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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 1380 OF 2024

Ashwini Charan Singh Yadav .. Petitioner

versus

Union of India & others .. Respondents

WITH
WRIT PETITION NO. 1385 OF 2024

Shashikant Ganpat Surwade .. Petitioner

versus

Union of India & others .. Respondents

WITH
WRIT PETITION NO. 1396 OF 2024

Sunil Bhaulal Potdar .. Petitioner

versus

Union of India & others .. Respondents

Mr. S. S. Patil, Advocate for the Petitioners.
Mr. B. B. Kulkarni and Mrs. Sudha Chintamani, Standing
Counsel for Respondent Nos. 1 to 4 in respective petitions.

**CORAM : RAVINDRA V. GHUGE AND
R. M. JOSHI, JJ.**

DATE : 29th FEBRUARY, 2024.

ORDER : (Per R. M. Joshi, J.)

1. Petitioners, in these Petitions, seek stay of Departmental Enquiry bearing Nos. BSL/153/DE-06/2023, BSL/153/DE-05/2023 and BSL/153/DE-07/2023 respectively pending against them before Respondent No. 5 till completion of hearing, evidence and decision in Regular Criminal Case instituted before the Judicial Magistrate First Class, Bhusawal arising out C.R. No. 8/2024, for the offence punishable under Section 3(a) of Railway Property (Unlawful Possession) Act, 1966.

2. The Petitioners are serving as Constables in Railway Protection Force at Bhusawal Loco within the jurisdiction of Bhusawal Division under the control of Respondent Nos. 2 to 4 and under overall control of Respondent No. 1. According to the Petitioners, along with other accused, they were charged in Crime No. 8/2023 at Railways Protection Force (R.P.F.) Station, Bhusawal (Loco) for the offence as stated above at the behest of Mr. Santosh Kumar Yadav. It is alleged that accused persons have committed theft of copper wire weighing 1604.5 Kgs having net value worth of Rs. 7,84,227.50/- belonging to the Railways with the help of RPF personnel including the Petitioners. There is allegation that the accused persons with the help of RPF personnel, covered the CCTV

camera in the Main Gate, Cycle Stand, Workshop and Strong Room of POH premises during Diwali festival, for commission of theft. Initially, offence came to be registered against unknown persons and during the investigation, name of the co-accused Rahul More surfaced and after his arrest, the involvement of RPF personnel was revealed. It is the case of the Petitioners that pursuant to the registration of Crime, Petitioners were arrested and remanded to RPF custody and later on were sent in judicial custody and ultimately they were released on bail on 10th January, 2024 by Additional Sessions Judge, Bhusawal. Petitioners claim that simultaneously the department conducted preliminary enquiry and fact finding report is obtained. Respondent No. 4 served a departmental charge-sheet dated 15th January, 2024 on the Petitioners and called upon them to explain the charges leveled against them. It is the case of the Petitioners that on the same set of allegations as contained in the criminal proceeding i.e. on the same set of witnesses and evidence, the Departmental Enquiry is sought to be conducted. It is claimed by the Petitioners that prejudice will be caused to their defence in the criminal proceeding if the Departmental Enquiry is allowed to be continued against them. Mainly, on these amongst other grounds, stay to the Departmental Enquiry is asked.

3. Respondents filed the affidavit-in-reply of Mr. H. Shrinivasa Rao, DSC(RPF), Divisional Security Commissioner (RPF), Central Railway, Bhusawal Division, Bhusawal, District Jalgaon, opposing the Petitions. It is the case of the Respondents that having regard to the judgments of the Hon'ble Supreme Court, the Departmental Enquiry and criminal proceedings can proceed simultaneously and there is no bar in conducting them at the same time. It is also claimed that the case does not involve complicated questions of fact and law and as such, no case is made out for stay of the Departmental Enquiry as sought for.

