

THE HIGH COURT OF MEGHALAYA

WP(C). No. 94 of 2015

1. Shri Alarick J. Sangma
S/o Late A.J.Sangma
Village Bolong Atimbo Dakopgre
Tura, Post Office Tura,
West Garo Hills District, Meghalaya.

... **Petitioner**

-Versus-

1. The State of Meghalaya,
Through the Commissioner and Secretary to the
Government of Meghalaya,
Department of Home,
Meghalaya, Shillong.
2. Director General of Police,
Meghalaya, Shillong.
3. Assistant Inspector General of
Police (Administration),
Meghalaya, Shillong.
4. Superintendent of Police,
East Garo Hills District
Williamnagar, Meghalaya.
5. Additional Superintendent of Police
(DSB) Tura, West Garo Hills District,
Meghalaya.

.....**Respondents**

BEFORE THE HON'BLE MR JUSTICE S.R.SEN

For the petitioner	:	Mr. S.Dey, Adv. Ms. Q.B.lamare, Adv
For the respondents	:	Mr. S. Sen Gupta, GA
Date of hearing	:	31-07-2015
Date of Judgment	:	31-07-2015

JUDGMENT AND ORDER (ORAL)

Heard Mr. S. Dey, learned counsel appearing for the petitioner as well as Mr. S. Sen Gupta, learned State counsel appearing for the State respondents.

2. Petitioner's case in a nutshell is that the petitioner is a citizen of India belonging to the Garo Schedule Tribe of Meghalaya, who usually and habitually resides at the aforesaid address within the jurisdiction of this Hon'ble High Court. The petitioner is a qualified citizen of India, having completed his studies from Meghalaya and was appointed as an Un-Armed Branch Sub-Inspector w.e.f. 10-02-1999 in West Garo Hills DEF vide D.O. No. 8575 dated, 25-10-1999. The petitioner was later transferred and posted to East Khasi Hills DEF after completion of his probationary period w.e.f 01-03-2001 vide D.O. No. 3755 Dated 03-04-2001. At present, the petitioner is holding the charge of Reverse Inspector of Williamnagar Police Reserve and is also looking after the work of Prosecution Inspector, Williamnagar Court.

3. On 12th October, 2014 late night while the petitioner was sleeping, at around 11:00 pm the petitioner was asked by some police personnel to report at the Williamnagar Police Station. The petitioner immediately reported to the Police Station but unfortunately in the said Police Station allegation was leveled against the petitioner that he has molested some girls. First Information Report was lodged by the so called victim girl namely Melisha D. Shira before the Officer-in-Charge of

Williamnagar Women Police Station, East Garo Hills, Meghalaya inter alia it was alleged that on 12th October, 2014 at 5:00 pm, a case was registered as Williamnagar Women Police Station Case No. 18 (10) of 2014 under Section 354 IPC, R/w Section 10 of POCSO Act, 2012 on the strength of the FIR dated 13-10-2014. As per Charge Sheet filed by the I.O. prima facie case was found well established under Section 354 IPC and Section 10 of the POCSO Act, 2012 and it was also stated that the petitioner was sent to stand a trial in the Court and witnesses will prove the case. It is to mention herein that the list of the witnesses of Criminal trial and the department proceeding are same and moreover as per the said memorandum the petitioner was to show cause as to why he should not be liable to be punished under Rule 66 of APM, Part III as adopted by State of Meghalaya for failing to maintain absolute integrity, devotion to duty and thereby committed gross misconduct which is unbecoming of a member of a Discipline Force and thus violated Rule 3(1) of Meghalaya Service (Conduct) Rules 1990, Section 108(1)(a)(c) 9(e) and 108(2)(e) of the Meghalaya Police Act 2010, Rules 45 of the Meghalaya Subsidiary Rules 1984. In compliance to the letter No.C.51/2014/50 Dated 01-12-2014, the petitioner submitted his explanation through the Superintendent of Police, East Garo Hills District, Williamnagar (Respondent No.4) to the Assistant Inspector General of Police (Adms), Meghalaya, Shillong (Respondent No.3).

4. The petitioner denied all the charges leveled against him, moreover the petitioner informed the respondents that he have

