

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.11.2018

CORAM

THE HONOURABLE MR. JUSTICE D.KRISHNAKUMAR

W.P.No.3643 of 2011

N. Jayakumar

...Petitioner

-Vs-

1.The Superintendent of Police,
Nagapattinam District

2. The Deputy Inspector General of Police,
Thanjavur Range,
Thanjavur.

...Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari calling for the records of the respondents in connection with the impugned orders passed by the 1st respondent in PR No.13/2008 dated 14.08.2008 and the 2nd respondent in C. No.B2/19582/2008 dated 04.05.2009 and quash the same.

For Petitioner : Mr. K. Venkataramani S.C.
for M.Muthappan

For Respondents
1 & 2 : Mr.A. Zakir Hussain
Govt. Advocate

O R D E R

The writ petition has been filed to direct the respondents for issuance of Writ of Certiorari calling for the records of the first respondent passed in PR No.13/2008 dated 14.08.2008 and the second respondent passed in C. No.B2/19582/2008 dated 04.05.2009.

2. According to the petitioner, while the petitioner was serving as Grade-I PC in the District Armed Reserve, Nagapattinam, his wife Jayasudha due to misunderstanding with her husband attempted to commit suicide by pouring kerosene over her body and subsequently, she was admitted for treatment in the Government Hospital, Thanjavur. A Criminal case has been registered against the petitioner in Crime No.54 of 2007 on the

file of the Manalmedu Police station under Section 174 Cr.P.C. After the death of the petitioner's wife, the case was altered into Section 302 IPC and the petitioner was arrested and remanded to judicial custody. Further, disciplinary proceedings also has been initiated against the petitioner by issuing a charge memo in P.R. No.13/K1/2008 dated 25.03.2008 u/r 3(b) of TNPSS (D&A) Rules stating that the petitioner has caused the death of his wife by pouring kerosene over her body and set fire and therefore, petitioner was proceeded under Section 302 IPC. Thereafter, the case was altered into under Section 4(B) of Women Harassment Act, since the confession statement given by the deceased could not be believed for the sole reason in event of eye witnesses to the occurrence are available.

3. When the Criminal Case is pending before the trial Court, the first respondent has passed the impugned order in P.R.No.13/08 dated 14.08.2008, thereby the petitioner was awarded a punishment of Rank Reduction from Gr.I. PC to Gr. II.PC for a period of three years. After trial, the petitioner was acquitted by Judgment dated 22.12.2008 in S.C. No.180 of 2007 on the file of the Principal Assistant Session Judge, Mayiladuthurai. Following the order of acquittal in the criminal case, the second respondent has passed impugned order of punishment in C.No.B2/19582/2008 dated 04.05.2009 confirming the order of the first respondent. Challenging the aforesaid impugned orders of punishment passed by the respondents, the petitioner has filed the present Writ petition.

4. According to the the learned counsel for the petitioner, The petitioner was acquitted by the learned Principal Assistant Session Judge, Mayiladuthurai, on merit by Judgment dated 22.12.2008 made in S.C.No.180 of 2007. Thereafter, the second respondent without considering the acquittal order of the trial Court, has confirmed the impugned order of the first respondent.

5. The learned counsel for the petitioner would further submit that the impugned order in PR No.13/2018 dated 14.08.2008 has been passed by the first respondent on the basis of the criminal case registered against the petitioner in Crime No.54 of 2007 under Section 302 IPC, on the file of Manalmedu Police Station. Thereafter, the petitioner was tried before the trail Court and acquitted from the charges framed against him. However, the second respondent has passed the impugned order in C.No.B2/19582/2008 dated 04.05.2009 confirming the punishment imposed by the first respondent. Both the respondents have passed the non-speaking orders, without any findings, therefore, they are liable to be quashed.

6. According to the learned Government Advocate, the second respondent has reviewed suo-moto, by issuing show cause notice to the petitioner. Even though further action in the show cause

notice was dropped in view of the acquittal of the petitioner, the punishment awarded by the first respondent was confirmed by the second respondent.

7. On a perusal of the impugned orders passed by the respondents, it makes clear that the impugned orders were passed without considering the proper evidence and without following the procedure contemplated under the relevant rules as well as without giving adequate opportunities to the petitioner. Admittedly, the petitioner was acquitted on merits in the criminal case by Judgment dated 22.12.2008 in S.C. No.180 of 2007 on the file of the Principal Assistant Session Judge, Mayiladuthurai.

8. It is well settled in law that if the criminal Court acquits a Government Servant on merits with regard to the allegations, it is not open to the department to initiate or continue the departmental proceedings on the very same set of facts/allegations.

9. In view of the Judgement dated 22.12.2008 in S.C. No.180 of 2007 and considering the submissions made by both parties, this Court holds that the impugned orders of punishment passed by the respondents for the very same charges is unsustainable and consequently, impugned orders passed by the respondents are quashed. The respondents are directed to pass appropriate orders on merit and in accordance with law, in the light of the Judgment passed in S.C. No.180 of 2007 on the file of the Principal Assistant Session Judge, Mayiladuthurai, within three months from the date of receipt of a copy of this order.

10. Accordingly, the writ petition is allowed with the above direction. There shall be no order as to costs.

s/d-
Assistant Registrar(CO)

True Copy

Sub-Assistant Registrar

lbm
To

1. The Principal Assistant Sessions Judge
Mayiladuthurai.
2. The Superintendent of Police,
Nagapattinam District

3.The Deputy Inspector General of Police,
Thanjavur Range,
Thanjavur.

4. The Public Prosecutor
High Court, Madras 104.

+1 CC to Mr.M.Muthappan, Advocate sr 78516.

+1 CC to Govt. Pleader sr 78034.

W.P.No.3643 of 2011

BS(CO)
SP(20/02/2019)