

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WP(S) No. 5276 of 2020**

1. Balram Singh Thakur S/o Amar Singh Thakur Aged About 36 Years Constable No. 105, R/o Near Sindhi Dharamshala, Pundri, Raipur Chhattisgarh.

---- Petitioner**Versus**

1. State Of Chhattisgarh Through The Director General Of Police PHQ Naya Raipur, Raipur Chhattisgarh.
2. Dy. Inspector General Of Police Raipur Range Shankar Nagar Raipur Chhattisgarh
3. Senior Superintendent Of Police Raipur, District Raipur Chhattisgarh.
4. City Superintendent Of Police Purani Basti Raipur Chhattisgarh.

---- Respondents

For Petitioner : Shri U.N.S. Deo, Advocate.

For State : Ms. Akanksha Jain, Dy. G.A.

Hon'ble Shri Justice P. Sam Koshy**Order on Board****15.12.2020**

1. The challenge in the present writ petition is to the initiation of the departmental enquiry by the respondents simultaneously along with the criminal case registered for the same set of offence and charges.
2. The brief facts of the case is that the petitioner is a Constable under the respondents. According to the petitioner, on the night of the 16.04.2020 the respondents have registered a criminal case against the petitioner for the offence of violating the Lock-down norms and also under Section 34(2) of the Chhattisgarh Excise Act and Sections 188 & 34 of the Indian Penal Code, Crime No. 80/2020 was registered at Police Station Rajim and a Criminal Case No. 264/2020 has been registered before the Court of Chief Judicial Magistrate, Gariyabandh. Simultaneously, the respondents have also issued the petitioner with

a charge-sheet and have contemplated departmental enquiry against the petitioner. The counsel for the petitioner drew the attention of the list of witnesses in the Criminal Case as also the list of witnesses in the departmental enquiry and submits that both these list of witnesses would find that most of the witnesses to be examined before the two forums are identical. It is the contention of the 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 the 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 the counsel for the petitioner prays for stay of the departmental enquiry.

3. 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

¹(2014) 3 SCC 636

²(2012) 1 SCC 442

subsequently in the case of **State Bank of India & Ors. vs. Neelam Nag and Others**³.

4. 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 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.
5. 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 of those witnesses who have been cited in the departmental enquiry, are examined, which would include the recording of the statement of the delinquent himself who should not be compelled to depose in the departmental enquiry ahead of the evidence on behalf of the department in the criminal case is completed. It is ordered accordingly.

³(2016) 9 SCC 491

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 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.
7. The writ petition stands allowed and disposed off.

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

Jyotijha