

**IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR**

BEFORE

HON'BLE SHRI JUSTICE SHEEL NAGU

&

HON'BLE SHRI JUSTICE VIRENDER SINGH

W.P. No.12681 of 2022

Between:-

**DESHRAJ SINGH PARIHAR S/O SHRI
R.P. SINGH, AGED ABOUT 59 YEARS,
OCCUPATION- ASSISTANT SUB
INSPECTOR PRESENTLY POSTED AT
POLICE LINE, DISTRICT- REWA (M.P.)**

.....PETITIONER

***(BY SHRI SANJAY RAM TAMRAKAR,
ADVOCATE)***

AND

- 1. STATE OF MADHYA PRADESH
THROUGH PRINCIPAL SECRETARY,
DEPARTMENT OF HOME (POLICE),
VALLABH BHAWAN, DISTRICT-
BHOPAL (M.P.)**

2. **DIRECTOR GENERAL OF POLICE,
POLICE HEAD QUARTER,
JAHANGIRABAD, DISTRICT- BHOPAL
(M.P.)**
3. **SUPERINTENDENT OF POLICE, REWA,
DISTRICT- REWA (M.P.)**

....RESPONDENTS

***(BY SHRI NAVIN DUBEY, GOVERNMENT
ADVOCATE)***

AND

W.P. No.12682 of 2022

Between:-

**SURENDRA SINGH BAGHEL S/O LATE
SHRI B.B. SINGH, AGED ABOUT 59
YEARS, OCCUPATION- INSPECTOR OF
POLICE (KARYAVAHAK) PRESENTLY
POSTED AT POLICE LINE, DISTRICT-
REWA (M.P.)**

.....PETITIONER

***(BY SHRI SANJAY RAM TAMRAKAR,
ADVOCATE)***

AND

1. **STATE OF MADHYA PRADESH
THROUGH PRINCIPAL SECRETARY,
DEPARTMENT OF HOME (POLICE),**

**VALLABH BHAWAN, DISTRICT-
BHOPAL (M.P.)**

**2. DIRECTOR GENERAL OF POLICE,
POLICE HEAD QUARTER,
JAHANGIRABAD, DISTRICT- BHOPAL
(M.P.)**

**3. SUPERINTENDENT OF POLICE, REWA,
DISTRICT- REWA (M.P.)**

....RESPONDENTS

***(BY SHRI NAVIN DUBEY, GOVERNMENT
ADVOCATE)***

Reserved on : 07.07.2022

Passed on : 12.10.2022

ORDER

Both these petitions praying for the same relief, based on similar set of facts and grounds were heard analogously and are being decided by this common order.

2. Learned counsel for the rival parties are heard on the question of admission so also on final disposal.

3. The petitioner in WP No.12681/2022 substantively holds the post of Assistant Sub Inspector in Police, while petitioner in WP No.12682/2022 is an Inspector of Police. Both the petitioners were posted at Police Station Govindgarh, District Rewa at the relevant point of time in September, 2021. Both petitioners were alleged with demand and acceptance of bribe as a result of which offences punishable under the Prevention of Corruption Act, 1988 were registered by Special Police Establishment (Lokayukt). Soon thereafter by separate charge-sheets, both dated 21.12.2021, were issued against both the petitioners, initiating disciplinary proceedings on the same set of allegations which had given rise to the aforesaid criminal prosecution. Additional charge-sheet in the disciplinary proceeding was also issued on 10.05.2022 against both the petitioners. The petitioners were also placed under suspension.

3.1 The facts further reveal that investigation in the criminal prosecution continues to be pending till date, and both the petitioners are seeking quashment of disciplinary proceedings initiated vide charge-sheet dated 21.12.2021 (Annexure P/5) and 10.05.2021 (Annexure P/9) against both the petitioners on the ground that simultaneous conduction of criminal and disciplinary proceedings founded on the same set of facts and circumstances leads to prejudice, since petitioners will have to disclose their defence in the criminal trial.

