

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH**

ORIGINAL APPLICATION NO 1039 OF 2023

DISTRICT : PUNE

Mr Shaikh Abdul Rashid Pathan)
Occ-Assistant Sub Inspector,)
Pune City [at present suspended],)
R/o: Room No. 103, Shahnour Manzil)
Near Suhag Mangal Karyalay,)
Bibewadi, Pune – 411037.)...**Applicant**

Versus

1. The Commissioner of Police,)
Office of Commissioner of)
Police, Pune City,)
Sadhu Vaswani Road,)
Camp, Pune 411 001.)
2. The Dy. Commissioner of Police))
[H.Q], cum Disciplinary)
Authority, Office of the)
Commissioner of Police,)
Pune City Police,)
Sadhu Vaswani Road,)
Camp, Pune 411 001.)
3. The Assistant Commissioner)
of Police cum Inquiry Officer,)
Faraskhana Division,)
Pune City, Pune.)...**Respondents**

Shri K.R Jagdale, learned advocate for the Applicant.

Ms Swati Manchekar, learned Chief Presenting Officer for the Respondents.

CORAM : Justice Mridula Bhatkar (Chairperson)
Mrs Medha Gadgil (Member) (A)

RESERVED ON : 26.02.2024

PRONOUNCED ON : 15.04.2024

PER : Justice Mridula Bhatkar (Chairperson)

J U D G M E N T

1. The applicant prays the Tribunal be pleased to quash and set aside the impugned departmental proceedings initiated by Respondent No. 2 vide charge sheet dated 21.3.2023 and further prays to quash the communication dated 5.6.2023 which was received by the applicant on 27.7.2023 whereby the Respondent No. 2 arbitrarily rejected the request of the applicant dated 17.5.2023 of quashing and setting aside the impugned departmental proceedings dated 21.3.2023.

2. Learned counsel for the applicant has submitted that the applicant, working as Assistant Sub-Inspector was falsely implicated in the case of rape in an offence u/s 376, 376(2)(a), 323, 504, 506 & 427 of IPC, vide FIR No. 248/2022 at Haveli Police Station, Pune. The applicant came to be arrested on 16.12.2022 and thereafter he was released on Bail on 30.1.2023. Accordingly, the applicant came to be suspended from service on 18.11.2022 and till date he is arbitrarily kept under suspension. Learned counsel has submitted that on 9.1.2023 charge sheet was filed in connection with the above Criminal Case at Pune. Learned

counsel has further submitted that simultaneously on 21.3.2023, Respondent No. 2 issued a charge sheet in the departmental proceedings against the applicant. Learned counsel submits that if the departmental enquiry proceeds, then the applicant will have to disclose his defence which will be detrimental to his rights as accused in the Criminal trial. Learned counsel has further submitted that the allegations made in the departmental enquiry and the criminal case are one and the same. Even the witnesses cited in the criminal case and the departmental enquiry are one and the same. In support of his submissions, learned counsel for the applicant relied on the judgment of the **Bombay High Court dated 28.9.2022 in W.P No. 7719/2022, Sachin S. Bhosale Vs. Union of India & Ors.** Learned counsel has submitted that when the offence is grave in nature the punishment can be more than 10 years imprisonment the departmental enquiry vide charge sheet dated 21.3.2023 be stayed.

3. Learned C.P.O also relied on the judgment of the Division Bench of the **Bombay High Court dated 28.9.2022 in W.P No. 7719/2022, Sachin S. Bhosale Vs. Union of India & Ors.** Learned C.P.O further relied on the judgment of this Tribunal dated 24.3.2023 in O.A 136/2023, Dhupal

4. In the case of Sachin S. Bhosale's case (supra), the Division Bench of the Hon'ble Bombay High has considered catena of judgments on the issue of staying the departmental enquiry proceedings pending criminal case. Considering the nature of allegations and facts therein it is good on the part of the applicant to first go ahead with the Criminal case.

5. We have considered para 42 and 43 of the Sachin Bhosale's case (supra) in which the Bombay High Court while addressing the

same issue whether departmental enquiry should proceed pendency of the criminal case against the delinquent officer, have enlightened by laying down the important principles of law in para 42 and 43 of the said judgment, holding thereby the weighing of the facts in each matter, considering the nature of the delinquent officer depending on the facts of each case is required when such issue is dealt with. The said para 42 and 43 is reproduced below:-

“ **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 foolproof 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."

6. In the present case we have gone through the facts of the case. The complainant is one and the same in both departmental enquiry and criminal case. It is not the position that each and

every case where the Police Officer is charged for the offence under Section 376 of I.P.C, the departmental enquiry is to be stayed or departmental enquiry to proceed. After going through the nature of the complaint in the present case, we find it is better and in the interest of the delinquent officer to face the criminal trial and till then the departmental enquiry is stayed.

7. In view of the above, interim relief is granted. The Departmental Enquiry dated 21.3.2023 initiated against the applicant is stayed till further orders.

8. S.O to 8.7.2024

Sd/-
(Medha Gadgil)
Member (A)

Sd/-
(Mridula Bhatkar, J.)
Chairperson

Place : Mumbai
Date : 15.04.2024
Dictation taken by : A.K. Nair.