

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

LPA-252-2021(O&M)
Date of Decision:-23.7.2021

L/ASI Seema

... Appellant

Versus

State of Haryana & Others

... Respondents

**CORAM: HON'BLE MR. JUSTICE RAJAN GUPTA
HON'BLE MR. JUSTICE KARAMJIT SINGH**

Present:- Dr. Suresh Kumar Redhu, Advocate
for the appellant.

Mr. Hitesh Pandit, Addl. A.G., Haryana.

KARAMJIT SINGH, J.

Case has been heard through video conferencing on account of
COVID-19 Pandemic.

This appeal has been preferred by appellant against the order
dated 4.2.2021 passed by learned Single Judge whereby CWP-14185-2021
filed by the appellant for quashing impugned order dated 4.3.2020
(Annexure P-2) vide which regular inquiry has been ordered by respondent
No.3 and charge-sheet dated 10.4.2020 (Annexure P-3) vide which
respondent No.4 has initiated the departmental inquiry against the appellant

on the basis of FIR No.218 dated 1.3.2020 under Sections 7/13 of Prevention of Corruption Act, 1988 (in short 'the Act of 1988'), Police Station Model Town, Panipat (Annexure P-1) was dismissed.

The brief facts of the case are that the appellant joined Police Department of Haryana on 23.2.2002 as Lady Constable and was promoted as Head Constable on 8.5.2012 and was further promoted as Assistant Sub-Inspector on 28.10.2016. She was having clean service record except one censure which was given on account of delay in submitting the charge-sheet. However, when she was posted at Panipat, FIR No.218 dated 1.3.2020 under Sections 7/13 of the Act of 1988 was registered against her on the allegations that she demanded ₹5,000/- from Rakesh Kumar for exonerating his mother from the FIR got registered against said Rakesh Kumar by his wife. The trap was laid and the appellant was apprehended red-handed and bribe money of ₹5,000/- was recovered in the presence of shadow witnesses and punter. On the basis of the aforesaid allegations, the appellant was placed under suspension vide order dated 4.3.2020 (Annexure P-2). The regular departmental inquiry was initiated against her by respondent No.3. Subsequently, she was reinstated in service vide order dated 24.7.2020. In the meantime, she was served charge-sheet dated 10.4.2020 (Annexure P-3).

The appellant challenged the aforesaid departmental actions by filing writ petition. In the writ petition, the appellant denied all the allegations levelled against her by the department in the charge-sheet. The appellant also took plea that she was made scapegoat and that she never demanded or accepted any bribe from Rakesh Kumar.

The writ petition was challenged by respondents No.1 to 4 and they filed written statement challenging the contentions raised by the appellant in the writ petition.

After hearing both the parties, the learned Single Judge dismissed the writ petition with the following observations:-

“In the facts of the present case, the petitioner was working as ASI and an FIR No.218 was registered on 01.03.2020. The challan has been presented as informed by learned counsel for the respondent-State. During the pandemic of COVID 19, the trial is likely to take some time to conclude. However the petitioner being part of disciplined department, the departmental proceedings cannot be stayed to await decision of the criminal proceedings and even a direction cannot be given to trial Court to examine the witnesses expeditiously in the prevailing situation.

Hence, writ petition is dismissed.”

Being dissatisfied, the appellant has filed the present appeal.

We have heard the counsel for the appellant as well as State counsel who was having advance copy of the appeal.

The only grievance of the counsel for the appellant is that the criminal case and the departmental proceedings against the appellant cannot proceed simultaneously as both the said proceedings are based on same set of facts and evidence. He further elaborated that if the departmental proceedings and criminal case against the appellant are allowed to proceed simultaneously, then the defence of the appellant will be prejudiced as the appellant will have to disclose her defence in advance in the departmental

proceedings which are going to be conducted at a much fast pace than the proceedings in the criminal trial. In support of his contention the counsel for the appellant has placed reliance on **Capt. M. Paul Anthony vs. Bharat Gold Mines Ltd., 1999(3) SCC 679**, wherein the Hon'ble Apex Court accepted the appeal filed by the delinquent and stayed the departmental proceedings while observing that the departmental proceedings and the criminal case initiated against the employee were based on the same facts and the evidence. The counsel for the appellant also referred to **State Bank of India & Ors. vs. Neelam Nag and Another 2016(4) SCT 805**, wherein also the similar view was taken with further observation that if the trial is not completed within one year from the date of the order, despite the steps which the trial Court has been directed to take, the disciplinary proceedings against the employee shall be resumed by the inquiry officer concerned.

The counsel for the appellant further brought to the notice of this Court, different orders passed by this Court, under the similar circumstances, whereby direction was given that in the meanwhile the departmental proceedings may go on. However, common witnesses in the departmental inquiry and the criminal trial would first be examined in the criminal trial and thereafter in the departmental proceedings and their examination in the departmental inquiry would not be conducted till they are examined in the criminal case. For instance, he relied upon the interim order dated 31.7.2020 passed in CWP-11074-2020. The counsel for the appellant also made reference to the orders dated 11.9.2019 and 4.10.2019 passed by this Court in CWP-23314-2019 and CWP-28815-2019 relying upon on the ratio of **Capt. M. Paul Anthony's** case (supra). While concluding his

arguments, the counsel for the appellant contended that the aforementioned law laid down by the Hon'ble Apex Court was not considered by the learned Single Judge while passing the impugned order and as such the said order is not sustainable in the eyes of law.

