

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:06.01.2015

CORAM

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN

W.P.No.4554 of 2014
and
M.P.Nos.1 to 3 of 2014

I.Kader Batcha

... petitioner

Versus

- 1.The Principal Secretary to Government,
Home (Pol.2) Department,
Secretariat, Fort St. George,
Chennai - 600 009.
- 2.The Director General of Police,
Chennai - 600 004.
- 3.The Additional Director General of Police,
Civil Supplies CID,
Nandanam, Chennai - 35.
i/c Inspector General of Police,
Chennai - 35.

... Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India praying to issue a writ of Certiorari, calling for the records of the Charge Memo in P.R.No.02/2004 dated 17.12.2013 pending on the file of the 3rd respondent and quash the same.

For petitioner : Mr.R.Singaravelan

For Respondents : Mr.P.H.Aravind Pandian,
Additional Advocate General,
Assit by Mrs.P.Kavitha,
Government Advocate.

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O R D E R

An Inspector of Police has approached this Court challenging the charge memo in P.R.No.2 of 2014 dated 17.12.2013 issued in respect of an act said to have been committed by the petitioner on 07.04.2002. The petitioner, who was working as Inspector of Police conducted a raid in one Shamsudhin's shop on

07.04.2002 between 1.00 and 1.30 hrs at Nos.25, 26 Rajaji Jaya Nagar, Pillai Thaner Pandhal, Pudhukottai and 11 barrels of adulterated kerosene were said to have been seized from the shop. The seizure mahazar was prepared at the time of seizure itself. However, he had shown that he seized only two barrels instead of 11 barrels by suppressing the seizure of nine barrels in that mahazar. He also said to have demanded Rs.15,000/- from the black marketer for not registering a grave case for returning the kerosene barrels. In this regard, a criminal case was registered against the petitioner in Special Case No.46 of 2011 before the Chief Judicial Magistrate, Tiruchirappalli. Departmental proceedings were initiated in PR.No.2 of 2004 by issuance of charge memo dated 05.05.2004. The said charge memo was challenged by the petitioner by filing of Writ Petition No.29642 of 2004 and interim stay was obtained on 14.10.2004. Thereafter, the criminal case proceeded and the petitioner was acquitted on 17.04.2013 by the Special Judge for PC Act cases of Trichy in Special Case No.46 of 2011. Subsequently, the petitioner withdrew writ petition No.29642 of 2004 on 26.06.2013. While the writ petition was withdrawn on 26.06.2013, this Court directed the Disciplinary Authorities to expedite the enquiry and dispose of the proceedings within three months from the date of receipt of a copy of the order.

2. However, the third respondent issued a fresh charge memo on 17.12.2013 for the incident which is said to have occurred on 07.04.2002. The said charge memo is challenged before this Court.

3. Mr.R.Singaravelan, learned counsel appearing for the petitioner would make the following submissions:

i) There is no power to withdraw the earlier charge memo in P.R.No.2 of 2004 dated 05.05.2004 and issue a fresh charge memo on 17.12.2013.

ii) New charge memo has been issued only to over come the direction by this Court in W.P.No.29642 of 2004 dated 26.06.2013 and also the dictum laid down by the Division Bench of this Court in State of Tamil Nadu, Rep. by its Secretary to Government and another Vs. T.Ranganathan reported in 2010-2-L.W. 867.

iii) The charge memo has been issued with mala fide intention to over come limitation as there was heavy delay.

iv) More serious charges viz., corruption case was filed before the criminal Court and after trial, the Criminal Court acquitted the petitioner on the very same set of evidence and

therefore, the impugned charge memo on the very same set of allegations is not sustainable.

v) The second charge memo does not even speak about the judgment rendered by the Criminal Court and the allegations made, the documents referred and the witnesses named were repeated in the second charge memo as that of the earlier charge memo and it has been given without application of mind.

vi) The juniors were promoted in July 2009 superseding the petitioner even though the petitioner is eligible for promotion as he has got number of medals and certificates to his credit. Therefore, he seeks for setting aside the charge memo dated 17.12.2013.

