



Crl.R.C(MD) No.606 of 2017

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 25 .07.2023

Pronounced on : 17 .08.2023

CORAM

THE HONOURABLE MR.JUSTICE P.DHANABAL

Crl.R.C(MD) No.606 of 2017

R.Soundarapandian

... Petitioner

-Vs-

1. The Inspector of Police
R.S.Mangalam Police Station,
Ramanathapuram

2. Selvaraj
3. Kannan
4. Palaniyammal(Died)
5. Jeyamani
6. Muthuraja
7. Senthil Murugan
8. Muthulakshmi
9. Muthukumar

(Cause title amended as per order of the
Court dated 05.06.2023)

... Respondent

PRAYER:- Criminal Revision Petition is filed under section 397 and 401 of Cr.P.C to call for the records relating to the adverse remarks passed against the petitioner by the learned Additional District and Sessions Judge, Fast Track Court, Ramanathapuram in Paragraph No. 21 of judgment in S.C.No.67 of 2011 dated 20.03.2013 and may expunge the remarks against the petitioner and relieve him from all proceedings initiated on the basis of the said remarks.



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For Petitioner

: Mr.K.P.Narayanakumar

For R-1

: Mrs. M.Aasha

Government Advocate(Crl.Side)

For R-5

: Mr.S.R.Sasidharan Tamilkani

ORDER

This Criminal Revision Petition has been filed to call for the records relating to the adverse remarks passed against the petitioner by the learned Additional District and Sessions Judge, Fast Track Court, Ramanathapuram in Paragraph No.21 of judgment in S.C.No. 67 of 2011 dated 20.03.2013 and may expunge the remarks against the petitioner and relieve him from all proceedings initiated on the basis of the said remarks.

2.According to the petitioner he was appointed as Sub Inspector of Police in the year 1997 and promoted as Inspector of Police in the year 2008 and served in several places and rendered unblemished service for the welfare of the department and now he is working as Inspector of Police(Crime) at Thallakulam Police Station, Madurai. While he was working as a Inspector at Thirupalaikudi Police Station in Ramanathapuram District he was entrusted with the charge of R.S.Mangalam Police Station, a crime was registered by the first respondent police in Crime No.60 of 2010 for the offences punishable under sections 302 and 379 of IPC. He conducted part of



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the investigation and matter was further investigated and final report was filed by his Successor and the same was tried before the learned Assistant Sessions Judge, Fast Track Court, Ramanathapuram in S.C.No.67 of 2011 and the case ended in acquittal. Unfortunately without hearing or questioning him some adverse remarks were passed against him in the said judgment.

3. Pursuant to the judgment learned Principal District Judge, Ramanathapuram send a letter to the Deputy Inspector General of Police, Ramanathapuram dated 26.03.2013 to take action against the petitioner. The Deputy Inspector General of Police, Ramanathapuram directed the Superintendent of Police, Ramanathapuram to initiate departmental proceedings and accordingly charge memo was issued to the petitioner on 10.04.2015 and thereafter some of the charges were proved. As against the adverse remarks he filed appeal before the Additional Director General of Police and the same was modified into punishment to postponement of increment for two years with cumulative effect against which mercy petition is pending before the Principal Secretary Home Department, Chennai. Strictures passed by the trial Court in S.C. No.67 of 2011 in Crime No.60 of 2010 on the file of the first respondent is the route cause for the subsequent proceedings . Hence he filed the Writ Petition before this Court in



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W.P.Sr.No.25562 of 2017 challenging the adverse remarks passed by the trial Court in para no.21 of the judgment, wherein the Registry raised the query about the maintainability of the writ petition and posted the matter before the Court under the caption of maintainability, this Court upheld the query raised by the Registry and observed that Criminal Revision would lie against the judgment of acquittal and adverse remarks and liberty was granted to the petitioner to file criminal revision petition, hence the present petition was filed by the petitioner.

4. No counter was filed by the respondents.

5. The learned counsel for the petitioner contended that the petitioner was the investigation officer in this case and he only investigated the case in part and thereafter his successor has investigated the case. The same version also revealed in the previous paras of judgment of the trial Court. While so, without giving any opportunity to the petitioner the trial Court recorded adverse remarks and passed strictures as against this petitioner. Without giving opportunity to the petitioner straight away recorded adverse remarks and recommended disciplinary action. In the said disciplinary proceedings the petitioner was found guilty and awarded



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punishment of reduction of lower rank and then he preferred appeal and in the appeal the punishment was modified to postponement of increment for two years with cumulative effect. Thereafter the petitioner filed mercy petitions and the same is pending before the Home Secretary for consideration. In support of his contention the learned counsel for the petitioner relied on the judgment of the Hon'ble Apex Court in the case of ***State(NCT of Delhi).vs Pankaj Chaudhary and others*** reported in ***(2019)11 SCC 575***.