On the other hand, the State counsel submitted that there is no straight jacket formula in such like cases. The State counsel further argued that the departmental proceedings cannot be stayed just on the ground that the criminal case based on same facts and evidence is also pending against the delinquent. He further contended that there is no legal bar to the conduct of the disciplinary proceedings and criminal trial simultaneously and as such the learned Single Judge rightly refrained from interfering in the matter.

We have considered the submissions made by counsel for the appellant and the State counsel.

In the present case FIR No.218 dated 1.3.2020 under Sections 7/13 of the Act of 1988 was registered against the appellant for demanding bribe of ₹5,000/- from Rakesh. The appellant was placed under suspension and departmental action has also been initiated against her on the basis of the same charges. The plea of the appellant is that the aforesaid criminal case and the departmental inquiry cannot proceed simultaneously as both of them are based on same facts and evidence. This question has been dealt by the Hon'ble Apex Court in **Capt. M. Paul Anthony's** case (supra) as well as in **State Bank of India & Others'** case (supra) which have been relied upon by the appellant. The Hon'ble Apex Court while dealing with the matter came to the following conclusions:-

- “(i) There is no legal bar for both the proceedings to go on simultaneously.
- (ii) 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 or law.
- (iii) 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.
- (iv) 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.”

So, it is well settled position in law that proceedings in criminal case and departmental proceedings can go on simultaneously except where departmental proceedings and criminal case are based on same set of facts and evidence. At the same time, the Court cannot ignore the fact that the purpose of departmental inquiry and of prosecution in criminal case are two different aspects. In **State Bank of India and Others vs. R.B. Sharma, 2004(7) SCC 27**, it was observed as under:-

“The criminal prosecution is launched for an offence for violation of a duty the offender owes to the society, or for breach of which law has provided that the offender shall make satisfaction to the public. So crime is an act of commission in violation of law or of

omission of public duty. The departmental enquiry is to maintain discipline in the service and efficiency of public service. It would, therefore, be expedient that the disciplinary proceedings are conducted and completed as expeditiously as possible. It is not, therefore, desirable to lay down any guidelines as inflexible rules in which the departmental proceedings may or may not be stayed pending trial in criminal case against the delinquent officer. Each case requires to be considered in the backdrop of its own facts and circumstances.”

The standard of proof in the criminal case is altogether different from that in departmental inquiry. In case of disciplinary enquiry the technical rules of evidence have no application. Also in such a situation the action of the department cannot be termed as double jeopardy as has been held in **The Divisional Controller, KSRTC vs. M.G. Vittal Rao, 2012(1) SCC 442.**

It is generally seen that the criminal cases do not proceed quickly, whereas the departmental proceedings are concluded within a short span of time. Admittedly, the appellant is member of the police force. The departmental inquiry is being conducted against her to maintain discipline in the department and efficiency of public service. It would therefore be expedient that the departmental proceedings against the appellant are conducted and completed expeditiously. The disciplinary inquiry cannot be delayed unduly. The learned Single Judge referred to **CWP-9999-2006** titled as **Prem Singh vs. State of Haryana and Others** decided on **28.10.2006**, wherein the Division Bench of this Court while referring to

judgment in **Capt. M. Paul Anthony's** case (supra) held that departmental proceedings cannot be permitted to wait endlessly till the conclusion of criminal trial, which may take its own time and it would not be in the interest of the Department that a person like the petitioner who is charged with serious misconduct continued to be in service and accordingly the writ petition was dismissed. The learned Single Judge also referred to **Ved Parkash vs. State of Haryana and Others, 2007(4) SCT 423**, wherein also the similar view was taken by the Division Bench of this Court in a case relating to bribe accepted by Head Constable working in Haryana Police.

The Hon'ble Supreme Court in the **The Divisional Controller, KSRTC's** case (supra) considered the judgement of **Capt. M. Paul Anthony's** case (supra) and opined that this judgment is not of universal application. Even in **State Bank of India and Others'** case (supra) the Hon'ble Supreme Court clearly observed that it is well settled that there is no legal bar to the conduct of the disciplinary proceedings and criminal trial simultaneously. However, no straight jacket formula can be spelt out and the Court has to keep in mind the broad approach to be adopted in such matters on case to case basis. Thus making it clear that each case requires to be considered in backdrop of its own facts and circumstances.

We are cognizant of the fact that due to prevalent COVID-19 pandemic, it will take considerable long time for the criminal Court to conclude the trial. This being the situation, we are of the view that no ground is made out in the present case to stay the departmental proceedings till the conclusion of the criminal trial. We are also of the opinion that even

no direction could be given to the effect that common witnesses in departmental proceedings and the criminal trial would first be examined in the criminal trial and only thereafter in the departmental proceedings, as it would also prejudice the interest of the department.

In view of the above, we do not find any illegality or perversity in the impugned order passed by the learned Single Judge. Consequently, the appeal is hereby dismissed being devoid of merits.

(RAJAN GUPTA)
JUDGE

(KARAMJIT SINGH)
JUDGE

23.7.2021
Gaurav Sorot

Whether reasoned / speaking?

Yes / No

Whether reportable?

Yes / No