

HIGH COURT OF CHHATTISGARH AT BILASPUR**WRIT PETITION (S) NO. 4728 OF 2020**

- Rubina Bano, D/o Mohd. Ansar Khan, aged about 28 years, Lady Police Constable No. 2780, Reserve Police Centre, Raipur, R/o Sahid Veer Narayan Chowk, Ward No.4, Mahasamund, Police Station City Kotwali, Mahasamund, District Mahasamund (CG)

... Petitioner**versus**

1. State of Chhattisgarh, through Secretary, Home Department Mantralaya, Capital Complex, Mahanadi Bhawan, New Raipur, Police Station Raipur, District Raipur (CG)
2. D.I.G., Raipur and Sr. Supdt. of Police, Raipur, District Raipur (CG)
3. D.S.P. Harijan and Tribal Welfare, Police Station, Raipur (CG)
4. Sub Inspector Kavita Dhurve, SHO, Harijan and Tribal Welfare, Police Station Raipur (CG)

... Respondents

For Petitioner	:	Mr. Amit Kumar, Advocate.
For Respondents/State	:	Mr. Sudeep Verma, Dy. G.A.

Hon'ble Shri Justice P. Sam Koshy**Order on Board****17/12/2020**

1. Challenge in the present writ petition is to the initiation of departmental enquiry by respondents simultaneously along with the criminal case registered for the same set of offence and charges.
2. Brief facts of the case is that the petitioner is a Constable under the respondents. According to the petitioner, on 8.1.2020, the respondents have registered a criminal case against the petitioner for the offence punishable under Sections 294, 323/34, 392 and 506-B of IPC in Crime No. 9/2020 registered at Police Station Sargaon, District Mungeli. Simultaneously, the respondents have also issued the petitioner with a charge-sheet and have contemplated departmental enquiry against her.
3. Learned counsel for the petitioner draws the attention of this Court of the list of witnesses in the said criminal case as also the list of witnesses in the departmental enquiry and submits that both the lists of witnesses would find that most of the witnesses to be examined before the two forums are identical. It is the contention of learned counsel for petitioner that, in case, if these witnesses are examined first in the departmental enquiry then the defense of the petitioner would get disclosed in the criminal case, which may have an adverse impact on

the criminal case and therefore the departmental enquiry to that extent should be deferred to. Therefore, relying upon a decision of the Hon'ble Supreme Court in the case of **Stanzen Toyotetsu India Private Limited vs. Girish V. & Ors**¹ and also in the case of **Divisional Controller, Karnataka State Road Transport Corporation vs. M. G Vittal Rao**², learned counsel for petitioner prays for stay of the departmental enquiry.

4. It is relevant at this juncture to refer to the judgment of Hon'ble Supreme Court in the case of **Avinash Sadashiv Bhosle (Died) through LRs. Vs. Union of India (2012) 13 SCC 142** wherein the Hon'ble Supreme Court dealing with the similar set of facts and issues has categorically held that the 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 evidences in preceding case are common. The said principle of law has been reiterated by the Hon'ble Supreme Court in many other decisions previously and subsequently in the case of **State Bank of India & Ors. Vs. Neelam Nag and Others**³.

5. The fact which needs to be kept in mind or that needs to be considered at this juncture is the set of witnesses cited by the Department in the departmental enquiry and the list of witnesses in the criminal case. A perusal of the two in the present case would reveal that the list of witnesses and evidences are similar and the nature of allegations in the criminal case as also in the charge-sheet are also same. Again, in a recent decision the Hon'ble Supreme Court in the case of **Shashi Bhushan Prasad Vs. Inspector General of C.I.S.F in case no. C.A. No. 7130/2009, decided on 01.08.2019** has categorically held that the two proceedings can go simultaneously except where the witnesses and the evidences are same which in the instant case appears to be same.

6. Therefore, in the light of the aforesaid legal position as it stands for, this Court is of the opinion that in the present case also keeping in view the judgment of the Hon'ble Supreme Court referred to in the preceding paragraphs, since the

¹(2014) 3 SCC 636

²(2012) 1 SCC 442

³(2016) 9 SCC 491

witnesses in the two proceedings are similar, if not identical, in the interest of justice, it would be more appropriate if the evidences in the departmental enquiry is deferred till the evidences or witnesses in the criminal case of those witnesses who have been cited in the departmental enquiry are examined, which would include the recording of the statement of the delinquent herself who should not be compelled to depose in the departmental enquiry ahead of the evidence on behalf of the department in the criminal case. It is ordered accordingly.

7. With the aforesaid observation and direction, the present writ petition is disposed of directing the respondent authorities to ensure that the departmental enquiry proceedings shall defer till the witnesses cited in the departmental enquiry, if at all, they are the witnesses in the criminal case are examined in the criminal case as witnesses.

8. Writ Petition stands allowed and disposed of accordingly.

/sharad/

Sd/-
(P. Sam Koshy)
JUDGE