6. The learned Government Advocate(Crl.Side) appearing for the official respondent would contend that the petitioner being Investigation Officer not conducted property investigation and due to that the trial Court acquitted the accused and then recommended disciplinary action. Based on the recommendation of the Court disciplinary proceedings were initiated against the petitioner and punishment was awarded. After punishment this petition is filed and now this petition become infructuous.

7. According to the petitioner he was the investigating officer in Crime No.60 of 2010 on the file of the first respondent and he partly investigated the case and then his successor further investigated and filed final report. The said case was taken on file in S.C.No.67 of 2011



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and the trial was conducted by the Additional District and Sessions Judge, Fast Track Court, Ramanathapuram and the case ended in acquittal. In the judgment the trial Court passed adverse remarks as against the investigation officer i.e., P.W.19 this petitioner herein without giving opportunity to him.

8. First of all coming to the point with regard to the maintainability of this petition as against the findings of the trial Court it is relevant to extract the provisions under Section 397(1) of Cr.P.C., which reads as follows:

397. Calling for records to exercise powers of revision.—

(1) The High Court or any Sessions Judge may call for and examine the record of any proceeding before any inferior Criminal Court situate within its or his local jurisdiction for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any finding. Sentence or order, recorded or passed, and as to the regularity of any proceedings of such inferior Court, and may, when calling for such record, direct that the execution of any sentence or order be suspended, and if the accused is in confinement, that he be released on bail or on his own bond pending the examination of the record.

9. From the bare reading of the above section it is clear that Criminal Revision is maintainable for propriety of any finding. In this case also adverse remarks and strictures passed by the trial Court and against that finding Criminal Revision is maintainable before this Court. Further this Court in W.P.Sr.No.25562 of 2017 observed that in



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the considered opinion of this Court remedy to the petitioner is not a writ under Article 226 of the Constitution of India where there is already a remedy provided under the Code inasmuch as the petitioner could have easily filed a criminal revision case against the judgment of acquittal in S.C. No.67 of 2011 and would have assailed the findings thereon. Therefore revision is maintainable as against the findings of the trial Court.

10. The trial Court in para 20 of the judgement has observed that P.W.19 admitted that he hid not seize the cellphone of the first accused and the deceased and he has not taken steps to examine the officials of the cellphone company and also made observation that through cross examination it was proved that the second accused was already shown to P.W.15 and 16 in the police station and thereby they identified the second accused. Further P.W.19 failed to explain as to how P.W.15 and P.W.16 omitted to mention about seeing of the deceased by the accused and therefore made adverse remarks in para 21 of the judgement which reads as follows:

“21.ஆக தன் மகளை பெரியம்மாளை பறிகொடுத்த அவருடைய தாயார் அசா.1 பழனியம்மாள் தன்னுடைய மகள் பெரியம்மாளை கொலை செய்து நகைகளை திருடிவிட்டதாக 1வது எதிரி மீது சந்தேகத்தின் மீது புகார் கொடுத்த போதிலும் குற்றத்தின் தன்மை



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மிக கடுமையாக இருப்பதை கூட அசா.19 ஆய்வாளர் கருத்தில் கொள்ளாமல் எதிரிகளை குற்றச்சாட்டிவிருந்து விடுதலை செய்வதற்கான சூழ்நிலைகளை கீழ்க்கண்டவாறு உருவாக்கியுள்ளார்.

1.அசா.1 பழனியம்மாள் குறுக்கு விசாரணை: அசா.14 திருச்சிலுவை அசா.5 தில்லைமுத்து,ஆயுதப்படை துப்பறியும் நாய் பிரிவு ஆகியோரின் சாட்சியத்திலிருந்து அசாஆ.1 புகாரை 22.04.2010 ல் பகல் 12 மணிக்கு அசா.12 சார்பு ஆய்வாளர் மகாலிங்கம் பெற்று முதல் தகவலறிக்கை தயார் செய்த பின்பு அன்றே வழக்கு விசாரணையை அசா.19 செளந்திரபாண்டியன் ஆய்வாளர் எடுத்துக்கொண்டு 15.30 மணிக்கு சம்பவயிடத்திற்கு காவல் துறையினர் முதன் முதலாகக் சென்றதாகத் கூறுவது ஏற்படையது இல்லை. அன்று காலை 09.0 மணிக்கே சம்பவ இடத்தில் போலீசார் அசா.1, அசா.14 ஆகியோரிடம் வாக்கு மூலம் வாங்கியதை மறைக்கப்பட்டுள்ளது.

