

IN THE HIGH COURT OF JUDICATURE FOR MADHYA PRADESH

AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE RAVI MALIMATH,

CHIEF JUSTICE

&

HON'BLE SHRI JUSTICE PURUSHAINDRA KUMAR KAURAV

ON THE 27th OF JANUARY, 2022

WRIT APPEAL No. 736 of 2021

Between:-

**RAJEEV KHARE S/O LATE SHRI
P.N.KHARE, AGED ABOUT 55 YEARS,
OCCUPATION-SERVICE, R/O 150, SECTOR
1, SHAKTI NAGAR, BHOPAL (M.P)**

.....APPELLANT

(BY SHRI PUNEET CHATURVEDI, ADVOCATE)

AND

- 1. STATE OF MADHYA PRADESH THROUGH,
PRINCIPAL SECRETARY, HOME
DEPARTMENT (POLICE), VALLABH
BHAWAN BHOPAL (MADHYA PRADESH).**
- 2. THE DEPUTY INSPECTOR GENERAL OF
POLICE, MADHYA PRADESH, RANGE CITY
PHQ, BHOPAL (MADHYA PRADESH).**
- 3. SUPERINTENDENT OF POLICE (NORTH
REGION) BHOPAL, DISTRICT BHOPAL (M.P)**

.....RESPONDENTS

(BY SHRI B.D.SINGH, GOVERNMENT ADVOCATE.)

(Heard through Video Conferencing)

*This appeal coming on for admission this day, **Hon'ble Shri Justice Purushaindra Kumar Kaurav**, passed the following:*

ORDER

This *intra* Court appeal takes exception to order dated 24.06.2021, passed by the learned Single Judge in Writ Petition No. 19661 of 2018, whereby appellant's petition has been dismissed.

2. The appellant-petitioner approached writ court seeking direction to the respondents to drop the departmental proceedings till conclusion of the criminal proceedings pending against him pursuant to the F.I.R. dated 18.09.2011. The case of the appellant-petitioner is that he was posted as Thana Incharge-cum-Traffic Inspector at Police Station Cant. District Sagar. On an allegation against him that he was illegally stopping the vehicles and forcefully extracting the money from the truck drivers, an F.I.R. at Crime No.515/2011 for offences punishable under section 341 and 384 of the I.P.C was registered against him at Police Station Cant. District Sagar. After investigation, the charge-sheet was filed on 30.09.2015 before the court of competent jurisdiction.

On 24.06.2015, a departmental charge sheet was also issued to him for alleged violation of para-634 and 637(d) of the Police Regulations. According to the appellant-petitioner, the charge-sheet dated 24.6.2015 and the allegations mentioned in the F.I.R are similar and the witnesses are also almost same, therefore, till the criminal case is concluded, the departmental proceedings be postponed.

3. The learned Single Judge while dismissing the writ petition has noted that the criminal case for the alleged offences punishable under

sections 341 and 384 of the I.P.C.is for the purpose of determining whether the allegations of extortion of money from the truck drivers are proved, whereas, in the departmental inquiry it is to be seen whether the appellant-petitioner has made correct entries in the General Diary or not. The learned Single Judge has also noted that though there may be some common witnesses, however, the nature of allegations and the trial of both the proceedings do not suggest that any prejudice would be caused to the appellant-petitioner if both the proceedings are conducted simultaneously. The judgment relied on by the appellant-petitioner in the case of *M.Paul Anthony Vs. Bharat God Mines Ltd. and another*¹ was also distinguished by the learned Single Judge on the aforesaid facts.

4. We have heard learned counsel for the parties and perused the record.

5. We are in full agreement with the reasons given by the learned Single Judge. In the case of *Stanzen Toyotetsu India Private Limited Vs. Girish V. and others*², the Hon'ble Supreme Court has held that there is no bar in conducting the disciplinary proceedings and criminal trial simultaneously. A perusal of the charge-sheet further shows that the allegation against the appellant-petitioner was for erroneously and incorrectly making entries in the Rojnamcha at around 11.30 P.M.on the date of incident with an object to create defense for the criminal case. It is fairly well settled that the approach and objective in criminal proceedings and the disciplinary proceedings are altogether distinct and different. In the disciplinary proceedings, the primary

¹ (1993) 3 SCC 679

² (2014) 3 SCC 636

question is whether an employee is guilty of such conduct as would merit action against him, whereas, in criminal proceedings the question is whether the offence registered against him are established and, if established, what sentence should be imposed upon him. The standard of proof, the mode of enquiry and the rule governing the enquiry and trial are conceptually different. (*See:Lalit Popli Vs. Canara Bank and others*)³.

6. The Hon'ble Supreme Court in the case of *M.Paul Anthony*¹ was of the opinion that the departmental proceedings and the proceedings in a criminal case can proceed simultaneously as there is no bar. However, it is desirable to stay departmental inquiry till conclusion of the criminal case if the departmental proceedings and criminal case are based on identical and similar set of facts and the charge in a criminal case against the delinquent employee is of a grave nature which involves complicated question of fact and law. On the facts of the said case, it was found that the criminal case and departmental proceedings were based on identical set of facts and the evidence before the criminal court and the departmental inquiry was the same. Further, in the said case the departmental inquiry was conducted *ex parte*. In such circumstances, the Hon'ble Supreme Court held that the *ex parte* departmental proceedings cannot be permitted to stand in view of the acquittal of the delinquent by the criminal court on the same set of facts and evidence. The said judgment is not applicable to the facts of this case.

7. On the anvil of aforesaid pronouncement of law when we examine the charges of the departmental proceedings, we find that the

³ (2003) 3 SCC 583.

departmental inquiry is only to the extent whether the appellant-petitioner has violated the Police Regulations 634 and 637(d) while making entries in the General Diary regarding the incident which occurred at around 8.30 A.M. on 18.09.2011 pursuant to which, F.I.R was registered against him and whether the said entries in the General Diary was with a motive to cover-up his alleged criminal act. The nature of allegations, the nature of evidence to be led and the number of witnesses to be examined in both the proceedings does not show any overlapping. More importantly for the reason that the allegations are simple in nature and there is no complex question of fact and law which would call for any interference at this stage.

8. Taking into consideration the overall facts and circumstances of the case, we hold that the learned Single Judge has rightly declined to invoke the equitable jurisdiction under Article 226 of the Constitution in favour of the appellant-petitioner. Accordingly, the writ appeal is dismissed.

(RAVI MALIMATH)
CHIEF JUSTICE

(PURUSHAINDR KUMAR KAURAV)
JUDGE

MKL.