

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI  
ORIGINAL APPLICATION NO.1023 OF 2019**

**DISTRICT : PUNE**

Dattatraya Rajaram Madane, )  
Age 38 years, occ. Service, Residing at Flat No.202, )  
Tower No.31, Amnora Town Park, Hadapsar, Pune-28 )..Applicant

Versus

1. The State of Maharashtra, )  
Through the Secretary, Home Department, )  
Mantralaya, Mumbai )
2. Commissioner of Police, Pune City, )  
Sadhu Vaswani Chowk, Opp. GPO, Pune )
3. Additional Commissioner of Police, )  
West Zone Office, Faraskhana, Pune )
4. Assistant Commissioner of Police, )  
Vishrambag Division, Faraskhana, Pune )..Respondents

Shri L.S. Deshmukh – Advocate for the Applicant

Shri A.J. Chougule – Presenting Officer for the Respondents

CORAM : Shri P.N. Dixit, Vice-Chairman (A)  
Shri A.P. Kurhekar, Member (J)  
RESERVED ON : 7<sup>th</sup> January, 2020  
PRONOUNCED ON : 14<sup>th</sup> January, 2020  
PER : Shri P.N. Dixit, Vice-Chairman (A)

**ORDER**

1. Heard Shri L.S. Deshmukh, learned Advocate for the Applicant and Shri A.J. Chougule, learned Presenting Officer for the Respondents.

2. Ld. Advocate for the applicant prays for ad interim relief in prayer clause 9(a) which reads as under:

*“9(a) Direct the Respondents not to proceed with the departmental enquiry against the applicant till the criminal proceedings in CR No.129/2019 are concluded.”*

(Quoted from page 12 of OA)

3. He further submits that he is not pressing any other relief viz. revoke the applicant's suspension and his reinstatement.

4. The main prayer in the OA is as under:

*“8(B) Direct the Respondents not to proceed with the departmental enquiry against the applicant till the criminal proceedings in CR No.129/2019 are concluded.”*

(Quoted from page 11 of OA)

Brief facts of the case:

5. FIR was registered against the applicant, who was working as API in Bharati Vidyapeeth Police Station, Pune. In 2019 FIR was registered against the applicant at Hadapsar Police Station, Pune under Section 376 of IPC. Among other things FIR reads as under:

“श्री मदने यांनी माझेसोबत लग्नाचे आमीष दाखवुन माझे सोबत जबरदस्तीने शारिरीक संबंध प्रस्थापित केलेले आहेत. त्यानंतर पुन्हा आठ महिन्यांनी श्री मदने यांनी मला व माझे मुलीस फ्लट नॅ.203 जे विंग, कुमार पुर्वा डी.पी. रोड सिद्धेश्वर हटेलच्या मागे हडपसर पुणे येथे घेवुन आले व तिथे देखील श्री मदने यांनी लग्नाचे आमीष दाखवुन माझेसोबत जबरदस्तीने शारिरीक संबंध प्रस्थापित केलेले आहेत. तरी सन 2017 सालापासुन ते दि. 26/01/2019 रोजी पर्यंत माझेसोबत द-तात्रय राजाराम मदने यांनी प्रियदर्शनी अपारमेंट एफ विंग, फ्लट नॅ.21, हडपसर व फ्लट नॅ.203, जे 1 विंग कुमार पुर्वा डी.पी. रोड सिद्धेश्वर हटेलच्या मागे हडपसर पुणे हडपसर पुणे 28 येथे वेळोवेळी लग्नाचे आमीष दाखवुन जबरदस्तीने शारिरीक संबंध केलेले आहेत. तसेच मी मदने यांच्याकडे लग्नाबाबत विचारणा केली असता त्यांनी मला वेळोवेळी हाताने मारहान केलेली आहे.”