2. இறந்த பெரியம்மாள் மிளகாய்பொடி அரைப்பதற்காக மாலை 4.00 மணிக்கு ஆர்.எஸ் மங்களம் வந்து தன்னுடைய ரைஸ் மில்லில் மிளகாய் பொடி அரைத்ததாக அசா.10 கருப்பையாவின் சாட்சித்தை உறுதி செய்வதற்கு பில் புத்தகத்தை போலீசார் கைப்பற்றியதாக அவர் குறுக்கு விசாரணையில் ஒத்துக்கொண்டுள்ளதால் அசா.19 ஆய்வாளர் அந்த பில் புத்தகத்தை தாக்கல் செய்யவில்லை.

3. 21.04.2010 ல் மாலை சுமார் 3 மணியளவில் தன்னுடைய வீட்டில் பெரியம்மாள் இருக்கும் பொழுது 1வது எதிரி அவருடன் செல்போனில் தொடர்பு கொண்டு வரச்சொன்னதை தன்னுடைய



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அம்மா அசா.1 பழனியம்மாள் அவருடைய கணவர் அசா.2 ஜெயமணி ஆகியோரிடம் சொல்லிவிட்டுச் சென்றுள்ளார் என்ற அசா.19 ஆய்வாளரின் புலன் விசாரணை வலுவூட்டும் விதமாக 1வது எதிரி மற்றும் இறந்த பெரியம்மாள் பயன்படுத்திய செல்போன்களை கைப்பற்றி தாக்கல் செய்யவில்லை. இரண்டு பேருக்கும் நடந்த உரையாடல்களை நிரூபிக்க நடவடிக்கை மேற்கொள்ளவில்லை.

4.. எதிரிகளையும் இறந்த பெரியம்மாளையும் 21.04.2010 ஆர். எஸ் மங்களம் பஸ்ஸ்டாப்பில் சந்தித்து பேசிக்கொண்டிருந்தவர்களை இறந்த பெரியம்மாளின் சகோதரியை திருமணம் செய்து கொண்ட அசா.15 சேகரும் இறந்த பெரியம்மாளின் ஊரைச் சேர்ந்த அசா.16 இராமநாதனும் அவர்களை சந்தித்த விவரத்தை தன் மகள் காணாமல் போன போது தேடிய அசா.1 பழனியம்மாளிடம் ஏன் தெரியப்படுத்தப்படவில்லை என்பதற்கு அசா.15 சேகர், அசா. 16 இராமநாதன் 161 குவிமுச படி வாக்குமூலம் முறையாக பதிவு செய்யவில்லை. சம்பவத்தை தெரியப்படுத்தி எழுதப்படவும் இல்லை என்பதால் அவர்களின் சாட்சியம் குறுக்கு விசாரணையை பரிசீலனை செய்த பின் நம்பத்தன்மை அற்றதாக கருதப்பட்டுள்ளது.

5. அசா.4 ஜெயராஜ் 1வது எதிரி கொடுத்த ஒப்புதல் வாக்குமூலம் சா.பொ.1 ஆகியவற்றை கைப்பற்றும் போது அத்தாட்சியில் கையெழுத்திட்டதாக அசா.19 ஆய்வாளர் தன்னுடைய புலன் விசாரணையில் கூறியுள்ளார். ஆனால் ஒப்புதல் வாக்குமூலம் அசா.ஆ. 4, அசா.ஆ.5 மற்றும் அத்தாட்சியில் உள்ள அசா.4 ஜெயராஜ்



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கைகெழுத்தை அவர் நீதிமன்றத்தில் சாட்சியளித்த பின்னிட்டு போட்ட கையெழுத்துடன் ஒப்பிட்டு பார்த்தால் அவரின் கையெழுத்து அல்ல என்பது அசா.4 ஜெயராஜ் குறுக்கு விசாரணை சொன்னது ஏற்படையதாக உள்ளது.

