

**IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE**

BEFORE

HON'BLE SHRI JUSTICE SUBODH ABHYANKAR

ON THE 10th OF MAY, 2024

WRIT PETITION No. 19874 of 2023

BETWEEN:-

**MANOJ SINGH CHOUHAN S/O LATE SHRI RAJ
BAHADUR SINGH CHOUHAN, AGED ABOUT 50
YEARS, OCCUPATION: SERVICE, ASSISTANT
SUB INSPECTOR DISTRICT DHAR 11 C NORHT
GADRAKHEDI NEAR MARIMATA CHOURAHA
DISTRICT INDORE (MADHYA PRADESH)**

.....PETITIONER

(BY SHRI L. C. PATNE – ADVOCATE)

AND

- 1. THE STATE OF MADHYA PRADESH
THROUGH PRINCIPAL SECRETARY
DEPARTMENT OF HOME POLICE
VALLABH BHAWAN, DISTRICT BHOPAL
(MADHYA PRADESH)**
- 2. SUPERINTENDENT OF POLICE DISTRICT
DHAR, DHAR (MADHYA PRADESH)**

.....RESPONDENTS

(BY SHRI BHUWAN DESHMUKH – G.A.)

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*This petition coming on for admission this day, the court passed
the following:*

ORDER

- 1] Heard finally, with the consent of the parties.
- 2] This petition has been filed by the petitioner Manoj Singh Chouhan, an Assistant Sub Inspector of Police/Reader, posted in the office of respondent No.2 – Superintendent of Police, Dhar, under Article 226 of the Constitution of India against the order dated 05.07.2023, and 29.07.2023, passed by the respondent No.2, the Superintendent of Police, District Dhar.
- 3] Vide order dated 05.07.2023, a departmental enquiry has been initiated against the petitioner, and vide order dated 29.07.2023 the petitioner's application for stay of departmental enquiry has been rejected by the respondent no.2.
- 4] In brief, the facts of the case are that the petitioner was posted as Assistant Sub Inspector of Police, D.R.P., Line, Dhar and it is alleged that on 15.06.2022, when the police team of Police Station Khalwa, District Khandwa reached Banganga, Indore to apprehend the accused Raghvendra Chouhan, who happens to be the brother of the petitioner, in Crime No.332 of 2022 under Sections 489A and 489C of IPC registered at Police Station Khalwa, District Khandwa, at the time, the petitioner also reached on the spot and obstructed the police personnel of police station Khalwa to arrest his brother Raghvendra, a video clip of the aforesaid incident was also captured by a female constable Jyoti Falke and subsequently, the FIR at Crime No.1098 of 2022 was lodged at Police Station Banganga, Indore on the allegations that the petitioner had tried to obstruct the police personnel from

performing their official duty, and subsequently, the departmental enquiry has also been initiated against the petitioner in respect of the same incident, wherein it was also alleged that the petitioner had left his headquarter without any information and has obstruct the police personnel of police station Khalwa in performing their duty. Subsequently, the charge-sheet has also been issued to the petitioner and the evidence in the aforesaid charge-sheet is about to begin, which has led the petitioner to file this petition contending that if the petitioner discloses his defence in the present departmental enquiry, it would gravely prejudice his case in the proceedings of the Criminal Case bearing RCT No.6315 of 2023, pending in the Court of VII Judicial Magistrate, First Class, Indore.

5] In support of his submissions, counsel for the petitioner has also relied upon the decision rendered by the co-ordinate Bench of this Court in the case of **Omprakash Solanki Vs. State of M.P. & Ors.** passed in **W.P. No.7907 of 2011** dated **27.02.2012** wherein this Court has also relied upon the decision rendered by the Supreme Court in the case of **Capt. M. Paul Anthony Vs. Bharat Gold Mines Ltd. and Ors.** reported as **(1999) 3 SCC 679**. Thus, it is submitted that in the present case also the petitioner is seeking that his departmental enquiry may be stayed till the witnesses in the criminal case are examined as all those witnesses are also the witness in the departmental enquiry.

6] Counsel for the respondents/State, on the other hand, has

opposed the prayer and it is submitted that no case for interference is made out as in the case of **Capt. M. Paul Anthony** (supra) itself the Supreme Court has also held that the criminal proceedings and the departmental enquiry are different and both can continue simultaneously.

7] Heard. Having considered the rival submissions and on perusal of the documents filed on record, it is found that the departmental enquiry has arisen out of the same incident in which a crime has been registered at Crime No.1098 of 2022 at Police Station Banganga, Indore. It is also found that the same set of witnesses are to be examined in the criminal case, which are to be examined in the departmental enquiry, and the charges are also more or less are similar. In such circumstances, this Court has no hesitation to hold that the petitioner, if compelled to lead his evidence in the departmental enquiry, would suffer in his defence in the criminal case, in which he is required to cross-examine the same witnesses and apparently, the witnesses, who have already been cross-examined in the departmental enquiry, are cross examined in the criminal trial subsequently, would come prepared to answer the questions to be put to them in the criminal case, which would certainly prejudice the defence of the petitioner.

8] In such circumstances, this Court is of the considered opinion that this is a fit case where the departmental enquiry can be stayed while the criminal case is pending. Thus, it is directed that the departmental enquiry initiated against the petitioner shall

remain stayed till the witnesses in the criminal case are examined in the trial Court. However, after the examination of the witnesses, the departmental enquiry can commence, which shall be decided, in accordance with law.

9] With the aforesaid, the petition stands **disposed of**.

10] It is made clear that this Court has not reflected upon the merits of the case.

(SUBODH ABHYANKAR)
JUDGE

Pankaj