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HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (S) No. 1019 of 2017**

- Bablu Mishra S/o Shri Pramod Kumar Mishra, Aged About 34 Years R/o Quarter No. 4 D, Street No. S P A, Sector - 8, Bhilai, Police Station Bhilai Nagar, Tahsil & District Durg (Chhattisgarh).

---- Petitioner**Versus**

1. State Of Chhattisgarh Through Its Secretary, Department Of Home (Police), Mahanadi Mantralaya, Police Station & Post Rakhi, New Raipur (Chhattisgarh).
2. Director General Of Police (D. G. P.), Police Headquarters (P H Q), Near Mahanadi Mantralaya, Police Station & Post Rakhi, New Raipur (Chhattisgarh).
3. Inspector General Of Police (I. G. P.), Office Of Inspector General Of Police (I. G. P.), 32 Bungalow, Bhilai, Police Station Supela, District Durg (Chhattisgarh).
4. Superintendent Of Police (S. P.), Office Of Superintendent Of Police, Near Collectorate Office, Durg, District Durg (Chhattisgarh).
5. Deputy Superintendent Of Police (Dy. S. P.), Crime/ Enquiry Officer, Police Control Room, Sector-6, Bhilai, District Durg (Chhattisgarh).

---- Respondents

For Petitioner:	Mr. Abhishek Pandey, Advocate
For State :	Mr. Shashank Thakur, Government Advocate

Hon'ble Shri Justice P. Sam Koshy**Order on Board****01.03.2017**

1. The challenge in the present Writ Petition is that the charge sheet dated 08.04.2016 issued to the Petitioner under Chhattisgarh Police Regulation, 1861 Sub-rule 2 & 3 of Rule 64 – General Condition of Service has been issued to the Petitioner on 08.04.2016 on the basis of a complaint lodged by Smt. Shushma Thakur in the respect of the Petitioner having ravished her. Subsequently, an inquiry officer was also appointed however no presenting officer was appointed in the present case on behalf of the department.
2. In the instant case the inquiry was initiated and the inquiry report has

also been submitted on 24.01.2017. Immediately on receipt of the inquiry report the Petitioner made a representation which is pending consideration with the Respondent authorities.

3. Learned Counsel for the Petitioner submits that a perusal of the inquiry proceeding itself would clearly reflect that inquiry officer in the instant case has himself acted as a judge as well as prosecutor. He submits that it was the enquiry officer himself who had examined and cross examined most of the witnesses examined during the enquiry particularly the Prosecutrix PW1, Shushma thakur, PW2 Rani Telasi and PW7 Anju Srivas. Even the delinquent the Petitioner was examined by the inquiry officer that the procedure which has been adopted by the Respondents as well as the inquiry officer in not appointing presenting officer and the inquiry officer himself acting as an adjudicator as well as a prosecutor are illegal and also bad in law in the light of the settled legal position made in the catena of the decisions of the Supreme Court in this regard.
4. The leading decision of which is the case of **Union of India through its Secretary, Ministry of Railway, New Delhi and Others v. Mohd. Naseem Siddiqui** reported in **2005 (1) LLJ 931** where in the Supreme Court in paragraph 7 has held as under :-

“7. One of the fundamental principles of natural justice is that no man shall be a judge in his own cause. This principle consists of seven well recognised facets: (i) The adjudicator shall be impartial and free from bias, (ii) The adjudicator shall not be the prosecutor, (iii) The complainant shall not be an adjudicator, (iv) A witness cannot be the Adjudicator, (v) The Adjudicator must not import his personal knowledge of the facts of the case while inquiring into charges, (vi) The Adjudicator shall not decide on the dictates of his Superiors or others, (vii) The Adjudicator shall decide the issue with reference to

material on record and not reference to extraneous material or on extraneous considerations. If any one of these fundamental rules is breached, the inquiry will be vitiated.

Further, in paragraph-16, Their Lordships summarized the legal position by observing as under:-

(i) The Inquiry Officer, who is in the position of a Judge shall not act as a Presenting Officer, who is in the position of a prosecutor.

(ii) It is not necessary for the Disciplinary Authority to appoint a Presenting Officer in each and every inquiry. Non- appointment of a Presenting Officer, by itself will not vitiate the inquiry.

(iii) The Inquiry Officer, with a view to arrive at the truth or to obtain clarifications, can put questions to the prosecution witnesses as also the defence witnesses. In the absence of a Presenting Officer, if the Inquiry Officer puts any questions to the prosecution witnesses to elicit the facts, he should thereafter permit the delinquent employee to cross-examine such witnesses on those clarifications.

(iv) If the Inquiry Officer conducts a regular examination-in-chief by leading the prosecution witnesses through the prosecution case, or puts leading questions to the departmental witnesses pregnant with answers, or cross-examines the defence witnesses or puts suggestive questions to establish the prosecution case employee, the Inquiry Officer acts as prosecutor thereby vitiating the inquiry.

(v) As absence of a Presenting Officer by itself will not vitiate the inquiry and it is recognised that the Inquiry Officer can put questions to any or all witnesses to elicit the truth, the question whether an Inquiry Officer acted as a Presenting Officer, will have to be decided with reference to the manner in which the evidence is let in and recorded in the inquiry.

Whether an Inquiry Officer has merely acted only as an Inquiry Officer or has also acted as a Presenting Officer depends on the facts of each case. To avoid any allegations of bias and running the risk of inquiry being declared as illegal and vitiated, the present trend appears to be to invariably appoint Presenting Officers, except in simple cases. Be that as it may.”

5. The issue involved in the Petition is also squarely dealt with by the Coordinate Bench of this Court in one of the recent decision decided on 13.01.2016 in WP(S) No. 1691/2011 wherein the aforesaid judgment of the Supreme Court has also been relied upon and the Writ Petition was allowed.
6. In view of the aforesaid two authoritative decisions, this Court does not have any hesitation in reaching to the conclusion that the inquiry which has been conducted against the present Petitioner is bad in law, illegal and is not sustainable.
7. In view of the same the entire inquiry proceeding initiated against the present Petitioner being bad in law the same is set aside / quashed and the matter is remitted back to the disciplinary authority for conducting a de-novo enquiry from the stage of the appointment of inquiry officer as well as by appointing a presenting officer to present the case on behalf of the department.
8. With the aforesaid observation the present Writ Petition stands allowed.

Sd/-

(P. Sam Koshy)
JUDGE