

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-10530-2023

Reserved on: 16.05.2023

Date of decision: 25.05.2023

SUKHJINDER SINGH

..Petitioner

Versus

STATE OF PUNJAB AND OTHERS

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. D.S. Patwalia, Sr. Advocate
with Mr. Mayank Mathur, Advocate
for the petitioner.

Mr. Vishnav Gandhi, DAG, Punjab.

ANIL KSHETARPAL, J.

1. While praying for the issuance of a writ in the nature of certiorari to quash order dated 25.04.2023, in substance, the petitioner prays for stay of departmental enquiry till the criminal case arising from FIR No.3, dated 01.05.2019, under Section 377, 388, 389, 109, 115, 116, 120-B, IPC at Police Station SSOC, Mohali, is decided.

2. At the relevant time, the petitioner was posted as the Assistant Superintendent, Jail. On the basis of the fact finding preliminary enquiry report, it has been found that there are very serious allegations against the petitioner. Since, both the departmental proceedings and the criminal trial are pending, it would not be appropriate for the Court to express any opinion on the merits of the case. However, it is considered appropriate to extract the charges/imputations levelled against the petitioner in the departmental enquiry, which read as under:-

“When you Shri Sukhjinder Singh, Assistant Superintendent (under suspension), Headquarter at Central Jail, Kapurthala, were posted as Assistant Superintendent, Central Jail, Patiala, at that time, a written complaint was received from Shrimati Manorma Devi widow of late Shri Radha Mohan Thakur, resident of Muzzafarpur (Bihar), in which she has levelled serious/grave allegations that her son Brijesh Kumar Thakur was confined in the Central Jail, Patiala by the orders of Hon'ble supreme court and was given inhuman treatment and raising a demand of ransom. besides this, a source report was received, in which the jail minister, Punjab, by seeing the gravity of the allegations, got conducted the preliminary enquiry of this case From Shri Kanwar Vijay Pratap Singh, I.P.S. I.G. Counter Intelligence, Amritsar. on the basis of the Preliminary Enquiry, Case F.I.R. No. 03, dated 01.05.2019, u/s 377, 388, 389, 109, 115, 116, 120-B, was registered at the Police Station, S.S.O.C., S.A.S. Nagar as per the preliminary enquiry, you have made yourself liable/ accountable for the following allegations/ charges:-

i) The convict/prisoner Kiranbir Singh alias Jimmi son of Manjeet Singh, resident of Patiala (who was serving the sentence of 03 years in the year 2017 as a prisoner/ convict u/s (3406, 420 I.P.C.), in the morning of 31.10.2018, with the collusion of yourself and the aforementioned officers/ employees, was got beaten up by the convicted gangsters in the prison - Gaurav Sharma alias Goru Bacha, Narinder Goyal alias Lala, Lovepreet Singh alias Lallu and Ramandeep Singh Kohli and the gangsters by committing unnatural sex with the convict/ prisoner Kiranbir Singh alias Jimmi, recorded the video on the mobile. after recording the video, by threatening the prisoner/ convict Kiranbir Singh alias Jimmi, ransom of Rupees 07.00 Lakhs was recovered.

ii) you in collusion with Shri. Rajan Kapoor, of jail, Vikas sharma, assistant superintendent, head warder Pargan Singh and the gangster confined in the jail – Gaurav Sharma alias Goru Bacha, Amit Malik alias Bhura, Gurjant Singh Bholu, Lovepreet Singh alias Lallu and Amanjeet Singh alias Beeru gave beatings and tortured the prisoner/ convict Brijesh Kumar Thakur on 11.11.2018, e.g. by making a cloth wick and entering the same in the secret organ and putting the same on fire, drowning the head in the water, by putting blanket upon him and then giving beatings to him, etc. besides this, the said gangsters committed unnatural sex with the convict/ prisoner Brijesh Kumar Thakur and recorded the video of the aforementioned incident through the mobile. after recording, the afore-mentioned gangsters recovered

ransom for an amount of Rs.15,06,000/- (Rupees fifteen lakhs six thousand) from the prisoner/ convict Brijesh Kumar Thakur's family and Delhi and at other destinations.

iii) Due to your collusion with the afore-stated Officers/ Employees of the Central Jail, Patiala, by misusing your position, indulging in the illegal activities, the department has to face embarrassment/ disgrace/ ignominy/ humiliation.

iv) You by colluding with the gangster inside the jail, by getting committed inhuman sex with the prisoner/ convict, has tarnished the image of the Department and the Government of Punjab.”