4 In support of the aforesaid contention, learned counsel for the petitioners relies upon **(2016) 9 SCC 491 (State Bank of India and others vs. Neelam Nag and another)**, a decision of the Coordinate Bench of this Court

passed on 08.03.2022 in WA No.158/2022 and an interim order dated 21.06.2022 passed in WP No.12682/2022 (one of the present petition being decided) whereby this Court as an interim measure stayed the disciplinary proceedings initiated vide charge-sheets Annexure P/5 and Annexure P/9.

5. A reply has been filed by the State in WP No.12682/2022 denying all contentions raised by the petitioners by submitting that there is no bar to simultaneous conduction of proceedings on the disciplinary as well as criminal side arising out of the same incident.

6. After having heard learned counsel for the rival parties and having perused the record, the glaring aspect of the case which appears to have missed the attention of rival parties is that criminal prosecution in the present case is at the stage of investigation but has not matured into filing of final report/charge-sheet u/S 173 Cr.P.C. Thus, it cannot be said, that merely because an FIR is lodged and investigation is underway, that charge-sheet will be filed by the investigating agency and thereafter charges would be framed by the Court of competent jurisdiction.

6.1 In none of the cases cited by the petitioners interference has been made with disciplinary proceedings when criminal prosecution is at the nascent stage of investigation and has not fructified into final report/charge-sheet and framing of charge.

6.2 In the considered opinion of this Court, the cause of action to successfully raise the ground of prejudice in criminal trial due to disclosure of

defence in disciplinary proceedings, can mature only on framing of charge in criminal prosecution but not prior to that. The reason is not far to see. When an FIR is lodged, the investigation is set into motion. Investigation is a unilateral process conducted by the police where evidence and material is collected in the shape of direct/circumstantial evidence by the police in support of allegations in FIR. When the material and evidence so collected are of such nature and quality that the ingredients of the offences alleged are *prima facie* made out, it is only then that a final report/charge-sheet u/S 173 Cr.P.C. is filed by the police in the Court of competent criminal jurisdiction. Thereafter, trial Court takes cognizance of the offences alleged in the charge-sheet after applying its mind to the contents therein. The next stage where judicial mind is applied is the stage of framing of charge. It is settled principle of criminal jurisprudence that charge is framed where the contents of charge-sheet indicates presence of strong suspicion against the accused of having committed the offences alleged. Once the charge is framed, the trial begins.

6.3 There may be cases where the trial Court find the contents of charge-sheet to contain in sufficient evidence and material to reveal *prima facie* case against the accused and therefore may decline to take cognizance. Similarly, at the stage of framing of charges, the trial Court may not find a strong case of suspicion and therefore discharge the accused.

6.4 After the criminal prosecution crosses both the two stages of cognizance and framing of charge, that it can safely be said that the trial

would now begin where the accused who is also delinquent employee in disciplinary proceedings will suffer the prejudice of disclosure of defence, taken in disciplinary proceedings.

7. Thus, the stage of arising of prejudice to the accused of disclosing his defence is only after the charges are framed in the criminal proceeding.

8. In all the stages of criminal prosecution prior to framing of charge, the possibility of cognizance not being taken or the accused being discharged, cannot be ruled out.

9. From aforesaid discussion what comes out loud and clear is that the stage of arising out of cause of action of prejudice due to disclosure of defence would arise only after the charges are framed in the criminal prosecution and not prior to that stage.

10. It is thus, the stage of framing of charge and thereafter that this cause of prejudice due to disclosure of defence can be raised by an accused who also happens to be delinquent employee in disciplinary proceedings initiated against them.

11. Reverting to the facts of this case, it is revealed that the investigation arising out of Crime No.207/2021 registered at Police Station SPE(Lokayukt), Rewa against both the petitioners herein continues to be pending till date. Thus, the cause raised herein on the ground of simultaneous proceedings

being pending arising out of the same incident, is not available to the petitioners at this stage of pending investigation.

