

W.A.Nos.757 & 1245 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED : 17.03.2025

CORAM

**THE HONOURABLE MR.JUSTICE R.SURESH KUMAR
and
THE HONOURABLE DR.JUSTICE A.D.MARIA CLETE**

**W.A.Nos.757 and 1245 of 2023
and
C.M.P.Nos.7338 and 12513 of 2023**

1. The Additional Director General of Police /
Inspector General of Prisons,
6, Whannels Road,
Egmore, Chennai - 8.

2. The Superintendent of Prisons,
Central Prison,
Coimbatore - 18.

... Appellants
in both W.As

-Vs-

R.Gnanasekaran ... Respondent in W.A.No.757 of 2023

S.Sivamoorthy ... Respondent in W.A.No.1245 of 2023

COMMON PRAYER : Appeals filed under Clause XV of Letters Patent,
against the order dated 02.11.2021 and 09.12.2021 made in W.P.Nos.21889 and
17251 of 2017.



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For Appellants : Mr.R.Kumaravel
in both W.As Additional Government Pleader

For Respondent in : Mr.L.Chandrakumar
W.A.No.757 of 2023

For Respondent in : Mr.C.Elamurugan
W.A.No.1245 of 2023

COMMON JUDGMENT

(Judgment of the Court was delivered by **R.SURESH KUMAR, J.**)

Since the issue involved in both these writ appeals is one and the same, these writ appeals were heard together and are disposed of by this common order.

2. That the respondents in both the cases, i.e., R.Gnanasekaran and S.Sivamoorthy were working as Grade-II Warders at Central Prison, Coimbatore. Against these Warders, there has been a criminal proceedings, by which a charge has been framed against them alleging that, on 24.06.2012 with an involvement of these people, there has been an alleged incident of smuggling of 21 contraband items into the Central Prison at Coimbatore weighing 18kgs.

3. At the time of said occurrence on 24.06.2012, it is the case of the prosecution that, these Warders had been in duty. Therefore, an Enquiry Officer



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was appointed, before whom, enquiry was conducted, on behalf of the prosecution / employer, six witnesses, i.e., P.W.1 to P.W.6 were examined.

4. Ultimately, the Enquiry Officer gave a enquiry report dated 04.10.2012 stating that the charges framed against these incumbents have been proved.

5. Based on the Enquiry Officer's report, the Disciplinary Authority by order dated 06.03.2013 has inflicted the punishment of dismissal from service against these Warders and that has been confirmed by the Appellate Authority by order dated 06.03.2017, against which only, the respondents have filed separate writ petitions in W.P.No.21889 of 2017 (by R.Gnanasekaran) and W.P.No.17251 of 2017 (by S.Sivamoorthy).

6. By two separate orders dated 02.11.2021 and 09.12.2021, the Writ Court has allowed both the writ petitions, as against which, these respective appeals have been preferred by the Department.

7. We have heard Mr.R.Kumaravel, learned Additional Government Pleader appearing for the appellants who would submit that, the enquiry was properly conducted based on the charge framed against these delinquents and

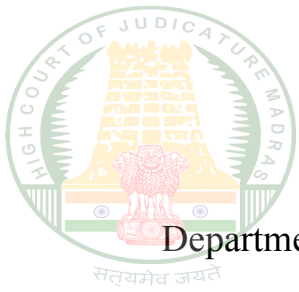


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there has been no quarrel over the manner in which the enquiry was conducted.

There were six witnesses examined on behalf of the prosecution, i.e., Department before the Enquiry Officer. Based on the deposition and the materials placed before the Enquiry Officer, he has come to the conclusion that, the charges framed against the delinquents have been proved.

8. He would also submit that, insofar as the disciplinary proceedings are concerned, as per the theory of preponderance of probability, the Enquiry Officer has come to the conclusion that, there had been contrabands available inside the jail premises on the particular day weighing 18kgs and that if at all could not be infiltrated into jail through main gate, it could have been thrown from the outside as there could be possibility of throwing such items to the jail premises which cannot be ruled out and therefore, the Enquiry Officer has come to such a conclusion, by thus, he had stated that the charges framed against them have been proved. Those report since has been accepted by the Disciplinary Authority and the charges since were serious in nature, that will hit the very high security of the jail premises and these delinquents were working as Warders, they are liable to be inflicted with the maximum punishment and that is why, the punishment of dismissal has been inflicted against them which was confirmed by the Appellate Authority and hence, the said approach made by the



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Department, i.e., Disciplinary Authority cannot be found fault with, he
contended.

