

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CRIMINAL APPLICATION [APPW] NOS. 50, 64 & 70 OF 2023
IN CRIMINAL WRIT PETITION NO. 794/2019.

Madankumar Babulalji Shriwas

-VERSUS-

State of Maharashtra and others.

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders

Shri M.P. Kariya, Advocate for the Petitioner.
Shri S.S. Doifode, Addl.P.P. for Respondent Nos.1 to 4 & 8.
Shri N.B. Rathod, Advocate for Respondent No.5.
Shri A. Parchure, Advocate for Respondent No.6.
Shri R.M. Daga, Advocate for Respondent No.7.

CORAM : VINAY JOSHI AND
VALMIKI SA MENEZES, JJ.

DATE : JUNE 28, 2023.

Heard learned Counsel for the parties.

2. These applications are filed by respondent Nos.5 to 7 [jail authorities] claiming some what similar reliefs, which are as under :

“(i) *to quash further proceeding of FIR No.161/2021 dt.12.5.2021 registered at Police Station, Dhantoli, Nagpur for offence under section 384, 506 read with 34 of IPC, against applicant, in facts and circumstances of present case.*

- (ii) *to direct that further proceeding pursuant to F.I.R. No.161/2021 dated 12.5.2021, registered at Police Station Dhantoli, Nagpur shall remain stayed, till disposal of present petition;*
- (iii) *to direct that no coercive steps be taken against the present applicant in connection with C.R.No.161/2021, registered at Police Station Dhantoli, Nagpur for the offence punishable under sections 384, 506 read with section 34 of I.P.C. till disposal of the present writ petition;*
- (iv) *to direct that the applicant be reinstated in service forthwith;*
- (v) *to recall direction No.II and V in order dated 4.5.2021 passed by this Hon'ble Court in Criminal Writ Petition No.794/2019 against present applicant;"*

3. It is informed that applicant in Criminal Application No.50/2023 has filed a separate petition bearing Criminal Writ Petition No.429/2023 seeking the same relief.

4. In order to understand the reliefs claimed on the canvass of controversy, some background facts need reference.

The petitioner who was in jail at the relevant time has filed this Writ Petition pointing out several illegalities going on in

the Central Prison, Nagpur. In the said petition, vide order dated 13.12.2019, this Court has directed an enquiry by a Retired District and Sessions Judge to be conducted to ascertain the truthfulness of the accusation made in the petition. In pursuance of that, Retired District and Sessions Judge has conducted exhaustive enquiry of which report dated 18.04.2021 is placed before this Court. After hearing the petitioner, respondent nos. 1 to 4, and on perusal of the enquiry report, this Court vide order dated 04.05.2021 has directed to conduct a departmental enquiry, and to place respondent nos. 5 to 7 under suspension till the conclusion of the departmental enquiry. It was also directed to place the departmental enquiry report before this Court for passing further orders. Besides that, this Court has also directed that the first information report shall be registered at Dhantoli Police Station, Nagpur against respondent nos. 5 to 7. Relevant clauses [1], [2], [3] and [5] of the order reads as under :

“(i) Considering the seriousness of the accusations against the respondent No.5- Krishna Ravindra Chaudhari, who was working as Circle Jailor at Central Jail, Wardha Road, Nagpur, respondent No.6- Gulabrao Sakharam Kharde, who was working as Badi Circle Officer at Central Jail, Wardha Road, Nagpur and respondent No. 7-

Ravindra Govind Parekar, who was working as Circle Jailor at Central Jail, Wardha Road, Nagpur, we direct that Departmental enquiry shall be conducted against respondent No.5-Krishna Ravindra Chaudhari, respondent No.6-Gulabrao Sakharam Kharde, and respondent No. 7-Ravindra Govind Parekar as per the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979. As the accusations are of serious nature we direct that the Departmental enquiry shall be conducted by the Additional Chief Secretary (Home), Government of Maharashtra.

- (ii) *Considering the nature of accusations against respondent No.5- Krishna Chaudhari, respondent No.6- Gulabrao Kharde, and respondent No. 7-Ravindra Parekar we are of the view that their continuation on duty may hamper the Departmental enquiry to be conducted against them. Hence, we direct that respondent No.5- Krishna Chaudhari, respondent No.6- Gulabrao Kharde, and respondent No. 7-Ravindra Parekar shall be under suspension with immediate effect till the conclusion of Departmental enquiry against them.*

- (iii) *After the Departmental enquiry is complete and enquiry report is ready, further action shall not*

be taken on it and the enquiry report shall be placed before this Court, and any further action on the enquiry report which would be submitted to this Court after conducting Departmental enquiry shall be as per the further orders which may be passed by this Court.

(iv) ...