6. அசாஆ.6 அத்தாட்சியில் அசா.11 செல்லபனுக்கு சொந்தமான லலிதா ஜுவல்லர்ஸ் என்ற கடையிலிருந்து 36 கிராம் நகைகள் கைப்பற்றியதாக அசா.19 சௌந்தரபாண்டியன் ஆய்வாளர் கூறுவதற்கு அசா.4 ஜெயராஜ் கிராம நிர்வாக அதிகாரியின் கையெழுத்து போர்ஜரியாக போடப்பட்டுள்ளது. அசா.11 செல்லப்பன் காவல் நிலையத்தில் வைத்து கையெழுத்துப் போட்டதாக குறுக்கு விசாரணையில் ஒத்துக்கொண்டுள்ளார். அங்கு கைப்பற்றிய ஆவணங்கள் தாக்கல் செய்யப்படவில்லை.

7. எதிரிகளிடமிருந்து கைப்பற்றிய நகைகளை இறந்த பெரியம்மாளின் அணிந்திருந்த நகைகள் என்பதை ஒப்பிட்டு பார்ப்பதற்கு அசா.1 பழனியம்மாள் இறந்தவரின் கணவர் அசா.1 ஜெயமணி ஆகியோர்களிடம் காண்பித்து உறுதி செய்யப்படவில்லை கூடுதல் வாக்குமூலம் பதிவு செய்யப்படவில்லை.

போன்ற காரணங்களை பரீசிலனை செய்யும்பொழுது அசா.19 ஆய்வாளர் சௌந்திரபாண்டியன் பெயரளவில் புலன் விசாரணை மேற்கொண்டு குற்றப்பத்திரிக்கை தாக்கல் செய்துள்ளதால் எதிரிகளை குற்றச்சாட்டிலிருந்து விடுவிக்க வேண்டிய கட்டாயம் இந்நீதிமன்றத்திற்கு ஏற்பட்டுள்ளதால் மகளை பறிகொடுத்த அசா.4 பழனியம்மாளுக்கும், மனைவியை பறிகொடுத்த அசா.2 ஜெயமணிக்கு பரிகாரம் கொடுக்க



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வேண்டிய சூழ்நிலையில் உள்ளதால் அசா.19 ஆய்வாளர்
செளந்திரபாண்டியன் மீது காவல்துறை துணைத்தலைவர் (D.I.G)
இராமநாதபுரம் அவர்கள் துறை ரீதியாக தகுந்த நடவடிக்கை
மேற்கொள்ள வேண்டும் என இந்நீதிமன்றம் முடிவு செய்கிறது.

and also recommended for departmental action against this petitioner. The petitioner's contention is that without giving opportunity to him the trial Court passed adverse remarks against him and based on the recommendation of trial Court departmental proceedings was also initiated against him. Since the adverse remarks was recorded without hearing the petitioner it has to expunged by this Court. In this context the learned counsel appearing for the petitioner relied on the judgement of the Hon'ble Apex Court in the case of ***State(NCT of Delhi) vs. Pankaj Chaudhary and others*** reported in ***(2019)11 SCC 575*** wherein the Hon'ble Apex Court has held as follows:

“42. While passing disparaging remarks against the police officials and directing prosecution against them, in our considered view, the High Court has failed to bear in mind the well settled principles of law that should govern the courts before making disparaging remarks. Any disparaging remarks and direction to initiate departmental action/prosecution against the persons whose conduct comes into consideration before the court would have serious impact on their official career.

43. In S.K. Viswambaran v. E. Koyakunju⁶ this Court held as under: (SCC pp. 113 & 116-17, paras 9 & 13-14)

“9. Stung by the remarks made against him without even a hearing....

* * *

13. We have also to point out a grievous procedural error committed by the High Court. Even assuming for argument's sake that for expunging the remarks against Respondents 2 and 3 the conduct of the appellant



required scrutiny and merited adverse comment, the principles of natural justice required the High Court to have issued notice to the appellant and heard him before passing adverse remarks against him if it was considered necessary. By its failure the High Court has failed to render elementary justice to the appellant.

