

(2011) 06 AHC CK 0184
In the Allahabad High Court
Case No : Service Single No. 3355 of 2011

Nagendra Bahadur Singh and Others	Vs	APPELLANT
State of U.P. and Others		RESPONDENT

Date of Decision : 02-06-2011

Acts Referred:

Penal Code, 1860 (IPC) — Section 223, 224

Citation : (2011) 06 AHC CK 0184

Hon'ble Judges : Ritu Raj Awasthi, J

Bench : Single Bench

Judgement

Ritu Raj Awasthi, J.—Heard learned Counsel for the parties.

2. Learned Counsel for the Petitioner submits that he does not want to press the writ petition on behalf of Petitioners No. 2 and 3 and as such the writ petition on their behalf may be dismissed as withdrawn with liberty to file separate writ petitions.

3. In view of this, the writ petition on behalf of Petitioners No. 2 and 3 is hereby dismissed as withdrawn with liberty to file separate writ petitions.

4. Learned Counsel for the Petitioner submits that criminal case has been registered against the Petitioner for the offence under Sections 223 and 224 I.P.C. The trial is pending and the prosecution witnesses are to be examined. However, during the pendency of the criminal trial, departmental proceedings have been initiated and the enquiry report along with the impugned show cause notice have been served on the Petitioner calling upon him to submit reply to the enquiry report.

5. The contention of the learned Counsel for the Petitioner is that under U.P. Police Officers of the Subordinate Ranks (Punishment and Appeal) Rules, 1991 there is no provision dealing with the situation where the departmental proceedings and the criminal proceedings can be held simultaneously, therefore, Paras 486 and 489 of the Police Regulations will continue to operate.

6. He further submits that under Paras 492 and 493 of the Police Regulations, it is provided that whenever a police officer has been judicially tried, the Superintendent must await the decision of the judicial appeal, if any, before deciding whether further departmental action is necessary. In the present case judicial proceedings are still pending and the authorities have decided to complete the disciplinary proceedings. In support of the contentions learned Counsel for the Petitioner has relied on the judgment of the Hon'ble Apex Court in the case of The State of Uttar Pradesh and Others Vs. Babu Ram Upadhyya, as well as the Division Bench decision of this Court in the case of Kedar Nath Yadav v. State of U.P. and Ors. reported in 2005 LCD 1181.

7. Learned Standing Counsel on the other hand submits that in the case of Ram Asrey v. State of U.P. and Ors. in Civil Misc. Writ Petition No. 36865 of 2006 decided on 18.8.2006, this Court has held that in such matters the departmental proceedings and the criminal proceedings can be allowed to continue, simultaneously.

8. Learned Standing Counsel also relies on a Division Bench judgment of this Court passed in the Special Appeal No. 844 of 2008 Vinod Kumr Mishra v. The Regional Manager, Bank of India and Anr. wherein it has been held that the subject matter of the departmental enquiry and the criminal proceedings have different scope and it can not be said as a matter of legal profession that when a criminal proceeding is going on a particular criminal charge, in that regard, the departmental proceeding cannot be allowed to proceed.

9. In reply the learned Counsel for the Petitioner submits that the police regulations specifically deals with such a situation wherein it has been provided in Para 489 of the Police Regulations that the Superintendent of Police must await the decision of the judicial appeal.

10. Arguments advanced by the learned Counsel for the parties require consideration.

11. Prima-facie, I am of the opinion that the Petitioner requires protection in view of the fact that the criminal proceedings are pending where he is yet to disclose his defence and in the meanwhile the departmental proceedings have been concluded and the Petitioner has been asked to submit his reply to the show cause notice. This may prejudice the right of defence of the Petitioner before the trial court.

12. Learned Standing Counsel is directed to file counter affidavit within four weeks. In case counter affidavit is filed, Petitioner may file rejoinder affidavit within two weeks, thereafter.

13. List in the last week of July, 2011.

14. Till the next date of listing the opposite parties shall not take any final decision on the basis of impugned show cause notice, however, the Petitioner may file reply to the show cause notice within two weeks from today.