(Quoted from page 16 of OA)

6. Following the same the applicant was suspended. The applicant moved Hon'ble Bombay High Court by Anticipatory Bail Application No.990 of 2019 and the Hon'ble High Court granted him interim protection by order dated 15<sup>th</sup> July, 2019. In April, 2019 the DE was initiated against the applicant along with list of documents, copies of documents and witnesses. The charges against the applicant in DE are as under:

“१. तुम्ही, भारती विद्यापिठ पोलीस स्टेशन येथे दि. १४/१२/२०१६ ते दि.०६/०२/२०१९ अखेर सहायक पोलीस निरीक्षक या पदावर कार्यरत होता या, कालावधीन दिनांक २६/०१/२०१९ पर्यंत पोलीस अधिकारी असल्याचा फायदा घेवुन तक्रारदार महिला नामे श्रीमती सोनाली मनोज सोनावणे (घटस्फोटीत) वय वर्षे २८ हिची अगतिकता व असहाय्यतेचा फायदा घेवुन तिवेशी शारिरीक संबंध प्रस्थापित करुन नैतिक अधःपतनाचे कृत्य केलेले आहे.

२. तसेच वरील कालावधीत पोलीस अधिकारी असतानाही श्रीमती सोनाली मनोज सोनावणे व तिची मुलगी कुमारी शरयु मनोज सोनावणे वय वर्षे ८ यांना बेकायदेशीर कृत्य करण्याची धमकी दिली आहे.

३. तसेच पोलीस अधिकारी असूनही तुम्हाय दिनांक ०३/०२/२०१९ रोजी अटक करतेवेळी कर्तव्यावरील पोलीस कर्मचा-यास धक्का देवून परागंदा होवून न्यायोचित कृतीत तुम्ही अडथळा आणला आहे. अशा प्रकारे पोलीस अधिका-यास अशोभनिय व निंदनीय असे वर्तन केले आहे.

यावरून तुम्ही पोलीस दलात सहायक पोलीस निरीक्षक या जबाबदार पदावर कार्यरत असताना व तुम्हास कायद्याची व त्याचे पालन न केल्यास त्यामुळे होणा-या परिणामाची पुर्णपणे जाणीव असताना व तुम्ही कायद्याचे रक्षणकर्ते असताना तुमचे पदाचा गैरफायदा घेवून, तुम्ही कायदा हातात घेतल्याने जनमाणसात पोलीस दलाची प्रतिमा मलीन केली आहे. तुमचे हे कृत्य निश्चितच नैतिक अधःपतमाखाली येत असल्याने तुमच्यावर ठेवलेले वरील दोषारोप चौकशीत सिध्द झाल्यास तुम्ही मुंबई पोलीस (शिक्षा व अपिले) नियम १९५६ च्या नियम ३ व महाराष्ट्र पोलीस अधिनियम - १९५१ मधील कलम २५ मध्ये नमुद केलेल्या कोणत्याही शिक्षेस पात्र आहात.”

(Quoted from page 60 of OA)

7. The Ld. Advocate for the applicant contended that the DE against the applicant should be stayed on following grounds:

“V) *That the initiation and continuation of the departmental enquiry on the basis of allegations in CR No.129/2019 will cause prejudice to the applicant and therefore, the said departmental enquiry is required to be stayed till the criminal proceedings are over.*

VI) *That the allegations by the complainant in CR No.129/2019 registered against the applicant and also the allegations in departmental proceedings are same.*

VII) *That the allegations in departmental enquiry are based on the same set of facts of the allegations in the said CR No.129/2019.*

VIII) *That the list of witness annexed with the charge sheet in the departmental proceedings indicates that the respondent no.3 wants to examine the witnesses who are also witnesses in the criminal proceedings.*

IX) *That the departmental proceedings initiated against the applicant is based on the same set of facts of the allegations in the said CR*

*No.129/2019. In case the applicant submits his statement of defence or put his effect defence, the same would be resulted in disclosure of his defence in criminal proceedings in connection with the said CR No.129/2019. Therefore, the same would cause applicant's right to defence in the criminal proceedings. Therefore, in the present case both proceedings should not be allowed to run simultaneously and the departmental proceedings are required to be stayed till the decision in the criminal proceedings.*

*X) That it is quite settled position of law that in case departmental proceedings are based on the same set of facts and evidence, the same should not be allowed to run simultaneously. It is therefore just, necessary and proper to stay the departmental enquiry initiated against the applicant till the criminal proceedings are over."*

(Quoted from page 9-10 of OA)

