

(2010) 09 PAT CK 0143
In the Patna High Court
Case No : CWJC No. 12527 of 2010

Kapil Muni Rai

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 23-09-2010

Acts Referred:

Citation : (2010) 09 PAT CK 0143

Judgement

Navin Sinha, J.—Heard learned Counsel for the Petitioner and learned Counsel for the State.

2. The Petitioner has been suspended by order dated 2.11.2009 and charges have been framed on 6.11.2009.

3. The order of suspension under Rule 9(1)(c) read with Rule 9(3)(ii) states that he has been charged u/s 7/13(2) read with Section 13(1)(d)(ii) of the P.C. Act which was serious in nature. The memo of two charges states: (1) The Police Vigilance Bureau has found evidence of movable and immovable property valued at approximately Rs. 2,00,000/- for which Vigilance Case No. 85/09 under the aforesaid provisions has been registered against him as an accused; (2) The Enquiry Officer had informed of the details of the movable and immovable property in excess of the source of income. Both were indicative of his being a person with an undesirable character.

4. In view of the provisions of Rule 9(1)(c) as discussed in the Full Bench reported in The State of Bihar and Others Vs. Gyan Kumar Ram, learned Counsel for the Petitioner finds it difficult to assail the suspension at this stage.

5. Learned Counsel for the State submits that it is up to the Petitioner how early he wants the trial concluded.

6. Insofar as the challenge to the departmental proceedings pending disposal of the criminal trial is concerned, this Court finds substance in the contention that they are both based on the same charge. The materials for allegations and defence are also common. Complicated questions shall be involved in the

criminal trial and if the Petitioner is forced to contest the departmental proceedings at this stage, he shall be required to disclose his defence which may prejudice him in the criminal trial.

7. Learned Counsel for the State finds it difficult in law to oppose that submission.

8. In *Kusheshwar Dubey Vs. Bharat Coking Coal Ltd. and Others*, it has been held at paragraphs-6 and 7 as follows:

The view expressed in the three cases of this Court seem to support the position that while there could be no legal bar for simultaneous proceedings being taken. Yet, there may be cases where it would be appropriate to defer disciplinary proceedings awaiting disposal of the criminal case.

In the latter class of cases it would be open to the delinquent-employee to seek such an order of stay or injunction from the Court. Whether in the facts and circumstances of a particular case there should or should not be such simultaneity of the proceedings would then receive judicial consideration and the Court will decide in the given circumstances of a particular case as to whether the disciplinary proceedings should be interdicted, pending criminal trial. As we have already stated that it is neither possible nor advisable to evolve a hard and fast straight-jacket formula valid for all cases and of general application without regard to the particularities of the individual-situation. For the disposal of the present case, we do not think it necessary to say anything more, particularly when we do not intend to lay down any general guideline.

7. In the instant case, the criminal action and the disciplinary proceedings should have been stayed and the High Court was not right in interfering with the trial court's order of injunction which had been affirmed in appeal.

9. This view has been reiterated in *Capt. M. Paul Anthony Vs. Bharat Gold Mines Ltd. and Another*, as follows:

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

10. In absence of any other charge in the departmental proceedings related to discharge of duties except for what has been noticed above, this Court finds it difficult to allow the departmental proceedings to continue pending disposal of the criminal trial.

11. It is therefore ordered that the memo of charges and the consequential departmental proceedings dated 6.11.2009 shall remain stayed till disposal of the criminal trial.

12. The writ application stands allowed, but only to the extent indicated.