been falsely implicated in the Williamnagar P.S. case No. 18(10) of 2014 under Section 354 IPC R/w Section 10 of the POCSO Act, 2012 and it was also brought into the knowledge of the respondents that the allegation of the department proceeding and Criminal Trial are parimateria and the petitioner will not be in a position to disclose his defence in the department proceedings since he will be prejudice in the criminal trial. The petitioner with an expectation prayed before the respondents to keep the department proceeding in abeyance till the disposal of the Criminal Case. The petitioner was communicated with letter vide Memo.No. C. 51/2014/90 dated 21st March, 2015 wherein it was informed that the reply to show cause submitted by the petitioner found to be unsatisfactory and it was further informed that Shri. Lethindra M. Sangma, MPS, Additional Superintendent of Police, South West Garo Hills District, Ampati was appointed as Enquiry Officer (EO) in connection with the D.P. No.1/2015 drawn up against the petitioner and moreover it was also mentioned in the said letter that the respondent No.5 was requested to conduct an enquiry on the matter immediately and submit his findings within two weeks time from the date of receipt of the said order without delay. The respondent No.5 on the strength of the Memo. No. C. 51/2014/90 dated 21st March 2015 issued a notice to appear vide letter No. L/No./Misc. Enquiry/2015-16/01 dated 28th April 2015 to the petitioner wherein it was informed that upon being appointed the Enquiry Officer of D.P. No.1/2015/vide PHQ Memo No. C.51/2014/90 dated 21st March 2015 notice is hereby given to the petitioner that enquiry will commence on

08-05-2015 in the office chamber of Addl. S.P. (DSB) located at S.P. Office, Tura and the petitioner is requested to appear in person before the said respondent No.5 on the above mentioned date and place @ 11:00 am alongwith evidences, and it was further informed that if the petitioner seek to take the assistance of any person (departmental or otherwise), not being a legal practitioner, to plead in petitioner's defence the name of such person/official etc. may be filed along with his consent thereon the first appearance of the petitioner.

5. The petitioner begs to state that even after it was pointed out to the respondent that "if the department proceedings of the Criminal Case are based on identical in nature which involves complicated question of law and fact" it would be desirable to stay the department proceedings till the conclusion of the Criminal Case, however the respondents without considering the direction given by the Hon'ble Apex Court reported in **(1999) 3 SCC 679 Capt. M. Paul Anthony - Vs - Bharat Gold Mines Ltd. and Another**, rejected the request of the petitioner and proceeded with the departmental enquiry. 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 petitioner and moreover if both the proceedings proceed simultaneously there is every possibility that the right of fair trial of the petitioner would be infringed and vitiated. It is to mention herein that the witnesses are the same in both the proceeding and the established law of the land is to stay the proceedings of the departmental proceedings till the conclusion of the criminal case. The decision of the

respondent No.2 by appointing the Enquiry Officer (EO) in connection with the DP. No.1/2015 drawn up against the petitioner and recommending the respondent No.5 as the Enquiry Officer to conduct enquiry on the matter immediately and submit his finding within two months from the date of receipt of the order is illegal, arbitrary, tainted by malifide or oblique consideration or motive and the same is being not fair. Moreover on the strength of the Memo. No. C. 51/2014/90 the impugned order No. L/No. LS/Misc.Enquiry/2015-16/01 dated Tura 28th April, 2015 issued by the respondent No.5 is highly illegal and unconstitutional and required to be set aside and quashed or the same should be kept in abeyance till the disposal of the criminal case GR Case No. 147 of 2014. Under Section 354 IPC R/w Section 10 of POCSO Act, 2012 pending before the Hon'ble Court of Special Judge at Williamnagar.

6. Mr. S. Dey, learned counsel appearing on behalf of the petitioner submits that the petitioner was charged under Section 354 IPC R/w Section 10 of the POCSO Act, 2012 and he submits that a criminal case trial is pending before the District and Sessions Judge, Williamnagar as G.R.Case No. 147 of 2014, and the petitioner is facing trial before the Sessions Court and the trial is on. Therefore a simultaneous departmental proceeding is uncalled for. In support of his submission, he relied on **(1999) 3 SCC 679 Capt. M. Paul Anthony - Vs - Bharat Gold Mines Ltd. and Another para 22**. On the other hand, learned State counsel Mr. S. Sen Gupta submits that there is no bar to departmental proceedings and criminal trial to proceed simultaneously.

7. After hearing the submissions advanced by the learned counsel for the petitioner and learned counsel for the State and after going through the observation made by the Hon'ble Supreme Court in above referred case, it appears to me that the departmental proceeding and proceeding in a criminal case can proceed simultaneously as there is no bar in their being conducted simultaneously, though separately. In para 22 (ii) Hon'ble Supreme Court further observed that 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. In para 22 (iii) Hon'ble Supreme Court further observed 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. Hon'ble Supreme Court also made it clear that the factors mentioned in (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. It also further observed 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 it at an early date, so that if the employee is found not guilty his honour may be vindicated and in case if he is found guilty, the administration will get rid of him at the earliest.

8. After scanning the observation made by Hon'ble Supreme Court as referred above and considering the fact that Section 10 of the POCSO Act, 2012 is involved, I am of the opinion that the offence is grave in nature. Therefore, I am of the view that under such circumstances, the departmental proceedings needs to be stayed till the disposal of the criminal case pending and faced by the petitioner. Accordingly, the departmental proceedings is hereby stayed till the conclusion of the criminal case pending against the petitioner and Session Court is also directed to expedite the trial and dispose of the matter as early as possible.

9. With this direction and observations, the instant writ petition is allowed and stands disposed of.

JUDGE

S.Rynjah