

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Orders reserved on 15.11.2016)

DATED : 06.01.2017

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THE HONOURABLE MR.JUSTICE R.SUBBIAH

W.P.No.35146 of 2016
and
W.M.P.No.30280 of 2016

S.Vijayakumar Petitioner

Vs.

1.The Deputy Commissioner of Police,
Armed Reserve,
St. Thomas Mount,
Chennai-16.

2.The Assistant Commissioner of Police,
(Enquiry Officer),
Armed Reserve Force-I,
Pudupet, Chennai-2.

.... Respondents

Writ Petitions filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorari, to call for the records of the proceedings of the 1st respondent issued in P.R.No.223/Tha/Bi5(2)/2016, dated 11.02.2016 and the Proceedings of the 2nd respondent issued in Na.Ka.No.33-OE-4/AC-II, AR-I/CAMP/2016, dated 26.09.2016 and to quash the same.

For Petitioner
For respondents

: Mr.V.Ravikumar
: Mr.K.Dhananjayan, Spl GP

ORDER

This writ petition has been filed by the petitioner, praying for issuance of a Writ of Certiorari, to call for the records pertaining to the proceedings of the 1st respondent issued in P.R.No.223/Tha/Bi5(2)/2016, dated 11.02.2016 and the Proceedings of the 2nd respondent issued in Na.Ka.No.33-OE-4/AC-II, AR-I/CAMP/2016, dated 26.09.2016 and to quash the same.

2.In the affidavit filed in support of the writ petition, it has been averred by the petitioner, as follows_

2-1.The petitioner was enlisted as Grade-II Police Constable and he joined service on 18.02.2013. From the date of his appointment, he has been discharging his duties sincerely and efficiently without any stigma. While so, by virtue of the proceedings of the 1st respondent dated 03.02.2016, the petitioner was placed under suspension, on the basis of the alleged investigation in a criminal case in Crime No.13/2015 filed on the file of the All Women Police Station, Gengee, for the alleged offences under Sections 417, 376 & 354 (c) IPC. Thereafter, vide proceedings of the 1st respondent in P.R.No.223/Tha.Bi 5(2)/2016, dated 11.02.2016, the petitioner was issued with the impugned Charge Memo, under Rule 3(b) of the Tamil Nadu Police Subordinate Service. The crux of the alleged charges levelled against the petitioner, is as follows_

Count No.1:- After marrying one Tmt.Puspa Dhana Racklin Mary, aged about 31 years, on 01.07.2015 and sending her to her home and without calling back to his house, he demanded Dowry and as she refused, he threatened her to upload her Private Photos in Face Book and thereby, committed reprehensible conduct and involved in a criminal case registered in Crime No.13/2015 under Section 417, 376 & 354 (c) IPC.

Count No.2:- that he has not informed about the Criminal case and the details of Anticipatory Bail obtained in the Hon'ble High Court, to the higher officials either directly or over Phone.

It is the specific case of the petitioner that actually he was not involved in any offence as stated in the charge memo and on the false allegations, the said criminal case was registered; now, the petitioner has been issued with the impugned charge-memo as if he was involved in the criminal case. Subsequently, the 2nd respondent herein was appointed as Enquiry Officer. While so, to his shock and surprise, the petitioner was asked to appear for oral enquiry by the 2nd respondent vide his proceedings in Na.Ka.No.33-OE-4-AC-II, AR-1/CAMP/2016, dated 206.09.2016, as if all the witnesses were examined in his absence and he was asked to submit his explanation to the charges, within two days. Aggrieved over the same, the petitioner has come forward with the present writ petition.

3.When the matter was taken up for consideration, the learned counsel appearing for the petitioner would contend that that the chage-memo has been issued by the 1st respondent against the petitioner, on the same set of allegations made in the criminal case, which is allegedly pending against the petitioner in S.C.No.206 of 2016 pending on the file of the

District Magalir Court, Villupuram. If the petitioner discloses his defence in the departmental proceedings, his defence in the said criminal case would be affected. Further, according to the learned counsel appearing for the petitioner, as there are complicated questions of law/facts involved in the present case, the departmental proceedings shall be deferred till the conclusion of the criminal case. Further, the very initiation of the Departmental Proceedings and consequential proceedings issued by the 2nd respondent are against Rule 3(b) of the Tamil Nadu Police Subordinate Services as well as against the dictum laid down by the Hon'ble Supreme Court in various decisions. Thus, the learned counsel appearing for the petitioner sought for quashing the impugned proceedings.

4. Per contra, the learned Special Government Pleader appearing for the respondents, by filing a detailed counter, would contend that in the criminal case pending against the petitioner, after completion of investigation, chargesheet has been filed and the same has been taken on file in S.C.No.206 of 2016 on the file of the District Magalir Court, Villupuram and it is pending. The charge-memo issued by the 1st respondent against the petitioner contains additional facts and additional charge. The 2nd charge levelled against the petitioner in the charge-memo issued by the 1st respondent is a different one and it is an additional charge, apart from the allegation in the FIR registered against the petitioner. Hence, according to the learned Special Government Pleader, there cannot be any impediment in proceeding with the departmental proceedings against the petitioner. Thus, he sought for dismissal of the writ petition.

