



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

**LPA No.1108 of 2024 in
CWP No.1801 of 2024**

Date of Decision: July 1, 2024.

Sumit Kumar

..... APPELLANT (s)

Versus

State of Haryana and others

..... RESPONDENT (s)

**CORAM:- HON'BLE MRS.JUSTICE LISA GILL
HON'BLE MRS.JUSTICE AMARJOT BHATTI**

Argued by: Dr. Pankaj Nanhera, Advocate
for the appellant.

Mr. Sukhdeep Parmar, Sr.DAG, Haryana.

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporters or not?
3. Whether the judgment should be reported in the digest?

LISA GILL, J.

1. Appellant has filed this appeal being aggrieved of judgment dated 10.04.2024 passed by learned Single Judge dismissing CWP No.1801 of 2024 filed by the appellant alongwith other writ petitions.

2. CWP No.1801 of 2024 was filed by the appellant for setting aside statement of charges and allegations dated 06.09.2023 wherein departmental proceedings had been initiated against the petitioner. There is a further prayer for stay of departmental proceedings/enquiry during pendency of the criminal trial arising out of FIR No.10 dated 17.04.2023 under Sections 7, 13(1)(b) read with

Section 13(2) of the Prevention of Corruption Act, 1988 , registered at Police Station Anti-Corruption Bureau, Faridabad, Haryana claimed to be based on the same facts and evidence. Abovesaid FIR was registered against the appellant on the allegations of him demanding a bribe of Rs.3000/- for a getting a traffic challan compounded/disposed of. Appellant at that time was posted as Ahlmad in the court of Judicial Magistrate First Class, Faridabad.

3. Abovesaid FIR No.10 dated 17.04.2023 was registered on a complaint by a Law Intern of a practicing Advocate, namely, Mr. Vikrant Gaud, to the effect that his senior had given him two traffic challans for processing and he came in contact with the present appellant, who demanded Rs.3,000/- for getting the same compounded/disposed of, though challan was for Rs.2,000/-. Appellant again demanded Rs.3,000/- from them, which the complainant and his senior did not wish to pay. Thus, complaint was lodged. It is alleged in the FIR that a recording in respect to the demand had been made by the complainant. Raid was conducted on the basis of the complaint and present appellant was caught red-handed while accepting bribe money of Rs.3000/-. Challan/final report under Section 173 Cr.P.C. stood presented with charge yet to be framed. Departmental proceedings were initiated against the appellant on the allegations of having demanded money and received the same from the complainant. Aggrieved, the appellant filed CWP No.1801 of 2024. A bunch of 35 writ petitions involving common issue(s) of facts and law were disposed of by learned Single Judge vide decision dated 10.04.2024. The issue as culled out for consideration, reads as under:-

“The primary issue which arises for consideration in all the above-said writ petitions is as to “whether the regular departmental proceedings are required to be stayed or the examination of the

common witnesses is required to be deferred till the culmination of the criminal proceedings or till the said common witnesses are examined in the criminal proceedings, which criminal proceedings as per the case of the petitioners, relate to the same incident, on account of which departmental proceedings have been initiated against the petitioners, in the facts and circumstances of the individual cases”

4. Learned Single Judge noted that the sole prayer pressed by learned counsel appearing in all the writ petitions was for stay of examination of common witnesses in departmental proceedings till the said witnesses are examined in the criminal proceedings. Common argument raised in all the writ petitions, it was further noted, was that in the departmental as well as criminal proceedings witnesses are common, therefore, the said common witnesses should not be examined in the departmental proceedings till they are examined in the criminal proceedings because in case these witnesses are examined in departmental proceedings, it would lead to serious prejudice to the case of petitioners in criminal proceedings. Learned Single Judge while considering the issue, as raised, after detailed reference to various judgments of Hon’ble the Supreme Court as well as decisions rendered by this High Court, culled out the principles and conclusions which should be followed in case departmental proceedings are to be stayed during the pendency of criminal proceedings. The principles and conclusions as detailed in para 17 of decision dated 10.04.2024 read as under:-

“1. Departmental proceedings and proceedings in a criminal case can proceed simultaneously as there is no bar in their being conducted simultaneously though separately. (Specific reference in this regard can be made to the judgment in case of **Capt. M. Paul Anthony** (supra) (relevant portion of which is reproduced in Para 5 of the present order) and **State Bank of India and Ors.** (supra) (relevant portion of which is reproduced in Para 8 of the present

order)

2. The approach and objective in the criminal proceedings and the disciplinary proceedings is altogether distinct and different inasmuch as in the disciplinary proceedings, the question is as to whether the employee is guilty of such conduct as would merit his removal from service or imposition of lesser punishment whereas in the criminal proceedings, the question is as to whether the offences registered against him are established and if established, what sentence is to be imposed upon him. (Specific reference in this regard can be made to the judgment in **Kendriya Vidyalaya Sangathan & Ors (supra)** (relevant portion of which is reproduced in Para 7 of the present order) and to **Shashi Bhusan Prasad vs. Inspector General, Central Industrial Security Force and others, reported as 2019(7) SCC 797** and also **LPA-470-2024** (relevant portion of which is reproduced in Para 10 of the present order).

