminal proceeding, the departmental proceeding cannot be stalled. Even after conclusion of the criminal case, in case if the petitioner would be convicted or acquitted, the matter may go in Appeal and the same principle may again be applied and in such a situation there would be no end of the matter. The post cannot be kept vacant for an indefinite period. Interest of

the institution is paramount. The proceeding for safeguarding the interest of the institution cannot be stopped. In the departmental proceeding, which is going on, the right of the delinquent employee will not be hampered and he will be provided fullest opportunity to plead his case. So far as grant of bail by this Hon'ble Court is concerned, this Hon'ble Court has been pleased to grant the bail to the petitioner merely on the ground that the petitioner was in Jail for the last four years and trial has yet not been concluded. Lastly, he submitted that in a departmental enquiry, the advisability, desirability or the propriety has to be determined. The conduct of an employee of the High Court should be un-impeccable as he is part of the judicial administration. His conduct should be beyond doubt and unblemished and there is no scope of any compromise about the conduct of the High Court employee, or for that matter any employee or any officer of any rank of the other Government departments. He placed reliance on the following decisions of the Apex Court:

State Bank of India and Others Vs. R.B. Sharma, (Paragraph Nos. 8 to 11)

(State of Rajasthan Vs. B.K. Meena and others, (Paragraph Nos. 14 and 17)

Hindustan Petroleum Corporation Ltd. and Others Vs. Sarvesh Berry, (Paragraph 14)

Management of Krishnakali Tea Estate Vs. Akhil Bharatiya Chah Mazdoor Sangh and Another, (Paragraphs 26 and 27)

(Kendriya Vidyalaya Sangathan and Others Vs. T. Srinivas, (Paragraph Nos. 9, 10, 11)

(Noida Entrepreneurs Assn. Vs. Noida and Others, (Paragraph Nos. 11 and 16)

Management, Pandiyan Roadways Corp. Ltd. Vs. N. Balakrishnan, (Paragraph Nos. 21 and 22)

The Deputy Inspector General of Police and Another Vs. S. Samuthiram, (Paragraphs 23 to 27).

6. I have considered rival submissions and gone through the materials on record as well as the decisions of the Apex Court on the issue.

7. In the case of Capt. M. Paul Anthony Vs. Bharat Gold Mines Ltd. and Another, , the Apex Court, after considering various decisions of the Apex Court, in paragraph 20, has formulated certain parameters with regard to departmental proceedings and the proceedings in a criminal case, which reads as under:

20. The conclusions which are deductible 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-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.

8. In the case of [State Bank of India and Others Vs. R.B. Sharma](#), the Apex Court, in paragraphs 8, 9, 10 and 11, held as follows:

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 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 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 department 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. A three-Judge Bench of this Court in Depot Manager, Andhra Pradesh State Road Transport Corporation Vs. Mohd. Yousuf Miya, etc., analysed the legal position in great detail on the above lines.

10. The aforesaid position was also noted in State of Rajasthan Vs. B.K. Meena and others, .

11. There can be no straight jacket formula as to in which case the departmental proceedings are to be stayed. There may be cases where the trial of the case gets prolonged by the dilatory method adopted by delinquent official. He cannot be permitted to, on one hand, prolong criminal case and at the same time contend that the departmental proceedings should be stayed on the ground that the criminal case is pending.

9. In the case of State of Rajasthan Vs. B.K. Meena and others, , the Apex Court, in Paragraphs 14 and 17, has observed as follows:

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 to be determined having regard to the facts and circumstances of a given case and that no hard and fast rules can be enunciated in that behalf. The only ground suggested in the above decisions 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. 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 well-known 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 in spite 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 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.

17. There is yet another reason. The approach and the objective in the criminal proceedings and the disciplinary proceedings is altogether distinct and different. In the disciplinary proceedings, the question is whether the respondent is guilty of such conduct as would merit his removal from service or a lesser punishment, as the case may be, whereas in the criminal proceedings the question is whether offences registered against him under the Prevention of Corruption Act (and the Indian Penal Code, if any) are established and, if established, what sentence should be imposed upon him. The standard of proof, the mode of enquiry and the rules governing the enquiry and trial in both the cases are entirely distinct and different. Staying of disciplinary proceedings pending criminal proceedings, to repeat, should not be matter of course but a considered decision. Even if stayed at one stage, the decision may require reconsideration if the criminal case gets unduly delayed.

