

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.08.2015

CORAM

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN

W.P.No.26085 of 2015
and
M.P.Nos.1 and 2 of 2015

M.Sridhar .. Petitioner

Vs

- 1.The Principal Secretary to Government,
Commercial Taxes and Registration Department,
Fort St.George, Chennai-600 009.
- 2.The Inspector General of Registration,
Santhome High Road,
Santhome, Chennai-600 028. .. Respondents

Petition filed under Article 226 of The Constitution of India, praying for the issuance of a Writ of certiorari to call for the records comprised in letter (D) No.417 dated 10.11.2014 on the file of the first respondent and the consequential impugned charge memo as made in memo number 36287/V2/2009 dated 29.04.2015, on the file of the second respondent and to quash the same.

For Petitioner .. Mr.R.Karthikeyan

For Respondents .. Mr.V.Subbiah,
Spl. Govt. Pleader

ORDER

By consent, the writ petition itself is taken up for final disposal.

2.The petitioner, while working as Sub Registrar Grade I, was arrested by the Vigilance and Anti-corruption Detachment at Chennai, alleging that the second accused has accepted the illegal gratification of Rs.15,000/- on behalf of the first accused viz., the petitioner herein. The case in Crime No.10/AC/2009/CC-III registered by the DVAC, Chennai, after investigation, has culminated in charge sheet, which was taken on file in Spl. C.C. No.19 of 2010 on the file of Special Court for Trial of Cases under Prevention of Corruption

Act/Chief Judicial Magistrate, Chengalpet. The Trial Court, after full fledged trial, has acquitted the petitioner herein/A1 along with A2 for want of sufficient evidence and also on the ground that the DVAC Manual has not been followed properly vide judgment dated 02.04.2015. The petitioner would submit that thereafter, the DVAC, Chennai, has written a letter to the first respondent, recommending for initiation of departmental action and accordingly, the first respondent has directed the second respondent, vide letter dated 10.11.2014, to take departmental action and challenging the legality of the same, the petitioner came forward to file this writ petition.

3.Learned counsel for the petitioner has drawn the attention of this Court to the order of acquittal recorded by the Trial Court and would submit that admittedly, it is an honourable acquittal for the reason that the Trial Court has recorded a finding that no sufficient proper evidence has been let in by the prosecution to prove the charges framed against the petitioner and DVAC also did not prefer any appeal against acquittal and has written a letter to the first respondent, suggesting for departmental action. The first respondent, in turn, has requested the second respondent to initiate departmental action and the second respondent, being the disciplinary authority, is expected to apply its mind independently and properly as to whether any case has been made out to proceed against the petitioner departmentally and since the second respondent has not done so, the learned counsel prays for appropriate orders.

4.Per contra, Mr.V.Subbiah, learned Special Government Pleader would submit that de hors acquittal, it is always open to the Department to initiate departmental action against the petitioner and after due and proper application of mind only, the first respondent has suggested the second respondent to initiate departmental action and hence prays for dismissal of the writ petition.

5.This Court has carefully considered the rival submissions and also perused the materials placed before it. A perusal of the order of acquittal dated 02.04.2015 in Spl.C.C.No.19 of 2010 passed by the Special Court for Trial of Cases under Prevention of Corruption Act/Chief Judicial Magistrate, Chengalpet would disclose that the Trial Court has acquitted the petitioner, who was arrayed as Accused No.1 for want of proper and sufficient evidence and that the mandatory provisions of DVAC Manual have not been followed. Admittedly, the prosecuting agency did not prefer any appeal against acquittal but merely suggested the first respondent for initiation of disciplinary action and the first respondent, in turn directed the second respondent to initiate disciplinary action. The second respondent, being the disciplinary authority, is also expected to apply its mind independently as to whether any case has been made out for initiation of disciplinary action. It is also pertinent to point out at this juncture that the criminal prosecution as well as the disciplinary action are based upon same set of charges and since the order of acquittal came to be passed honourably, it is expected that

the second respondent has to apply its mind independently de hors the recommendation made by the prosecuting agency as well as the first respondent. Hence, on the sole ground, the impugned orders, warrant interference.

6.In the result, the writ petition is partly allowed. The impugned orders dated 10.11.2014 and 29.04.2015 are set aside and the matter is once again remanded to the second respondent, who shall apply its mind independently to the order of acquittal passed by the Trial Court and thereafter, proceed further strictly in accordance with law. The second respondent is directed to complete the said exercise within a period of eight weeks from the date of receipt of a copy of this order and communicate the decision taken, to the petitioner. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

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To

- 1.The Principal Secretary to Government,
Commercial Taxes and Registration Department,
Fort St.George, Chennai-600 009.
- 2.The Inspector General of Registration,
Santhome High Road,
Santhome, Chennai-600 028.

+1 cc to Mr.R.Karthikeyan, Advocate, sr.44528
+1 cc to Govt.Pleader, sr.44680

W.P.No.26085 of 2015

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