

(1959) 10 MP CK 0011

In the Madhya Pradesh High Court

Case No : Miscellaneous Criminal Case No. 177 of 1959

In Re: Shri Mehra, Senior Supdt. of Post Offices and Another

Date of Decision : 27-10-1959

Acts Referred:

Penal Code, 1860 (IPC) — Section 161, 409
Prevention of Corruption Act, 1988 — Section 5(2)

Citation : AIR 1962 MP 72 : (1959) ILR (MP) 819 : (1961) 6 MPLJ 363

Hon'ble Judges : P.R. Sharma, J; P.K. Tare, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Tare, J.

This application for taking action against the non-applicants for contempt of court is by the Magistrate First class, Jabalpur.

Laxman Dawande, a clerk of the Head Post office, Jabalpur is being prosecuted for an offence u/s 409, I. P. C. The case was registered on 24-11-1958 in the court of Shri B. C. Soni, Magistrate First Class, Jabalpur, from where it was transferred to the file of Ku. Sumitra Gandhi, Magistrate First Class, Jabalpur. After transfer, the case is registered as Criminal Case No. 36 of 1959.

During the pendency of the said case, Shri R.B. Choudhary, Post Master, Head Post Office, Jabalpur, conducted the departmental enquiry in respect of the same matter involving a charge of misappropriation of a sum of Rs. 8.15 N.P. He submitted a report of the departmental enquiry and on that report the first non-applicant framed a charge sheet against Dawande. Ultimately, he held Dawande guilty of a grave misconduct. Dawande filed an appeal to the Director of Postal Services at Nagpur, the second non-applicant, who however, by order dated 23-4-1959, acquitted him of the charge of misappropriation.

As the departmental enquiry was held during the pendency of the criminal prosecutions, the learned Magistrate was of opinion that it amounted to a contempt of court. The only manner in which the contempt is said to have been

committed is the passing of an order in the departmental enquiry during the pendency of the Criminal Case. It is not alleged by the learned Magistrate that the postal authorities tried to influence the court "by forwarding copies of any departmental orders or otherwise publishing the same. Had that been done, it would have been another matter. But, the mere holding of an enquiry by the departmental authorities during the pendency of a criminal prosecution would not, in our opinion, amount to a contempt of court.

Their Lordships of the Supreme Court in *S.A. Venkataraman Vs. The Union of India (UOI) and Another*, while considering the implications of Article 20(2) of the Constitution of India, laid down that the holding of a departmental enquiry by the departmental authorities would not be a prosecution for the second time. Their Lordships expressed the view that the scope of the criminal prosecution and the departmental enquiry would be separate and independent of each other. For that reason, their Lordships laid down that even if a person were to be acquitted by a court of law, the departmental authorities could still hold a departmental enquiry against the employee.

Applying the principles laid down by their Lordships to the present case, we are of opinion that the mere holding of a departmental enquiry during the pendency of a criminal prosecution in respect of the same subject-matter would not amount to a contempt of the court. The position would be different, if an attempt is made by the departmental authorities to influence the court in any manner or otherwise to create an atmosphere of prejudice. But, the mere holding of a departmental enquiry and even passing an order therein of punishment would not amount to contempt. The departmental authorities are free to exercise such lawful powers, as are conferred on them by the departmental rules and regulations. Such exercise of powers bona fide cannot come within the mischief of the law of contempt.

For this proposition, we have a direct authority on the point. A Division Bench of the Madhya Bharat High Court consisting of Mehta J. and Khan J. in *Narayan Singh v. Satyanarayan Dubey* MB LJ (1953) HCR 164, held that although a case may be pending before a court, yet the doing of another lawful act, such as the conducting of a departmental enquiry, cannot be regarded as amounting to contempt of court. The applicant in that case was being prosecuted for offences u/s 161, I. P. C., and Section 5(2) of the Prevention of Corruption Act. During the pendency of the criminal case, a departmental enquiry was started against him. The learned Judges of the Madhya Bharat High Court held that the departmental authorities were within their rights in holding a departmental enquiry and the mere holding of such enquiry could not amount to contempt. According to the learned Judges, it was only when the result of enquiry was published that, at the most a contempt could be said to have been committed. In the present case, the departmental authorities did not publicise any departmental orders, which might have a tendency to influence the mind of the court. Therefore, we are of opinion that no contempt was committed in this case and there is no case for issuing

notices to the non-applicants.

The application is, therefore, dismissed summarily without notice to the other side.