

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (S) No. 4552 of 2021**

Bhagwat Prasad Sinha S/o Late Jeewanlal, Aged About 27 Years, R/o Village Satmara, Post Belaudi, P.S. Ranchirai, Tehsil Gunderdehi, District Balod, Chhattisgarh, Posted As A Dank Runner At Police Line Durg, Chhattisgarh

---- Petitioner**Versus**

1. State Of Chhattisgarh Through The Secretary, Home Affairs, Police Department Mahanadi Bhawan, New Mantralaya, Atal Nagar Raipur, District Raipur, Chhattisgarh
2. Superintendent Of Police, Durg, District Durg, Chhattisgarh

---- Respondents

For Petitioner	:	Mr. B. P. Singh, Advocate
For State	:	Mr. Ishan Verma, P.L.

Hon'ble Shri Justice P. Sam Koshy**Order On Board****31.08.2021**

1. Aggrieved of the charge sheet dated 10.08.2021 the present writ petition has been filed.
2. The prayer of petitioner primarily is for staying the departmental inquiry contemplated by the impugned charge-sheet Annexure P-1 till the criminal case, for the same incident and cause of action which the petitioner has already been prosecuted through an FIR Annexure P-3, is finalized.
3. The brief facts of the case are that the petitioner in the present writ petition is working under the respondents as a Police Constable. The

complainant in the present writ petition is the wife of petitioner. The wife of petitioner is said to have already lodged an FIR against the petitioner for the offence punishable under Section 498A, 323, 377, 34 of IPC. Subsequently, the charge sheet (final report) in the criminal case has also been filed on 23.07.2021. The petitioner is facing trial before the concerned criminal Court for the same set of offence. Meanwhile, the present charge sheet has been issued contemplating departmental inquiry. For ready reference the two charges levelled against the petitioner is reproduced hereinunder;

“ 01. पुलिस विभाग जैसे अनुशासित बल में रहकर श्रीमती हेमा सिन्हा(पत्नी) को शारीरिक एवं मानसिक रूप से प्रताड़ित कर सिविल सेवा आचरण नियम-1965 के नियम-03 की कंडिका(तीन) का उल्लंघन करना।

02. दिनांक 03.08.2021 को हिरेन्द्र कुमार सिन्हा(साले) उम्र 30 वर्ष निवासी तर्रिघाट, जिला-दुर्ग के साथ गाली-गलौज, मारपीट कर अभद्र व्यवहार प्रदर्शित कर पुलिस रेग्यूलेशन के पैरा-64 सेवा की सामान्य शर्तों के उप पैरा 11 का उल्लंघन करना।”

4. The contention of petitioner now is that a plain reading of the aforesaid two charges levelled against the petitioner and the contents of the FIR Annexure P-3 enclosed along with the writ petition would clearly establish the fact that the petitioner is being prosecuted in the departmental inquiry on the same set of facts and the same allegations. Moreover, for proving the allegations made in the charge sheet it would be the same set of witnesses who would be required to lead the evidence to establish the case of the prosecution in the criminal case. Another fact which needs to be appreciated is that whatever stands that the petitioner would take in the departmental inquiry as of now in his defence before the disciplinary authorities would in fact be his defence also in the criminal case. In case in the

departmental inquiry the evidence of prosecution is recorded earlier so also if the evidence of the delinquent petitioner is recorded, it would amount to disclosing the entire defence of petitioner which the petitioner would be taking in the criminal court and there is all likelihood of the prosecution in the criminal case may take advantage of the evidence of petitioner in the departmental inquiry and take steps for improving the case of prosecution which may be detrimental to the interest of petitioner in the course of facing the criminal case.

5. It is settled law that proof of criminal charges depends upon prosecution producing proof beyond reasonable doubt relating to culpability of accused, while in departmental proceedings standard of proof is one of the preponderance of probabilities. Such being the principle it is held in series of cases that simultaneous conduct of departmental enquiry and criminal proceedings are permissible.
6. In *Stanzen Toyotetsu India Private Limited v. Girish V. and others*¹, the Supreme Court, after referring to its earlier decisions in the matters of *A.P. SRTC v. Mohd. Yousuf Miya*², *Karnataka SRTC v. M.G. Vittal Rao*³, *M. Paul Anthony v. Bharat Gold Mines Ltd*⁴ and *Hindustan Petroleum Corpn. Ltd. v. Sarvesh Berry*⁵, has held thus in para 13, 14 & 16 :