9. The learned Judge after having gone through the Enquiry Officer's report has found that, there were six witnesses examined, i.e., P.W.1 to P.W.6 where the learned Judge has found at Paragraph No.8 of the impugned order that, K.Balasubramani-P.W.4 and A.Sakthivel-P.W.5 merely deposed that they have seen the co-delinquents, i.e., Dinesh and Sivamurthy standing at the backside of the gallows room, however none of the witnesses were able to confirm whether they had seen either the petitioners or any one of the two co-delinquents directly or indirectly participating in the alleged smuggling of contrabands into the prison.

10. Based on these factual matrix where there has been no direct evidence to attribute that, these delinquents were responsible for such smuggling of contrabands into the jail premises and none of the witnesses who deposed as the evidence have given statement either before the Enquiry Officer or during the enquiry directly or indirectly confirming the involvement of the petitioners in the alleged smuggling of the contraband items into the prison, the learned Judge has come to the conclusion that the charges framed against them has not been



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proved.

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11. It is the further finding of the learned Judge that it is improbable that the contraband items were thrown in a bundle weighing 18kgs from outside the prison periphery. Considering the fact that the prison is under Constant Surveillance and surrounded by the Central Reserve Police Force and the Tamil Nadu Special Police Force, it is quite possible that the contraband items moved into the prison from outside into the prison in active connivance of some of the other persons manning the prison entrance.

12. It is the further finding of the learned Judge in the impugned order that since the Enquiry Officer has given a finding based on an improbable theory of smuggling of contraband items, i.e., throwing of contrabands from outside prison wall of 18 feet, the conclusion arrived at by the Enquiry Officer which was accepted by the Disciplinary Authority was liable to be quashed, was the finding given by the learned Judge.

13. However, the learned Additional Government Pleader would submit before us that, based on the observation that has been given by the learned Judge, a High Level Enquiry Committee consisting of higher officials have been



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constituted by the Government and the said Enquiry Committee having
thoroughly enquired the matter has given a report dated 14.01.2025 where the

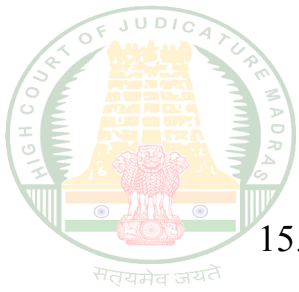
learned Additional Government Pleader has relied upon the following findings:

"சிறையின் பிரதான வாயில் வழியாக தடை செய்யப்பட்ட பொருட்கள் சிறையினுள் கொண்டு செல்ல வாய்ப்பில்லை. ஏனெனில், பிரதான வாயிலில் சிறைப்பணியாளர் / அலுவலர்களின் சோதனை மற்றும் தமிழ்நாடு சிறப்புக்காவல் படையினரால் சோதனை செய்யப்பட்ட பின்னரே பணியாளர்கள் மற்றும் சிறைவாசிகள் கொண்டு செல்லப்படும் பொருட்கள் சிறையினுள் அனுமதிக்கப்படுகிறது. சுமார் 18 கிலோ எடையுள்ள பார்சல், காவல்துறை மற்றும் சிறைத்துறை பணியாளர்களின் சோதனையை மீறி வாசல் வழியாக சிறைக்குள் சென்றிருப்பதற்கு வாய்ப்பு மிகவும் குறைவாகும். சம்பவ தினத்தன்று சம்பவம் நடைபெற்ற நேரத்தில் மேற்படி மூன்று காவலர்களும் சிறைவளாகத்தில்தான் இருந்துள்ளனர். 18 கிலோ எடை கொண்ட அட்டைப்பெட்டியில் சுற்றி வைக்கப்பட்டுள்ள தடை செய்யப்பட்ட பொருட்களை தரையிலிருந்து 18அடி உயரம் கொண்ட வெளிமதிர்கவலை தாண்டி கீழேயிருந்து வீச இயலாது. எனினும், அந்த அட்டை பெட்டியினை தூக்கு மேடை அருகிலுள்ள கட்டிடத்தின் மீதோ அல்லது அருகில் அமைந்துள்ள மரத்தின் மேலேறி சிறையினுள் வீசிட அதிக அளவில் வாய்ப்புள்ளது. ஏனெனில், இக்கட்டிடம் வெளி மதிர்கவரினை



ஒட்டியே அமைந்துள்ளதுடன், இக்கட்டிடத்தின் மீதேறினால் மிகவும் எளிதாக எந்த எடை கொண்ட பொருளையும் வெளி மதிர்கவரை தாண்டி சிறைக்குள்ளே வீச இயலும். இக்கட்டிடத்தின் அமைப்பும் மிகவும் எளிதாக மேலே ஏறும் வண்ணமே அமைந்துள்ளது. தூக்கு மேடை மற்றும் பிரதான மதிர்கவரை ஒட்டி அமைந்துள்ள பழைய கட்டிடம் மற்றும் அதை ஒட்டி அமைந்துள்ள மரம் ஆகியவற்றைக் காட்டும் புகைப்படம் ஒன்று இத்துடன் இணைக்கப்பட்டுள்ளது. இக்கட்டிடம் மற்றும் மரம் ஆகியன சிறையினுள் தடை செய்யப்பட்ட பொருட்கள் அடங்கிய பெட்டி வீசப்பட்ட இடத்திற்கு நேர் எதிராக பிரதான மதிர்கவரை ஒட்டி வெளிப்புறம் அமைந்துள்ளது."

