

HIGH COURT OF CHHATTISGARH AT BILASPUR**WPS No. 4789 of 2020**

1. Mukesh Mishra, S/o Basant Mishra, Aged About 34 Years, R/o Daupara, Heeralal Ward, Mungeli, District Mungeli, Chhattisgarh

---- Petitioner**Versus**

1. State of Chhattisgarh Through Secretary, Department of Home, Mahanadi Bhavan Mantralaya, Atal Nagar, Naya Raipur, District Raipur, Chhattisgarh
2. Director General of Police, Raipur District: Raipur, Chhattisgarh
3. Superintendent of Police Mungeli, District: Mungeli, Chhattisgarh

... Respondents

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

Hon'ble Shri Justice P. Sam Koshy**Order on Board****11.12.2020**

1. The challenge in the present writ petition is to the departmental enquiry initiated by the respondents for the same set of facts on which the petitioner is facing a criminal trial.
2. The facts of the case is that the petitioner was working as a Constable in the Police Department, an F.I.R was lodged against him on 29.10.2018 As F.I.R. No. 500/18 at Police Station: Mungeli for the offence punishable u/s 376 of the I.P.C. For the same set of facts, the matter subsequently has been registered and his presently pending before the Sessions Court at Mungeli. Based on the same set of facts, the Department has also issued a charge-sheet on 09.01.2019 to which also the petitioner has given a detailed reply. Now, both the criminal case as also the departmental enquiry is at the stage of recording of evidences. It is, therefore, the request of the counsel for the petitioner that in case, if the evidences before the departmental enquiry are recorded first, the Right to Defence of

the petitioner in the criminal case may get adversely affected and therefore the counsel for the petitioner prays that the departmental proceedings be stayed till the outcome of the criminal case.

3. According to the counsel for the petitioner, in case if the evidences are recorded in the departmental enquiry his defence would itself get disclosed before evidence in the criminal case gets started, which again may have an adverse impact on the outcome of the criminal case. 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 the counsel for the petitioner prays for stay of the departmental enquiry.
4. It is relevant at this juncture to refer to the judgment of the 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 re-iterated 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. A 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

¹(2014) 3 SCC 636

²(2012) 1 SCC 442

³(2016) 9 SCC 491

criminal case as also in the charge-sheet are also same. In again 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. 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 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 are recorded that is only those witnesses who have been cited in the departmental enquiry, not all other witnesses. It is ordered accordingly.

6. With the aforesaid observation and direction, the present writ petition stands disposed off, directing the respondent-authorities to ensure that the departmental enquiry proceedings can 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.
7. The writ petition stands allowed and disposed off.

**Sd/-
(P. Sam Koshy)
JUDGE**