

(2014) 01 OHC CK 0022

In the Orissa High Court

Case No : Writ Petition (C) No"s. 3033 of 2009

Sri Balaram Dhal

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 22-01-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161
Penal Code, 1860 (IPC) — Section 120(B) 120-B 201 379 411
Railway Property (Unlawful Possession) Act, 1966 — Section 3(a)

Citation : (2014) 117 CLT 1065 : (2014) 1 ILR 536 : (2014) 1 OLR 538

Hon'ble Judges : Sanju Panda, J

Bench : Single Bench

Advocate : J.M. Mohanty, K.C. Mishra, P.C. Moharana, M. Pani and R.K. Ray, for the Appellant; A.K. Misra, S.K. Ojha, N.R. Pandit, H.M. Das and A.K. Sahoo, for the Respondent

Final Decision : Dismissed

Judgement

Sanju Panda, J.—In W.P. (C) Nos. 3033 and 4005 of 2009 and in W.P. (C) Nos. 16706 and 16707 of 2008 petitioners have prayed to quash the departmental proceedings under Annexures-7, 11, 5 dated 22.5.2008 respectively and under Annexure-5 dated 17.7.2008.

Since common question of law and facts involved in all these writ petitions is one and same, they are heard together and disposed of by this common order.

Petitioners in the aforesaid writ petitions have challenged the initiation of the departmental proceedings and its continuation after closure of the criminal proceedings as illegal and seek to quash the same.

It is contended in the writ petitions that F.I.R. was drawn up by one S.K. Biswal, Superintendent of Police, C.I.D., C.B., Orissa, Cuttack on 22.4.2008 basing upon the news published in a daily newspaper dated 14.4.2008 regarding death of a Judo coach at Bhubaneswar. The coach was shot dead on apprehension that he

was about to disclose the name of the officials, who had nexus with pilferaging iron scraps from Mancheswar coach repairing shop. The said incident was investigated into as per the direction of D.G. Police. The Senior Divisional Security Commissioner-opposite party-No. 3 also caused a joint fact finding enquiry through Sri S.N. Das, Inspector, Sri P.S. Biswas, Inspector Crime Reader and Sri S.K. Das, Inspector R.P.F., Mancheswar workshop, who went to Mancheswar workshop along with the custodian of the scrap iron of the workshop Sri B. Verkatiya, Asst. Chief Manager(I)/CRW/Mancheswar. After due verification, it was found that there was no disturbance in the stacks of the earmark location in the scrap dumping area of the workshop and accordingly they submitted a report on 14.4.2008 vide Annexure-2. It reveals from the said report that no stack was on distenbes State/condition in the earmarked locations in the suap dewing area of the workshop. Basing upon the F.I.R., C.I.D., C.B. Case No. 20 of 2008 was registered under Sections 120-B/379/201/411 & 414 of the I.P.C. against the petitioners-Constable. The custodian of Mancheswar stock yard has not lodged any F.I.R. with regard to any pilferage of any iron scrap or involvement of any of the constables on dereliction of duty.

The Deputy Chief Commissioner, East Coast Railway, Senior Security Commissioner, R.P.F. Khurda Road, CCB, Railway Board, New Delhi also enquired into the mater and they submitted a reported on 25.4.2008 vide Annexure-3. The matter was again enquired into by Sri A.K. Jena, OI/CIB Waltire, Sri P.S. Biswas, OC/RPF Waltire and Sri R.K. Narendra, OIC/RPF Bhubaneswar and they also submitted a report on 5.5.2008 vide Annexure-4. From those two reports it reveals that they could not find any incriminating materials in support of the paper publication and "Y" form has not been issued and no report has been given by the OC/RPF/MCS to Senior DSC/RPF/Khurda in that regard. "Y" form stands for lodging of theft report in the Railway by the custodian of the property.