10. The Apex Court in the case of Hindustan Petroleum Corporation Ltd. and Others Vs. Sarvesh Berry, has held as follows:

14. That being the position, the High Court was not justified in directing stay of the departmental proceedings pending conclusion of the criminal charge. As noted in

Capt. M. Paul Anthony Vs. Bharat Gold Mines Ltd. and Another, where there is delay in the disposal of a criminal case the departmental proceedings can be proceeded with so that the conclusion can be arrived 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.

11. The Apex Court, in the case of Management of Krishnakali Tea Estate Vs. Akhil Bharatiya Chah Mazdoor Sangh and Another, held as follows:

26. Learned counsel for the respondents in regard to the above contention relied on a judgment of this Court in the case of Capt. M. Paul Anthony (supra). In our opinion, even that case would not support the respondents herein because in the said case the evidence led in the criminal case, as well as in the domestic enquiry was one and the same and the criminal case having acquitted the workmen on the very same evidence, this Court came to the conclusion that the finding to the contrary on the very same evidence by the domestic enquiry would be unjust, unfair and rather oppressive. It is to be noted that in that case the finding by the tribunal was arrived in an ex parte departmental proceeding. In the case in hand, we have noticed that before the Labour Court the evidence led by the management was different from that led by the prosecution in the criminal case and the materials before the criminal court and the Labour Court were entirely different. Therefore, it was open to the Labour Court to have come to an independent conclusion dehors the finding of the criminal court. But at this stage it should be noted that it is not as if the Labour Court in the instant case was totally oblivious of the proceedings before the criminal court. The Labour Court has in fact perused the order of the Judicial Magistrate and the exhibits produced therein and come to an independent conclusion that the order of the criminal case has no bearing on the proceedings before it which finding of the Labour Court, in our opinion, is justified. It may be some use to us to refer at this stage to a judgment of this Court in the case of State of Rajasthan (supra) wherein it is held thus:

There is yet another reason. The approach and the objective in the criminal proceedings and the disciplinary proceedings is altogether distinct and different. In the disciplinary proceedings, the question is whether the respondent is guilty of such conduct as would merit his removal from service or a lesser punishment, as the case may be, whereas in the criminal proceedings the question is whether the offences registered against him under the Prevention of Corruption Act (and the Indian Penal Code, if any) are established and, if established, what sentence should be imposed upon him. The standard of proof, the mode of enquiry and the rules governing the enquiry and trial in both the cases are entirely distinct and different.

27. From the above, it is seen that the approach and the objectives of the criminal proceedings and the disciplinary proceedings are altogether distinct and different. The observations therein indicate that the Labour Court is not bound by the findings of the criminal court.

12. In the case of Kendriya Vidyalaya Sangathan and Others Vs. T. Srinivas, , the Apex Court, in paragraphs 9, 10 and 11, held as follows:

9. In State of Rajasthan Vs. B.K. Meena and others, this court held:

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.

(Emphasis supplied)

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.

11. In the instant case, from the order of the tribunal as also from the impugned order of the High Court, we do not find that the two forums below have considered the special facts of this case which persuaded them to stay the departmental proceedings. On the contrary, reading of the two impugned orders indicates that both the tribunal and the High Court proceeded as if a departmental enquiry had to be stayed in every case where a criminal trial in regard to the same misconduct is pending. Neither the tribunal nor the High Court did take into consideration the seriousness of the charge which pertains to acceptance of illegal gratification and the desirability of continuing the respondent in service in spite of such serious charges levelled against him. This Court in the said case of State of Rajasthan (supra) has further observed that the approach and the objective in the criminal proceedings and the disciplinary proceedings is altogether distinct and different. It held that in the disciplinary proceedings the question is whether the respondent is guilty of such conduct as would merit his removal from service or a lesser punishment, as the case may be, whereas in the criminal proceedings the question is whether the offences registered against him are established and, if established, what sentence should be imposed upon him. The court in the above case further noted that the standard of proof, the mode of enquiry and the rules governing the enquiry and trial in both the cases are distinct and different. On that basis, in the

case of State of Rajasthan the facts which seem to be almost similar to the facts of this case held that the tribunal fell in error in staying the disciplinary proceedings.