4. Mr.P.H.Aravind Pandian, learned Additional Advocate General, on the other hand, would make the following submissions:

i) The charge memo issued on 17.12.2013 is not new one and it is only the old one dated 05.05.2004 as the officer who issued the earlier one lacks the competence to issue notice.

ii) There is no delay as the petitioner obtained stay of the charge memo in W.P.No.29642 of 2004 from 14.10.2004 to 27.06.2013.

iii) As soon as the writ petition was withdrawn on 26.06.2013, immediately, after rectifying the mistake the competent officer issued the charge memo on 17.12.2013.

iv) Merely because, the criminal Court acquitted the petitioner, it does not mean that the proceedings should be dropped as per the judgment of the Division Bench of this Court in The Director of Medical and Rural Health services Vs. K.Ragothaman reported in 2014 (5) CTC 90.

v) There were 11 more officers, who were already proceeded for the same offence along with the petitioner and they were inflicted with the punishment of stoppage of increment for one year without cumulative effect. In view of the same also the petitioner, has to go through the departmental proceedings.

Making the above all submissions, the learned Additional Advocate General would support the impugned charge memo.

5. Heard the parties and perused the records.

6. The petitioner was issued charge memo on 05.05.2004 and the allegations against the petitioner are extracted as follows:

"Charge-1: Tr.I.Kader Batcha, Inspector of Police while working at Civil Supplies CID, Trichy Unit searched the shop of Thiru M.Samsuddin, S/o.Mohammed Gani at No.25, 26 Rajavijaya Nagar, Pillairthanneer Pandal on the night of 06.01.2002/7.4.2002 between 01.00 and 01.30 hours and seized 11 kerosene barrels but has shown only two barrels of kerosene in the FIR in Trichy CS CID Cr.No.109/2002 registered on 07.04.2002 minimizing the case and prepared the mahazar as such.

Charge-2: Thiru I.Kader Batcha when he was working as Inspector of Police, Civil Supplies CID, Trichy Unit committed gross neglect of dereliction of duty for failure to maintain the General Diary in the Station as mentioned above and failed to enter the seizure of the properties in the relevant records and kept the same in the station without taking any steps."

Similarly the charges made against the petitioner by the impugned charge memo dated 17.12.2013 reads as follows:

"Charge-1: You, Thiru I.Khadar Batch, Chennai City while serving as Inspector of Police, CSCID, Trichy Unit had committed grave misconduct and gross dereliction of duty while registering a case in Trichy SCSID Unit, Cr.No.109/2002 on 07.04.2002 by minimizing the quantity of kerosene seized as 2 barrels instead of 11 barrels and by preparing a false and incomplete mahazar in connection with search conducted at No.25,26 Rajavijaya Nagar, Pillai Thanner Pandal, a shop owned by Tr.M.Samsuddin S/o.Mohammed Gani on the night of 6/7.04.2002 between 01.00 and 01.30 Hrs.

Charge-2: You, Thiru I.Khadar Batch, Chennai City while serving as Inspector of Police, CSCID, Trichy Unit had committed gross neglect of duty by failing to write the General Diary in Trichy CSCID Unit from 17.00 hrs. on 06.04.2002 till 09.04.2002 and not writing note book as on 09.04.2002."

A comparative perusal of both the charge memos in effect are one and the same with regard to the same incident. Similarly, the list of documents to be relied upon given along with both the charge memos are one and the same. The witnesses shown in annexure-1 in both the charge memos are one and the same.

7. It is not understandable as to how when a charge memo was already issued and after withdrawal of the writ petition challenging the said charge memo and when there is no bar for the authorities to proceed with the enquiry under the same charge memo could issue a fresh charge memo dated 17.12.2013 stating that as it is only a modification. Assuming for a moment that there is a modification of the earlier charge memo, as contended by the learned Additional Advocate General, there is nothing shown from the impugned charge memo to show that it has been amended only to remove the irregularity with regard to the competence.