8. The Ld. Advocate for the applicant relies on the judgment of the Hon'ble Supreme Court reported in (1999) 3 SCC 679 Capt. M. Paul Anthony Vs. Bharat Gold Mines Ltd. & Anr. The relevant portion from the judgment is as under:

*"22. The conclusions which are deducible from various decisions of this Court referred to above are :*

*(ii) If the departmental proceedings and the criminal case are based on identical and similar set of facts and the charge in the criminal case against the delinquent employee is of a grave nature which involves complicated questions of law and fact, it would be desirable to stay the departmental proceedings till the conclusion of the criminal case.*

9. Ld. Advocate for the applicant therefore presses for interim relief.

10. The Ld. PO has filed reply on behalf of respondents no.1 to 4 and contested the claims being made by the applicant and oppose the interim relief. Ld. PO pointed out that the relief being claimed in the interim relief as well as the final reliefs in the OA are one and the same and if interim relief is granted in favour of the applicant nothing would remain in the OA as well. The respondents have further submitted in reply as under:

8. *With reference to contents of Paragraph No.6.5, I say that the contents of this para are not true and correct, therefore denied by the Respondent No.3. For the sake of argument the statement made by the Applicant is considered true, even then the Applicant alleged to have been committed the serious offence of public tranquility, forming unlawful assembly, being the member of unlawful assembly proceeded with a common object to commit the criminal offences as alleged in C. R. No. 930/2018 registered with Karmala Police Station and therefore the Applicant is liable to face the departmental enquiry in respect of act committed by Applicant. Framing of charge against the Applicant is not required. It is only sufficient of his act i.e. taking part in unlawful assembly being as a Police Officer.*

9. *With reference to contents of Paragraph No.6.6, I say that the contents of this para are not true and correct, therefore denied by the Respondent No.3 in toto. It is submitted on behalf of Respondent that being aggrieved by the act of Applicant, the complainant Sonali Sonawane lodged the F.I.R. bearing No. 129/19 under Section 376,323, 504, 506(2) of I.P.C. at Hadapsar Police Station, Pune City against the Applicant. The said case is pending before Hon'ble Session Court, Pune. It is being the serious offence affecting the moral turpitude of Police Department in the eyes of public at large, therefore it is necessary to conduct the departmental enquiry regarding his misconduct and misbehavior.*

10. *With reference to contents of Paragraph No.6.7, I say that the contents of this para are regarding the disciplinary action taken by*

*Respondent No. 3 against the Applicant regarding the grave misbehavior and misconduct of the Applicant during his service period, so the contention regarding the suspension is true and correct and admitted by this Respondent No. 3.*

14. *With reference to contents of Paragraph No.6.11, I say that the contents of this para not true and correct and denied by this Respondent No. 3. It is submitted by Respondent No. 3 that the criminal proceeding and disciplinary proceedings are basically different. There should be no bar to proceed simultaneously with departmental enquiry and trial of criminal case. It seems from the contents of the petition that they are mixing two different concepts together. It is submitted that whatever stated by the Applicant is not applicable to the departmental enquiry. It is further submitted that the object of the departmental enquiry is to maintain the discipline in the police department and it is not depended upon the outcome of judicial proceeding. The charge against the Applicant is serious nature and affect the moral turpitude of Police Department in the eyes of public at large so the application submitted by the Applicant is not considered and rejected by the Respondent No.3.*

17. *With reference to contents of Paragraph No.6.14, I say that the contents of this para are the facts of the case lodged against the Applicant. It is submitted that the witnesses and contents of charge will be similar because the facts of the case are narrated by the victim and that will be considered as judicial proceedings whereas the misbehavior, misconduct and moral turpitude of the Applicant are the issue of departmental enquiry and they will be considered in departmental proceeding. The object of departmental enquiry is to maintain the discipline. The departmental enquiry results into punishment whereas judicial enquiry results into conviction. Therefore judicial proceeding and departmental proceeding are totally different and not depended on each other.*

18. *With reference to contents of Paragraph No.6.15, I say that the contents of this para are not true and correct and denied in to-to by*

