

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (S) No. 2449 of 2021**

1. Shashank Sharma S/o Late Sunil Sharma Aged About 30 Years Presently Posted And Working As Constable(440), Reserve Line, Bemetara, District- Bemetara, Chhattisgarh. R/o Village- Partra, Bemetara, P.S. And District- Bemetara, Chhattisgarh ---- **Petitioner**

Versus

1. State Of Chhattisgarh Through The Secretary, Department Of Home, Mahanadi Mantralaya, Naya Raipur, Post Office And Police Station- Naya Raipur, District- Raipur, Chhattisgarh.
2. Director General Of Police, Police Headquarters, Chhattisgarh, Raipur, Chhattisgarh.
3. Inspector General Of Police Durg Range, Durg, District- Durg, Chhattisgarh
4. Superintendent Of Police Bemetara, District- Bemetara, Chhattisgarh.

---- Respondents

For Petitioner	:	Shri Vivek Kumar Shrivastava, Advocate.
For State	:	Shri Rahul Jha, G.A.

Hon'ble Shri Justice P. Sam Koshy**Order On Board****16.06.2021**

1. The present writ petition has been filed seeking for a relief of keeping the disciplinary proceedings initiated against the petitioner inabeyance till the pendency of the criminal case which has been levelled against the petitioner for the same set of allegations and charges.
2. The facts of the case are that the petitioner herein was working as a constable and posted at District Bemetara. The petitioner got implicated in a criminal case i.e. Crime No. 112/20 registered at

Police Station City Kotewali District Mahasamund and was charged for the offence punishable under section 376(2)(A)(i), 376(2)(B), 376(D) & 506 of the Indian Penal Code and 3(1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. The prosecution has filed the charge-sheet before the concerned Court dealing with the criminal case. Meanwhile, the respondents herein i.e. the employer in the capacity of the Disciplinary Authority has issued the petitioner with a charge-sheet on 17.11.2020 (Annexure P/1). The plain perusal of the charge-sheet, particularly article of charges would reveal that the allegations levelled against the petitioner are similar, if not identical to the charges and allegations that are levelled against the petitioner in the criminal case.

3. Given the said facts, the petitioner prays for the stay of the disciplinary proceedings till the out-come of the criminal case before the Criminal Court.
4. Counsel for the petitioner relies upon the judgment of the Hon'ble Supreme Court in the case of ***Stanzen Toyotetsu India Private Limited vs. Girish V. & Ors (2014) 3 SCC 636*** in support of his contention.
5. The State Counsel on the other hand opposing the petition submits that it is a case where the two proceedings can simultaneously go as the consideration under both the situations are entirely different. Accordingly to the State Counsel, the evidence required before the departmental enquiry is on preponderance of probability whereas the evidences under the criminal case are, where the standard of proof has to be beyond all reasonable doubts and the two proceedings can

therefore simultaneously go on. Counsel for the State further relies upon the judgment of the Hon'ble Supreme Court in the case of ***Divisional Controller, Karnataka State Road Transport Corporation vs. M. G Vittal Rao*** (2012) 1 SCC 442.

6. As regards, the law as laid down by the Hon'ble Supreme Court which is by now well settled proposition of law that there is no legal bar for continuation of the two proceedings, one under the departmental enquiry and other under the criminal trial. However, the Hon'ble Supreme Court has repeatedly reiterated the fact that even though there is no legal bar but in the event of the question of facts and the nature of evidences to be adduced in the two proceedings are the same. To avoid unnecessarily further complications, the departmental enquiry should be deferred till the conclusion of the criminal case.
7. In the instant case, if we look into the allegations levelled against the petitioner in the criminal case and the charges levelled against the petitioner in the disciplinary proceedings, it would clearly reflect that the allegations are the same that are levelled in the criminal case as well.
8. As early as in the case of ***Capt. M. Paul Anthony V. Bharat Gold Mines Ltd. And Anr.*** 1999 3 SSC 679 the Hon'ble Supreme Court in paragraph 22 had laid down certain guidelines and where it has been specifically held that in the event if the issue involves complicated question of law and facts, if the evidences are similar, if not identical, it would be desirable to stay the disciplinary proceedings. For ready reference paragraph-22 of the said judgment is reproduced here-in-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 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.

9. A similar stand has again been taken by the Hon'ble Supreme Court in the case of ***Stanzen Toyotetsu India Private Limited vs. Girish V. & Ors (2014) 3 SCC 636*** which has also been relied by the Counsel for the petitioner. The aforesaid view of the Supreme Court has further been reiterated again in the case of ***State Bank of India & Ors. vs. Neelam Nag and Others*** reported in **2016 9 SSC 491**. In all these cases, the principle of law so far as stay of the departmental enquiry, in the event of the nature of allegations and the witnesses remained the same have not been diluted. The Courts have very emphatically held that for stay of the departmental enquiry, there can be no straight jacket formula which can be spelt out, it would all depend upon the facts of each case.

10. This Court also in a recent writ petition of similar nature has relied upon the judgments 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 2016 9 SSC 491**

11. 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 chargesheet 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.

12. 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.

13. Given the aforesaid facts and circumstances of the case and also taking note of the judicial pronouncement as it stands, the present writ petition if taken into consideration, it would reveal that for proving the charges which have been levelled against the petitioner in the departmental charge-sheet, the witnesses if not all, most of them would be the same who are also the witnesses in the Criminal Court.

14. Under the circumstances, if the witnesses are permitted to be examined in the disciplinary proceedings before they are examined in the criminal Court, there is all likelihood of the evidences of the petitioner being adversely affected.

15. For all the aforesaid reasons, this Court is of the firm view that the writ petition as of now can be disposed of with a direction to the respondent-authorities to ensure that the disciplinary proceeding initiated against the petitioner be deferred till all the witnesses in the departmental enquiry who are also witnesses in the criminal case, are examined before the Trial Court in the criminal case against the

petitioner and to proceed further with the disciplinary proceedings thereafter.

16. The writ petition accordingly stands allowed and disposed of with the aforesaid observations.

Sd/-

P. Sam Koshy
Judge

Jyotijha