

IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

115

CWP-9142-2024

Date of Decision :24.04.2024

Kuldeep Singh Mothsra and another

...Petitioners

Versus

State of Haryana and others

....Respondents

**CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI**

Present: Mr. Sunil K. Nehra, Advocate and  
Mr. Suryaveer Surjewala, Advocate for the petitioners.

Mr. Harish Nain, AAG, Haryana  
(keeping in view advance copy served)

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**Harsimran Singh Sethi, J. (Oral)**

1. In the present petition, prayer of the petitioners is for quashing the charge sheets, which have been issued to the petitioners dated 02.08.2023 (Annexures P-2 and P-3 issued to the petitioner No.1 and 2 respectively) keeping in view the fact that the said allegations mentioned in the charge sheet are being enquired into in an FIR No.159 dated 26.04.2023 (Annexure P/1) registered at police Station Ellenabad, District Sirsa.

2. Certain facts need to be noticed for the correct appreciation of the issue in hand.

3. Petitioner No.1 was appointed on the post of Peon on 06.07.2001 and thereafter was promoted to the post of clerk on 17.01.2020

whereas, petitioner No.2 was directly recruited on the post of Clerk on

19.03.2018. While both the petitioners were working in the office of Deputy Commissioner, Sirsa, it came to the notice of the department that certain irregularities/illegalities have been committed by the petitioners while discharging the duties on the said post due to which allegations came to surface that large sum which the petitioners had collected on behalf of the department while discharging their duties was not deposited with the Government Treasury regularly, which amounts to misappropriation. On the basis of the said allegations alleged against the petitioners, which had come, an FIR No.159 dated 26.04.2023 (Annexure P/1) under Sections 406 and 420 of IPC was registered at Police Station Ellenabad, District Sirsa against the petitioners.

4. Thereafter, two charge sheets, which have been impugned in the present petition dated 02.08.2023 (Annexures P/2 and P/3) respectively were issued to the petitioners alleging the allegations that while discharging their duties on the said post in the registration branch, the money being collected by the petitioners on account of registration of vehicles or for the grant of driving licences, have not been deposited with the Government Treasury, which amounted to embezzlement. Certain amount which the petitioners collected and did not deposit to the concerned authority was mentioned in the charge sheet hence, Rules 4, 1 & 5 of the Haryana Civil Services (Government Employees Conduct) Rule, 2016 were alleged to be violated.

5. No reply has been filed by the petitioners to the said charge sheets and only an information has been given to the department that as the criminal case is also pending against them the petitioners would not like to

disclose their defence.

6. It may be noticed that the police after investigation has also filed challan against the petitioners and the said challan is yet to be taken up for consideration by the competent Court of law as to whether any charges are to be framed against the petitioners or not.

7. As the respondents were proceeding in respect of the charge sheets issued to the petitioners, the petitioners have approached this Court on the ground that as the criminal proceedings have already been initiated on the basis of the said facts, departmental proceedings should not be continued any further so that the petitioners do not suffer any prejudice in the criminal proceedings, which are being faced by them on the said allegations.

8. Keeping in view the advance copy of the petition served, Mr. Harish Nain, AAG, Haryana appears on behalf of the respondent and resisted the prayer of the petitioner.

9. Learned counsel for the respondents submits that a Coordinate Bench of this Court in the bunch of petitions being ***CWP-5111-2024 titled as, Mustaq vs. State of Haryana and others, decided on 10.04.2024*** has held that departmental proceedings can continue, even if, the criminal proceedings have already been initiated on the same facts hence, prayer of the petitioners is contrary to the law laid down by the Coordinate Bench of this Court in the case of ***Mustaq (surpa)*** hence, the same is liable to be rejected.

10. Learned counsel for the respondents further submits that in the present case, allegations alleged against the petitioners are being proved on the basis of the documents, which have come on record, according to which,

the petitioners collected certain amount on behalf of department, details of which have been mentioned in the charge sheets (Annexures P/2 and P/3) respectively but did not deposit the said amount in the Government Treasury and even if, it is assumed for the sake of arguments that the same was due to an inadvertence, even then also, departmental action can be taken against the petitioners as the proof required in the departmental proceeding to prove the charge is entirely different as compared to criminal proceedings.