3. The mode of the enquiry, the rules governing the enquiry and trial as well as the standard of proof in criminal proceedings and in departmental proceedings are distinct and different and in a criminal case, charge has to be established beyond reasonable doubt whereas in the departmental proceedings, the charge of misconduct has to be established on the principle of “preponderance of probabilities”. (Specific reference in this regard can be made to the judgment of the Hon'ble Supreme Court of India in **“State of Karnataka and others vs. Umesh”, reported as 2022 SCC Online SC 345** and **LPA-470-2024** (relevant portion of which is reproduced in Para 10 of the present order).

4. There should be early conclusion of departmental proceedings so as to weed out any employee whose integrity/character has been put in doubt and to maintain discipline in service and efficiency of public service and also in case the employee is not guilty of any wrong doing, then his honour is required to be vindicated at the earliest. [Specific reference in this regard can be made to the judgment in the case **Dr.Balwinder Kumar Sharma’s (supra)** (relevant portion of which is reproduced in Para 14 of the present order) and **Capt. M. Paul Anthony (supra)** (relevant portion of which is reproduced in Para 5 of the present order).

5. All the ingredients i.e., the departmental proceedings and the criminal case being based on identical and similar set of facts, charge in the criminal case being of grave nature involving complicated questions of law and facts are required to be met before the Court could consider the case of the employee for grant of stay of departmental proceedings during the pendency of the criminal case. (Specific reference in this regard can be made to the case of **Capt. M. Paul Anthony (supra)**; **Indian Overseas Bank, Anna Salai and Anr (supra)** (relevant portion of which is reproduced in Para 6 of the present order); **State Bank of India and Ors. (supra)** (relevant portion of which is reproduced in Para 8 of the present order).

6. 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. [Specific reference can be made to the judgment of **Capt. M. Paul Anthony (supra)**]. Even the question as to whether the case involves identical and similar set of facts would also have to be considered after taking into consideration the FIR, the report under Section 173 Cr.P.C. and the charges framed. [Reference in this regard can be made to the judgment of **Paramjit Kaur's (supra)**] (relevant portion of which is reproduced in Para 16 of the present order)

7. The fact that the departmental proceedings and the criminal case are based on identical and similar set of facts and the charges in the criminal case against the delinquent employee are of grave nature which involve complicated questions of law and facts also cannot be considered in isolation to stay the departmental proceedings and due regard must be given to the fact that the departmental proceedings cannot be unduly delayed. [Specific reference in this regard can be made to the case of **Capt. M. Paul Anthony (supra)** (relevant portion of which is reproduced in para 5 of the present order) and **State Bank of India and Ors. (supra)**.] (relevant portion of which is reproduced in Para 8 of the present order)

8. Before granting stay of the departmental proceedings, special facts of the case are required to be mentioned, warranting stay of departmental proceedings. (Specific reference in this regard can be made to the judgment of **Kendriya Vidyalaya Sangathan & Ors (supra)** (relevant portion of which is reproduced in Para 7 of the present order).

9. In case all the above parameters are met and the stay of the departmental proceedings has been granted, then also in case, the criminal case is being unduly delayed, the departmental proceedings can be resumed and proceeded with so as to conclude them at an early date. (Specific reference in this regard can be made to the judgment of **Capt. M. Paul Anthony's case (supra)** (relevant portion of which is reproduced in Para 5 of the present order)."

5. The learned Single Judge thereafter proceeded to decide each individual writ petition on its own facts. In the present matter, it was observed that copy of the challan/final report under Section 173 Cr.P.c. had not been placed on record despite opportunity being afforded to the appellant. Moreover, final report under Section 173 Cr.P.C. stood submitted, with statements of all

witnesses under Section 161 Cr.P.C. already being recorded, with copy thereof being given to the present appellant and that it was for the prosecution to prove its case against the appellant by relying upon evidence of witnesses whose statements have already been recorded. Plea of prejudice raised by present appellant was found to be misconceived. No ground was found to stay examination of common witnesses in departmental proceedings till conclusion of the criminal proceedings. Writ petition was accordingly dismissed without expressing any opinion on the merits of the allegations either in the criminal proceedings or in the departmental proceedings which would be decided independently in accordance with law. Aggrieved therefrom, present Letters Patent Appeal has been filed by the writ petitioner.

