

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**WPS No. 4394 of 2021**

Ajay Kumar @ Guddu Thakur S/o Chetan Thakur Aged About 32 Years
Posted As Constable (Now Suspended), 5th Battalion, Chhattisgarh Arms
Force, Jagdalpur, District Bastar, Chhattisgarh.

---- Petitioner**Versus**

1. State Of Chhattisgarh Through The Station House Officer, Police Station Darbha, District Bastar, Chhattisgarh.
2. The Commandant 5th Battalion, Chhattisgarh Arms Force, Jagdalpur, District Bastar, Chhattisgarh.
3. The Company Commander 5th Battalion, Chhattisgarh Arms Force, Jagdalpur, District Bastar, Chhattisgarh.
4. The Assistant Commandant 5th Battalion, Chhattisgarh Arms Force, Jagdalpur, District Bastar, Chhattisgarh.

----Respondents

For Petitioner	:	Mr. Vikas A. Shrivastava, Advocate
For State	:	Ms. Akanksha Jain, Dy. G.A.

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

23/08/2021

1. The initiation of the departmental enquiry and the issuance of the charge-sheet is what is under challenge in the present writ petition.
2. The contention of the petitioner is that on the same set of facts and with the same set of witnesses, the petitioner is already facing a criminal case for the offence punishable under Sections 354 & 323 of Indian Penal Code along with the provisions of Section 8 of the Protection of Children from the Sexual Offences Act, 2012.
3. The contention of the petitioner is that the initiation of the departmental enquiry on the same set of facts would amount to disclosing of the defense of the petitioner, which may have an adverse impact on the

outcome of the criminal case initiated against him and it would have a serious repercussion and also it may cause prejudice to the interest of the petitioner. Accordingly, the petitioner prays for the departmental enquiry to be stayed till the outcome of the criminal case.

4. The brief facts relevant for the disposal of the present writ petition is that the petitioner who is working on the post of Constable at 5th Battalion posted at Jagdalpur, Bastar is said to have on the date of incident i.e. 01.12.2020 had gone to attend a marriage function, where taking advantage of the power disruption that took place, it is alleged that the petitioner tried to outrage the modesty of one of the victims who had also gone to attend the marriage function. The petitioner is also said to have assaulted one of the friends of the victim, who tried to rescue her and an F.I.R. in this regard was lodged on 06.12.2020. Subsequently, a charge-sheet also has been filed before the trial Court on 18.01.2021 and the petitioner has been charged for the offence punishable under Sections 354 & 323 of Indian Penal Code along with the provisions of Section 8 of the Protection of Children from the Sexual Offences Act, 2012. Meanwhile, the petitioner also seems to have been subjected to disciplinary proceedings by the respondents and the petitioner has been issued with a charge-sheet on 17.04.2021 and the petitioner also was issued with a list of witnesses and the list of documents and subsequently vide order dated 12.05.2021, an inquiry officer also has been appointed.
5. The contention of the petitioner is that from among the list of witnesses, the main witnesses to be examined in the departmental enquiry are the victim and her friends, who have allegedly seen the incident and have also witnessed the act on the part of the petitioner.

Accordingly to the petitioner, these witnesses are also the same witnesses, who have also been cited as witnesses in the criminal case, therefore, if at this juncture if the statement of these witnesses are recorded in the departmental enquiry and the petitioner is made to cross-examine these witnesses, the very defence of the petitioner in the criminal case would get disclosed. Thus, there is a clear prejudice which shall be caused to the petitioner in the event if the departmental enquiry is permitted to continue and concluded before the outcome of the criminal case.

6. The learned counsel for the petitioner relied upon the decision of the Hon'ble Supreme Court in the case of “**Stanzen Toyotetsu India Private Limited v. Girish V. & Others**” (2014) 3 SCC 636 and also the case of “**State Bank of India & Others. v. Neelam Nag and Others**” (2016) 9 SCC 491 in support of his contention.
7. Per contra, the counsel appearing for the respondents submits that now that the petitioner having been released on bail, he can fully participate in the departmental enquiry and can take whatever defence he intends to. The counsel appearing for the respondents at the same time referring to the judgment of the Hon'ble Supreme Court in the case of “**Divisional Controller, Karnataka State Road Transport Corporation v. M.G. Vittal Rao**” (2012) 1 SCC 442 submitted that the law so far as simultaneous proceedings of criminal case and departmental enquiry is by now well settled, wherein the Hon'ble Supreme Court has repeatedly reiterated that the departmental enquiry and the criminal case can go on simultaneously, therefore under the circumstances, the departmental enquiry in the instant case also does not need to be stalled at this juncture. The

contention of the respondent counsel is that there is a possibility that the conclusion of the criminal case may take long time, which may ultimately affect the departmental enquiry and would also have an adverse impact so far as the discipline in the Department is concerned.

8. From the contentions put forth by the counsel appearing on either side what clearly reflects is that the allegations against the petitioner both in the FIR lodged against him and also in the charge-sheet that has been issued to him in the departmental enquiry, both are in respect of the same alleged involvement of the petitioner in the alleged act of theft along with other accused persons. The list of witnesses cited in the two proceedings also would reveal that many of the witnesses cited are common and these common witnesses are the main witnesses for both the proceedings. Keeping this fact, it would now be relevant to take note of the legal position as it stands.
9. 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.
10. In the instant case, if we look into the allegations leveled against the petitioner in the criminal case and the charges leveled against the

petitioner in the disciplinary proceedings, it would clearly reflect that the allegations are the same that are leveled in the criminal case as well. Perusal of the documents enclosed along with the writ petition, particularly the F.I.R. and the list of witnesses in support of the prosecution before the trial Court and the list of witnesses enclosed along with the departmental charge-sheet for the departmental enquiry would show that most of witnesses are common in the two proceedings.

11. As early as in the case of **“Capt. M. Paul Anthony V. Bharat Gold Mines Ltd. And Anr.” (1999) 3 SCC 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 No. 22 of the said judgment is reproduced hereinunder:-

“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.”

12. 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” (2016) 9 SCC 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 ⁷ 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.
13. 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 SCC 491.

14. 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.
15. 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 leveled 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.
16. Under the circumstances, if the common witnesses are permitted to be examined in the disciplinary proceedings before they are examined in the criminal Court, there is all likelihood of the interest of the petitioner getting adversely affected. Since most of witnesses are common in the two proceedings and in case if the witnesses who are common

before the two proceedings are examined in the departmental enquiry ahead of their statements being recorded in the criminal case, undoubtedly the defense of the present petitioner (the accused in the criminal case) would get disclosed and can have an adverse bearing in the criminal case detrimental to the interest of the delinquent (the petitioner).

17. 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 some of 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 of witnesses in the criminal case of those witnesses who have also 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 in the criminal case is completed. It is ordered accordingly.
18. For all the aforesaid reasons, this Court is of the firm view that in the aforesaid legal position as it stands, the writ petition as of now can be disposed of directing the respondent authorities to ensure that the departmental enquiry initiated against the petitioner as of now may be proceeded only with the witnesses who are not common in the two proceedings i.e. in the departmental enquiry and the criminal case. However as regards the witnesses who are common in both the proceedings, their evidences which is to be recorded in the departmental enquiry, shall be recorded only after their

evidence/statement is recorded in the criminal case, wherein the petitioner is an accused for the offence under Section 380.

19. With the aforesaid observations, the present writ petition at this juncture stands allowed and disposed of.

Sd/-
(P. Sam Koshy)
Judge

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