

**(2018) 09 CHH CK 0228**

**Chhattisgarh High Court**

**Case No:** Writ Petition (S) No. 5509 Of 2018

Daniram Tandiya

APPELLANT

Vs

State Of Chhattisgarh And Ors

RESPONDENT

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**Date of Decision:** Sept. 13, 2018

**Acts Referred:**

- Indian Penal Code, 1860 - Section 376
- Protection Of Children From Sexual Offence Act, 2012 - Section 4, 6

**Hon'ble Judges:** P. Sam Koshy, J

**Bench:** Single Bench

**Advocate:** Abhishek Pandey, RN Pusty

**Final Decision:** Allowed

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**Judgement**

P. Sam Koshy, J

1. The relief sought for by the petitioner in this petition is for quashment of the charge sheet as also to stall the departmental enquiry proceedings

initiated against him.

2. The petitioner is working as a Constable in 16th Battalion of Chhattisgarh Armed Force, Narayanpur. An FIR was lodged against the petitioner on

05.11.2017 for the offence under Section 376 IPC and also under Sections 4 and 6 of POCSO Act. Charge sheet has been filed and the matter is

under trial before the concerned criminal court. Meanwhile, the petitioner has been served with a charge sheet on 27.07.2018. The charges have been

levelled against the petitioner is in respect of the same offence for which he is being subjected in criminal trial.

3. The petitioner has filed this petition on the ground that the witnesses which the petitioner would require to adduce before the departmental enquiry proceedings would be the same witness who have to be examined before the criminal court by the prosecution. Therefore, the defence before the criminal court would be substantially prejudiced in case if the department proceeds with the departmental enquiry. The petitioner relies upon the case of Supreme Court in case of Karnataka SRTC Vs. MG Vittal Rao, 2012(1)SCC 442 as also recent decision in case of State Bank of India & Ors. Vs. Neelam Nag & Anr. 2016(9) SCC 491.

4. Relying upon the aforesaid two judgments, this court recently in case of similar nature in Sandip Kumar Singh Vs. Chhattisgarh Rajya Gramin Bank & Ors., WPS No.2377 of 2018 had allowed the writ petition on 27.03.2018 stalling departmental enquiry till the finalization of the criminal case initiated against the delinquent employee.

5. In the instant case also the material witnesses before the criminal court, as also before the departmental enquiry proceedings would be the victim or the prosecutrix. In case, if the victim and the other witnesses are examined in the departmental enquiry, there is all possibility of the defence being disclosed before it commences in the criminal court and which may have an adverse affect so far as the right of defence is concerned in the criminal case.

6. Given the aforesaid factual matrix and the legal position as it stands from the aforesaid two judgments of the Supreme Court, as also the view already taken by this court in Sandip Kumar Singh (Supra), this court at this juncture is of the opinion that it would not be in the interest of the petitioner if the respondents proceed with the departmental enquiry. Therefore, it is ordered that the departmental enquiry initiated against the petitioner shall remain stalled till conclusion of the criminal case. Thereafter, the respondents would be at liberty to proceed further from the stage of enquiry as it stands today reserving the right of either parties to adduce evidence in accordance with procedure prescribed under the rules.

7. Needless to mention that the respondents would also have an opportunity to resume their proceedings of departmental enquiry if the criminal court

does not decide the case within a reasonable period or in case if the criminal case is getting delayed on account of the conduct of the petitioner.

8. With the aforesaid observation in the preceding paragraphs, the writ petition stands allowed.