

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.10.2016

CORAM

THE HONOURABLE MR. JUSTICE R.SUBBIAH

Writ Petition No.21826 of 2015

A.Sairam

... Petitioner

vs.

- 1 The State of Tamilnadu
rep. the Home Secretary to Government
Public (Law and Order E) Department Fort St.
George Chennai-9
- 2 The District Collector
Kancheepuram District Kancheepuram
- 3 The Revenue Divisional Officer
Kancheepuram District Kancheepuram
- 4 The Additional Director of
General of Police Prison Department No.1
Gandhi Irvin Road Thalamuthu Natarajan
Building Egmore Chennai-8
- 5 The Superintendent of Prison
Central Prison Puzhal Chennai-66
- 6 The State rep. by
The Sub Inspector of Police B-1 Sivakanchi
Police Station Kancheepuram.

... Respondents.

Writ petition has been filed under Article 226 of the Constitution of India, praying for a Writ of certiorari to call for the records relating to the impugned order of the first respondent passed in G.O.(MS) No.735 Public (Law & Order E) Department dated 13.8.2010 and the impugned proceedings of the second respondent passed in Na.Ka. No.47801/2006/MI/ dated

12.9.2014 and to quash the same.

For Petitioner : Ms.S.T.P.Kuilmozhi

For Respondents : Mr.K.Dhananjayan,
Spl. Govt. Pleader

ORDER

The petitioner has come up with the present writ petition, challenging the impugned order of the first respondent passed in G.O.(MS) No.735 Public (Law & Order E) Department dated 13.8.2010 and the impugned proceedings of the second respondent passed in Na.Ka. No.47801/2006/MI/ dated 12.9.2014.

2. The case of the petitioner, in brief, is as follows:-

(a) The petitioner was initially appointed as Grade II Warder through employment exchange at Central Prison, Vellore, on 1.6.1983. Thereafter, he was transferred to various places and now, he is working as Grade I Warder at Sub Jail, Kancheepuram.

(b) While so, on 24.1.2003, when he was rendering his service as Grade II Warder in Sub Jail, Kancheepuram, one remand prisoner viz., Mari was suffering with health problem. Hence, one Sathyanarayanan called the petitioner to assist him to take the said Mari to Government Hospital at Kancheepuram. Though the petitioner was on leave on that day, with an intention to safeguard the remand prisoner, he went along with the said Sathyanarayanan and the remand prisoner. But, the said Mari died on the way to hospital. The Jail Superintendent lodged a complaint before the sixth respondent, based on which FIR was registered in Crime No.26 of 2003 and enquiry is still pending.

(c) After seven years from the date of death of the said Mari, the first respondent issued G.O (Ms) No.735, Public (Law and Order-E) Department, dated 13.8.2010 directing the respondents 2 and 3 to initiate both departmental and criminal proceedings against the officials, who discharged their duties on the date of occurrence. Based on the said GO, the fourth respondent vide proceedings in No.2723/Ki.Si.Vu/2006-1, issued charge memo against the petitioner and an enquiry officer was also appointed. After enquiry, the enquiry officer submitted his report stating that the charge levelled against the petitioner has not been proved against him, based on which, the petitioner

was discharged from the charges by the fifth respondent vide proceedings dated 25.6.2014. After that, the fourth respondent through his proceedings dated 4.12.2014 issued panel of Grade I Warder (UG) in which the petitioner's name has been placed in Sl.No.2 with certain remarks. Thereafter only the petitioner came to know that the second respondent through his communication dated 12.9.2014 requested the fifth respondent to initiate criminal action against certain persons including the petitioner. However, charge sheet was not filed in the criminal proceedings as on the date of panel. If the respondents are proceeding further with the impugned letter of the second respondent dated 12.9.2014, it may result in impairment of his ability to defend himself. Hence, challenging the same, the petitioner has come up with the present writ petition.

3. Today, when the matter was taken up for consideration, learned counsel appearing for the petitioner made detailed arguments by adverting to the averments made in the affidavit filed in support of the petition. Further, he has submitted that when the enquiry officer submitted his report stating that the charge has not been proved as against the petitioner, based on which, the petitioner was discharged from the charges levelled against him, by the fifth respondent, the question of initiating criminal proceedings against the petitioner does not arise in this case. Thus, he sought for quashing the impugned order passed by the second respondent.

4. But, the learned Special Government Pleader appearing for the respondents by filing a detailed counter, submitted that in the departmental proceedings initiated against the petitioner, the charge was held as not proved and further action was dropped by the fifth respondent vide proceedings dated 25.6.2014. However, the second respondent, in his letter dated 12.9.2014, had reported that the Revenue Divisional Officer, Kancheepuram District was directed by him to initiate criminal action against the petitioner and other officials attached with the enforcement wing. Further more, the first respondent had already issued orders vide G.O.(Ms).No.735 dated 13.8.2010 to initiate action both departmental and criminal against the petitioner, prison personnel and other police personnel, who were found responsible for the cause of death of the prisoner Mari based on the inquiry report submitted by the District Collector. Thus, he sought for dismissal of the writ petition.

5. Keeping the submissions made on either side, I have carefully gone through the entire materials available on record.

6. It is the categorical submission of the learned

counsel appearing for the petitioner that on the date of occurrence i.e., on 24.1.2003, the petitioner was not on duty and only with an intention to safeguard the remand prisoner, he accompanied with one Sathyanarayanan to hospital. The said submission made by the learned counsel appearing for the petitioner was not denied by the respondents in their counter affidavit. Moreover, an enquiry was conducted in the departmental proceedings and the enquiry officer has also come to the conclusion that the charge levelled against the petitioner was not proved. Based on the said report, the petitioner was discharged from the charges by the fifth respondent through his proceedings dated 25.6.2014. When once the petitioner was discharged from the charges levelled against him, the question of initiating criminal action against the petitioner does not arise. Further, in the criminal proceedings, though 12 years have lapsed, till date, charge sheet was not filed. Therefore, I am of the opinion, the impugned order of the first respondent passed in G.O.(MS) No.735 Public (Law & Order E) Department dated 13.8.2010 and the impugned order of the second respondent dated 12.9.2014 are liable to be quashed in so far as the petitioner is concerned.

7. Accordingly, the impugned order of the first respondent passed in G.O.(MS) No.735 Public (Law & Order E) Department dated 13.8.2010 and the impugned proceedings of the second respondent passed in Na.Ka. No.47801/2006/MI/ dated 12.9.2014 are quashed in so far as the petitioner is concerned and the writ petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy// सत्यमेव जयते

Sub Assistant Registrar

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To

- 1 The Home Secretary to Government
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- 6 The Sub Inspector of Police B-1 Sivakanchi
Police Station Kancheepuram.

+1cc to Mr.S.T.P. Kauilmozhi, Advocate, S.R.No.58032
+1cc to the Government Pleader, S.R.No.58207

mu(CO)
md(3/11/2016)

W.P.No.21826 of 2015

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