

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.07.2015

CORAM:

THE HON'BLE MR.JUSTICE SATISH K. AGNIHOTRI
AND
THE HON'BLE MR.JUSTICE M.VENUGOPAL

W.A.No.979 of 2015

P.Samuel Raj

... Appellant/Petitioner

Vs.

1. The State of Tamilnadu
Rep. By the Superintendent
of Central Prison, Vellore

2. The Deputy Inspector General of Prisons,
Vellore - Chennai Range,
No.807, Annasalai, Chennai ... Respondents/Respondents

Prayer: Writ Appeal filed under Clause 15 of the Letter Patent Appeal against the Order of this Court dated 23.03.2015 made in W.P. No. 6877 of 2007 filed under Article 226 of the Constitution of India seeking issuance of a Writ of Certiorari to call for and to set aside the impugned order of the 1st Respondent in proceedings No.5796/po 1/97 dated 29.03.2001 and the impugned order of the 2nd Respondent in proceedings No.3623/mu va/2001 dated 26.06.2002.

For Appellant : Mr.R.Syed Mustafa

For Respondents : Mr.P.S.Sivashanmugasundaram
Special Government Pleader

JUDGMENT

[Judgment of the Court was Delivered By M.VENUGOPAL, J.]

The Appellant / Petitioner has focused the instant Writ Appeal as against the Order dated 23.03.2015 in W.P.No.6877 of 2007 passed by the Learned Single Judge in dismissing the Writ Petition.

2.According to the Learned Counsel for the Appellant/Petitioner, the Learned Single Judge had committed an error in holding that the Appellant was not in a possession of the

contraband articles. The Learned Counsel for the Appellant urges before this Court that the standard of proof required before the Criminal Court is something different from the Domestic Enquiry. In fact when the witness and material evidences are one and the same, viz., in Criminal Trial and in Domestic Enquiry, then, result of one process would prevail over the other.

3.The stand taken on behalf of the Appellant is that the enquiry Officer had erroneously come to the conclusion that the charges were proved. The Learned counsel for the Appellant contends that the Learned Single Judge had failed to take into consideration that when the First Charge was that the Appellant was caught with 20 gms of Ganja while entering the prison campus, the packets of Ganja should have been produced before the enquiry and marked as material objects. However, this was not produced and identified by proper witness as to whether it was actually recovered from him or not. As such, on the simple ground alone the Impugned Orders of the Learned Single Judge are liable to be set aside.

4.The Learned Counsel for the Appellant takes a plea that the 'Udams Tobacco' was not produced in the enquiry and marked as a material object and as such, the finding of the Enquiry Officer is erroneous and perverse one because of the reason that there was no evidence on record to establish the charges.

5.The Learned Counsel for the Appellant submits that the Enquiry Officer had acted both as a Judge and as a Prosecutor and when the Appellant had clearly stated that he was not examined himself as a Witness, then, the 'Enquiry Officer' had cross-examined him on 26.12.2000 and therefore, there is violation of the principles of Natural Justice.

6.The Learned Counsel for the Appellant submits that the Charge Memo was framed only after lapse of two and a half years from the date of incident in so far as the Appellant was concerned and when there is an unexplained delay, in this regard, charge memo is liable to be quashed in law.

7. The other stand of the Appellant is that the Learned Single Judge should have been taken into account the difference between a offence under Indian Penal Code and other offences mentioned in Narcotic Drugs and Psychotropic Substance Act, 1985.

8.The Learned Counsel for the Appellant projects an argument that the discrepancy relating to number of Ganja packets was not taken into account by the Learned Single Judge at the time of passing the Impugned Order in the Writ Petition.

9.Lastly, it is represented on behalf of the Appellant that the charges levelled against him are more of Criminal Charges and that the common records and material evidence were that the Criminal Court and that those records were not placed before the departmental enquiry. That apart, the date of Criminal Court acquitting the Appellant was on 20.02.2003 in C.C.No.157 of 1998. But the Disciplinary Authority and the Appellate Authority of the Respondent/Department completed the enquiry on 29.03.2001 and 26.06.2002, which was obviously much earlier to the Trial Court Judgment, that too without material records.

10.It is not in dispute that when the Appellant was serving as Warden at Central Prison at Vellore on 20.09.1999, he was issued with a Charge Memo in terms of Rule 17(b) of Tamil Nadu Civil Services (Discipline and Appeal) Rules. Also, he was required to offer his explanation relating to two charges. The First Charge was that he was in possession of 20 gms of Ganja and tried to smuggle into Vellore Central Jail when he came to duty, on the night of 04.06.1997 at about 19.10 hrs. The Second Charge was that he was under the influence of liquor while entering into the prison campus. He was suspended and also a Criminal Case in C.C.No.157 of 1998 was filed against him.

11.It comes to be known that although the Appellant came out with a request to stay Departmental Proceedings till the disposal of the Criminal Case based on the premises that the charges before the Criminal Court and in the Departmental Proceedings were one and the same, especially arising out of similar facts. But the Departmental Enquiry Proceedings were continued against him since his request for staying the Departmental Proceedings was not acceded to by the Authorities Concerned.