8. In this regard, the learned counsel for the petitioner's contention that the impugned charge memo has been issued only to over come the direction given by this Court to conclude the enquiry within three months in W.P.No.29642 of 2004 dated 26.06.2013 cannot be ignored. Once a direction has been given by this Court especially when the petitioner withdrew the writ petition, nothing prevented the respondents to proceed with the matter. No such exercise has been shown by the respondents; On the contrary a fresh notice has been issued by a different officer. Without withdrawing the earlier one or without showing any proof regarding modification, the impugned charge memo dated 17.12.2013 cannot be issued and the same is not sustainable, as it has been issued without deletion or addition or modification.

9. Though the learned Additional Advocate General tried to employ a communication dated 20.01.2005 written by the Additional Superintendent of Police, Civil Supplies CID, Madurai pointing out the incompetent of the officer, who issued the earlier charge memo, what has been insisted therein is to issue a fresh charge memo. The relevant paragraph No.3 of the said communication is extracted as follows:

"3. The charge memo against the Inspector of Police has to be signed by the appointing authority as per the existing orders, whereas only the Dy. Supt. Of Police, CSCID Villupuram has signed the charge memo, which is technically not correct. Further, the statements of witnesses, recorded by the I.O of the V X A.C. During the course of his investigation have to be cited as prosecution documents. But these statements do not

find a place in the list of documents in Annexure III of the charge memo. The statements of charges in Annexure-I also requires modification. Hence the charge memo have to be prepared afresh fulfilling the aforesaid mandatory provisions and sent for the signature of the Inspector General of Police, CSCID, in the absence of the post of D.I.G., in CSCID."

From the above, it is clear that what has been recommended is to modify the charges and also to issue a fresh charge memo. As per the said communication, no such efforts have been made and as pointed out earlier, repetition of earlier charges has been made without even making any modification in the list of documents and in the list of witnesses. Therefore, the question of alteration of the charge memo does not help.

10. Assuming for a moment that in the absence of any proof regarding the modification of the original charge memo it should be deemed that it is a fresh charge memo. If a fresh charge memo is issued on 17.12.2013 with regard to the incident occurred on 07.04.2002, it is not sustainable on the ground of delay, as it has been issued after lapse of 12 years.

11. The contention of Mr.R.Singaravelan, with regard to the issuance of the impugned charge memo without even application of mind has to be sustained, since the fresh charge memo contains the very same allegations, list of witnesses and list of documents. In 2004 charge memo second document was shown as FIR in Trichy CS CID Crime No.109 of 2002 was included. Even in the subsequent charge memo dated 17.12.2013, the very same FIR has been shown as second document. As on 17.12.2013, there is no document as FIR as investigation was completed and charge sheet was filed and the matter went on trial and the petitioner was acquitted on 17.04.2013. That apart, the order of acquittal was not shown in the list of documents. The aforesaid facts would only go to show that the second charge memo dated 17.04.2013 has been issued mechanically without applying mind. On that ground also the impugned charge memo has to go.

12. The petitioner was charged with offences under Sections 7,13(2) r/w Section 13(1)(d) of Prevention of Corruption Act 1988. After full trial, the Criminal Court acquitted the petitioner and other two accused under Section 248(1) Cr.P.C on 17.04.2013. Paragraph No.16 of the Criminal Court judgment reads as follows:

"Culminating the above, P.W.3 has not supported the prosecution case with regard to the initial demand said to have been made on 07.04.2002

and the subsequent reiteration said to have been made on 09.04.2002 and from that the foundation of the prosecution case itself is shaken and the discussion indicated above would raises suspicious about the accompanying of the P.W.4 as per the instructions of his superior and the further discussion above regarding the variation of the evidence of the P.W.4 with regard to his signature in Ex.P6, Ex.P7 and also the recovery are varied from the prosecution case and hence it raises about his presence and accompany during the trap proceedings and hence, this Court have no other option except to give the benefit of doubt to the accused. Accordingly, the benefit of doubt is given to the accused."