6. Learned counsel for the appellant vehemently argued that present is a case which throws up complicated questions of law and fact inasmuch as the raid itself, pursuant to which criminal and departmental proceedings had been initiated against the appellant, is in the teeth of instructions dated 22.02.1977 (Annexure P6) issued by the Deputy Inspector General of Police, CID, Haryana to all District Superintendents of Police in the State of Haryana. It was contended that the raid was conducted without prior information to the learned District & Sessions Judge, Faridabad which was mandatory. It was further submitted that in terms of Haryana Subordinate Court Establishment (Recruitment and General Conditions of Service) Rules, 1997, the controlling court which has the power of supervision and control, should have been first taken in confidence by officials of the Vigilance Department. Failure to do so renders the entire proceedings *void ab initio* and such a course of action, in fact, tantamounts to an attack on the independence of judiciary which should be

nipped in the bud and all proceedings flowing from the illegal raid should be set aside. Thus, a complicated question of law and fact clearly arises in present case which has not been considered by learned Single Judge. Therefore, present appeal should be allowed and impugned order dated 10.04.2024 be set aside with the writ petition filed by the appellant being allowed as prayed for.

7. Per contra learned counsel for the State (on advance notice) had controverted the averments on behalf of the appellant. It was submitted that apart from the fact that the only prayer addressed on behalf of the appellant before the learned Single Judge was for stay of examination of witnesses who are common in the departmental proceedings as well as criminal proceedings, there is no merit in the argument raised in respect to the proceedings being set aside on the ground of the raid having been conducted without intimation to the learned District & Sessions Judge or for any other reason. It was refuted that any complicated question of fact or law is involved in this matter for consideration. Dismissal of the appeal is sought.

8. We heard learned counsel for the parties and have carefully perused the file.

9. Indeed, bare perusal of impugned decision dated 10.04.2024 passed by learned Single Judge reveals that prayer in all the writ petitions had been restricted to stay of examination of witnesses which are common to departmental as well as criminal proceedings. It is settled position of law that when a delinquent official is arrayed as an accused in a criminal case with departmental proceedings also being initiated, said parallel departmental proceedings can very well continue. Parameters which are required to be in existence for grant of stay of departmental proceedings have been very well culled out by learned Single

Judge in para 17 of the impugned decision, as reproduced in foregoing paras. At this juncture, it is relevant to note that LPA No.1146 of 2024 and LPA Nos.1222, 1232 & 1233 of 2024, also arising out of the impugned decision dated 10.04.2024, stand dismissed vide orders dated 08.05.2024 and 17.05.2024, respectively. Distinction sought to be drawn by learned counsel for the appellant in the present appeal on the ground that a complicated question of fact and law arises as narrated in the foregoing paras in respect to the raid itself being illegal rendering the proceedings *void ab initio*, is an attempt in futility. It is apparent that this argument was not even raised before the learned Single Judge, though pleaded in the writ petition. It is duly noted by learned Single Judge that prayer in all writ petitions including the one filed by present appellant was restricted, as has been narrated in foregoing paras. Be that as it may, in our considered opinion, we do not find the argument so raised to indicate any complicated question of law and fact, which calls for intervention by this Court. A perusal of statement of charges reveals that the appellant who was posted as Ahlmad attached to the court of learned Civil Judge(Junior Division), Faridabad is charged with having misused his position as public servant/government employee by taking illegal gratification and thereby having misconducted himself and acted in a manner unbecoming of a government servant. Reliance on instructions dated 22.02.1977 (Annexure P6) with CWP No.1801 of 2024 issued by issued by the Deputy Inspector General of Police, CID, Haryana, by itself does not raise a complicated question of law and fact, which calls for stay of departmental proceedings being carried out against the appellant.

10. Learned counsel for appellant is unable to point out any ground which calls for intervention. In our considered opinion, there is no illegality or

infirmity in the impugned decision dated 10.04.2024, which is, accordingly, upheld.

11. Instant appeal is, accordingly, dismissed with no order as to costs.
12. It is clarified that there is no expression of opinion on the merits of the criminal or departmental proceedings and appellant is at liberty to take up all available pleas therein, in accordance with law.

(LISA GILL)
JUDGE

July 1 , 2024.
'om'

(AMARJOT BHATTI)
JUDGE

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