13. The Apex Court, in the case of [Noida Entrepreneurs Assn. Vs. Noida and Others](#), (Paras 11, 12 and 17 of AIR), has observed has follows:

11. A bare perusal of the order which has been quoted in its totality goes to show that the same is not based on any rational foundation. The conceptual difference between a departmental enquiry and criminal proceedings has not been kept in view. Even orders passed by the executive have to be tested on the touchstone of reasonableness. (See [Tata Cellular Vs. Union of India](#), and Teri Oat Estates (P) Ltd. v. U.T. Chandigarh). The conceptual difference between departmental proceedings and criminal proceedings have been highlighted by this Court in several cases. Reference may be made to [Kendriya Vidyalaya Sangathan and Others Vs. T. Srinivas](#), , [Hindustan Petroleum Corporation Ltd. and Others Vs. Sarvesh Berry](#), and [Uttaranchal Road Transport Corpn. and Others Vs. Mansaram Nainwal](#) .

8. ...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 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 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 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 department 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.

A three-Judges Bench of this Court in Depot Manager, Andhra Pradesh State Road Transport Corporation Vs. Mohd. Yousuf Miya, etc., analysed the legal position in great detail on the above lines.

16. The standard of proof required in departmental proceedings is not the same as required to prove a criminal charge and even if there is an acquittal in the criminal proceedings, the same does not bar departmental proceedings. That being so, the order of the State Government declining not to continue the departmental proceeding is clearly untenable and is quashed. The departmental proceedings shall continue.

14. The Apex Court in the case of Management, Pandiyan Roadways Corp. Ltd. Vs. N. Balakrishnan, observed as follows:

21. There are evidently two lines of decisions of this Court operating in the field. One being the cases which would come within the purview of Capt. M. Paul Anthony Vs. Bharat Gold Mines Ltd. and Another, and G.M. Tank Vs. State of Gujarat and Another. However, the second line of decisions show that an honourable acquittal in the criminal case itself may not be held to be determinative in respect of order of punishment meted out to the delinquent officer, inter alia, when : (i) the order of acquittal has not been passed on the same set of fact or same set of evidence; (ii) the effect of difference in the standard of proof in a criminal trial and disciplinary proceeding has not been considered. [See Commissioner of Police, New Delhi Vs. Narendra Singh, or; where the delinquent officer was charged with something more than the subject-matter of the criminal case and/or covered by a decision of the Civil Court. [See Jasbir Singh Vs. Punjab and Sind Bank and Others, and Noida Entrepreneurs Assn. Vs. Noida and Others, .

22. In Narinder Mohan Arya Vs. United India Insurance Co. Ltd. and Others, this Court held:

39. Under certain circumstances, a decision of a civil court is also binding upon the criminal court although, converse is not true. (See Karam Chand Ganga Prasad and Another Vs. Union of India (UOI) and Others, . However, it is also true that the standard of proof in a criminal case and civil case is different.

40. We may notice that in Capt. M. Paul Anthony Vs. Bharat Gold Mines Ltd. and Another, this Court observed: (SCC p. 695, para 35)

35. Since the facts and the evidence in both the proceedings, namely, the departmental proceedings and the criminal case were the same without there being any iota of difference, the distinction, which is usually drawn as between the departmental proceedings and the criminal case on the basis of approach and burden of proof, would not be applicable to the instant case.

41. We may not be understood to have laid down a law that in all such circumstances the decision of the civil court or the criminal court would be binding

on the disciplinary authorities as this Court in large number of decisions points out that the same would depend upon other factors as well. See e.g. [Management of Krishnakali Tea Estate Vs. Akhil Bharatiya Chah Mazdoor Sangh and Another](#), and [Manager, R.B.I., Bangalore Vs. S. Mani and Others](#). Each case is, therefore, required to be considered on its own facts.