11. Learned counsel for the petitioners submits that no reliance can be placed upon the judgment of the Coordinate Bench of this Court in the case of **Mustaq (surpa)** as while passing the said order, the Coordinate Bench of this Court has not considered the latest judgment passed by the Hon'ble Supreme Court of India in **Civil Appeal No.2794-2022 titled as, Eastern Coalfields Limited and others vs. Rabindra Kumar Bharti decided on 07.04.2022** and hence, prayer of the petitioners is liable to be allowed.

12. I have heard learned counsel for the parties and have gone through the record with their able assistance.

13. The question which arises is as to whether the petitioners are entitled for the relief claimed of keeping the departmental proceeding in abeyance till the criminal proceedings attain finality.

14. A Coordinate Bench of this Court considered the said issue on the basis of the settled principle of law while passing order in the case of **Mustaq (surpa)** and after the detailed discussion, a Coordinate Bench of this Court keeping in view the fact that the proof required to prove the criminal charge is beyond reasonable doubt whereas, for proving the allegations in the departmental enquiry, the probabilities can also be taken into account

and it is not a straight jacket formula that wherever criminal proceedings are initiated, departmental proceedings are to be kept in abeyance. Similar prayer has been rejected by the Coordinate Bench of this Court in the case of **Mustaq (surpa)**. The only objection qua the implementation of the judgment of **Mustaq (surpa)** in the case of the petitioner is that the judgment of the Hon'ble Supreme Court of India in **Eastern Coalfields Limited (supra)** has not been taken into account by the Coordinate Bench of this Court.

15. It may be noticed that in **Eastern Coalfields Limited** the view of the Hon'ble Supreme Court of India is not contrary to the view of the Coordinate Bench of this Court in Mustaq (supra). In para-9 of the judgment in **Eastern Coalfields Limited**, it has been mentioned that there is no straight jacket formula of in keeping the departmental proceedings in abeyance in case criminal proceedings have also been initiated and the law laid down in **Capt. M Paul Anthony (supra)** is to be applied only on the basis of the facts of each case hence, the objection being taken by the learned counsel for the petitioner so as not to make applicable the judgment in **Mustaq (supra)** in the case of the petitioner cannot be accepted.

16. Now coming to the case of the petitioner's, whether in the facts and circumstances of the present case, the departmental proceedings are liable to be stayed or not. In the present case, allegations alleged against the petitioners are that while discharging their duties on the post of clerk in the registration branch, the petitioners collected certain amount on behalf of the department while issuing driving licences and for the registration of vehicles, which amount was not deposited with the Government Treasury by them. The facts alleged are to be seen on the basis of the record, keeping in

view the money received by the petitioners and the said money being deposited in the Government treasury. The allegation alleged is to be proved on the basis of the record and not on the basis of the oral evidence. Once, proving of the allegation alleged is to be done on the basis of the documentary evidence, it cannot be said that petitioners are to disclose their defence qua allegations alleged. Rather in the present case, the petitioners have to oppose the documents being produced by the respondents in the departmental proceedings to prove the said allegations, which is other way around.

17. Argument of the learned counsel for the petitioners that keeping in view the judgment in **Civil Appeal No.1906-1999, titled as, Capt. M. Paul Anthony vs. Bharat Gold Mines Limited decided on 30.03.1999**, no proceedings can be raised where there is a complicated question of fact and law. In the case of **Capt. M Paul Anthony (supra)**, there were allegation of raid and recovery of certain amount, which was not proved before the competent Court of law. It was under these circumstances, where facts were in dispute and were required to be proved by oral evidence, an order was passed by the Hon'ble Supreme, Court of India but while considering the said judgment of the Hon'ble Supreme Court of India in **Eastern Coalfields Limited** it has been held that every case needs to be decided on the basis of the facts. In the present case, allegations alleged against the petitioners are not oral but are documentary qua the receipt of certain amount by the petitioners while discharging their duties and proving of the same not being deposited in the Government treasury on the basis of the documents. In the present case, petitioners are not supposed to disclose their defence and rather

are to rebut the said documents qua the allegations alleged in the departmental proceedings. Hence, facts of the present case are such that the departmental proceedings need not be kept in abeyance even during the pendency of the criminal proceedings.

18. No other argument has been raised.
19. Keeping in view the facts and circumstances recorded hereinbefore, present petition stands dismissed.

April 24, 2024

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(HARSIMRAN SINGH SETHI)

JUDGE

*Whether speaking/reasoned : Yes/No*

*Whether reportable : Yes/No*