(v) As we find that the accusations made by the petitioner and the report submitted by Shri. Ejazuddin N. Quazi, Retired District and Sessions Judge make out commission of cognizable offence by respondent No.5- Krishna Chaudhari, respondent No.6- Gulabrao Kharde, and respondent No. 7-Ravindra Parekar, we direct that first information report be registered by Dhantoli Police Station, Dhantoli, Nagpur against respondent No.5- Krishna Chaudhari, respondent No.6- Gulabrao Kharde, and respondent No. 7-Ravindra Parekar. The Police Station Officer Dhantoli, Nagpur shall file affidavit of compliance on record of this petition till 18th May 2021.”

5. Initially this Court has issued notice only to respondent nos. 1 to 4, meaning thereby when this interim order was passed, respondent nos. 5 to 7 were not noticed. Being aggrieved by the above interim order dated 04.05.2021, respondent nos. 5 to 7

have approached the Supreme Court by filing SLP (Cri) No.3883/2021. In said Special Leave Petition initially the Supreme Court vide order dated 28.05.2021 has stayed the proceeding arising from concern first information report (First Information Report No.161/2-21 dated 12.05.2021) registered with Dhantoli Police Station, Nagpur. Several grievances were agitated before the Supreme Court against the interim order. In the circumstances all the points including the aspect of suspension, registration of first information report has been kept open and the matter is relegated to this Court to decide the same. Liberty was granted to respondent nos. 5 to 7 to raise all issues before this Court. In the wake of such position, these applications have been filed seeking a relief as set out above.

6. The learned Counsel appearing for applicants took us through the departmental enquiry report conducted by the Superintendent of Prison, District Wardha to contend that applicants were exonerated in major charges, whilst only the minor charge about negligence has been proved. They would submit that the authorities are not taking further action on the basis of enquiry report, nor revoking the suspension since there has been interim order of this Court dated 04.05.2021.

7. On the other hand, the learned Counsel appearing for

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the petitioner would submit that the fact finding enquiry report filed by the retired District Judge points out several irregularities. He would submit that the departmental enquiry conducted by the Superintendent of Police, Wardha itself is illegal, as it was not in tune with the directions issued by this Court. Besides that, he has also raised certain objections regarding the mode and manner in which the enquiry was conducted by the Superintendent of Police, Wardha.

8. There is no denial that this Court specifically directed that the departmental enquiry shall be conducted by the Additional Chief Secretary [Home], Government of Maharashtra, which has not been conducted so. It appears from the record that the Deputy Secretary, Home Department has appointed the Regional Departmental Enquiry Officer, Nagpur meaning thereby the Superintendent of Police, Wardha as an enquiry officer. We are unable to find any source for appointing him as enquiry officer by the Deputy Secretary. Obviously, the said order is not in consonance with the directions issued by this Court. In the circumstances, it necessitates that the Authority which is named by this Court shall conduct departmental enquiry to decide the further course of action. Consequently the departmental enquiry report conducted by the Superintendent of Police, Wardha is

recalled.

At this stage, it is pointed out that the Additional Chief Secretary [Home] is the highest Authority, rather the Appellate Authority under the Maharashtra Civil Service Rules. If the enquiry is conducted by him, then the aggrieved may lose the opportunity of filing departmental appeal. Facing such difficulty, we deem it necessary to direct that the departmental enquiry shall be conducted by Inspector General of Police, Pune, who is also the disciplinary authority. He being a high ranking officer, the purpose of fairness would be served. The said Authority shall complete the enquiry as early as possible, within a time bound manner.

9. So far as the aspect of suspension of respondent nos. 5 to 7 is concerned, in our considered view, it is within the domain of the disciplinary authority. We hope and trust that the disciplinary authority after initiation of fresh enquiry, shall take appropriate decision in that regard in accordance with law. He is free to take appropriate decision as to whether suspension shall be continued during fresh departmental enquiry or shall not. If the authority comes to a conclusion that the suspension is to be recalled, then the officers [respondent nos. 5 to 7] shall not be posted in Nagpur Central Prison.

10. So far as the aspect of registration of first information report and continuation of investigation is concerned, we find prima facie substance to at least investigate the matter. Having regard to the material placed and the enquiry report submitted by the Retired District Judge, we feel that the investigation shall go on, but, charge sheet shall not be filed without obtaining leave of this Court.

11. In view of above, we recall the enquiry report, and direct that fresh enquiry be conducted through the Inspector General of Police, Pune and to be completed within a period of four months from the date of receipt of this order. The said Authority is at liberty to take appropriate decision in respect of suspension, as observed in the aforesaid paras.

12. We direct that the investigation in the matter shall go on, but, charge sheet shall not be filed without obtaining prior permission of this Court.

13. Criminal Applications are disposed of in aforesaid terms.

JUDGE

JUDGE