4. The learned Advocate for the Petitioners submits that the defence of the Petitioners in criminal case would prejudice if they are required to participate in the Departmental Enquiry. To support his submissions, he placed reliance on following judgments :

- i) Cap. M. Paul Anthony vs. Bharat Gold Mines Ltd. & others
(1999) 3 SCC 679
- ii) Stanzen Toyotectsu India Private Ltd. vs. Girish V. & others
(2014) 3 SCC 636.
- iii) State Bank of India & others vs. Neelam Neg
2016 GoJuris(SC) 671 : 2016 (9) SCC 491
- iv) Dinkar Hanumant Dokhe vs. Shri Saibaba Sansthan
Vishwashta Vyavashta
2016 Gojurisi (BOM) 839

- v) Prashant Magar vs. The UOI & others
W. P. No. 5059/2019 with connected Writ Petitions.
- vi) Ram Lal vs. State of Rajasthan & others
2023 GoJuris (SC) 1172
- vii) G. M. Tank vs. State of Gujrat & another
2006 DGLS(SC) 417 : 2006(5) SCC 446.

5. The learned AGP opposed the said submissions by stating that it is not a law that the departmental enquiry and the criminal proceeding cannot simultaneously proceed.

6. We have carefully gone through precedents cited supra. The sum and substance of the law laid down with regard to the proceedings of Departmental Enquiry and criminal trial to be simultaneously proceeded or not is fairly settled to say there is no legal bar for proceeding with the Departmental Enquiry pending the criminal proceeding parallelly. However, if both are based on identical facts/allegations and evidence, and also involve complicated question of law and fact, then it may not be allowed to proceed simultaneously. A survey of the binding precedents, on the point does not show any judgment directing non proceeding of departmental/domestic enquiry, merely on account of filing of First Information Report against the delinquent.

7. Admittedly, in the instant case, no charge-sheet has been filed by the Investigating Agency against the Petitioners. Merely because the First Information Report has been registered against the Petitioners, there is no presumption that the same will culminate into filing of the charge-sheet. The provisions of Code of Criminal Procedure contemplate an investigation to be conducted into the crime registered against any one, by a competent police officer and, in case he finds sufficient evidence, to file charge-sheet a final report would be submitted under the provisions of Section 173(8) of Code of Criminal Procedure. It is always open for the Investigating Agency to file any summary report, under Section 169 of the Code of Criminal Procedure before the competent Court. The Constitution Bench of Hon'ble Supreme Court in case of Hardeep Singh vs. State of Punjab and others, **(2014) 3 Supreme Court Cases 92**, has drawn distinction between an enquiry and trial before criminal Court. In Paragraph No. 23 of the judgment, it is held thus :-

“23. In Yeluchuri Venkatachennaya, In re, the Court held that an inquiry is a stage before the committal to a higher court. In fact, from a careful reading of the judgments under reference i.e. Ranjit Singh and Kishun Singh, it emerges that there is no dispute even in these two cases that the stage of committal is neither an inquiry nor a trial, for in both the cases, the real dispute was whether Section 193 CrPC can be invoked at the time of committal to summon an accused to face trial who is not already an accused. It can safely be said

that both the cases are in harmony as to the said stage neither being a stage of inquiry nor a trial.

Similarly, in Paragraph No. 27 it is observed thus :-

“27. The stage of inquiry commences, insofar as the court is concerned, with the filing of the charge-sheet and the consideration of the material collected by the prosecution, that is mentioned in the charge-sheet for the purpose of trying the accused. This has to be understood in terms of Section 2(g) CrPC, which defines an inquiry as follows :

“2(g) ‘inquiry’ means every inquiry, other than a trial, conducted under this Code by a Magistrate or court.”

From the above judgment, it can be safely said that till completion of investigation, filing of charge-sheet and thereafter framing of charge, question of simultaneous conducting of trial and departmental enquiry against Petitioners does not arise.

8. In such circumstances, there would be no gain saying that the Petitioners would be with certainty charge-sheeted for the alleged offence against them and that they would be tried for the same and for that reason departmental enquiry sought to be conducted against them could be stayed.

9. In view of the above discussion, we find no merit in the Petition. In the result, **all the Writ Petitions stand dismissed.**

(R. M. JOSHI)
JUDGE

(RAVINDRA V. GHUGE)
JUDGE

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