

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13757 of 2015

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Manoj Kumar, son of Ram Chandra Prasad, resident of village Dhanakdobh
Ghoswari, District Patna

.... Petitioner

Versus

1. The State of Bihar through Principal Secretary Co-operative Department
2. The Principal Secretary, Co-operative Society, Patna
3. The Deputy Secretary, Co-operative Society, Patna
4. The Registrar, Co-operative Society, Patna
5. The Assistant Registrar, Co-operative Society, Patna

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Yogesh Chandra Verma, Sr.Adv.

For the Respondent/s : Mr. Sanjay Kumar Singh, AC to AAG12

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CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA
ORAL ORDER

2 03-09-2015

Heard learned counsel for the parties.

The prayer of the petitioner in this writ application reads as follows:

“That by this writ application the petitioner craves the indulgence of the Hon’ble High Court for issuance of a writ in nature of mandamus for directing or commanding the respondents to stay proceeding which was being initiated against the petitioner by the department in connection with Saharsa Vigilance Case No. 20/05 dated 12.3.15 under section 7, 13(2) of section 13(1)(D) P.C.Act according to Rule 7 of 2005 of Bihar Government Servant (Classification, Control and Appeal) in the light of Article 20(2) of the Constitution of India.”

Mr. Yogesh Chandra Verma, learned Senior counsel for the petitioner, submits that since a substantive criminal case



against the petitioner being Saharsa Vigilance Case No. 20/2015 dated 12.3.2015 is pending, the departmental proceeding sought to be drawn against the petitioner under the impugned resolution dated 26.6.2015 on the basis of memo of charge should be stayed, inasmuch as the petitioner is likely to be prejudiced in pending criminal case.

Such argument has to be only noted for its being rejected. The criminal case against the petitioner is still under investigation. This Court in the case of the State of Bihar & ors. v. Ram Lakhan Singh, reported in 1997(1) PLJR 49, has straightway answered this very question by holding as follows:

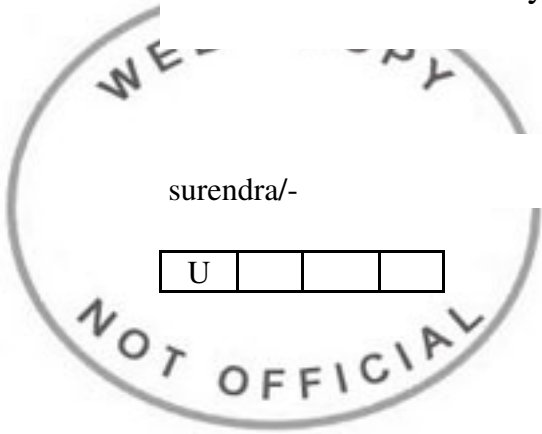
“8. In our opinion, however, the learned single Judge has not taken the correct view of the matter in staying the departmental proceedings. The respondent has not been able to show that prejudice, if any, or embarrassment shall be caused to him in case the departmental proceedings proceed against him particularly when the police had not submitted any chargesheet (final form) against him and the matter was still under investigation and the learned Chief Judicial Magistrate did not take cognizance of any offence against the respondent. As noted above, the attempt of the respondent to have civil suit stayed ultimately failed in the revision filed by the State of Bihar in this Court. We have not been shown any decision of the Supreme Court or of any other Court that even when investigation is pending with the police the departmental proceeding should be



stayed. The learned Single Judge though rightly observed that it was not invariably a rule that when accused was facing the criminal trial, the departmental proceeding against him should be stayed. We think it will be stretching this rule too far if we hold that even when the investigation is pending the departmental proceeding should be stayed without knowing if ultimately the investigation results into prosecution of the accused or not. It is altogether a different thing that a person against whom first information report is lodged and a case registered of a cognizable offence, he cannot be compelled to be witness against himself.”

Even otherwise this Court would find that the scope of departmental proceeding and the criminal case are in two different spheres. In the departmental proceeding it is the misconduct which is examined and in the criminal case it is offence committed by the person concerned which becomes subject matter of consideration. A Government servant, who is found to be caught red-handed taking bribe, may also become liable for offence under section 13 of the Prevention of Corruption Act but then the Government servant is not expected as per the Bihar Government Servant Conduct Rules to take bribe and therefore if the departmental proceeding has been started against the petitioner for that misconduct it cannot be heard to say that should be stayed till final outcome of the criminal case.

In that view of the matter, this application must fail and is
hereby dismissed.



(Mihir Kumar Jha, J)