
(1993) 02 RAJ CK 0015
In the Rajasthan High Court
Case No : .C. Spl. Appeal No. 70 of 1993

Yasin Khan

APPELLANT

Vs

O.N.G.C.

RESPONDENT

Date of Decision : 25-02-1993

Acts Referred:

Penal Code, 1860 (IPC) — Section 323, 341

Citation : (1995) 1 LLJ 393 : (1993) 2 WLC 68

Hon'ble Judges : N.K. Jain, J;J.R. Chopra, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Jain, J.—This special appeal u/s 18 of the Rajasthan High Court Ordinance has been filed by Yasin Khan against the order of the learned Single Judge of this Court dt. January 25, 1993 dismissing his writ petition.

2. The facts which are necessary to be noticed for the disposal of this special appeal briefly stated are that one Ramdeo Choudhary, an employee of Oil and Natural Gas Commission, lodged a complaint against the petitioner Yasin Khan, a driver in the ONGC, alleging that Yasin Khan abused and hit him for a news paper on March 16, 1982 at about 9.15 p.m. On hearing the uproar some other employees reached the spot and they intervened in the matter. Thereupon a case u/s 341 and 323 IPC was registered against the petitioner at P.S. Girav, Distt. Barmer. After due investigation challan has been filed in the court of Munsif and Judicial Magistrate 1st, Banner. On the other hand, the Commissioner also charge-sheeted the petitioner vide memorandum dt. July 2, 1972 alleging two charges against him. The petitioner submitted a representation on September 25, 1992 requesting the Respondent No. 2 to cancel the charge-sheet on account of the pendency of criminal case but vide order dt. December 8, 1992 enquiry Officer was appointed to enquire into the charges. Aggrieved, Yasin Khan filed a writ petition in this Court. The same has been dismissed by the learned Single Judge vide order dt. January 25, 1993 observing that no prejudice is going to be

caused to the petitioner from either side. Dissatisfied with the said order of learned Single Judge, the petitioner has filed this special appeal.

3. Mr. Vijay Mehta, learned counsel for the petitioner-appellant, has submitted that the learned Single Judge has erred in rejecting the writ petition and in not staying the departmental enquiry pending the criminal case. He has placed reliance on *Purshottamlal v. The State of Raj. and Anr.* bearing S.B.C. Writ Petition No. 4503/92 decided on November 9, 1992 and *Kusheshwar Dubey Vs. Bharat Coking Coal Ltd. and Others*, and *Sunderlal v. State* reported in 1992(2) WLR-668.

4. We have heard learned counsel for the petitioner-appellant and persued the record as well as the case law cited at the Bar.

5. In *Kusheshwar Dubey v. Bharat Coking Coal Ltd.* (supra) their Lordships of the Supreme Court after considering the case of *The Delhi Cloth and General Mills Ltd. Vs. Kushal Bhan*, and *Jang Bahadur v. Baij Nath Tiwari* 1969 I LLJ 567 held that there cannot be a legal bar for simultaneous proceedings being taken and it is neither possible nor advisable to evolve a hard and fast strait-jacket formula valid for all cases. It has also been observed by their Lordships of the Supreme Court that when a person is prosecuted for a grave charge then it is fair that the departmental enquiry should be stayed and it would be unfair to compel the workman to disclose the defence which may be taken before the criminal court. However, their Lordships have further observed that when the case is of simple nature, in that situation the management is justified in proceeding with the departmental enquiry. In the aforesaid decision their Lordships of the Supreme Court did not think it proper to give general guidance and each case depends upon the facts of its own.

6. In the instant case a criminal case is pending against the petitioner u/s 341 and 323 IPC as he slapped and abused his official colleague one Shri R.D. Choudhary and also demanded Rs. 100/- from him for liquor and on refusal snatched his wrist watch. The petitioner also gave beating to Mr. Choudhary and he was treated by Camp Doctor as Shri Choudhary sustained injury. On the other hand, a disciplinary enquiry under Regulation No. 36 of ONGC (Conduct, Discipline & Appeal) Regulations, 1976 has also been started and in the statement of articles of charges it is alleged that he has committed misconduct inasmuch as he used impertinent language against R.D. Choudhary and also inflicted physical injuries to him by giving blows with his fist and further that he falsely alleged that R.D. Choudhary was drunk on March 16, 1992. Thus, he contravened Regulation 5(1)(c) of ONGC (C.D.A.) Regulations, 1976 and also committed misconduct under Clauses 1, 2 and 7 of Schedule to Regulation 2(k) of ONGC (CDA) Regulations, 1976. Though the criminal case and the disciplinary proceedings are arising out of the same incident but looking to the simple nature of the charge and the insubordination committed by the petitioner by using insolent language and physically assaulting his senior in a drunken state against which power of taking action vests in the Disciplinary Authority only, therefore, it

cannot be said that the management is not justified in not staying the departmental enquiry particularly when there is no allegation of the petitioner that these proceedings are initiated with malice. More so, the present case is not of such a nature wherein the disclosure of defence in the disciplinary proceedings will prejudice the petitioner in any manner before the criminal court, so as to await the decision of the criminal case. In both the proceedings the defence can only be of denial and hence no prejudice can be caused to the petitioner. Under these circumstances, the petitioner cannot derive any benefit out of the cases cited at the Bar, as they are not applicable to the facts of present case.

7. In view of the above discussion, in our opinion, there is no illegality or irregularity in the order of the learned Single Judge whereby he has dismissed the writ petition with this observation that no prejudice is going to be caused to the petitioner from either side. As such the order of learned Single Judge calls for no interference.

8. In the result, this special appeal has no force, and it is hereby dismissed.