

HIGH COURT OF CHHATTISGARH, BILASPUR**WPS No. 2386 of 2020**

Talendra Chandrakar, S/o. Rekeshwar Prasad Chandrakar, Aged About 31 Years, R/o. Constable Police Line, Durg Chhattisgarh.

---- **Petitioner**

Versus

1. State Of Chhattisgarh, Through The Principal Secretary, Home Department Mahanadi Bhavan, Mantralaya, Atal Nagar, Raipur, District Raipur Chhattisgarh.
2. Director General Of Police, Police Headquarter, Atal Nagar, Naya Raipur, District Raipur Chhattisgarh.
3. Senior Superintendent Of Police Durg, District Durg Chhattisgarh.

---- **Respondents**

For Petitioner : Mr. T.K.Jha, Advocate

For Respondents/State : Ms. Akanksha Jain, Dy. Govt. Advocate

Hon'ble Shri Justice Goutam Bhaduri

ORDER

01.07.2020

Heard

1. The petitioner seeks for stay of the departmental enquiry on the ground that on the similar set of facts, the charge sheet has been filed under Section 376 of I.P.C.
2. Learned counsel for the petitioner would submit that the petitioner is served with the charge sheet in the departmental enquiry wherein on the same set of facts, the enquiry has been sought for. It is further contended that the set of witnesses for the departmental enquiry and the criminal case are one and same. Further the counsel would submit that if the departmental enquiry is not stayed then it would open up the defence of the petitioner whereby the petitioner would be seriously prejudiced in the criminal case. He placed his reliance in *(2014) 3 SCC 636 and (1999) 3 SCC 679*.

3. Per contra, learned counsel for the respondents would submit that as a matter of right since the criminal case is pending, the departmental proceeding cannot be stayed and what is complex question of law and fact are to be explained, which the petitioner has failed. Reliance is placed in (2016) 9 SCC 491 and would submit under the circumstances the departmental enquiry may not be stayed.
4. Heard learned counsel for the parties and perused the documents.
5. The petitioner has placed on record the copy of FIR which is under Section 376 of I.P.C. The FIR is being made on the ground that the complainant who was separated from her husband while was working in the Hospital came in contact with the petitioner in the year 2015. It is stated initially petitioner tried to commit forceful sexual intercourse and having been objected, on the pretext of marriage, the petitioner committed sexual intercourse with her thereafter refused to marry. Likewise, the charge sheet which has been served for departmental enquiry purports that it is on the ground that the complainant who was residing separately with her husband was working in the Hospital and the petitioner came in contact in between 2015 and in 2015 he tried to commit forceful sexual intercourse which was objected and having objected subsequently on the pretext of marriage sexual intercourse was committed. The factual background of content of charge sheet served for D.E. and the charge sheet filed in criminal trial are from one genesis.
6. In the likewise situation when the nucleus of fact i.e. charge sheet in D.E. and charge sheet in criminal trial are same in respect of stay of D.E. is laid down by the Supreme Court. The Supreme Court in case of **M. Paul Anthony v. Bharat Gold Mines Ltd.**¹ at para 22 held as under :

“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

¹ (1999) 3 SCC 679

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.”

7. Likewise in case of ***Stanzen Toyotetsu India (P) Ltd. v. Girish V. & Others***² the Supreme Court has reiterated the similar view.
8. The Supreme Court in case of ***State Bank of India & Others v. Neelam Nag & Another***³ has made a little deviation, however, the principles as earlier laid down were not diluted. The Court held that for the stay of the departmental enquiry no straitjacket formula can be spelt out and it would depend from case to case. It further held the disciplinary proceeding cannot be kept pending for indefinite period. It further held the disciplinary proceeding may be stayed to ensure that the defence of the employee in the criminal case may not be prejudiced, but defence ought not to be permitted to unnecessarily delay the departmental proceedings. Therefore, the balance has to be drawn 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 and laid down the following principles.

“14. This Court in *Karnataka SRTC vs. M.G.Vittal Rao* (2012) 1 SCC 442 has summed up the same in the following

² (2014) 3 SCC 636

³ (2016) 9 SCC 491

words:

“(i) There is no legal bar for both the proceedings to go on simultaneously.

(ii) The only valid ground for claiming that the disciplinary proceedings may be stated 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 or 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. (emphasis supplied)”

9. In the case *SBI v. Neelam Nag*³, the principles were laid down on the ground that Neelam Nag had committed a commission and omission in the Bank which caused loss to the Bank and subsequently the FIR was lodged in December 2006 and in 2008 the Bank called for explanation about the alleged irregularities and instituted the disciplinary proceeding. The criminal case which was instituted did not made any effective progress and only 3 witnesses were examined out of 18 witnesses and 133 different dates after framing of charges were there. In such case 26 adjournments were directly attributable to the accused in the criminal case and criminal case was pending for 10 years and eventually when it reached to the Supreme Court, under this background, the Supreme Court has laid down the aforesaid principles.
10. Now taking into the facts of this case, this would reveal that FIR has been lodged on 08.11.2019 and verbatim on the same allegation the charge sheet has been served on 07.04.2020. The charges of FIR and the allegation on the charge sheet and the departmental enquiry are premised over same facts. The petitioner therefore is facing trial under Section 376 of I.P.C. Primarily taking into the date and events and the time period, at this stage, this cannot be said there has been an exorbitant delay and the delay as of

now cannot be attributed to the petitioner who is accused in the criminal case. Therefore, reliance placed by the State and the case law of (2016) 9 SCC 491 do not support the State entirety.

11. The petitioner who is facing trial under Section 376 of I.P.C., if the witnesses are examined in the departmental case prior to recording of the evidence in the criminal case certainly it would prejudice the defence of the petitioner whereby the petitioner would suffer. The reading of the charge sheet would show that primary witnesses are one and same on which the allegations are made i.e. in the criminal case and departmental enquiry. In view of this, it is directed that till the prosecutrix and the material witnesses are examined in the criminal case, there shall be stay of the departmental enquiry. It is further made clear that the petitioner shall not prolong the criminal case and shall cooperate to get the evidence recorded and shall not take any unnecessary adjournment other than any reasonable and valid ground, which would be decided by the learned Court below which is in hold of the trial.
12. With the aforesaid observation, the petition stands finally disposed off.

Sd/-
Goutam Bhaduri
Judge

Aks