12.In the Departmental Enquiry held against the Appellant, a Report was furnished on 26.12.2000 to the effect that the Charges levelled against him were proved. Ultimately, a dismissal order was passed on 29.03.2001 by the Superintendent of Vellore, Central Jail in respect of the Appellant.

13.In the instant case, it transpires that the Appellant in the Domestic enquiry had not cross-examined P.W.2 and P.W.3, but, claimed that Witness had deposed against him wantonly. Further, he had not produced any document and also not established the fact that the Witness in the Departmental Enquiry had deposed against him deliberately/wantonly. In this connection, it is relevant for this Court to pertinently point out that the enquiry officer had clearly in his Report dated 30.12.2000 had clearly mentioned that P.W.1 had stated that he recovered four packets of Ganja from the

inner garment underwear of the Appellant. In fact, P.W.1 was not cross-examined and that the Appellant had stated that he had nothing to cross-examine. In sum and substance, the Appellant had not cross-examined P.Ws.1 to 3 during the course of Domestic Enquiry proceedings. In reality, the Appellant was charged for violation of Jail Manual 2 Rule 298(c) 126 and 127 and also under Section 20(1) of the Tamilnadu Government Servant's Conduct Rules.

14.The Appellant preferred an Appeal before the 1st Respondent / DIG of Prisons, Vellore and Chennai Range on 14.05.2001, being aggrieved against the dismissal Order dated 29.03.2001 passed by the Superintendent of Central Jail, vellore. The Appellate Authority had confirmed the punishment of dismissal imposed on the Appellant through its order dated 26.06.2002. As a matter of fact, the Appellate Authority had opined that the Appellant had forgotten that he was a Government Employee wearing uniform and with a view to supply had endeavored to smuggle Ganja which was a serious offence and concurred with a view taken by the Superintendent of Central Prison in awarding punishment to the Appellant and dismissed the Appeal.

15.In the present case, the Appellant cannot take umbrage in regard to his acquittal in C.C.No.157 of 1998 on the file of the Special Court (EC Act), Salem pertaining to the Charges under Section 8(c) read with 20(b) (ii) (A) of Narcotic and Drugs Act, 1985 and under Section 4(1)(j) of Tamilnadu Prohibition Act, because of the simple reason that the Charges were not established by the prosecution beyond any reasonable doubt and as such, 'Benefit of Doubt' was given in his favour. Accordingly, he was found not guilty in respect of the charges levelled against him and was acquitted at the conclusion of the Trial.

16. More importantly 'an Acquittal' of a person in a Criminal Trial cannot be a basis for dislodging the punishment imposed in Disciplinary Proceedings. It is to be remembered that in a Domestic Enquiry 'Preponderance of Probability' is the governing factor. However, in a Criminal Case, the charges levelled against an accused will have to be proved by the prosecution beyond all shadow of doubt, in the considered opinion of this Court.

17. At this stage, it is to be relevantly pointed out that the Hon'ble Supreme Court in C.D.Fernandaz V. Union of India reported in (1988) (57) FLR at Page 234 has held that "the discharge or acquittal in a criminal case has got no bearing in 'Disciplinary Proceedings'".

18.Also that, it is to be noted that even the Order /Judgment of acquittal in a criminal case cannot conclude the Departmental

Proceedings. In Disciplinary Proceedings the 'purity and efficiency in public life' are kept in mind. However, the Criminal Law aims at prevention of crime by inflicting punishment. No doubt, the fear of punishment keeps the people under control.

19. Apart from the above, it is to be borne in mind that there is no constitutional, statutory or legal bar on the basis of which it can be said that departmental enquiry is bad in view of the order of acquittal by a competent Criminal Court.

20. In view of the qualitative and quantitative discussions as mentioned supra and also this Court on going through the Impugned Order dated 23.03.2015 passed by the Learned Single Judge in W.P.No.6877 of 2007, this Court is of the considered opinion that the said order is free from any flaw, material irregularities and illegalities in the Eye of Law. As such, we are in agreement with the view taken by the Learned Single Judge in dismissing the Writ Petition filed by the Appellant. Consequently, the Writ Appeal fails.

In the result, the Writ Appeal is dismissed leaving the parties to bear their own costs. Resultantly, the Order passed by the Learned Single Judge dated 23.03.2015 in W.P.No.6877 of 2007 is affirmed by this Court for the reasons assigned in this Writ Appeal.

Sd/-
Assistant Registrar(CS III)

//True Copy//

ssd

Sub Assistant Registrar

To

1. The Superintendent of Central Prison,
State of Tamilnadu, Vellore
2. The Deputy Inspector General of Prisons,
Vellore - Chennai Range,
No.807, Annasalai, Chennai

+1cc to Mr.R.Syed Mustafa, Advocate, S.R.No.37660
+1cc to the Government Pleader, S.R.No.37623

W.A.No.979 of 2015

EV(CO)
CA(11/08/2015)