

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 28.02.2017

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THE HONOURABLE MR. JUSTICE M. SATHYANARAYANAN

WP.No.4879/2017 & WMP.No.5105/2017

M.Navaneethakumar

.. Petitioner

Versus

The Commissioner,
O/o. The Police Commissionerate,
Salem City, Salem.

.. Respondent

Writ petition filed under Article 226 of the Constitution of India praying for a writ of certiorari calling for records relating to order of the respondent made in Ma.Ka. Order No.1160/2014:-Na.Ka.No.H.1/35774/2014 dated 19.12.2014 and to Quash the same.

For Petitioner : Mr. L.Chandrakumar

For Respondent : Mr.K.Dhananjayan, Spl.GP

ORDER

By consent, the writ petition is taken up for final disposal. Mr.K.Dhananjayan, learned Special Government Pleader accepts notice on behalf of the sole respondent.

2 The petitioner, while working as the Sub Inspector of Police, Annadanapatti Police Station, received instructions from the Inspector of Police, Intelligence Section, Salem City, to accompany Tr.Venugopal, Special Sub Inspector of Police [Law and Order], Annadanapatti Police Station, to search the premises bearing Door No.129-G, K.R.Nagar, Kanchi Nagar, Seelanaickanpatty, Salem and accordingly, he went with the said official and the police team on 18.12.2014 around 15.00 hours and searched premises and found pirated CDs as well as the implements to make pirated copies. The police team effected arrest of three accused and also seized incriminating articles. Thereafter, a Special Report was prepared based on which, a case in Cr.No.559/2014 was registered against the concerned accused for the commission of the offences u/s.51 read with 63, 63[B], 65 and 52[A] read with 62[A] of the Copy Rights Act, on 18.12.2014 and the Inspector of Police took up the investigation.

3 However, to the shock and surprise of the petitioner, the Assistant Commissioner of Police, North Range, who is in-charge of the South Range, has registered a case against the petitioner and Mr.Venugopal, Special Sub Inspector of Police, Law and Order, Annadanapatti Police Station in Cr.No.560/2014 for the alleged commission of the offences u/s.120-B, 213, 218, 221 IPC read with section 7 of the Prevention of Corruption Act, 1988, alleging that the petitioner made an initial demand of bribe and later on reduced the same to Rs.1,98,000/- by way of illegal gratification from one of the accused, viz., Sampathkumar. The petitioner was arrested and later on, was enlarged on bail and the respondent, vide proceedings dated 19.12.2014, has placed the petitioner under suspension and challenging the legality of the same, the petitioner came forward to file the present writ petition.

4 Mr.L.Chandrakumar, learned counsel for the petitioner would submit that the petitioner was placed under suspension for nearly two years and that it is to be reviewed/revoked and also drawn the attention of this Court to the decision of the Hon'ble Supreme Court of India reported in 2015 [7] SCC 291 [Ajay Kumar Choudhary V. Union of India through its Secretary and another].

5 Per contra, Mr.K.Dhananjayan, learned Special Government Pleader appearing for the sole respondent would submit that admittedly the petitioner has been placed under deemed suspension involving offences of moral turpitude and unless and until the order of suspension is reviewed, the petitioner as a matter of right, cannot seek for revocation/reviewing the order of suspension.

6 This Court has considered the rival submissions and also perused the materials placed before it.

7 It is pertinent to refer the decision of the Hon'ble Supreme Court of India in Ajay Kumar Choudhary V. Union of India through Secretary and another reported in 2015 [7] SCC 291, wherein the Hon'ble Apex Court has held thus:-

“21.We, therefore, direct that the currency of a suspension order should not extend beyond three months if within this period the memoandum of charge/charge sheet is not served on the delinquent officer/employee ; if the memorandum of charges/charge-sheet is served, a reasoned order must be passed for the extension of the suspension. As in the case in hand, the Government is free to transfer the person concerned to any department in any of its offices within or outside the State so as to sever any local or personal contact that he may

have and which he may misuse for obstructing the investigation against him. The Government may also prohibit him from contacting any person, or handling records and documents till the stage of his having to prepare his defence. We think this will adequately safeguard the universally recognised principle of human dignity and the right to a speedy trial and shall also preserve the interest of the Government in the prosecution. We recognise that the previous Constitution Benches have been reluctant to quash proceedings on the grounds of delay, and to set time-limits to their duration. However, the imposition of a limit on the period of suspension has not been discussed in prior case law, and would not be contrary to the interests of justice. Furthermore, the direction of the Central Vigilance Commission that pending a criminal investigation, departmental proceedings are to be held in abeyance stands superseded in view of the stand adopted by us."

8 The Personnel and Administrative Reforms Department, of the Government of Tamil Nadu, has taken into consideration the above cited decision and has issued administrative instructions in Letter [Ms] No.43/N/2015-13 dated 26.04.2016.

9 Though the petitioner has prayed for a larger relief, this Court, in the light of the above facts and circumstances, and without going into the merits of the claim projected by the petitioner, directs the respondent to consider and dispose of the petitioner's representation dated 28.12.2016 on merits and in accordance with law, after taking note of the above cited judgment as well as the administrative instructions of P&AR Department and pass appropriate orders within a period of six weeks from the date of receipt of a copy of this order and communicate the decision taken, to the petitioner.

10 The writ petition stands disposed of with the above direction. No costs. Consequently, the connected miscellaneous petition is closed.

-s/d-
Assistant Registrar

True Copy
Sub-Assistant Registrar

AP

To

The Commissioner,
O/o. The Police Commissionarate,
Salem City, Salem.

+1 cc to Mr.L.Chandrakumar Advocate sr 13218
+1 cc to Government Pleader sr 13568

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