From the above it is very clear more serious offence was alleged against the petitioner and it should be the trial and came out successfully getting acquittal where as the charges made in the impugned memo is not that much serious. Moreover, the offences alleged in the criminal case reads as follows:

"That on 07.04.2002 at about 13.00 hrs at the CSCID Office, Trichy, the 1st accused being the Inspector of Police, C.S.C.I.D., Trichy demanded illegal gratification of Rs.15,000/- from the defacto complainant Samsudhin as motive or reward for not registering a grave case and for returning all the 11 kerosene barrels seized, the 2nd accused also being Gr.1 PC in the same Station demanded for A1 and threatened that a case would be registered if he had not paid as demanded by 1st accused and in pursuance to that on 09.04.2002 at about 21.15 hrs at the police quarters of the 1st accused, the 1st accused reiterated the demand of Rs.15,000/- from the complainant Samsudhin and directed him to go and give the money either to the 2nd accused or to any other person as directed by the 2nd accused and at 22.50 hrs at CSCID Office, 2nd accused reiterated the demand and instructed the complainant to hand over the money to the 3rd accused a private person and the 3rd accused accepted the illegal gratification of Rs.15,000/- for A1 and thereby A1 and A2 are liable to be punished U/s.7, 13(2) r/w 13(1)(d) of Prevention of Corruption Act 1988 r/w 34 of IPC and A3 is liable to be punished U/s.12 of Prevention of Corruption Act, 1988."

The aforesaid offence is compared with the charges made against the petitioner as per the impugned charge memo and it is almost one and the same regarding the same incident for the same set of facts based on the same documents and witnesses. The Criminal Court already acquitted the petitioner, the further proceedings of the departmental proceedings for the very same set of facts and documents is only a futile exercise as held by the Honourable Apex Court in Karnataka SRTC Vs. M.G.Vittal Rao reported in 2012 (1) SCC 442.

13. It is true that the Division Bench of this Court in The Director of Medical and Rural Health services Vs. K.Ragothaman reported in 2014 (5) CTC 90 held that there cannot be any bar for the departmental proceedings, even after the acquittal of criminal cases. In that case, the said officer admitted his delinquency and a sum of Rs.18,361/- embezzled by him had been adjusted from the subsistence allowance payable to him. Where as the facts in this case are different. Here there is no admission of charges. As already observed that on the same facts, the same documents and witnesses are sought to be employed in both the criminal case as well as in the departmental proceedings. In those circumstances, if the criminal case acquitted the petitioner, the departmental proceedings is not sustainable. For the above reasons, the ordeal of going through enquiry is unnecessary.

14. There was stay of the operation of the earlier charge memo by this Court on 14.10.2004 till 26.06.2013 and therefore, the respondent cannot proceed with the enquiry. However, a perusal of the order dated 26.06.2013 passed by this Court would make it very clear that a direction was given to conclude the enquiry within three months. The order was passed on 26.06.2013 itself, whereas no effort was taken by the respondent to conclude the enquiry within three months. Hence, as per the Division Bench judgment in the State of Tamil Nadu Vs. T.Ranganathan reported in 2010-2-L.W. 867, the charge memo is liable to be quashed. Instead of proceeding with the matter, an attempt has been made to issue a fresh memo, without even taking note of acquittal of the petitioner in the criminal case on the same set of facts and evidences and ignoring the action taken against co-delinquents in 2006.

15. It is contended by the learned Additional Advocate General that along with the petitioner, 11 others were charged by the Department and they were proceeded under Rule 3(a) and stoppage of increment for one year without cumulative effect was made and therefore, the petitioner has to undergo the same enquiry. On the other hand, the learned counsel appearing for the petitioner would contend that for the very same delinquency, the petitioner was sought to be proceeded under Rule 3(b) meant for major punishment and therefore, there is a discrimination as far

as the petitioner is concerned. For the very same act, the department cannot choose different rule for others and the petitioner cannot be subjected to harsher punishment under different rule. The Honourable Apex Court in Rajendra Yadav Vs. State of Madhya Pradesh reported in 2013(3) SCC 73, categorically held that the parties among co-delinquents needs to be maintained while imposing the punishment. On that score also, the impugned order has to be suffer.

16. There is inordinate delay of 12 years in issuing the impugned charge memo and the same is to be quashed. In this regard, this Court gets the supports of the judgment of the Apex Court in State of A.P Vs. N.Radhakrishnan reported in (1998) 4 SCC 154 and P.V.Mahadev Vs. T.N.Housing Board reported in 2005(6) SCC 636.