3. Simultaneously, an FIR has been registered against the petitioner and the final report under Section 173 Cr.P.C. has been filed in relation to it. It is significant to note that the petitioner has submitted a comprehensive reply spanning 21 pages addressing the charges in the departmental enquiry. The learned counsel representing the petitioner has produced a copy of this reply upon the Court's request. On a perusal thereof, it is evident that apart from reproducing the charge sheet, the petitioner has pleaded his defence in detail. Apart from that, various objections while referring to the Service Rules and the constitutional provisions while citing the case laws have also been made. In other words, the reply filed by the petitioner is comprehensive so as include the petitioner's defence. On 24.02.2023, the petitioner filed a previous petition, which was disposed of on the same day. The Court directed the disciplinary authority to consider the petitioner's request for a stay of the departmental proceedings. Subsequently, a detailed order in this regard has been passed. While declining the petitioner's request, the following reasons have been recorded by the disciplinary authority:-

“i) The primary contention raised by the petitioner in this case is that the petitioner would be compelled to disclose his defence in the disciplinary proceedings which would prejudice him in criminal case. The contention of the petitioner is not tenable because the petitioner has already submitted a detailed reply dated 29.06.2021 wherein he has already disclosed his defence and has already replied to the charges leveled against him in Chargesheet dated 01.06.2021.

ii) The other main contention of the petitioner is that the departmental proceedings and criminal proceedings are identical as both are on same set of allegations and list of witnesses is also the same in both the proceedings. However, this contention of the petitioner is also not tenable as departmental proceedings have six witnesses while the criminal case has sixteen witnesses. Moreover, four' witnesses in the departmental proceedings are from two different families only and the Inquiry Officer is calling these witnesses to prove the charges framed in the departmental Chargesheet. Whereas, in criminal proceedings the Challan has already been presented against the petitioner and both these proceedings are pending at different stages. Further, the standard of proof, the mode of enquiry and the rules regarding the enquiry and trial in both cases are distinct and different.

iii) It has also been noticed that while deciding the CWP No. 35283 of 2019 titled as Sukhjinder Singh Vs. State of Punjab, the Hon'ble Punjab & Haryana High Court vide order dated 17.09.2020 had granted liberty to competent authority to hold a departmental enquiry against the petitioner. So keeping in view the liberty granted by the Hon'ble High Court and the allegations leveled against the petitioner, the competent authority had decided to hold a departmental enquiry against the petitioner.

iv) It has also been observed that in the disciplinary proceedings the punishment of dismissal from service or a lesser punishment can be awarded to the petitioner whereas in criminal case, if the charges stand proved against the petitioner, the sentence may be imposed upon him by the Hon'ble Court. It may also be mentioned that Sh. Sukhjinder Singh was dismissed from service and his plea for quashing the dismissal order was accepted by Hon'ble High Court on the ground that the Competent Authority has not conducted the departmental enquiry as contemplated by Article 311 of the Constitution of India and Punjab Civil Services (Punishment & Appeal) Rules, 1970. Thereafter, the employee was taken back in service with effect from 25.4.2019 (date of dismissal). Thus holding departmental proceedings in abeyance would not serve the ends of justice.

v) *It has also been noticed that Department of Personnel, Government of Punjab vide their instructions dated 09.07.2020 issued to all the administrative departments has relied upon the judgments passed by the Hon'ble Supreme Court of India in the case of State of Rajasthan Vs. B.K. Meena and others (1996) and Capt. M. Paul Anthony Vs. Bharat Gold Mines Ltd. & Anr and in accordance with these instructions, simultaneous action of prosecution and departmental proceedings can be initiated against an employee.*

vi) *It has also been observed that the allegations in the present case relate to the year 2018 and around five years have elapsed but the proceedings of criminal case are still far from conclusion. As already held in B.K. Meena's case (supra) by the Hon'ble Apex Court, it is not in the interest of administration that persons accused of serious misdemeanor should be continued in office indefinitely, i.e ., for long periods awaiting the result of criminal serves the proceedings. It is not in the interest of administration. It only serves the interest of the guilty and dishonest.”*

4. This Bench has heard the learned Senior counsel representing the petitioner at length and with his able assistance perused the paperbook while analyzing and evaluating the arguments put forth by the learned Senior counsel.

