



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 2420 OF 2024

Irfan Nazeer Khan & another .. Petitioners

versus

Union of India & others .. Respondents

Mr. P. B. Patil, Advocate for the Petitioners.

Mr. A. G. Talhar, DSGI, for Respondent Nos. 1 to 4.

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

RESERVED ON : 20th MARCH, 2024.

PRONOUNCED ON : 03rd APRIL, 2024.

PER COURT : (Per R. M. Joshi, J.)

1. The Petitioners in this Petition, are seeking stay of Departmental Enquiry Nos. SUR/X/P/227/153-1/2024 and SUR/X/P/227/153-2/22024 and memorandum Charge-Sheet dated 9th February, 2024 pending against them before Respondent Nos. 3 and 4,, till completion of criminal trial in Crime No. 8/2023 registered under Section 3(a) of Railway Protection (UP) Act, 1966 and Section 147 of Railway Act.

2. Prior to suspension, Petitioner No. 1 was serving as Sub Inspector (Executive) and Petitioner No. 2 was working as Constable

with Respondent No. 4 under the control of Respondent Nos. 1 to 3. According to the Petitioners, along with other accused, they were charged in Crime No. 8/2023 registered with Respondent No. 5-Railway Protection Force, Daund, Dist. Solapur, for the offence as stated above at the behest of informant Rakesh Kumar. It is alleged that between 1st November, 2023 to 2nd November, 2023, the accused persons have committed theft of railway property i.e. High Speed Diesel of 12893 liters amounting to Rs. 11,94,021/- from tank wagon No. ECOR92253 and SECR 75288 with the help of RPF personnel including the Petitioners. Pursuant to the registration of crime, Petitioners were arrested and granted bail on 18th December, 2023. It is claimed by Petitioners that immediately on the same day, they were suspended vide order dated 18th December, 2023. Petitioners claim that the department has hurriedly started Departmental Enquiry against them and they were called upon on 20th February, 2024 to explain the alleged charges levelled in the Charge-Sheet. 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. The learned Advocate for the Petitioners submits that the defence of the Petitioners in criminal case would be prejudiced if they are compelled to participate in the Departmental Enquiry. He further submits that the Investigating Officer is contemplating to file charge-sheet against the Petitioners. Thus, according to him, the facts of the present case materially differ with the judgment passed by this Court in case of Ashwini Charan Singh Yadav vs. Union of India in Writ Petition No. 1380/2024. 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.

4. 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.

5. 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, simultaneously. However, if both are based on identical facts/allegations and evidence, and also involve complicated question of law and fact, then it may be considered whether to allow both to proceed simultaneously. Each case has to be considered on its facts and circumstances. A survey of the binding precedents, on the point does not indicate a mandate to prohibit departmental proceeding/domestic enquiry, merely on account of filing of First Information Report against the delinquent.

6. 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, simultaneous conducting of trial and departmental enquiry against Petitioners, is not prohibited.

7. The learned Advocate for the Petitioners informed this Court that on completion of investigation, filing of charge-sheet is contemplated by Investigating Officer, in short time. Even if it is accepted that charge-sheet would be filed in this case, however, that would not mean that a trial has commenced. Even otherwise, the criminal trial would be for deciding same/similar question, as it would be determined in departmental enquiry. A comparison of allegations in both can be culled out from the allegations as under :-

First Information Report	Departmental Enquiry Charge
Commission of theft of 12893	- Non intimation of information

Ltrs diesel (value Rs. 11,94,021/-)	to Superior Officer.
All accused committed theft in collusion.	- Giving misleading information. - To be in touch/contact with accused. - Non conducting of patrolling. - Negligence - Failure/negligence of discharge of duty.

8. Prima-facie, perusal of the First Information Report shows that the allegation against the Petitioners in the First Information Report is that the Petitioners in collusion with the co-accused and under a criminal conspiracy have committed the crime of theft. Whereas, the charge-sheet shows that the Petitioners have charged for the mis-conduct and not taking action for preventing the act of commission of theft so also suppressing the information to the higher authorities. It is thus clear that prima facie, the First Information Report and the charge-sheeting alleging mis-conduct is not same. Neither it would be open for the Criminal Court, if the charge is framed against the Petitioners and they are tried, to hold that there was any act of mis-conduct committed by them as alleged against them. On the other hand, the Disciplinary Authority will not

be in a position to make any observation with regard to the allegations in the First Information Report against the Petitioners.

9. We, therefore, do not find that there are same allegations in both proceedings much less any complicated question of facts or law being involved herein this case, to defer the conduct of departmental enquiry against the Petitioners.

10. Having regard to these facts, we find no merit in the Petition. In the result, **the Writ Petition stands dismissed.**

(R. M. JOSHI)
JUDGE

(RAVINDRA V. GHUGE)
JUDGE

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