14. ... In State of U.P. v. Mohd. Naim⁷, it was held as follows: (AIR p. 707, para 10)

'10. ... If there is one principle of cardinal importance in the administration of justice, it is this: the proper freedom and independence of Judges and Magistrates must be maintained and they must be allowed to perform their functions freely and fearlessly and without undue interference by anybody, even by this Court. At the same time it is equally necessary that in expressing their opinions Judges and Magistrates must be guided by considerations of justice, fair play and restraint. It is not infrequent that sweeping generalisations defeat the very purpose for which they are made. It has been judicially recognised that in the matter of making disparaging remarks against persons or  authorities whose conduct comes into consideration before courts of law in cases to be decided by them, it is relevant to consider (a) whether the party whose conduct is in question is before the court or has an opportunity of explaining or defending himself; (b) whether there is evidence on record bearing on that conduct, justifying the remarks; and (c) whether it is necessary for the decision of the case, as an integral part thereof, to animadvert on that conduct. It has also been recognised that judicial pronouncements must be judicial in nature, and should not normally depart from sobriety, moderation and reserve.'

This ratio has been followed in R.K. Lakshmanan v. A.K.

Srinivasan and Niranjana Patnaik v. Sashibhusan Kar (to which one of us was a party). Judged in the light of the above tests, it may be seen that none of the tests is satisfied in this case. It is indeed regrettable that the High Court should have lightly passed adverse remarks of a very serious nature affecting the character and professional competence and integrity of the appellant in purported desire to render justice to Respondents 2 and 3 in the petition filed by them for expunction of adverse remarks made against them."

(emphasis supplied)

44. *In Manish Dixit v. State of Rajasthan¹⁰, this Court held as under: (SCC pp. 608-09, paras 42-43)*

"42. ... Such disparaging remarks and the direction to initiate departmental action against him could have a very serious impact on his official career.



43. Even those apart, this Court has repeatedly cautioned that before any castigating remarks are made by the court against any person, particularly when such remarks could ensure serious consequences on the future career of the person concerned, he should have been given an opportunity of being heard in the matter in respect of the proposed remarks or strictures. Such an opportunity is the basic requirement, for, otherwise the offending remarks would be in violation of the principles of natural justice. In this case such an opportunity was not given to PW 30 (Devendra Kumar Sharma). (State of U.P. v. Mohd. Naim, Jage Ram v. Hans Raj Midha, R.K. Lakshmanan v. A.K. Srinivasan Niranjana Patnaik v. Sashibhusan Kar and State of Karnataka v. High Court of Karnataka.)

(emphasis supplied)

45. Since the High Court has passed strictures against the police officials who were involved in the investigation in FIR No. 559 of 1997 without affording an opportunity of hearing to them, the disparaging remarks are liable to be set aside.

11. A careful reading of the above judgment it is clear that before any castigating remarks are made by the Court against any person particularly when such remarks would ensure serious consequences on the future career of the person concerned, he should have been given an opportunity of being heard in the matter in respect of the proposed remarks or strictures. Such an opportunity is the basic requirement, for, otherwise the offending remarks would in violation of principles of natural justice.

12. In this case no opportunity was given to the petitioner before passing strictures as against the petitioner. The petitioner was examined as prosecution witness P.W.19. After cross examination of



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P.W.19 the trial Court also failed to put any question under Section 165 of the Indian Evidence Act to P.W.19 with regard to the alleged mistakes committed during investigation. If at all the trial Court is not satisfied with the investigation done by the petitioner, the trial Court ought to have questioned the petitioner under Section 165 of Indian Evidence Act with regard to the lapse committed by the Investigation Officer during his examination and without putting any question and without giving opportunity of hearing the petitioner the trial Court has passed the adverse order as against the petitioner.

13.In the case on hand also no opportunity was given to the petitioner. Therefore the said case law is squarely applicable to the present facts of the case. In view of the said judgment and as discussed supra the strictures passed against the petitioner without giving opportunity of hearing him the disparaging remarks passed by the trial Court are liable to be set aside. Further it is an admitted that already based on the recommendation of adverse remarks the petitioner was awarded punishment and the petitioner has not challenged the adverse remarks at the earliest point of time and filed this petition in the year 2017 and thereby this order will no away affect the disciplinary proceedings. It is admitted that the mercy petition is pending before the Home Secretary and the same has to be decided on merits by the authority concerned.



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14. In the result, this Criminal Revision is allowed and the adverse remarks passed by the learned Additional District and Sessions Judge, Fast Track Court, Ramanathapuram in Paragraph No. 21 of judgment in S.C.No.67 of 2011 dated 20.03.2013 are expunged.

17 .08.2023

Index : Yes/No

Internet : Yes/No

aav

To

1. The Additional District and Sessions Judge,
Fast Track Court, Ramanathapuram
2. The Additional Public Prosecutor
Madurai Bench of Madras High Court,
Madurai



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P.DHANABAL, J.

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