

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.136 OF 2023

Smt. Komal Ramchandre Dhumal)
Age : 32 years. Police Constable)
(currently under Suspension))
Residing at : Plot No.14, Babar Chal)
Behind S.T. Stand, Sangli 416 416)

...APPLICANT

VERSUS

1. State of Maharashtra,)
Through Additional Chief)
Secretary, Home Department)
Mantralaya, Mumbai 400 032)

2. The Superintendent of Police,)
Sangli-Miraj Road,)
Vishrambaug, Sangli 416 415)

...RESPONDENTS

Ms. Punam Mahajan, learned Advocate for the Applicant.

Ms. S.P. Manchekar, learned Chief Presenting Officer for the Respondents.

CORAM : **Justice Mridula Bhatkar (Chairperson)**
Ms. Medha Gadgil (Member) (A)

DATE : **24.03.2023**

J U D G M E N T

1. Applicant, Police Constable at Sangli since 2013 challenges Departmental Enquiry (D.E.) which is initiated against her by the charge sheet dated 19.10.2022.

2. Learned Advocate for the Applicant prays for Interim order of stay of the D.E. mainly on the ground that along with D.E. the Applicant is prosecuted in two Criminal Cases before the Magistrate and the charge sheet is not yet filed therefore the Criminal case will take some time to proceed and conclude. Therefore, if the applicant is required to disclose her defense there will be serious prejudice to the applicant while defending her Criminal Case effectively.

3. Learned Advocate for the Applicant in support of her submissions relied on the following judgments :

(a) Kusheshwar Dubey Versus M/s. Bharat Coking Coal Ltd. and Ors. reported in (1988) 4 SCC 319.

(b) O.A.No.643/2022, Raosaheb Bajirao Jangle Versus State of Maharashtra & Ors. dated 16.01.2023 passed by M.A.T. Bench Aurangabad.

4. Par Contra, learned C.P.O. has submitted that the applicant is facing charges in two Criminal cases and she being a Police Constable the Respondents are opposing the interim relief of staying the Departmental Enquiry.

5. Learned C.P.O. for the Respondents further relies on the judgments of :

(a) Hindustan Petroleum Corporation Ltd. & Ors. Versus. Sarvesh Berry reported in (2005) 10 SCC 471.

(b) Sachin Subhash Bhosale Versus Union of India, through Secretary & Ors. in Writ Petition No.7719/2022 dated 28.09.2022 passed by the Hon'ble High Court of Judicature at Bombay.

6. The learned Advocate relies on the Interim order passed by the Aurangabad Bench of this Tribunal in O.A.No.643/2022 (supra) wherein

the interim stay is granted to the Departmental Enquiry as the witness cited in the Criminal prosecution and the D.E. are the same. Hence, if the D.E. continues the applicant is at risk of disclosure of his defense in Criminal prosecution during D.E.

7. We have perused the judgments above. We reproduce the relevant paragraphs 42 and 43 in **Sachin Subhash Bhosale (supra)** stating how the issue of D.E. and Criminal prosecution is to be dealt with :-

“42. There is one other significant aspect attracting us to deliberate upon, though it does not arise from the present set of facts. If an individual is alleged to have committed a crime punishable under the penal laws, it is the State which prosecutes him/her. It is invariably the State machinery that comes into play and it conducts proceedings as the prosecutor. The de facto complainant does not have much role to play. The police, which have the duty to maintain law and order as well as to investigate crimes, are expected to work in an organised and dedicated manner. More often than not, the failure of the State machinery, particularly the police, is noticeable. Either the police investigation is inefficient or flawed, or vital witnesses retract when present in Court to testify. Compromises made by the State machinery when it is required to deal with those having money power or unholy nexus with the power corridor are also discernible. In a criminal case, all the ingredients of the offence in question have to be proved in order to secure the conviction of the accused. In view of the standard of proof applicable in a criminal trial and regard being had to the gradually increasing trend noted above, the courts find it difficult to hold the prosecution case to have been established beyond reasonable doubt resulting in the acquittal of the accused for want of evidence. In the process of justice dispensation, the State is a pivotal stakeholder but rarely does one find proceedings being taken to its logical end efficiently and flawlessly leading to convictions. The rate of conviction in this country is abysmally low, several factors being responsible for contributing to such low rates of conviction. It is, therefore, essential that the trust of the citizenry in the State machinery is rebuilt.