15. In the case of [The Deputy Inspector General of Police and Another Vs. S. Samuthiram](#), (Paras 20 to 24 of AIR), the Apex Court, in paragraphs 23 to 27 (of SCC) (Paras 20 to 24), has observed as follows:

23. We are of the view that the mere acquittal of an employee by a criminal court has no impact on the disciplinary proceedings initiated by the Department. The respondent, it may be noted, is a member of a disciplined force and non examination of two key witnesses before the criminal court that is Adiyodi and Peter, in our view, was a serious flaw in the conduct of the criminal case by the Prosecution. Considering the facts and circumstances of the case, the possibility of winning over P.Ws. 1 and 2 in the criminal case cannot be ruled out. We fail to see, why the Prosecution had not examined Head Constables 1368 Adiyodi and 1079 Peter of Tenkasi Police Station. It was these two Head Constables who took the respondent from the scene of occurrence along with PWs. 1 and 2, husband and wife, to the Tenkasi Police Station and it is in their presence that the complaint was registered. In fact, the criminal court has also opined that the signature of PW 1 (husband - complainant) is found in Ex. P1 - Complaint. Further, the Doctor P.W.8 has also clearly stated before the Enquiry Officer that the respondent was under the influence of liquor and that he had refused to undergo blood and urine tests. That being the factual situation, we are of the view that the respondent was not honourably acquitted by the criminal court, but only due to the fact that PW 1 and PW 2 turned hostile and other prosecution witnesses were not examined.

Honourable Acquittal

24. The meaning of the expression "honourable acquittal" came up for consideration before this Court in AIR 1994 552 (SC) . In that case, this Court has considered the impact of Regulation 46(4) dealing with honourable acquittal by a criminal court on the disciplinary proceedings. In that context, this Court held that the mere acquittal does not entitle an employee to reinstatement in service, the acquittal, it was held, has to be honourable. The expressions "honourable acquittal", "acquitted of blame", "fully exonerated" are unknown to the Code of Criminal Procedure or the Penal Code, which are coined by judicial pronouncements. It is difficult to define precisely what is meant by the expression "honourably acquitted". When the accused is acquitted after full consideration of prosecution evidence and that the prosecution had miserably failed to prove the charges levelled against the accused, it can possibly be said that the accused was honourably acquitted.

25. In R.P. Kapur Vs. Union of India (UOI) and Another, it was held even in the case of acquittal, departmental proceedings may follow where the acquittal is other than honourable. In State of Assam and another v. Raghava Rajgopalachari reported in 1972 SLR 45, this Court quoted with approval the views expressed by Lord Williams, J. in (Major Robert Stuart Wauchope Vs. Emperor,) which is as follows:

The expression "honourably acquitted" is one which is unknown to court of justice. Apparently it is a form of order used in courts martial and other extra judicial tribunals. We said in our judgment that we accepted the explanation given by the appellant believed it to be true and considered that it ought to have been accepted by the Government authorities and by the magistrate. Further, we decided that the appellant had not misappropriated the monies referred to in the charge. It is thus clear that the effect of our judgment was that the appellant was acquitted as fully and completely as it was possible for him to be acquitted. Presumably, this is equivalent to what Government authorities term "honourably acquitted".

26. As we have already indicated, in the absence of any provision in the service rule for reinstatement, if an employee is honourably acquitted by a Criminal Court, no right is conferred on the employee to claim any benefit including reinstatement. Reason is that the standard of proof required for holding a person guilty by a criminal court and the enquiry conducted by way of disciplinary proceeding is entirely different. In a criminal case, the onus of establishing the guilt of the accused is on the prosecution and if it fails to establish the guilt beyond reasonable doubt, the accused is assumed to be innocent. It is settled law that the strict burden of proof required to establish guilt in a criminal court is not required in a disciplinary proceedings and preponderance of probabilities is sufficient. There may be cases where a person is acquitted for technical reasons or the prosecution giving up other witnesses since few of the other witnesses turned hostile etc. In the case on hand the prosecution did not take steps to examine many of the crucial witnesses on the ground that the complainant and his wife turned hostile. The court, therefore, acquitted the accused giving the benefit of doubt. We are not prepared to say in the instant case, the respondent was honourably acquitted by the criminal court and even if it is so, he is not entitled to claim reinstatement since the Tamil Nadu Service Rules do not provide so.

27. We have also come across cases where the service rules provide that on registration of a criminal case, an employee can be kept under suspension and on acquittal by the criminal court, he be reinstated. In such cases, the re-instatement is automatic. There may be cases where the service rules provide in spite of domestic enquiry, if the criminal court acquits an employee honourably, he could be reinstated. In other words, the issue whether an employee has to be reinstated in service or not depends upon the question whether the service rules contain any such provision for reinstatement and not as a matter of right. Such provisions are absent in the Tamil Nadu Service Rules.