14. It was contended by the learned Additional Government Pleader that, it could have been possible for some third party to climb over the building which is very adjacent to the wall of the jail from where these kind of contraband materials even to the extent of weighing 18kgs could have been thrown into the jail premises. When that being so, the probability that has been the basis for coming to such a conclusion by the Enquiry Officer in his report which was accepted by the Disciplinary Authority was quite possible and to be accepted by this Court also.



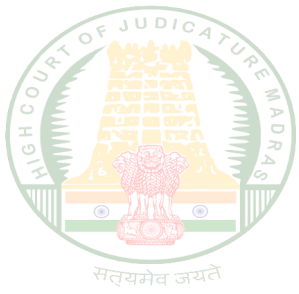
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15. This of the submission made by the learned Additional Government Pleader cannot be accepted by this Court for the simple reason that, such a probability stated by the High Level Enquiry Committee would go to the route of the matter, that is in the context of the security of the jail premises.

16. If any third party who can easily throw these kind of objects or materials from outside the jail premises, then even any dangerous weapons including the bombs could have been thrown or hurled from outside the jail premises. That kind of security lapses certainly could not have been made possible in a high security jail premises.

17. Be that as it may, in any disciplinary proceedings even though the theory of preponderance of probabilities can be adopted as an yardstick, these kind of preponderances without any basis normally would not be accepted for coming to any such conclusion by the Enquiry Officer.

18. Even though six witnesses have been examined on behalf of the prosecution side, it seems that, none of them have deposed directly to state that the involvement of these delinquents have been seen by any of these witnesses.



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19. Even an alternative probability also could be easily drawn and that could also be possible, because such kind of heavy weight contrabands to the extent of 18kgs would have been taken into the jail premises through the main gate itself as lot of food materials would normally be taken inside the jail premises. When that being so, if these kind of unwanted materials, here it is contraband, whether could have been taken as a bundle like any other food materials like vegetables, pulses, rice or any other items, that kind of lapses also could have been enquired by the High Power Enquiry Committee, but that Committee has been driven only on a particular direction on the basis of the Enquiry Officer's report alone. An alternative probability has not been thought of by the Enquiry Committee and therefore, the report dated 14.01.2025 relied upon by the learned Additional Government Pleader would not advance the case of the appellants.

20. Further it is brought to our notice by the learned counsel appearing for the respondents / writ petitioners as well as the learned Additional Government Pleader appearing for the appellants that the order impugned passed by the writ Court has been complied with by issuance of order dated 22.09.2023 where subject to the final disposal of the enquiry, i.e., through the Special Enquiry



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Committee, these delinquents have been reinstated into service and they have been working now.

21. Therefore, the only issue is the veracity of the report of the enquiry which has now been made on 14.01.2025 which we have gone through and we do not find anything in support of the appellants in the said report except the one that we have quoted herein above whereby also the High Power Enquiry Committee has taken the same route that has been taken by the Enquiry Officer based on only probabilities, based on which alone it cannot be concluded that these respondents employees / delinquents have involved in such an episode of smuggling the contrabands into the jail premises.

22. Therefore even on preponderance of probabilities it cannot be stated that, the charges framed against these delinquents have been proved as that has been the main finding given by the learned Judge based on the deposition of P.W.1 to P.W.6 which were examined by the learned Judge and has given his findings in the impugned order.

23. Such of those findings given by the learned Judge in the impugned order is to be accepted and hence, we do not find any reasons to interfere with the order impugned. Resultantly, both these Writ Appeals fail and are deserved



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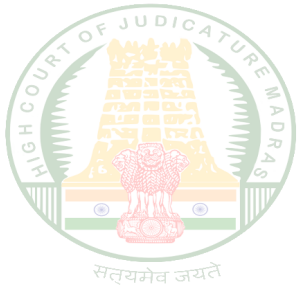
to be dismissed and accordingly, are dismissed. However, there shall be no

order as to costs. Consequently, connected miscellaneous petitions are closed.

(R.S.K., J.) (A.D.M.C., J.)
17.03.2025

NCC : Yes / No
Index : Yes / No
Speaking Order : Yes / No

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