



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 18.08.2016

CORAM:

WEB COPY

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN

W.P. (MD) No.14209 of 2014

K.S.Harikrishnan

: Petitioner

Vs.

1.State of Tamil Nadu, rep. By
The Principal Secretary to Government,
Home (Police-IV A) Department,
Secretariat,
Chennai-600 009.

2.The Director General of Police,
DGP Office, Appellate Authority,
Chennai-600 004.

3.The Deputy Inspector General of Police,
CID-Intelligence, Punishing Authority,
Chennai-600 004.

4.The Commissioner of Police,
Tirunelveli City Police,
Tirunelveli.

5.The Assistant Commissioner of Police (L&O),
Enquiry Officer,
Tirunelveli City Police,
Tirunelveli.

: Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India praying for the issue of a Writ of Certiorari, to call for the records relating to the impugned orders:

1. Findings of enquiry officer Assistant Commissioner of Police, Tirunelveli, 5th respondent herein in his Minute in PR No.11/2008, dated 10.01.2009 in respect of first charge.

2. Order of punishment role dated 11.02.2009 punishment of reduction by two stages in time scale of pay for two years without cumulative effect in PR No.1/2009 SB-CID Chennai (old No.City Police Office Tirunelveli PR 11/2008) on the file of third respondent herein.



3. Letter No.7675/Pol.IVA/2010-9, dated 19.01.2012, issued by the first respondent to quash the same as illegal.

For Petitioner : Mr.N.Dilip Kumar
For Respondents : Mr.D.Muruganantham,
Additional Government Pleader

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ORDER

This Writ Petition is directed against the order dated 11.02.2009 on the file of the Deputy Inspector General of Police, Chennai, imposing the punishment of reduction by two stages in the time scale of pay for two years without cumulative effect.

2. The disciplinary authority initiated proceedings against the petitioner under Rule 3(b) of the Tamil Nadu Police Subordinate Service (Discipline and Appeal) Rules, 1955. The disciplinary authority alleged that the petitioner failed to follow the procedures while escorting the accused from Chennai to Tirunelveli and as a result, the accused died at Madurantagam Hospital, due to consumption of poison. The petitioner submitted his explanation. Thereafter, enquiry was conducted. The findings given by the Enquiry Officer were accepted by the disciplinary authority. The disciplinary authority imposed the punishment of reduction by two stages in the time scale of pay for a period of two years without cumulative effect. Feeling aggrieved, the petitioner is before this Court.

3. The learned counsel for the petitioner submitted that Section 51 of the Code of Criminal Procedure does not mandate that the accused shall be medically examined before taking him to a distant place. The learned counsel submitted that charge framed against the petitioner is not legally maintainable. According to the learned counsel, the petitioner took the accused in a bus unaware of the consumption of poison. It was only when he vomited, the accused was taken to a hospital. The learned counsel contended that the Enquiry Officer was not correct in giving a finding with regard to the charge framed against the petitioner.

4. I have also heard the learned Additional Government Pleader appearing on behalf of the respondents.

5. The petitioner arrested an accused, by name Raman at Arumbakkam, Chennai. The arrest was made at about 22.00 hours on 26.04.2003. The petitioner, without producing the accused either before the Magistrate or before a Medical Officer to verify his health condition, proceeded to Madurai in a Government bus. When the bus reached near Mamandur at about 01.15 a.m. on 27.04.2003, the accused became unconscious and started vomiting. He was taken to a Government Hospital at about 02.00 a.m. The accused died at



about 02.15 a.m., without responding to treatment. The enquiry conducted by the Revenue Divisional Officer revealed that the accused consumed insecticide called as phosphamidon, which is a poisonous organo phosphorous compound.

6. The disciplinary authority initiated disciplinary proceedings against the petitioner on account of his negligence and dereliction of duty for not having followed the legal formalities while arresting the accused.

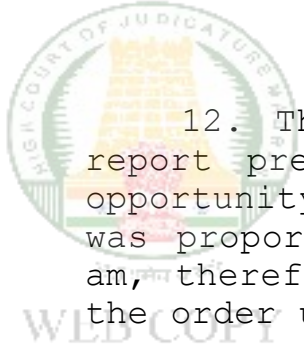
7. It is the contention of the petitioner that there is no statutory requirement to take the accused to a Medical Officer to ascertain as to whether he is medically fit to undertake a travel to a distant place. According to the petitioner, Section 51 of the Criminal Procedure Code mandates only the search of the arrested person and not his medical examination.

8. Section 55-A of the Criminal Procedure Code provides that it shall be the duty of the person having the custody of an accused to take reasonable care of his health and safety. Section 56 provides that the person arrested must be taken before a Magistrate or officer in-charge of the police station. Admittedly, the accused was not taken to a doctor before commencement of the journey. Similarly, he was not produced before a Magistrate or before the officer in-charge of the local police station.

9. The petitioner, without examining the accused by a Medical Officer, took him in a bus proceeding to Madurai. The travel from Chennai to Tirunelveli would take more than 12 hours. The petitioner ought to have ensured that the accused is enough fit for travelling in a bus for more than 12 hours.

10. The arrest was made at about 10.00 p.m., on 26.04.2003. The accused started vomiting at about 01.15 a.m., on 27.04.2003. In case an attempt was made by the petitioner to examine the accused by a Medical Officer immediately after his arrest, it would have revealed that he has taken pesticide. The petitioner is now relying on technicalities in his attempt to avoid the punishment. The petitioner failed to follow the mandatory provisions regarding search and medical examination of the accused. The disciplinary authority was, therefore, perfectly correct in awarding the punishment.

11. The petitioner seeks judicial review by examining the materials once again and to take a different view. This Court is concerned only with the decision making process. It is not within the province of this Court, while exercising jurisdiction under Article 226 of the Constitution of India, to analyse the materials considered by the disciplinary authority once again and take a different view.



12. The punishment was awarded on the basis of the enquiry report prepared by the Enquiry Officer after giving reasonable opportunity to the petitioner to submit his case. The punishment was proportionate to the charge framed against the petitioner. I am, therefore, of the view that no interference is called for in the order under challenge in this Writ Petition.

13. In the upshot, I dismiss the Writ Petition. No costs.

Sd/-

Assistant Registrar(CS-II)

/True copy/

Sub Assistant Registrar

To

1.The Principal Secretary to Government,
State of Tamil Nadu,
Home (Police-IV A) Department,
Secretariat, Chennai-600 009.

2.The Director General of Police,
DGP Office, Appellate Authority, Chennai-600 004.

3.The Deputy Inspector General of Police,
CID-Intelligence, Punishing Authority, Chennai-600 004.

4.The Commissioner of Police,
Tirunelveli City Police, Tirunelveli.

5.The Assistant Commissioner of Police (L&O),
Enquiry Officer,
Tirunelveli City Police, Tirunelveli.

+1 cc to M/s.N.Dilipkumar, Advocate in SR.No.45453
+1 cc The Special Government Pleader in SR.No. 45983

SML

CSL/SK-SKN/08.09.2016: 4P/8C

Order made in

W.P.(MD)No.14209 of 2014

Dated: 18.08.2016