

**In the High Court for the States of Punjab and Haryana
At Chandigarh**

CWP-17558-2023 (O&M)
Date of Decision:-24.08.2023

Ashish Kapoor

... Petitioner

Versus

State of Punjab and another

. . . Respondents

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present:- Mr. D.S.Patwalia, Senior Advocate with
Ms. Sehar Navjeet Singh Sandhu, Advocate, for the petitioner.

GURVINDER SINGH GILL, J.(Oral)

1. The petitioner has approached this Court so as to assail charge sheet dated 30.6.2023 (Annexure P-11) mainly on the ground that the charges as framed in the said charge-sheet are subject matter of the FIRs lodged against the petitioner and that as a matter of fact one such FIR i.e. FIR No.3 dated 01.05.2019, upon investigation same has been found to be false and cancellation report has been presented by the police.

2. Learned Senior counsel, however, at the very outset has confined his prayer at this stage to issuance of a direction to the authorities concerned not to examine the witnesses namely Preeti and Prem Lata in the departmental proceedings till the said witnesses are examined in the criminal trial arising out of FIR No.17 dated 06.10.2022 wherein challan already stands presented against the petitioner. Learned counsel in order to hammer forth his aforesaid submissions places reliance upon judgments of Hon'ble Supreme Court rendered in Capt. M. Paul Anthony Vs. Bharat Gold Mines Ltd. 1999(3) SCC 679 and M/s Stanzen Toyotetsu India P. Ltd. Vs. Girish V and others 2014(3) SCC 636.
3. Notice of motion.
4. Mr. Saurav Verma, Addl. A.G. Punjab, who is present in the Court accepts notice. Learned State counsel has however, opposed the aforesaid prayer and has placed reliance upon judgments of Hon'ble Supreme Court rendered in State of Rajasthan Vs. B.K.Meena 1996(6) SCC 417 and Indian Overseas Bank, Anna Salai and another Vs. P. Ganesan and others 2008(1) SCC 650.
5. Having regard to the limited prayer made on behalf of the petitioner, this Court is of the opinion that there is no need for calling for a written reply of the respondents. The judgments pressed into service by learned State counsel are to the effect that disciplinary proceedings should not ordinarily be stayed just on account of pendency of a criminal trial. This Court finds that there is no dispute to the broad proposition of law spelt forth in the judgments relied upon by State counsel.

6. Hon'ble Supreme Court has dealt in detail the aforesaid issue and while referring to a plethora of judgments including B.K. Meena's case (Supra) has drawn the following conclusions in Capt. M. Paul Anthony's case (Supra):

“21. 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 separated.
- (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.”

7. A perusal of the aforesaid extracted conclusions would indicate that while there is no absolute bar against departmental proceedings as well as proceedings of criminal case being conducted simultaneously, but at the same time some kind of balance is required to be maintained particularly when the allegations are grave and wherein the criminal trial may entail penal consequences in the shape of substantive sentence of imprisonment. The accused could stand prejudiced, in case material witnesses examined in the course of departmental proceedings happen to be cited as witnesses in the criminal trial as well and are yet to be examined therein as his defence would stand disclosed.
8. In the present case, there are as many as 21 common witnesses who have been cited in the departmental proceedings and also in the criminal trial. However, the learned counsel for the petitioner has fairly restricted his prayer at this stage to issuance of a direction to the authorities concerned to defer the examination of two witnesses namely Preeti and Prem Lata till the said witnesses are duly examined in the criminal trial. The said prayer is found to be genuine given the fact that it is the aforesaid 2 witnesses who would be the star witnesses in the criminal trial as well as in the departmental proceedings on whose testimony the fate of the proceedings would hinge. Since, the proceedings in criminal case can entail serious penal consequences, therefore, it will be in the interest of justice that the defence of the petitioner is not disclosed till the said PWs are examined in the criminal trial.
9. As such, the petition is accepted to the limited extent that the authorities concerned shall defer the examination of two witnesses namely Preeti and Prem Lata in the departmental proceedings till the said two witnesses are

examined during the proceedings of criminal trial arising out of FIR No.17 dated 06.10.2022.

10. It is however, clarified that the aforesaid order shall not be construed as an estoppel on the petitioner to challenge the charge-sheet on any other ground which may not have been raised in the instant petition. It is further clarified that any observation made above as regards the two witnesses being star witnesses is not to be treated as any kind of expression on merits of the case and the trial Court/Inquiry Officer shall form their own independent opinion based on evidence that may be led in such proceedings.

24.08.2023

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(GURVINDER SINGH GILL)
JUDGE

Whether speaking /reasoned	Yes / No
Whether Reportable	Yes / No