“13. It is unnecessary to multiply decisions on the subject for the legal position as emerging from the above pronouncements and the earlier pronouncements of this Court in a large number of similar cases is well settled that disciplinary proceedings and proceedings in a criminal case can proceed simultaneously in the absence of any legal bar to such simultaneity. It is also evident that while seriousness of the charge levelled

1 (2014) 3 SCC 636

2 (1997) 2 SCC 699

3 (2012) 1 SCC 442

4 (1999) 3 SCC 679

5 (2005) 10 SCC 471

against the employees is a consideration, the same is not by itself sufficient unless the case also involves complicated questions of law and fact. Even when the charge is found to be serious and complicated questions of fact and law that arise for consideration, the court will have to keep in mind the fact that departmental proceedings cannot be suspended indefinitely or delayed unduly.

14. In *Paul Anthony* this Court went a step further to hold that departmental proceedings can be resumed and proceeded even when they may have been stayed earlier in cases where the criminal trial does not make any headway.

16. Suffice it to say that while there is no legal bar to the holding of the disciplinary proceedings and the criminal trial simultaneously, stay of disciplinary proceedings may be an advisable course in cases where the criminal charge against the employee is grave and continuance of the disciplinary proceedings is likely to prejudice their defence before the criminal court. Gravity of the charge is, however, not by itself enough to determine the question unless the charge involves complicated question of law and fact. The court examining the question must also keep in mind that criminal trials get prolonged indefinitely especially where the number of accused arraigned for trial is large as is the case at hand and so are the number of witnesses cited by the prosecution. The court, therefore, has to draw a balance between the need for a fair trial to the accused on the one hand and the competing demand for an expeditious conclusion of the ongoing disciplinary proceedings on the other. An early conclusion of the disciplinary proceedings has itself been seen by this Court to be in the interest of the employees.”

7. In the case at hand, the petitioner has relied on the order passed by this Court in *Atul Dubey v. Municipal Corporation, Bilaspur*⁶. In the said matter, this Court has referred to the judgment of the Supreme Court in *Avinash Sadashiv Bhosale (Dead) through LRs v. Union of India and Others*⁷.
8. In *Avinash Sadashiv Bhosale (supra)*, the following principles have been laid down by the Supreme Court :

⁶ WP No. 2327 of 1999 (decided on 17.11.2014)

⁷ (2012) 13 SCC 142

“54. This Court recently reiterated the legal principle that departmental proceedings can be conducted simultaneously to the criminal trial in Karnataka SRTC v. M.G.Vittal Rao. In this case, making reference to almost all the previous precedents, this Court has reiterated the legal position as follows:-

54.1 There is no legal bar for both proceedings to go on simultaneously.

54.2 The only valid ground for claiming that the disciplinary proceedings may be stayed would be to ensure that the defence of the employee in the criminal case may not be prejudiced. But even such grounds would be available only in cases involving complex questions of facts and law.

54.3 Such defence ought not to be permitted to unnecessarily delay the departmental proceedings. The interest of the delinquent officer as well as the employer clearly lies in a prompt conclusion of the disciplinary proceedings.

54.4 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 evidence in both the proceedings is common.

54.5 In our opinion, the principles culled out by this Court would be a complete answer to all the submissions made by Mr. Jain.”

9. Recently this Court had yet in another case of similar nature in WPS No. 1833/2020 decided on 02.08.2021 in paragraphs 11 to 15 has held as under:

“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 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 reiterated 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.

10. Given the said facts and circumstances of the case and the legal decision as it stands particularly taking note of the charges levelled against the petitioner in the charge sheet reproduced in the preceding paragraph and also taking note of the contents of the FIR, this Court is of the opinion that the allegations made against the petitioner in both the charge sheet and the FIR are intrinsically connected and in the event if the departmental inquiry is permitted to proceed, it may have an adverse impact on the outcome of the

criminal case in which the petitioner is being prosecuted for the same set of facts and offence. Therefore, as of now the respondents are restrained from proceeding further with the departmental inquiry till the outcome of the criminal case or at least till all the witnesses in the criminal case are examined and thereafter the disciplinary authorities would have the liberty to proceed further with the impugned charge sheet.

- 11.** The writ petition accordingly stands partly allowed and disposed of.

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