

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

**CWP No.3977 of 2021  
Date of Decision:01.03.2021**

Rakesh Kumar

.....Petitioner

Versus

State of Haryana and others

.....Respondents

**CORAM: HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA**

Present:- Dr. Anmol Rattan Sidhu, Senior Advocate with  
Mr. Shiv Kumar Sharma, Advocate for the petitioner.

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**TEJINDER SINGH DHINDSA J.**

Petitioner who is serving as a Head Constable under the Haryana Police has filed the instant petition assailing communication dated Nil (Annexure P-4) issued by the Assistant Commissioner of Police, Traffic Highway, Gurugram, in terms of which departmental proceedings stand initiated against him. Impugned communication at Annexure P-4 is in the nature of a charge-sheet. Primary ground of challenge is that on the same set of allegations FIR No.506 dated 28.07.2020 under Sections 186, 332, 353 and 506 IPC stands registered against the petitioner at Police Station Shivaji Nagar Colony, District Rohtak.

Learned Senior counsel at the very outset submits that he is not pressing the challenge to the impugned charge-sheet at Annexure P-4 but would confine the scope of the instant writ petition only as regards keeping the departmental proceedings in abeyance till such time the criminal trial against the petitioner does not conclude.

Brief facts pleaded are that marriage of the petitioner was solemnized in the year 2003 and two children were born out of wedlock. However due to temperamental differences wife of the petitioner started living separately since May 2019. On 28.07.2020 wife of the petitioner got lodged an FIR against the petitioner with an ill-motive to settle scores. It is asserted that essentially a matrimonial dispute between husband and wife has been given the colour of a criminal offence. After registration of the FIR, challan was presented on 01.10.2020 and the petitioner now is facing trial.

Learned Senior counsel vehemently contends that the departmental proceedings ought to be held in abeyance pending criminal prosecution as both these proceedings are based on the same facts and allegations. It is urged that even the evidence to be produced in both the proceedings would be identical. It is argued that if the departmental enquiry pursuant to the impugned communication at Annexure P-4 is permitted to continue the defence of the employee in the criminal case would be prejudiced.

Counsel has been heard at length and pleadings on record have been perused.

The issue as to whether departmental proceedings and proceedings in a criminal case launched on the basis of the same set of facts can be continued simultaneously is no longer res-integra.

In ***Capt. M. Paul Anthony v. Bharat Gold Mines Ltd., (1999) 3 SCC 679*** the same very issue was dealt with by the Apex Court and the following principles were laid down:-

(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.”*

In ***Karnataka State Road Transport Corporation v. M.G. Vittal Rao, (2012) 1 SCC 442*** the Hon'ble Supreme Court reiterated that there is no legal bar for both departmental as also criminal proceedings to go on simultaneously even if they are based on the same set of facts and allegations. It was further observed that it may be a valid ground for claiming that disciplinary proceedings may be stayed to ensure that the defence of the employee in the criminal case be not prejudiced but even such ground was subject to the rider that not only should the charge(s) against the

employee be of a grave nature but the matter must also involve complicated questions of law and fact. A reference in this regard may also be made to another judgment of the Apex Court in ***State of Rajasthan v. B.K. Meena 1996 (4) SCT 707***. It is in the light of such settled dictum that the prayer of the petitioner in the facts and circumstances of the instant case require examination.

The charge-sheet at Annexure P-4 refers to an incident that allegedly took place on 28.07.2020 and where the petitioner is stated to have assaulted his wife Jyoti who was posted as a Teacher in Government High School, Sunaria Kalan, District Rohtak, during school hours and thereby having caused interruption during Government duty. Articles of charge formulated against the petitioner are of negligence, indiscipline and having tarnished image of police in the eyes of the general public. FIR No.506 dated 28.07.2020 has been registered under Sections 323, 186, 353, 506 IPC at Police Station Shivaji Nagar Colony, District Rohtak at the instance of the wife of the petitioner on the assertion that she was married to the accused on 18.05.2003 and has two children from the wedlock. Accused is serving under Haryana Police and posted in the Personal Security Staff with Additional Chief Secretary, Gurugram. He is a habitual drunkard and often abuses and beats the complainant under the influence of liquor. She had initially returned to her parental home shortly after marriage on account of ill-treatment but the matter was resolved in a Panchayat. In 2013 her husband/present petitioner had beaten her and had shifted her to the upper floor of the house. He beats her daily under the influence of liquor. She had been assaulted on 18.05.2019 as well. Complainant had informed her

brother and thereafter as there was a threat to her life from her husband she was taken away to her parental home. On 28.07.2020 her husband had come to the school staff room and had abused and assaulted her. One of the blows landed on her head and which led to bleeding. Thereafter husband escaped from the spot after threatening to kill her.

Clearly, the departmental proceedings at Annexure P-4 have been initiated in relation to an incident that allegedly took place on 28.07.2020 wherein the petitioner had assaulted his wife in the school premises. Even though the FIR in question also raises specific allegations pertaining to the same very incident but the allegations are much wider and contain instances of the husband/petitioner abusing and beating the complainant soon after marriage. There are instances of physical assault that took place in the year 2013 as also on 18.05.2019.

Reading of the final investigation report/challan at Annexure P-2 reveals that 10 prosecution witnesses have been cited. Alongwith the impugned communication at Annexure P-4 whereby departmental proceedings have been initiated, a list of witnesses has also been appended which are 8 in number. Undoubtedly some of the witnesses do over lap. However all the witnesses in the departmental proceedings and in the criminal prosecution are not common. It is by now well settled that the purpose lying the departmental proceedings is distinctly different from the purpose behind prosecution of offenders for commission of offence(s) by them. While criminal prosecution for an offence is launched for violation of a duty that the offender owes to the society, departmental enquiry is aimed at maintaining discipline and efficiency in service. The difference in the

standard of proof and the application of the rules of evidence in the two proceedings operate in difference spheres and are intended to serve distinctly different purposes. In such view of the matter there would be no legal impediment for the petitioner to be proceeded against departmentally as also in the criminal trial simultaneously.

Even the ground raised by learned Senior Counsel that disciplinary proceedings if permitted to continue, the defence of the petitioner in the criminal case would be prejudiced, the same is not well founded. As has been held in *M.G. Vittal Rao's case (supra)* and *B.K. Meena's case (supra)*, such ground would be available only when the charge is of a serious and grave nature and the matter involves complicated questions of fact and law. The only submission in such regard raised by learned Senior Counsel is that it would be a matter of evidence and trial whether the petitioner has committed any act which would complete the ingredients of Sections 183, 332, 353 and 506 IPC. This Court is constrained to observe that such a submission would be open to be raised in every criminal proceedings whereby it is for the prosecution to prove the charge beyond any shadow of doubt. The charge against the petitioner is of having physically assaulted his wife during school duty hours and thereafter having left the spot having threatened to kill her. The incident as reported in the first information report does not suggest any complication or complexity either on facts or law. The submission advanced by learned Senior counsel is found to be without merit.

For the reasons recorded above, this Court does not find any justifiable basis to accept the prayer of the petitioner to hold the

departmental proceedings in abeyance pending criminal prosecution initiated upon registration of the FIR in question.

Petition is dismissed.

(TEJINDER SINGH DHINDSA)  
JUDGE

March 01, 2021

*shweta*

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|---------------------------|---|--------|
| Whether speaking/reasoned | : | Yes/No |
| Whether reportable        | : | Yes/No |