2. Learned counsel for the petitioners submitted that in view of non-issuance of "Y" form clearly reveals that there was no pilferage of any scrap iron from Mancheswar repairing workshop and the news was only based on wrong information. Neither any railway property has been seized by the Crime Branch nor the driver or the helper of the seized truck was arrested in pursuance of the lodging of the said F.I.R. The C.I.D., C.B. Case No. 20 of 2008 corresponding to G.R. Case No. 1722 of 2008 was pending before the learned S.D.J.M., Bhubaneswar and no case was made out against the petitioners under the Indian Penal Code and a communication has been made to the Railway Authority for registration of a case. Accordingly, the O.I.C. Mancheswar R.P.F. has reregistered a case u/s 3(a) RP(UP) Act and thereafter has moved an application before the court. The afore-stated fact reveals that C.I.D., C.B. failed to get any materials against the petitioners in any manner with regard to theft of any alleged iron scrap and accordingly, requested the Railway Authority to re-register a case under the R.P.F. Act, therefore, there is no material before the authority to proceed with the departmental proceeding. The departmental proceeding was initiated on the basis of statement recorded u/s 161 of Cr.P.C. in the C.I.D., C.B.

case and a charge memo was submitted. Charge memo was based on the basis of 161 statement recorded. As the G.R. case is pending, the said 161 statement is only for the purpose of contradiction during the trial, therefore the departmental proceeding initiated against the petitioners along with the charge memo are liable to be quashed. The charge memo was submitted suspecting involvement of the petitioners with regard to theft of railway property but no F.I.R. was filed by the Railway Authority till date and therefore, on mere suspicion no departmental proceeding should be initiated which needs to be interfered with. In support of his contention he has cited the decisions reported in G.M. Tank Vs. State of Gujarat and Another, Capt. M. Paul Anthony Vs. Bharat Gold Mines Ltd. and Another, and P.S. Rajya Vs. State of Bihar,

3. A counter affidavit has been filed by the opposite parties and they have taken a stand that Railway Protection Force is an Armed Force of the Union and strict service discipline is required in respect of a member of the force under the Railway Protection Force Act, 1957. The said act governing the appointment and powers of the members of the force also deals with discipline and conduct as well as discipline and appeal of the member of the said force. The force was created to protect the properties of the Railways. The scrap materials of the Railway constitute the properties of the Railway. A joint enquiry was made by the Assistant Security Commissioner, Railway Protection Force and it was found that in the night of 13.4.2008 two trucks loaded with scrap materials were intercepted by local police being escorted by the RPF staff on duty with others for safe passage to their destination and a Crime Branch Case was registered under Sections 379/120(B)/411/414 I.P.C. The enquiry report reveals that large number of scrap dealers of Bhubaneswar, Cuttack and nearby area in connivance with officials of various Government Department including Railways etc. organizing theft of scrap materials and removing the same in various trucks. Therefore, the authority decided to initiate a departmental proceeding. Accordingly, a Departmental Proceeding was initiated by the authority and the delinquents were charge sheeted under Rule 153 of the Railway Protection Force Rules (in short, "RPF Rules"). The competent authority has appointed the enquiry officer. The enquiry officer has already furnished the enquiry report to the disciplinary authority and they have categorically denied that the charges framed in the Departmental Proceedings are not based on the statement recorded u/s 161 Cr.P.C. Pursuant to the direction of the Court on 26.11.2009, C.B.I. has also enquired into the matter. C.B.I. has submitted charge sheet against other persons where the petitioners are not accused. The C.B.I. enquiry was made during pendency of the writ petitions and it is open to the petitioners to take those stands in the Departmental Proceeding as those facts were not before the enquiry officer while Departmental Proceeding was initiated. Rule provided that an enquiry is to be conducted before taking any action against the delinquent officer under Rule 153 of the Railway Protection Force Rules and affording opportunity to the petitioners to put forth all the grievances by way of defence and they can canvass before the authority all the pleas by way of show cause for

appropriate decision. In support of its contention, learned counsel for the opposite parties cited the decisions reported in *The Secretary, Min. of Defence and Others Vs. Prabhash Chandra Mirdha, , Noida Entrepreneurs Association V. Noida and Others.*

