

HIGH COURT OF CHHATTISGARH, BILASPUR

WPS No. 3640 of 2015

1. Mukesh Gurjar S/o Shri Ramjilal Gurjar, Aged About 30 Years R/o C I S F, 3rd, R. B. Bhilai, P.S. Nevai, District Durg, (Chhattisgarh)

---- Petitioner

Versus

1. Union Of India Through: The Secretary, Home Department, Vallabh Bhawan, New Delhi
2. Senior Commandant, C I S F, 3rd Reserve Unit, Bhilai, District Durg, (Chhattisgarh)
3. Assistant Commandant, (Fire)-Cum-Enquiry Officer, C I S F, Bhilai, District Durg, (Chhattisgarh)

---- Respondent

For Petitioner

Shri T.K. Tiwari, Advocate

For Respondent/UOI

Shri Ashwani Shukla, Advocate

Hon'ble Shri Justice Prashant Kumar Mishra

Order On Board

12/10/2015

1. By this petition, the petitioner is seeking a direction to the respondent No.2 and 3 to stay the departmental enquiry proceedings initiated against him because on the same set of facts charge sheet has already been filed by the police before the Court of Chief Judicial Magistrate, Chhindwada (MP) in crime No.412/2015 for offence under Section 376 (2) (C) (F) of the Indian Penal Code and under Sections 3 (2) (v) &

3 (1) (xii) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 on 29-7-2015 vide final report No.388/2015.

2. The facts of the case, in brief, are that the petitioner is working on the post of Sub Inspector, Central Industrial Security Force, 3rd Reserve Unit, Bhilai, Durg. The prosecutrix lodged a report against the petitioner alleging commission of offence under Section 376 (2) (C) (F) of the Indian Penal Code and under Sections 3 (2) (v) & 3 (1) (xii) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and stated that the petitioner committed rape with her at Puja Hotel, Chhindwada (Madhya Pradesh). On the basis of the said report, the petitioner has been arrested and subsequently, he has been released on bail by the Sessions Court, Chhindwada. On completion of the investigation, the police submitted the charge sheet before the Court of Chief Judicial Magistrate, Chhindwada.
3. In the meanwhile, the employer of the petitioner i.e. CISF has also issued the charge sheet to the petitioner on the following charges :

(i) After being transferred from Chhindwada to Bhilai the petitioner obtained leave for 4 days i.e. from

20-7-2015 to 23-7-2015 to bring back his family, however, he lodged himself at Pooja Hotel, Chhindwada and committed forcible sexual intercourse with the prosecutrix, which was reported in newspapers, which caused disrespect and disrepute to the department.

(ii) Petitioner applied for leave for the above said period on the ground that he is to proceed to Chhindwada to bring back his family. Even though he had retained the official accommodation at Chhindwada he stayed at Pooja Hotel by producing an illegal identity card No.39404 as Constable of CISF whereas the petitioner is Sub Inspector in CISF. Thus, he committed act of indiscipline.

(iii) By involving himself in committing rape with the prosecutrix the petitioner has committed irresponsible and indisciplined act, which is in violation of the applicable conduct rules.

4. It is argued on behalf of the petitioner that departmental enquiry and the criminal case is based on same set of facts and allegation, therefore, departmental enquiry deserves to be quashed or at-least the same deserves to be withheld during the pendency of the criminal case.

5. It appears, the petitioner has allegedly committed the offence under Section 376 (2) (C) (F) of the Indian Penal Code and under Sections 3 (2) (v) & 3 (1) (xii) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.
6. In **Secretary, Ministry of Defence and others Vs. Prabhash Chandra Mirdha** {(2012) 11 SCC 565}, the Supreme Court has held thus in para 12:-

“12. Thus, the law on the issue can be summarised to the effect that the charge-sheet cannot generally be a subject-matter of challenge as it does not adversely affect the rights of the delinquent unless it is established that the same has been issued by an authority not competent to initiate the disciplinary proceedings. Neither the disciplinary proceedings nor the charge-sheet be quashed at an initial stage as it would be a premature stage to deal with the issues. Proceedings are not liable to be quashed on the grounds that proceedings had been initiated at a belated stage or could not be concluded in a reasonable period unless the delay creates prejudice to the delinquent employee. Gravity of alleged misconduct is a relevant factor to be taken into consideration while quashing the proceedings.”

7. In **Stanzen Toyotetsu India Private Limited vs. Girish V. and others**, (2014) 3 SCC 636, the Supreme Court, after referring to its earlier decisions in the matters of **A.P. SRTC v. Mohd. Yousuf Miya**¹, **Karnataka SRTC v. M.G. Vittal**

1 (1997) 2 SCC 699

Rao², M. Paul Anthony v. Bharat Gold Mines Ltd³ and

Hindustan Petroleum Corpn. Ltd. v. Sarvesh Berry⁴, has

held thus in para 13, 14 & 16 :

13. 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 levelled 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.

14. In *Paul Anthony (supra)* this Court went a step further to hold that departmental proceedings can be resumed and proceeded even when they may have been stayed earlier in cases where the criminal trial does not make any headway.

16. Suffice it to say that while there is no legal bar to the holding of the disciplinary proceedings and the criminal trial simultaneously, 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 their defence before the criminal court.

² (2012) 1 SCC 442

³ (1999) 3 SCC 679

⁴ (2005) 10 SCC 471

Gravity of the charge is, however, not by itself enough to determine the question unless the charge involves complicated question of law and fact. The court examining the question must also keep in mind that criminal trials get prolonged indefinitely especially where the number of accused arraigned for trial is large as is the case at hand and so are the number of witnesses cited by the prosecution. The court, therefore, has to draw a balance between the need for a fair trial to the accused on the one hand and the competing demand for an expeditious conclusion of the ongoing disciplinary proceedings on the other. An early conclusion of the disciplinary proceedings has itself been seen by this Court to be in the interest of the employees.”

8. In the case at hand, the charge does not involve such complicated questions of law and facts, which would require initiation of departmental proceeding after the criminal case is over.
9. For the foregoing, the writ petition being devoid of any substance deserves to be and is hereby dismissed.

Sd/-

Judge
(Prashant Kumar Mishra)

Gowri