*Respondent No. 3. The behavior of Applicant when he was on duty, lower down the dignity of police department in the eyes of public at large. It is the procedure of departmental enquiry contemplated by the provisions of law. It is submitted by Respondent No. 3 in earlier Para that both the proceedings are different from each other, therefore conducting departmental enquiry will not amounting to disclose the defence of Applicant. It is the procedural aspects in two different proceedings i.e. departmental and judicial enquiry to produce the evidence to justify their actions or allegations against Applicant. It is the principles of natural justice.*

*34. With reference to contents of Paragraph No.6.22, I say that the contents of this para are not true and correct and denied by the Respondent No.3. It is submitted that conducting the D.E. against the Applicant, in cases of serious offences committed by him during his duty will not cause prejudice, injuries and hardship to the Applicant.*

*35. With reference to contents of Paragraph No.6.23, I say that the contents of this para are not true and correct and denied by the Respondent No. 3. It is submitted that it is not a fit case to grant ad-interim relief whereas Applicant has committed very serious offences involving moral turpitude and degrading the image of police department in the eyes of public at large, therefore under such circumstances ad-interim relief mentioned in the said para may kindly be rejected in the interest of justice.”*

*(Quoted from page 67-75)*

11. Hence, the Ld. PO has prayed that the OA as well as prayer for interim relief deserves to be dismissed.

Observations and findings:

12. Comparison of the charges in criminal case registered against the applicant and charges in the departmental proceedings reveals that the criminal case is against the applicant under Section 376 and 417, 323,

506(2) of IPC. On the other hand the DE against the applicant has been initiated due to administrative lapses and misusing his position as police officer. The charges against him pertain to moral turpitude and indulging in acts which are bringing disrepute to the police department where he was functioning. As explained by the respondents in their affidavit the criminal case is on different footing and DE is basically for administrative lapses and moral turpitude and degrading the image of the police department in the eyes of public at large.

13. The facts and circumstances in the judgment relied upon by the Ld. Advocate for the applicant in the case of *Capt. M. Paul Anthony* (supra) are completely different and therefore the ratio mentioned in the same is not applicable in the present case. Moreover the Hon'ble Supreme Court has also observed in the same judgment as under:

*"22. The conclusions which are deducible from various decisions of this Court referred to above are :*

*(i) Departmental proceedings and proceedings in a criminal case can proceed simultaneously as there is no bar in their being conducted simultaneously, though separately."*

14. Needless to mention that approach and objectives in the criminal proceedings vis-à-vis disciplinary proceedings is altogether distinct and different. In disciplinary proceedings the question would be whether delinquent is guilty of misconduct and liable for punishment under service law whereas in criminal case question would be about the criminal liability and consequential sentence. It is well settled that the standard of proof, mode of enquiry and the rules governing the enquiry vis-à-vis criminal case are entirely distinct. In criminal case proof beyond reasonable doubt is required. Whereas in disciplinary proceedings alleged misconduct can be proved on preponderance and probability and strict

rules of Evidence Act are not applicable to it. What is required to be seen is whether the disciplinary proceedings would seriously prejudice the delinquent in his defence in the trial of criminal case. In the present case considering the charges leveled in disciplinary proceedings it cannot be said that there will be any prejudice to the applicant in criminal case. Criminal case will take longer time for its decision whereas disciplinary proceedings can be finished within reasonable time. Therefore, considering the charges in the disciplinary proceedings, in our considered opinion it would not be appropriate to stay the disciplinary proceedings till conclusion of criminal case.

15. The departmental proceedings which have been initiated for the administrative lapses can proceed separately and simultaneously. It would be inappropriate to stall the same as the same is likely to result in sending wrong message in the public that a police officer involved in moral turpitude is allowed to function as police officer where he is frequently called upon to enquire and investigate offences in which women are complainants.

16. For the reasons stated above and as there is no difference between the prayer for the interim relief and the final relief in OA, granting of interim relief would amount to deciding the OA itself. Hence, for the above reasons, we come to the conclusion that the interim relief prayed by the applicant needs to be rejected. Hence, interim relief requested by the applicant is rejected.

**(A.P. Kurhekar)**  
**Member (J)**  
**14.1.2020**

**(P.N. Dixit)**  
**Vice-Chairman (A)**  
**14.1.2020**

Dictation taken by: S.G. Jawalkar.