

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 3072 OF 2021

Prashant Raosaheb Chormale ... Petitioner

Versus

Punyashlok Ahilyadevi Holkar
Solapur University ... Respondent

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Mr. N.V. Bandiwadekar a/w Mr. Vinayak Kumbhar i/b Ashwini N.
Bandiwadekar for the Petitioner.

Mr. Manjunath Kakkalameli, for Respondent No.1.

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**CORAM : R.D. DHANUKA &
R.I. CHAGLA, JJ.**

**DATE : 22nd JULY, 2021.
(V.C.)**

P.C. :-

1 By this Writ Petition filed under Article 226 of the Constitution of India, the Petitioner seeks writ, order or direction for quashing and setting aside the impugned charge sheet dated 05.07.2021 issued by the Respondent for the purpose of the departmental enquiry against the Petitioner.

2 It is the case of the Petitioner that the Petitioner is already facing a Criminal Case R.C.C. No.479 of 2021 in respect of the said charges which are levelled in the charge sheet dated 05.07.2021 for initiation of the departmental enquiry. The learned Counsel for the Petitioner invited our attention to the charge sheet on the criminal enquiry as well as departmental enquiry and vehemently urged that the charges in both the enquiries are identical. The witnesses proposed to be examined are identical. Reliance is also placed on the judgment of the Hon'ble Supreme Court in case of *Capt. M. Paul Anthony vs. Bharat Gold Mines Ltd. and another*¹ in support of the submission that the charges and the evidence being common in the departmental proceedings as well as in Criminal case, departmental enquiry has to be quashed and set aside.

3 We have perused the charge sheet issued in the criminal case as well as in the departmental enquiry and the list of witnesses. All the charges against the Petitioner are not identical in both the proceedings. All the witnesses proposed to be examined are also not the same. The evidence in neither the criminal enquiry nor the departmental enquiry has commenced.

1 (1999) 3 SCC 679

4 The Hon'ble the Supreme Court in case of *Capt. M. Paul Anthony* (supra) has clearly held that simultaneous continuance of departmental enquiry with criminal proceedings is permissible independently. In the facts of that case, the Hon'ble the Supreme Court had held that in the criminal proceedings the employee was acquitted. After comparing the evidence in both the proceedings, the Hon'ble the Supreme Court held that since the facts and the evidence in both the proceedings, namely, the departmental proceedings and the criminal case were the same without there being any iota of difference, the distinction, which was usually drawn as between the departmental proceedings and the criminal case on the basis of approach and burden of proof, would not be applicable to the instant case. In that matter the Hon'ble the Supreme Court held that on a consideration of the entire evidence, the Court in the criminal case had come to the conclusion that no search was conducted nor was any recovery made from the residence of the employee. The whole case of the prosecution was thrown out and the employee was acquitted. In that situation, the Hon'ble the Supreme Court held that where the employee was acquitted by a judicial pronouncement with the finding that the "raid and recovery" at the residence of the employee were not proved, it would be unjust, unfair and rather oppressive to allow the

findings recorded at the ex-parte departmental proceedings to stand. The principles laid down in paragraphs 34, 35 and 36 of the said judgment would apply to the facts of this case. The said judgment in our view does not support the case of the Petitioner.

5 In this case the Petitioner has to file his reply to the charge sheet issued by the Respondent for conducting departmental enquiry. We are not inclined to interfere with the departmental enquiry in this Writ Petition. The time to file reply to the charge sheet granted to the Petitioner in the departmental enquiry, is extended by two weeks from today.

6 The Writ Petition is accordingly dismissed with aforesaid extension of time to the Petitioner to file reply to the charge sheet. No order as to costs.

(R.I. CHAGLA, J.)

(R.D. DHANUKA, J.)