5. I have carefully heard the submissions made on either side and perused the materials available on record.

6. It is the main submission of the learned counsel appearing for the petitioner that the petitioner is working as Grade -II Police Constable in Armed Reserve, St. Thomas Mount, Chennai. Based on a complaint given by one Tmt.Pusha Dhana Racklin Mary, an FIR in Crime No.13/2015 was registered on the file of the All women Police Station, Gengee, against the petitioner under Sections 417, 376 & 354 IPC, on the false allegation that after marrying the complainant Tmt.Puspa Dhana Racklin Mary, the petitioner send her to her home and without calling back to his house, he demanded Dowry and as she refused, he threatened her to upload her Private Photos in Face Book. While the said criminal case is pending, on the same set of allegations, the 1st respondent has issued a charge-memo dated 11.02.2016. Therefore, according to the learned counsel for the petitioner, if the departmental proceedings are initiated before the conclusion of the criminal case, the petitioner will have to go

through two separate proceedings and further the documents and evidences which the petitioner might rely upon in the criminal proceedings will be used against him by the departmental authorities to rigorously build their case and prepare documents accordingly.

7. Per contra, it is the submission of the learned Special Government Pleader appearing for the respondents that the 2nd charge framed against the petitioner in the departmental proceedings is an additional charge, which is in respect of the misconduct committed by the petitioner that he had failed to inform his Higher Officials, either directly or over phone, about the criminal case and the details of anticipatory bail obtained from the Court. When there is an additional charge, there cannot be any impediment in proceeding with the departmental enquiry against the petitioner.

8. From the perusal of the materials available on record, it is seen that the 2nd charge levelled against the petitioner in the departmental enquiry is an additional charge and it is in respect of misconduct of the petitioner in not informing about the criminal case and the details of the anticipatory bail obtained by him from the Court. Under such circumstances, as contended by the learned counsel for the respondents, there cannot be any impediment in proceeding with the departmental enquiry against the petitioner. I do not find any merit in the writ petition and the same is liable to be dismissed.

Accordingly, the writ petition is dismissed. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-

Assistant Registrar

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Sub Assistant Registrar

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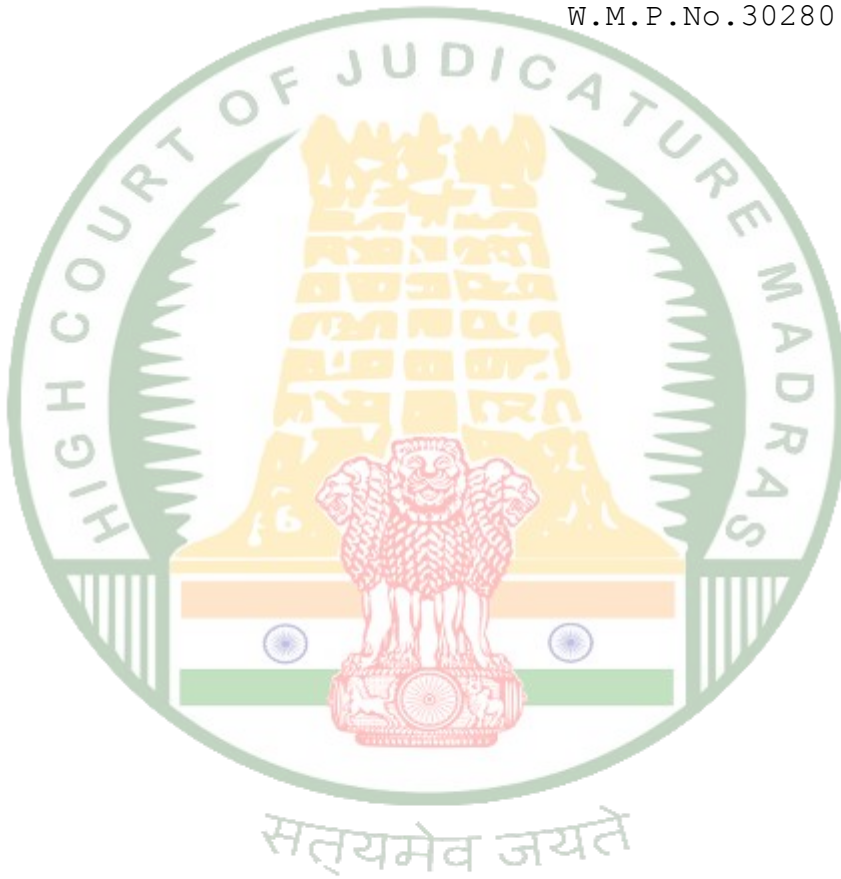
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+1cc to the Government Pleader, S.R.No.2086

sk(CO)
md(31/01/2017)

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