16. From perusal of the decisions of the Apex Court, referred hereinabove, in my view, briefly, the Apex Court has laid down following principles:

- (a) Departmental proceeding and the criminal proceeding are two different and distinct proceedings. The purpose of both the proceedings are different. 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 offence shall make satisfaction to the public whereas the departmental enquiry is meant to maintain discipline in the service and efficiency of public service.
- (b) There would be no bar to proceed, simultaneously with departmental enquiry and the trial of a criminal case unless the charge in the criminal trial is of grave nature involving complicated questions of fact and law.
- (c) 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. The strict standard of proof or applicability of the Evidence Act stands excluded.
- (d) The only ground for staying the disciplinary proceeding is "that the defence of the employee in the criminal case may not be prejudiced."
- (e) "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. 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 well known that they drag on endlessly where high officials or persons holding high public offices involved.
- (f) The interest of the administration and good governance demand that the proceedings are concluded expeditiously. It must be remembered that the interest of the administration demands that the undesirable element are thrown out on any charge of misdemeanour 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 in the services.
- (g) 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.
- (h) Stay of disciplinary proceedings cannot be, and should not be, a matter of course, but a considered decision. Even if it is stayed at one stage, the decision may require reconsideration, if the criminal case get unduly delayed.

(i) The standard of proof required in the departmental proceedings is not the same as is required to prove a criminal charge and even if there is an acquittal in the criminal proceedings, the same does not bar departmental proceedings.

(j) In the absence of any provision in the Service Rule for reinstatement, if an employee is honourably acquitted by a criminal court, even then no right is conferred on the employee to claim any benefit, including the reinstatement for reason that the standard of proof required for holding a person guilty by a criminal court and the enquiry conducted by way of disciplinary proceeding is entirely different. In a criminal case, the onus of establishing the guilt of the accused is on the prosecution and if it fails to establish the guilt beyond a reasonable doubt, the accused is assumed to be innocent.

(k) It is settled law that the strict burden of proof required to establish guilt in a criminal court is not required in a disciplinary proceedings and preponderance of probabilities is sufficient. There may be cases where a person is acquitted for technical reasons or the prosecution giving up other witnesses since few of the other witnesses turned hostile etc., but it may not of any help in the disciplinary proceedings.

17. In the present case, the charge against the petitioner is that the petitioner has murdered one Rajjan and also attempted to kill his wife, who subsequently died. The first information report has been lodged by the relatives of his wife. The crime has been committed on 2nd August, 2008. The Case Crime No. 132 of 2008, under Sections 302 and 201 IPC has been registered, and Sessions Trial No. 719 of 2009 is going on. The charges against the petitioner are serious in nature. The question is that whether a person against whom such criminal charges have been levelled should be allowed to continue in the Government service holding such an important post of Review Officer of the High Court, which carries highest degree of responsibility and confidentiality. The conduct of an employee of the High Court, or for that matter, of any other Government Department, should be un-impeccable and beyond doubt as well as unblemished. There is no scope of any compromise about the conduct of the High Court Employees, or for that matter employee of any other Government Department. The question is that whether it is in the interest of administration and good governance of the institution and is "desirable" or "advisable" to permit him to continue in the service against whom such a serious charge of misdemeanour has been levelled. These aspects of the matter can be considered only in the departmental proceeding, which is a forum, where it will be examined whether the conduct of the petitioner will fall within the purview of Section 3(2) of the Rules of 1956.

18. The crime took place on 2nd August, 2008 and the Sessions Trial No. 719 of 2009 is pending since 2009 in which the evidence has yet not been concluded, though more than four years have passed. It is not known that how much further time will be consumed in concluding the evidence after which the arguments will be made

and then the final verdict will come. Further, after the judgment in the Sessions Trial which may result either in acquittal or in conviction, either of the party may go in Appeal and the proceedings may not will conclude in the Appeal, but it may further went up to the Apex Court. Therefore, on the facts and circumstances, I do not see any justification in stalling the departmental proceedings. In the departmental proceedings, the petitioner will get the fullest opportunity to plead his case.

19. In view of the foregoing discussions and the facts and circumstances of the case, I do not see any reason to stay the departmental proceeding, till disposal of the Sessions Trial. Let the departmental proceedings go on and be concluded, expeditiously, in accordance to law. In the result, the writ petition fails and is dismissed.