17. Though the learned Additional Advocate General would point out from the records dated 02.09.2014 received by the department on 08.09.2014, that he himself has submitted for the enquiry and he sought for conclusion of enquiry at the earliest. However, it is a fact that the petitioner has already filed a writ petition as early as on 11.02.2014 and the same is pending and he has not given up his right to contest the writ petition and therefore, the said letter cannot be said to have taken away the petitioner's right.

18. For the reasons stated above, the impugned order is not sustainable and therefore, this writ petition is allowed and the impugned charge memo is quashed. No costs. Consequently, connected miscellaneous petitions are closed.

19. In view of the order passed by this Court, the respondents are directed to promote the petitioner, if he is otherwise eligible, within four (4) weeks from the date of receipt of the copy of the order. It goes without saying that the said promotion should be given to the petitioner from the date of promotion of his juniors as on 29.06.2009.

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Asst.Registrar (CO)

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Sub Asst. Registrar

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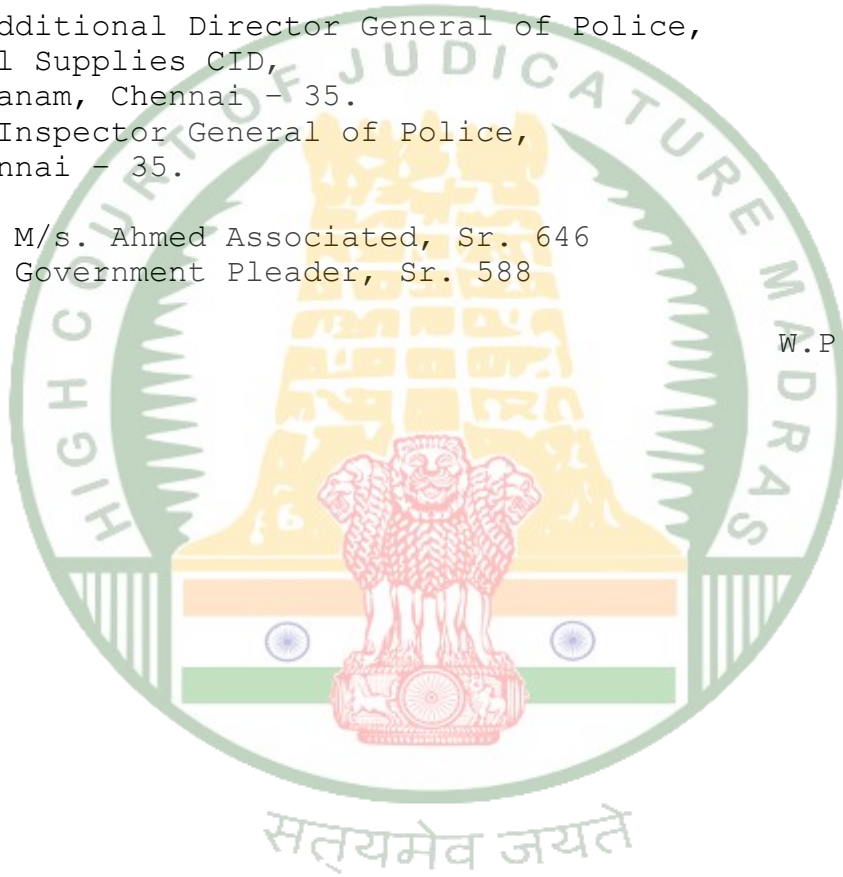
To

- 1.The Principal Secretary to Government,
Home (Pol.2) Department,
Secretariat, Fort St. George,
Chennai - 600 009.
- 2.The Director General of Police,
Chennai - 600 004.
- 3.The Additional Director General of Police,
Civil Supplies CID,
Nandanam, Chennai - 35.
i/c Inspector General of Police,
Chennai - 35.

1 cc to M/s. Ahmed Associated, Sr. 646
1 cc to Government Pleader, Sr. 588

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