43. Be that as it may, reference to the aforesaid disturbing trend is only for emphasizing that an employer, who complains of a crime having been committed by its employee in the official course of duty, is left high and dry if the police falter to bring him to book. The employer may have evidence for proving charges relating to violation of the service rules which, by application of preponderance of probabilities, might lead to recording of guilt in a duly constituted

disciplinary proceeding. Is it, therefore, the requirement of law that pendency of a proceeding before a criminal court would preclude the employer from initiating disciplinary action against an employee who is prima facie remiss in discharging official duty and against whom there is evidence to proceed therefor? There is sufficient judicial authority to draw appropriate guidance from to answer this question. However, it has to be remembered that when a public employer, prima facie, loses confidence in any of its employees for alleged misconduct, yet, is precluded from taking disciplinary action because of a pending criminal trial, he may have to be placed under suspension; in such case the public exchequer would be drained without, however, any work being extracted from him. The facts of each particular case would require consideration as to whether the employee's right of not being compelled to disclose his defence in a departmental inquiry to avert suffering prejudice at the criminal trial would outweigh the employer's right to proceed for disciplinary action in a case where a stay would be a clog to maintenance of discipline. We are clear in our mind that having regard to the exposition of law in B.K. Meena (supra), Mohd. Yousuf Miya (supra) and P. Ganesan (supra), mere pendency of a criminal proceeding may not be sufficient for the accused/delinquent to avert a departmental action for maintaining discipline, more so in a service like the present, where the petitioner having the onerous duty of enforcement of law is himself charged with conduct unbecoming of a member of the Force. We repeat, for interference with a disciplinary proceeding based on pendency of a criminal case/trial, a fool-proof case has to be made out of the nature found in Capt. M. Paul Anthony (supra) or the delinquent must establish to the satisfaction of the Court that going ahead with the disciplinary proceeding is fraught with the imminent and genuine risk of disclosure of his defence, which would prejudice him to no end in the criminal trial. After all, as the Supreme Court has repeatedly observed, each case has to depend on its own peculiar facts and no strait-jacket formula is applicable.”

Thus, each case is to be considered separately on the basis of the nature of the work, the post, duty of the Delinquent Officer and the nature of the offence in the Criminal case.

8. In the present case, there are two Criminal cases registered against the Applicant, C.R.No.267/2022 for the offence punishable under Sections 385, 504, 506 read with Section 34 of I.P.C., 39 and 45 of the Money Lending Act and the second case is registered in

C.R.No.494/2022 under Sections 342, 504, 506 read with Section 34 of I.P.C., 39 and 45 of Money Lending Act. Both the cases are registered at Sangli Shahar Police Station and the applicant was working at Sangli Shahar Police Station. This fact itself is against the Applicant for granting any interim relief. We are informed by the learned Advocate for the Applicant that the charge sheet is not yet filed. However, on the other hand as per submissions of learned C.P.O. two witnesses are examined in D.E. and only two witnesses are remained to be examined and now the matter is fixed on 28.03.2023. Moreover, in the charges of imputation in the D.E. as pointed out by learned C.P.O. they are about misconduct of committing offence when the applicant was on unauthorized leave. In view of this, prayer for interim relief stands rejected.

9. In the O.A. also prayer is about stay of the D.E till final decision in the Criminal case. In view that the prayer in O.A. is similar to that of interim relief, O.A. stands dismissed.

10. Interim relief is rejected. In view that nothing survives in O.A., the same stands dismissed.

Sd/-

(Medha Gadgil)
Member (A)

Sd/-

(Mridula Bhatkar, J.)
Chairperson

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