12. It is well known that criminal trial ordinarily takes longer time than disciplinary proceedings to conclude. The defence which the accused/delinquent employee is required to divulge in the disciplinary proceedings can obviously prejudice him in the criminal trial since in our criminal jurisprudence system, an accused is entitled to safely stay silent till the prosecution proves the case beyond reasonable time whereafter the burden shifts on the accused to disprove. This right to remain silent is exposed to the prejudice arising from disclosure of defence in disciplinary proceedings.

12.1 In this view of the matter, it would be appropriate that the disciplinary proceedings instead of being deferred by judicial intervention or otherwise are allowed to be concluded. The final order that is passed in the disciplinary proceedings, which in case is of clean exoneration, the delinquent employee, can then use this exoneration for causing judicial intervention in the pending criminal trial provided the trial has crossed the stage of framing of charge, as held by the Apex Court in *Ashoo Surendranath Tewari vs. Deputy Superintendent of Police, EOW, CBI and another*, (2020) 9 SCC 636 [para 12].

12.2 The Apex Court in the case of *Ashoo Surendranath Tewari (Supra)* after placing reliance on an earlier three Judge Bench decision in the case of *Radheshyam Kejriwal vs. State of West Bengal and another*, (2011) 3 SCC 581 laid down following principles of law pertaining to cases involving

simultaneous proceedings of criminal as well as disciplinary nature arising out of same set of facts and circumstances:

“38. The ratio which can be culled out from these decisions can broadly be stated as follows:

(i) Adjudication proceedings and criminal prosecution can be launched simultaneously;

(ii) Decision in adjudication proceedings is not necessary before initiating criminal prosecution;

(iii) Adjudication proceedings and criminal proceedings are independent in nature to each other;

(iv) The finding against the person facing prosecution in the adjudication proceedings is not binding on the proceeding for criminal prosecution;

(v) Adjudication proceedings by the Enforcement Directorate is not prosecution by a competent court of law to attract the provisions of Article 20(2) of the Constitution or Section 300 of the Code of Criminal Procedure;

(vi) The finding in the adjudication proceedings in favour of the person facing trial for identical violation will depend upon the nature of finding. If the exoneration in adjudication proceedings is on technical ground and not on merit, prosecution may continue; and

(vii) In case of exoneration, however, on merits where the allegation is found to be not sustainable at all and the person held innocent, criminal prosecution on the same set of facts and circumstances cannot be allowed to continue, the underlying principle being the higher standard of proof in criminal cases.”

“39. In our opinion, therefore, the yardstick would be to judge as to whether the allegation in the adjudication proceedings as well as the proceeding for prosecution is identical and the exoneration of the person concerned in the adjudication proceedings is on merits. In case it is found on merit that there is no contravention of the provisions of the Act in the adjudication proceedings, the trial of the person concerned shall be an abuse of the process of the court.”

13. Thus, this Court is of the considered view that in the light of the verdict of the Apex Court in the case of *Ashoo Surendranath Tewari* (supra), it is apt

to allow the disciplinary proceedings to proceed and taken to its logic end with liberty to the petitioner to seek indulgence of the superior Court after charge is framed in criminal prosecution by taking aid of the ground of prejudice in criminal prosecution due to disclosure of defence. In such a scenario, the petitioner can always seek stay of the criminal prosecution, not only on the ground of prejudice due to disclosure of defence in criminal trial but also due to the accused/delinquent employee having been exonerated in the disciplinary proceedings (provided in the meanwhile final order is passed in the DE).

14. This Court while declining interference **dismisses** both the writ petitions, extending liberty to the petitioners to revisit this Court once the said cause of action is available to be raised after framing of charge in the criminal proceedings.

15. No cost.

(SHEEL NAGU)
JUDGE

(VIRENDER SINGH)
JUDGE

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