

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT****DATED : 29.06.2017**

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THE HONOURABLE MR.JUSTICE S.S.SUNDAR**W.P(MD)No.11984 of 2017****and****W.M.P(MD) .Nos.9208 and 9209 of 2017**

T.Ganesan

.. Petitioner

Vs

1.The Superintendent of Police,
Virudhunagar District,
Virudhunagar.

2.The Deputy Superintendent of Police,
Virudhunagar Sub Division,
Virudhunagar District.

3.The Deputy Superintendent of Police,
Srivilliputhur Sub Division,
Virudhunagar District.

4.The Inspector of Police,
Srivilliputhur Town Circle,
Srivilliputhur,
Virudhunagar District.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a writ of Certiorari by calling for the entire records pertaining to the impugned proceedings of the 3rd respondent in Na.Ka.No.732/Kaa.Thu.Ka./Thiru/2016 signed on 04.12.2016 and the consequential charge memo issued by the first respondent in P.R.No.04/2017 dated 04.01.2017 and quash the same.

For Petitioner : Mr.S.M.Anantha Murugan
For Respondents : Mr.C.Selvaraj
Spl. Govt. Pleader

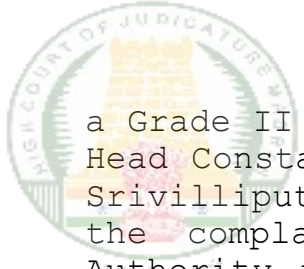
O R D E R

This writ petition is filed challenging the charge memo dated 04.01.2017 issued by the first respondent to the petitioner.

2.Heard Mr.S.M.Anantha Murugan, learned counsel who takes notice for the petitioner and Mr.C.Selvaraj, learned Special Government Pleader, who takes notice for the respondents.

<https://hcservices.ecourts.gov.in/hcservices/>

3.The petitioner joined the Police Department on 15.04.1997 as



a Grade II Police at Madurai Battalion. As on date, he is working as Head Constable and he was deputed to the Naxal Special Duty Wing at Srivilliputhur in Virudhunagar District. It appears that based on the complaint received from some individuals, the Disciplinary Authority found that the petitioner has used his face book account spreading some news item degrading the status of the former Chief Minister of Tamil Nadu. After conducting a preliminary enquiry, the impugned charge memo was issued to the petitioner.

4.The petitioner has now filed the above writ petition challenging the charge memo raising the following grounds:

(i)Absolutely there is no material or evidence to show that the petitioner is involved in the alleged misconduct. The petitioner's wife, who had access to the petitioner's mobile phone shared the disparaging/offending messages to others and therefore, the petitioner has not committed any misconduct.

(ii)During preliminary enquiry, the petitioner was not given any opportunity and therefore, the charge memo is also in violation of principle of natural justice.

(iii)The petitioner was not given any opportunity to examine the complainants and other witnesses, to prove his innocence.

(iv)The petitioner has got a right of freedom of speech and expression and the present charge memo is intended to curtail the fundamental rights of the petitioner.

(v)The petitioner was transferred from Virudhunagar District to Madurai District and called upon to face the ordeal of enquiry pursuant to the charge memo.

5.The Hon'ble Supreme Court has time and again deprecated the practice of entertaining the writ petition as against the charge memo. This Court has considered the relevant precedents and dismissed similar writ petition by order dated **25.04.2017** in the case of **M.Stephen v. The Joint Director of School Education, Directorate of School Education, College Road, Chennai and others** in **W.P. (MD).No.5252 of 2017**. Hence, this Court dismissed the writ petition challenging the charge memo on similar ground. After referring to the relevant judgment of the Hon'ble Supreme Court, this Court has culled out the principles as follows:

"(a)A charge sheet or show cause notice does not give rise to any cause of action, because it does not amount to an adverse order which affects or infringe the rights of any party.

(b)Ordinarily a Writ Petition should not be entertained against a mere show cause notice or charge sheet as interference at that stage would be premature.

(c)However, in some very rare and exceptional cases, the High Court can quash a charge sheet if it is found to be wholly without jurisdiction or on the ground of unreasonably long unexplained delay causing great prejudice to the delinquent or for some strong reason if the charge memo is wholly illegal. Even in such cases the gravity of alleged misconduct is a relevant factor that



should be taken into consideration before quashing the charge memo.

(d) Charge sheet cannot be quashed on the ground that the facts stated in the charges are erroneous since it is the function of the disciplinary authority to find the correctness or truth of the charges. Court or Tribunal has no jurisdiction to go into the correctness or truth of the charges as there is no infringement of any fundamental right guaranteed by the Constitution.

(e) The question whether the show cause notice was founded on any legal premises is a jurisdictional issue which can also be decided by the authority issuing the charge memo or show cause notice before the aggrieved approach the Court.

(f) In a Writ Petition challenging charge memo, issue is not whether the charge memo can ultimately be sustained."

6. In view of the position of law, this Court is not inclined to entertain the writ petition. The petitioner's grievance is that the respondents have not given proper opportunity to the petitioner. He further submitted that though the petitioner is prepared to face the enquiry, direction may be given to the respondents to conduct enquiry, after giving full opportunity to the petitioner to prove his innocence in the interest of justice. It goes without saying that the respondents are duty bound to give sufficient opportunity to the petitioner without violating the principles of natural justice. Hence, the first respondent is directed to hold an enquiry and pass appropriate orders after giving the petitioner a fair and reasonable opportunity in compliance of principles of natural justice and in accordance with law.

With this observations, this writ petition is dismissed. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(Crl.Side)

/True Copy/

Sub Assistant Registrar

To

1. The Superintendent of Police,
Virudhunagar District,
Virudhunagar.

2. The Deputy Superintendent of Police,
Virudhunagar Sub Division,
Virudhunagar District.

3. The Deputy Superintendent of Police,
<https://hcservices.ecourts.gov.in/hcservices/>
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4. The Inspector of Police,
Srivilliputhur Town Circle,
Srivilliputhur,
Virudhunagar District.

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+1cc to The Special Government Pleader in SR. No.62882

NS

JS/MR/KKR/SAR.2/18.7.2017/4P-6C

W.P (MD) No.11984 of 2017
29.06.2017