5. The learned Senior counsel submits that 4 witnesses enlisted as prosecution's witnesses in the final report filed under Section 173 Cr.P.C. are common in the departmental enquiry as well. He submits that the learned counsel representing the petitioner in the trial Court is expected to cross-examine the witnesses in the criminal trial. During the departmental proceedings, when the witnesses are examined by the presenting officer, the petitioner would be obligated to disclose his defence in order to conduct an effective and constructive cross-examination of the witnesses presented by the department. However, such disclosure could potentially prejudice his defence in the criminal trial. He further contends that in the reply, the

petitioner has broadly denied only the allegations levelled against him, whereas, he has not disclosed his defence. Since the allegations are identical, therefore, the proceeding should be stayed. In support of his submissions, he has relied upon the judgments passed in **Capt. M. Paul Anthony Vs. Bharat Gold Mines Ltd. 1999 (3) SCC 679, M/s Centra Zen Toyotetsu India Pvt. Ltd. Vs. Girish V. and others, 2014 (3) SCC 636, Avinash Sadashiv Bhosle (D) through Lrs. Vs. Union of India and others, (2012) 13 SC 142 and G.M. Tank Vs. State of Gujarat, (2006) 5 SCC 446.**

6. At the outset, it should be noted that the basis for staying proceedings in the departmental inquiry during the pendency of a criminal trial is rooted in Article 20 of the Constitution of India. Article 20 provides that no person accused of an offence shall be compelled to be a witness against himself. Based on the aforesaid fundamental right, the legal principle has evolved that the accused cannot be compelled to disclose his defence prior to the criminal trial. In **Capt. M. Paul Anthony's case (supra)**, the Supreme Court after conducting a comprehensive analysis of the law on the issue, in para 22, laid down the following tests for the applicability of the aforesaid legal principle:-

22. (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 mention 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, the administration may get rid of him at the earliest.”

7. In **G.M. Tank’s case (supra)**, there was acquittal in the criminal case. In **Avinash Sadashiv Bhosle’s case (supra)**, the inquiry report was submitted and in the criminal trial, the accused was acquitted. In **M/s Stanzen Toyotetsu India Pvt. Ltd.**, the Court refused to interfere in exercise of its jurisdiction under Article 136 of the Constitution of India in the peculiar facts of the case. In **Capt. M. Paul Anthony’s case (supra)**, the Supreme Court itself held that the departmental proceedings and the proceedings in a criminal case can proceed simultaneously as there is no express/implied bar in the proceedings being conducted simultaneously. Though, while discussing test No.2, the Court held that wherever the charge in criminal case against a delinquent employee is of a grave nature which involves the complicated questions of law and fact, it would be desirable to stay the departmental proceedings till the conclusion of the criminal case. However, under test No.3, the Court further laid down that it will depend upon the various factors, whereas, under test No.4, it has been held that test (ii) and (iii) cannot be read and applied in isolation to stay the departmental

proceedings. As already noticed, the petitioner while filing the reply spanning 21 pages has already disclosed his defence. The learned Senior counsel representing the petitioner has failed to draw the attention of the Court to the requirement of the stay of the departmental proceedings with reference to the facts of the case. The argument of the learned Senior counsel that the four witnesses are common in both the departmental proceedings and the proceedings of the criminal trial does not hold significance, because the defence presented by the petitioner is already out. Moreover, a detailed and elaborate reply while denying each and every allegation, has already been filed by the petitioner. As it is evident from the reading of the allegations, the charges against the petitioner in the criminal trial as well as in the departmental proceedings are not only serious but of grave nature. Hence, any delay in either the criminal trial or the departmental proceedings shall not be in the public interest.

8. Hence, finding no merit, the writ petition is dismissed.
9. All the pending miscellaneous applications, if any, are also disposed of.

May 25th, 2023

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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned

Whether reportable

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Yes/No

Yes/No