



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

WRIT PETITION NO. 5359 OF 2024
Digambar Bholanath Dere Vs. Principal District and Sessions Judge,
Nagpur and another

Office Notes, Office Memoranda of Coram, Appearances, Court's orders or directions and Registrar's orders	Court's or Judge's orders
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Mr. U.J. Deshpande, Advocate for Petitioner
Dr. (Mrs.) R.S. Sirpurkar, Advocate for Respondent

CORAM: **AVINASH G. GHAROTE AND**
 ABHAY J. MANTRI, JJ.

DATED : **24th MARCH, 2025**

1. The petitioner by this petition, seeks direction for stay to the ongoing Departmental Enquiry No. 5/2023 pending against the petitioner, pending criminal proceedings arising out of Crime Nos. 669/2023, 718/2023, 719/2023, 8/2024, 9/2024, 10/2024, 11/2024, 14/2024, 15/2024, 16/2024 and 17/2024, on the ground that the facts leading to both the proceedings are the same. The learned counsel for the petitioner places reliance upon the judgment in the case of **Capt. M. Paul Anthony Vs. Bharat Gold Mines Ltd. and another (1999) 3 SCC 679**. Mrs. Sirpurkar, learned counsel for the respondents opposes the contentions and submits that considering the offence and position which the petitioner was holding and nature of charges of Departmental Enquiry, the same ought to

be permitted to continue. She further submits that in Departmental Enquiry, six witnesses have been examined on behalf of the Department and side has been closed and it is now the turn of the petitioner to lead evidence in rebuttal, if any. At this stage, the petition is filed only with an intention to stall the enquiry, which is likely to be completed within a short while.

2. The petitioner, who was serving as a Junior Clerk in the Court of Civil Judge, Junior Division, Katol, Dist. Nagpur is alleged to have siphoned off an amount of approximately Rs.54,33,76,674/- from the personal ledger account and the fixed deposits, which were in the name of the Court. This was revealed, at the time of internal audit, of the records of the Court for the period January, 2016 to May 2023, during which the petitioner was not only posted as Junior Clerk, but also Nazir, of the Motor Accident Claims Tribunal, upon his transfer to Nagpur and thus had control over the Motor Accident Claims Tribunal, financials.

3. Thus 11 FIRs for the offences under Sections 409, 418, 420, 467, 468, 471, 477-A, 381 and 120-3 of the Indian Penal Code in respect of the aforesaid amount have been lodged against the petitioner, which are presently pending. The matters

are now before the Additional Sessions Judge, Nagpur, in which charge itself has not been framed.

4. In the meanwhile, in the Departmental Enquiry, six witnesses have been examined by the Department, whereupon it has closed its side and it was now for the petitioner to start the defence evidence, if any.

5. Though the facts leading to the registration of FIRs and basic premise leading to initiation of the DE, may be similar, however, the scope of the DE, is much larger and wider, as it examines the conduct of a delinquent employee and the necessity to continue his employment based upon such conduct. It, therefore, cannot be said that in all cases, mere registration of an FIR and initiation of DE based upon the same set of facts, would lead to a situation of prejudice to the employee, as the mode, manner, proof and the nature of charges, though the facts remaining identical, may not be similar. The nature of the allegations which are made against the petitioner indicate that he has misused the position of trust which was reposed on him on account of his employment, specially so, when huge amount on account of Awards granted in the MACT were entrusted to him for safe keeping and disbursement

which he has siphoned off. Though the learned counsel for the petitioner has relied upon the judgment in the case of **Capt. M. Paul Anthony Vs. Bharat Gold Mines Ltd.**, we however find that there is no absolute position laid down therein and all that is being indicated is the consideration of the nature of the offence based upon which the criminal prosecution has been initiated, vis-a-vis, the initiation of the departmental proceedings. It is also necessary to note that in 11 FIRs, charge is not framed, as against which in the departmental enquiry the side of the Department is already closed and therefore is likely to conclude within a short time. That being the position, considering the seriousness of the allegation and nature of abuse alleged against him, we do not see any reason to stay the departmental enquiry proceedings initiated against the petitioner, which as indicated above involves around the question of the continuance of the employment of the petitioner, considering the misuse and abuse the trust reposed upon him. We therefore dismiss the petition. No costs.

(ABHAY J. MANTRI, J.)

(AVINASH G. GHAROTE, J.)