

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.08.2018

CORAM:

THE HONOURABLE MR. JUSTICE HULUVADI G.RAMESH
AND
THE HONOURABLE MR. JUSTICE K.KALYANASUNDARAM

W.A.No.705 of 2018 and CMP.No.6793 of 2018

B.Ramesh

... Appellant

Vs

1. State of Tamil Nadu
rep. by its Secretary to Government,
Department of Agriculture,
Fort St. George, Chennai-9.
2. Director of Agriculture,
Chepauk, Chennai-5.
3. Additional Director of Agriculture
(Personnel Management),
Chepauk, Chennai-5.
4. Joint Director of Agriculture,
Lawley Road,
Coimbatore-641 013.
5. M.Mahalingam
6. Inspector,
Cyber Crime Cell,
Coimbatore City Police,
Coimbatore.

... Respondents

Prayer : Writ Appeal filed under Clause 15 of the Letter Patent against the order dated 14.09.2017 made in W.P.No.39249 of 2015 by a learned Single Judge praying call for the records pertaining to the impugned charge memo in ref. No. Desi/(1) 39874/2015-1 dated 03.8.2015 by the 3rd respondent and quash the same.

For Appellant	: Mr.V.Chokalingham
For Respondents	: Mr.P.S.Siva Shanmuga Sundaram
1 to 4 & 6	Spl. Govt. Pleader

JUDGMENT

(Judgment of the Court was pronounced by HULUVADI G.RAMESH, J.)

The Writ Appeal is directed against the order dated 14.09.2017 made in W.P.No.39249 of 2015 by a learned Single Judge.

2. The Writ Petition has been filed challenging the Charge Memo dated 3.8.2015 issued by the 3rd respondent against the writ petitioner and to quash the same. The said Writ Petition was dismissed by the learned Single Judge by order dated 14.09.2017. Aggrieved over the same, the Writ Petitioner has preferred the present Writ Appeal.

3. Heard the learned Counsel appearing for the appellant and the learned Special Government Pleader appearing for the respondents 1, 2, 3, 4 and 6. We have also perused the materials available on record carefully including the order of the learned Single Judge.

4. On a perusal of the nature of the allegations set out in the charge memo, it is seen that the computer available in the Government office has been misused by the writ petitioner/appellant along with some other staff. In this regard, a criminal case was registered by Cyber Crime Cell, Coimbatore for the offences under Sections 419 and 120-B of IPC as well as Sections 43, 66 and 66-D of Information Technology Act, 2000 which was taken cognizance by the learned Judicial Magistrate No.VII, Coimbatore in C.C.No.14/2015. Consequent to the same, it appears that the appellant was arrested by the 6th respondent on 27.3.2014 and thereafter, suspended from service by the proceedings of the 2nd respondent dated 21.7.2014 w.e.f. 27.3.2014. The said suspension order of the 2nd respondent came to be quashed in W.P.No.10107/2015 by order dated 8.6.2015 and the appeal filed against the same by the 2nd respondent is yet to be numbered.

5. In the meanwhile, based upon the charge sheet filed by the 6th respondent, the 3rd respondent has served the impugned charge memo dated 03.08.2015 framing three charges against the appellant. Now by judgment dated 11.01.2017, the learned VII Judicial Magistrate, Coimbatore, the appellant and two other accused were acquitted stating that the prosecution has failed to establish the charges against the accused beyond reasonable doubt. At this stage, it is pertinent to mention that originally, the complaint was lodged against Raman, Ramesh, Pathirappan, Kavibarathi. But the final report was filed against the accused Ramesh, Raman and Sakthivel under Sections 120(B), 419 of IPC and Sections 66, 661, 66d of the I.T. Act. As

per the final report, Pathirappan and Kavibarathi names were removed and they were examined as prosecution witnesses, namely, P.W.9 and P.W.13. It appears that in this regard, no special report has been filed on the side of the prosecution. Therefore, according to the appellant, he is no way connected with the aforesaid offence and requested to quash the charge memo as the charges are similar in both the criminal case and in the departmental enquiry. In support of his contention, the learned Counsel for the appellant would rely on a decision of the Supreme Court in S.Bhaskar Reddy and another vs. Superintendent of Police and another reported in (2015) 2 Supreme Court Cases 365 wherein while allowing the appeal filed by the delinquent appellant, it has been held that since the facts and the evidence in both the proceedings, namely, the departmental proceedings and the criminal case were the same, without there being any iota of difference, the distinction, which is usually drawn as between the departmental proceedings and the criminal case on the basis of approach and burden of proof, would not be applicable to the instant case and the learned Counsel also relied on yet another decision of the Supreme Court in Joginder Singh vs. Union Territory of Chandigarh and others reported in (2015) 2 Supreme Court Cases 377 in this regard.