4. Considering the rival submission of the parties and after going through the record, it reveals that a joint enquiry was made by the Railway Authorities. From enquiry report as per Annexures-3 and 4 it was found that large number of scrap dealers of Bhubaneswar, Cuttack and nearby area in connivance with officials of various Government Department including Railways etc. organizing theft of scrap materials and removing the same in various trucks. The reports under Annexures-3 and 4 also reveal that in spite of repeated letters to CWM Mancheswar workshop as well as to Works Manager, Mancheswar workshop regarding theft/shortage/missing of scrap iron in the month of March & April by the enquiry committee but no reply obtained from the said persons in-charge of the workshop. The staff deployed in the said stack yard was not being done on rotation basis. Ratification slips issued by the Accounts Department in respect of challan were not taken note of and scrap materials issued without verifying the said correction was a gross mistake. Further from the record, it also reveals that C.I.D., C.B. Case No. 20 of 2008 was re-registered and the same is pending and there is non-cooperation of persons in-charge of Mancheswar stack yard and they have not furnished information in spite of repeated requests made by the authority while making joint enquiry. The Disciplinary Authority initiated Departmental Proceeding as they have found that two trucks loaded with scrap materials were intercepted by the local police. Accordingly, the authority framed charges which are subject to enquiry as stipulated under Rule 153 of the aforesaid Rules. Law is well settled that the purpose of departmental enquiry and criminal prosecutions are two different and distinct aspects. Criminal prosecution is for an offence against the offender for breach of law and the crime is an act of commission in violation of law. In a criminal proceeding the prosecution has to prove its case beyond reasonable doubt. But in a Departmental Proceeding the standard of proof based on preponderance of probability. Therefore, departmental proceeding may continue even though in the criminal proceeding no case was made out against the delinquent.

5. The Apex Court in the case of *The Secretary, Min. of Defence and Others Vs. Prabhash Chandra Mirdha*, held that:-

Charge-sheet/Show-cause notice-when can be quashed by court/tribunal- normally not liable to be quashed as it does not adversely affect rights of delinquent employee and does not give rise to any cause of action. However, it can be quashed on ground of issuing authority being not competent to issue the same.

The law does not permit quashing of charge-sheet in a routine manner. In case the delinquent employee has any grievance in respect of the charge-sheet he must raise the issue by filing a representation and wait for the decision of the

disciplinary authority thereon. Neither the disciplinary proceedings nor the charge-sheet be quashed at an initial stage as it would be a premature stage to deal with the issues.

The Apex Court further in the case of Noida Entrepreneurs Association V. Noida and Others, reported in (2007) 10 S.C.C. 385 held that:-

Departmental enquiry is distinct from criminal proceeding-Standard of proof required in departmental enquiry is not the same as required to prove a criminal charge-Even acquittal in criminal case does not bar departmental enquiry.

In the case of G.M. Tank and Capt. M. Paul (supra) where the Apex Court held that in case the criminal proceedings and departmental proceedings are based on similar and identical set of facts and evidence and the charges before the criminal court and departmental proceedings are one and the same and if the appellant has been honourably acquitted in the criminal proceedings punishment in the departmental proceedings is unjust and unfair. The aforesaid decisions are not applicable in the present case in view of the reasons stated in the above paragraphs.

In the case of P.S. Rajya (supra) where the Apex Court held that charge in the departmental proceedings and criminal proceedings are one and the same, charge could not be established in the departmental proceedings. Hence there is no further necessity to proceed in criminal proceedings if the charge is same. The said decision is also not applicable to the present case.

In view of the above position of law, this Court is not inclined to interfere with the Departmental Proceedings initiated against the petitioners. Accordingly, the writ petitions are dismissed.