

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP-8634-2020 (O&M)
Date of decision : 02.12.2020

Ramesh Kumar

...Petitioner

Versus

Additional Chief Secretary to Government of Haryana, Home Department
and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL.

Present: Mr. Mohinder Pal, Advocate for the petitioner.

Mr. Samarth Sagar, Addl. A.G. Haryana.

ANIL KSHETARPAL, J.

At this stage, it may be noted that the allegations, against the petitioner, are serious. It is alleged that the petitioner had been registering false FIRs of the road accidents in order to help the dependents of persons who died due to cancer to claim compensation from the insurance company.

The petitioner by filing the writ petition, under Article 226/227 of the Constitution of India, has sought the following substantive reliefs:-

“ii) issue a writ in the nature of certiorari for quashing of the impugned orders dated 09.09.2019 (Annexure P-8) passed by respondent No.4, vide which the petitioner has been placed under suspension and regular departmental enquiry has been ordered against the present petitioner and service of Summary of charges

dated nil (Annexure P-10), issued by respondent No.5 to start the departmental proceedings due to registration of FIR No.144 dated 18.04.2019, registered at PS Civil Lines, Sonipat. Initiating of two parallel proceedings on the common sets of witnesses and common evidences by way of criminal trial as well as departmental proceedings simultaneously by violating the provisions of rule 16.38 of the Punjab Police Rules and violating the instructions No.5144-74/B-2 dated 21.6.83 (Annexure P-11) issued by respondent No.2, are against the law and may cause irreparable loss to the petitioner, in the form of pre-disclosure of his defence, in case same be continued. As such abovesaid impugned orders are arbitrary, void ab initio, not sustainable under law and are liable to be quashed in the interest of justice.

AND/OR

iii) Issue a writ in the nature of mandamus directing the respondents not to proceed with the departmental enquiry proceedings being initiated against the petitioner in pursuance of impugned order dated 09.09.2019 passed by respondent No.4 (Annexure P-8), started by the respondent No.5 on the basis of summary of charges and list of witnesses (Annexure P-10), which are common in the criminal trial and in the regular departmental enquiry served to the present petitioner on 10.06.2020.

AND/OR

iv) Issue a writ in the nature of prohibition to stay the further proceedings of the departmental enquiry initiated against the petitioner in pursuance of order dated 09.09.2019 (Annexure P-8) as prior permission of the District Magistrate under Rule 16.38 of the PPR has not been obtained prior to initiate the departmental

enquiry proceeding.

AND/OR

v) Issue any other appropriate writ, order or direction which this Hon'ble Court may deem fit and proper in view of the facts and circumstances of this case regarding violation of applicable PPR rules in view of the interim orders issued by this Hon'ble High Court in CWP 5888 of 2014 titled as Balbir Singh Vs. Addl. Chief Secretary to Govt. of Haryana, Home Department and others dated 27.03.2014 (Annexure P-12) in the interest of justice."

The respondents have filed a detailed written statement and the petitioner has also filed replication. At the outset, it is important to note that since criminal proceedings as well as departmental proceedings, are pending, it would not be appropriate to make any final observation which may prejudice the case of any of the party. The observations being made are limited to the decision of the writ petition, leaving it to the parties, to contest the proceedings before the authority/Court.

This Court has heard learned counsel for the parties at length and with their able assistance perused the paper book.

Learned counsel for the petitioner, apart from addressing oral arguments, has also forwarded a short note of his written submissions, which is extracted as under:-

"1. That in the present petition, Respondent No.6 has been impleaded as a party in person and his appearance is still pending. He has been impleaded due to preparation of forged confession report (Annexure P-7) in the name of petitioner with forged signature of the petitioner, as a result of which petitioner has been falsely implicated in the FIR

No.144 dated 18.04.2019 (Annexure P-6) without specifically naming him therein.

2. That the said confession report (Annexure P-7) has been tagged with the Challan papers by the Respondent No.6 in Criminal case before the Court of Ld. District and Sessions Judge, Sonipat. The petitioner's signature shown therein are totally different from his actual signature with regard to spell, style, starting point, flow, ending point and nature of trends with unequal heights of the words. So, comparison of petitioner's signature with the signatures on confession report is required to ascertain the truth at the level of trial court.

