

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6670 of 2018

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Ashok Kumar Sharma, Son of Kamta Prasad Sharma, Resident of Godam Road
Bodh Gaya, Police Station- Bodh Gaya, District- Gaya.

... .. Petitioner/s

Versus

1. The State Of Bihar through the Principal Secretary, Agriculture Department, Bihar, Patna.
2. The Director Agriculture, Bihar, Patna
3. The District Agriculture Officer, Patna.

... .. Respondent/s

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Constitution of India, 1950 – Article 226

Bihar Government Servant (classification, control and Appeal) Rules, 2005

Writ petition for staying the departmental proceeding initiated against the petitioner is filed in the High Court. The contention of the petitioner is that the contents of charge memo and the F.I.R are identical therefore, a departmental proceeding may not be proceeded against him till the pendency of the criminal case.

Held that tests of criminal jurisprudence and service jurisprudence are different. In criminal jurisprudence, the ingredients of action which constitute the crime beyond all reasonable doubts are tested; whereas in departmental proceeding, the imputation of work done by the employees against employer in violation of terms of service are tested. Therefore, the facts may be the same, but the test for criminal jurisprudence and service jurisprudence are distinct and varies from case to case.

Writ petition are disposed of directing to apply Bihar Government servant (Classification, Control and Appeal) Rules- 2005.

[Para 2, 3, 6 and 8]

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... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Amit Kumar, Adv.
For the Respondent/s : Mr. Nilotpai Sharma, (AC to GP-21)

CORAM: HONOURABLE MR. JUSTICE DR. ANSHUMAN

ORAL JUDGMENT

Date : 06-03-2024

Heard learned counsel for the petitioner and learned
counsel for the State.

2. The present writ petition has been filed for staying
the departmental proceeding initiated against the petitioner
pursuant to memo of charge dated 13.04.2017 (annexed as
Annexure-2) till completion of the criminal case based on the
same set of facts and charges and evidences.

3. Learned counsel for the petitioner submits that the
contents of charge memo and FIR are identical and therefore,
the departmental proceeding may not proceed against him till
pendency of the criminal case.



4. Learned counsel for the State on the other hand submits that the second column, description of charge indicates that allegation of FIR and description of charges are two distinct matters and therefore, the proceeding may not be stopped and both proceeding may run together.

5. After hearing the parties as well as going through the pleadings, the only question which has to be decided for this Court that whether the department proceeding and criminal case on the same set of allegations can run simultaneously or not.

6. In this regard, the position of law is very clear that criminal jurisprudence tests the ingredients of the action which constitute a crime beyond all reasonable doubts, whereas, the departmental proceeding tests the imputation of the work done by the employees against the employer in violation of terms of services in which employee has to work. Therefore, the event may be same, but the test for criminal jurisprudence and service jurisprudence are distinct and varies from case to case.

7. It also transpires to this Court that *vide* memo of charge dated 13.04.2017, interim order has been passed in favour of the petitioner. But, today on the date of final hearing, this Court is of the firm view that action under criminal justice system and under service jurisprudence may run together as the



description of allegation of the service jurisprudence has been described in the second column of the charge memo on the point of entry made in the third allegation in the charge memo is only related to criminal case. The official shall be at liberty to continue the departmental and criminal proceeding simultaneously, but shall only take care that findings of a criminal case and findings of service matters should be different and their standard of provings are also different.

8. Accordingly, the present writ petition is hereby disposed off directing the authorities to proceed in accordance with law and under strict guideline of Bihar Government Servant (Classification, Control & Appeal) Rules, 2005.

(Dr. Anshuman, J.)

Divyansh/-

AFR/NAFR	AFR
CAV DATE	NA
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