6. But, the learned Single Judge in his order has held thus:

''4. The charge memo is challenged broadly on the ground that the writ petitioner is no way connected with the allegations set out in the charge memo. Such a general statement pleaded in the writ petition, cannot be accepted by this Court for challenging the charge memo. The charge memo can be challenged on the limited grounds under exceptional circumstances. This Court cannot exercise the powers of judicial review on the charge memo and the same can be entertained only in the event of establishing that the charge memo was issued by an incompetent authority having no jurisdiction or if there is any malafide in the allegations raised. Even in the case of raising the grounds of malafides, the authority against whom such an allegation is set out, has to be impleaded as a party to the writ proceedings in his personal capacity. No such legal grounds are available in the writ petition and therefore, this Court is not inclined to consider the merits of the allegations set out in the writ petition.''

7. Anyhow, overall considering the facts and circumstances of this matter and the decisions cited supra, we are of the view that though the issue involved in those cases and the present case is one and the same, in the present case on hand, it appears that the appellant has already submitted his explanation for the said charge memo. Under the above circumstances, as held by the learned Single Judge, it is for the writ petitioner to submit his explanation/objections before the competent authority and prove his innocence in the enquiry proceedings.

8. At this stage, the learned Counsel appearing for the appellant submitted that when the appellant was acquitted in the criminal case for the same set of charges, there is no question of readmitting the same. However, without prejudice to his right, he is ready to tender apology, if the charges levelled against him are ordered to be dropped.

9. Accordingly, we are of the view that on tendering the Letter of Apology by the appellant without prejudice to his right before the concerned respondent authorities, the respondent authorities can drop the charges against the appellant and close the matter. We hereby made it clear that any other benefits for which he is entitled to, the same shall be extended to him and if any promotional benefits are withheld during the particular period, the same may also be released in favour of the appellant.

10. With the above observation and direction, the writ appeal is allowed in part. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Deputy Registrar

//True Copy//

Sub Assistant Registrar

tsi

To

1. Secretary to Government,
State of Tamil Nadu,
Department of Agriculture,
Fort St. George, Chennai-9.

2. Director of Agriculture,
Chepauk, Chennai-5.

3.Additional Director of Agriculture
(Personnel Management),
Chepauk, Chennai-5.

4.Joint Director of Agriculture,
Lawley Road,
Coimbatore-641 013.

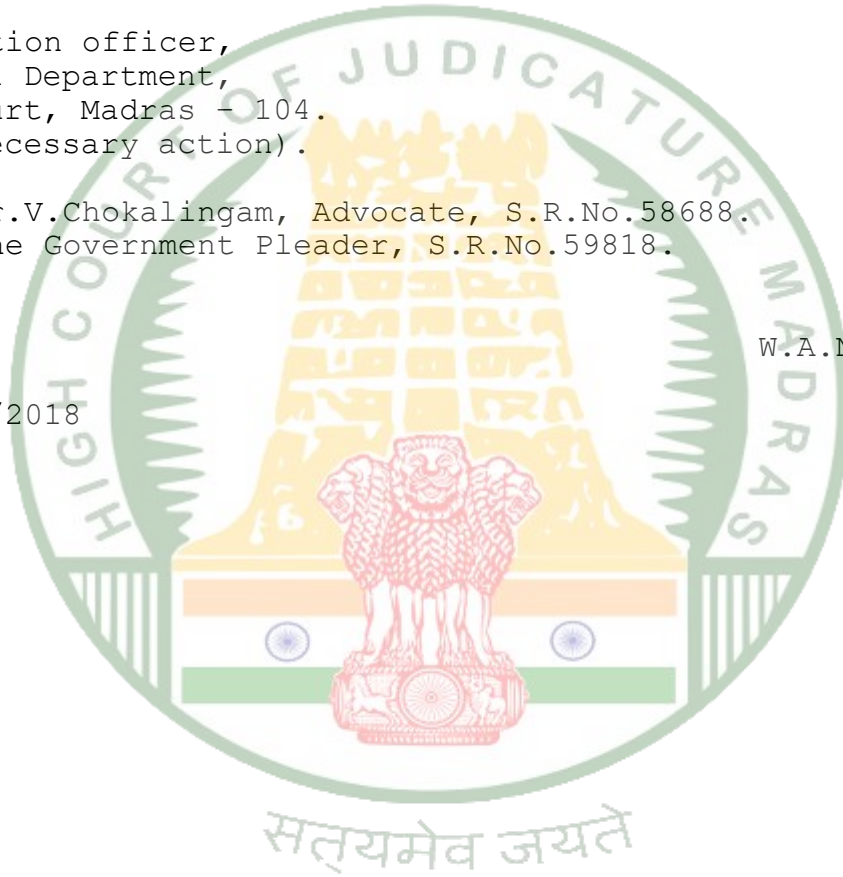
5.Inspector,
Cyber Crime Cell,
Coimbatore City Police,
Coimbatore.

6.The Section officer,
Judicial Department,
High Court, Madras - 104.
(Take Necessary action).

+1cc to Mr.V.Chokalingam, Advocate, S.R.No.58688.
+1cc to the Government Pleader, S.R.No.59818.

W.A.No.705/2018

rrs 19/09/2018



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