3. That as the petitioner has not been named in the FIR No.144 dated 18.04.2019 and present departmental proceedings has been ordered and initiated without getting the permission from District Magistrate to proceed against the present petitioner, it is violation of the provisions laid down under rule 16.38 of Punjab Police Rules, 1934 [Mentioned in para 22(i) of the present petition at page 25].

4. That nextly, the departmental proceeding as well as Criminal proceeding both are based on common facts, evidences and common witnesses as mentioned in Summary of Charge alongwith list of witnesses from Sr. No. 3 to 7. It is pertinent to mention here that witness No.7 has also been impleaded as a party in person as respondent No.6 in the present petition. In case the common witnesses examined in the departmental proceedings prior to examine them in criminal proceedings, the defence of the present petitioner regarding cross-examine them will be disclosed, which may affect adversely in criminal trial.

5. That the facts of the investigation conducted by the present petitioner in FIR No.294 (Annexure P-1) and FIR No.426 (Annexure P-2) have been mentioned in para No.2, 3

and 5 of the petition at page 10 and 11).

6. That criminal proceedings of both the abovesaid accidental cases FIRs, the investigation of which were conducted by the present petitioner are pending before the trial Court at Hisar and nothing against the present petitioner came on record therein.”

Mr. Samarth Sagar, Addl. A.G., Haryana, has also forwarded written submissions.

Now, the stage is set for examining the contentions of learned counsel for the petitioner.

First contention is that respondent No.6-the deputy Superintendent of police, impleaded by name, has not appeared in the present proceedings .From a bare perusal of the written statement, available at page 114 of the paper book, it is apparent that the written statement has been filed by respondent No.4, on behalf of respondent Nos.1 to 7. As noted above, the petitioner has also filed replication thereto. Hence, learned counsel for the petitioner is not correct on this aspect.

In the considered view of this Court, with regard to second submission, the parties are required to be relegated to the remedy of disciplinary proceedings, pending before the authorities as well as criminal prosecution. The second submission is based on the evidence to be led by the parties and at this stage, it would not be appropriate for the Court to adjudicate upon the same.

As regards next submission with reference to Rule 16.38 of the Punjab Police Rules, Rule 16.38 is extracted as under:-

“16.38. Criminal offences by police officers and strictures by courts procedure regarding.

(1) Where a preliminary enquiry or investigation into a complaint alleging the commission by an enrolled police officer or a criminal offence in connection with his official relations with the public, establishes a prima facie case, a judicial prosecution shall normally follow. Where, however, the Superintendent of Police proposes to proceed in the case departmentally, the concurrence of the District Magistrate shall be obtained.”

On plain reading of Rule 16.38 of the Punjab Police Rules, Volume II, it is apparent that it has no applicability in the facts of the present case. In the considered view of this Court, prior concurrence of the District Magistrate would be required if the Superintendent of Police, decides only to initiate a departmental action instead of registering an FIR against the enrolled police officer. Still further, it would not be appropriate for this Court, to finally form an opinion particularly when the proceedings are pending before the Court/authority.

Next argument, of learned counsel, is based upon the fact that defence of the petitioner shall stand exposed, when the petitioner will be called upon to cross-examine the witnesses. In this regard, it may be noted that only vague allegations have been made. The aforesaid issue has already been examined in more than one judgments. Reference in this regard can be safely made to the judgment in **Capt. M.Paul Anthony Vs. Bharat Gold Mines Limited, (1999) 3 SCC 679**. The Supreme Court has in para 22, laid down as under:-

“22. (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 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 mention 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, the administration may get rid of him at the earliest.”

In the absence of anything specific, it would not be appropriate for this Court to decide the issue, on general allegations.

Next argument, of learned counsel for the petitioner, is considered and rejected because the investigation carried out, is the subject matter before the trial Court.

Next argument, of learned counsel, is with reference to revocation of suspension by the Department. Revocation of suspension does not result in absolving the petitioner either from the criminal case or from the departmental proceedings.

Keeping in view the aforesaid facts, this Court does not find it appropriate to exercise its jurisdiction under Article 226/227 of the Constitution of India.

Hence, the writ petition is disposed of.

All the pending miscellaneous applications, if any, are disposed of, in view of the aforesaid judgment.

02.12.2020

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No