

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 24.07.2018

CORAM

THE HONOURABLE THIRU JUSTICE V. PARTHIBAN

W.P.Nos.2255 & 2256 of 2015

Thangadurai
Inspector of Police
No.141-1 Mariyamman Koil Street
Kasakaranoor
Sooramangalam Post
Salem 636 005 ... Petitioner in WP.No.2255/2015

Usha Rani
Sub Inspector of Police
No.30-2/ 31-E.11
II Corss Ranga Nagar
Sooramangalam
Salem 636 005 .. Petitioner in WP.No.2256/2015

versus

The Inspector General of Police,
Crime (SIT),
Chennai-16. ... Respondent in both WPs

Prayer in both WPs : These Writ Petitions are filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorarified Mandamus, to call for the records pertaining to the charge memo issued by the respondent herein in his P.R.Nos.2/2010 (W.P.No.2255/2015) 3/2010 (W.P.No.2256/2015) u/r.3(ஆ) T.N.P.S.S. (D & A) Rules, 1955 dated 02.12.2010 and quash the same.

For Petitioner : Mr.Ravi Shanmugam
in both WPs

For respondent : Mrs.P.Rosekamalam
in both WPs Addl. Govt. Pleader

COMMON ORDER

Both these writ petitions are filed challenging the charge memo issued against to the petitioners for the same incident. The issues and grounds raised in both the writ petitions are common and therefore, they are taken up together for disposal as under:

2. The writ petitioner, viz., M.Thangadurai, in W.P.No.2255 of 2015, is the Inspector of Police and the writ petitioner, viz., Usha Rani in W.P.No.2256 of 2015, is the Sub Inspector of Police. Both these writ petitioners were implicated in the criminal case on the basis of the complaint given by the wife of the writ petitioner in WP No. 2255 of 2015 viz., N.Vanitha (Complainant), under various provisions of the Indian Penal Code and also the provisions of Dowry Prohibition Act, in 2007. One of the allegations of the complainant was that the writ petitioner viz., M.Thangadurai had married the other writ petitioner viz., Usha Rani, while the marriage with the complainant was still subsisting. Apart from the criminal action, the Department has also initiated proceedings by issuing charge memo, dated 02.12.2010, charging that the petitioners have involved in the criminal case and also contracted bigamous marriage. Although the charge memo was issued on 02.12.2010, no progress was made in pursuance of the said charge memo.

3. While matter stood thus, the Sessions Court before which the criminal case was tried, acquitted both the writ petitioners of all the charges. The 1st writ petitioner was shown as A1 and the 2nd writ petitioner was shown as A8 in the criminal case. According to the judgment of the criminal Court, there was absolutely no documentary evidence available and held that the petitioners were not guilty of any charges and therefore they came to be acquitted honorably. In view of the clear acquittal by the Criminal Court, the petitioners are before this Court challenging the charge memo, dated 02.12.2010, by the respondent.

4. Shri. Ravi Shanmugam, learned counsel for the petitioners would submit that the primary witnesses including the complainant had turned hostile in the criminal proceedings. Therefore, the charges levelled against the petitioners on the basis of the complaint were held not proved as there was no material evidence against these petitioners. Once the complainant has turned hostile, the charge which was framed on the basis of such complaint had no foundation to be sustained and therefore, the learned Sessions Court had acquitted the petitioners of all the charges.

5. The acquittal by the Sessions Court, was not on the basis of benefit of doubt granted to the the petitioners but on the basis of no evidence and once such clear acquittal has been rendered in favour of the petitioners, the learned counsel for the petitioners would submit that there cannot be any justification on the part of Department to go ahead with the departmental enquiry for the same set of facts and grounds which formed the basis of the criminal action, vide departmental charge memo, dated 02.12.2010. The learned counsel for the petitioners would submit that one of the two charges framed against these petitioners was that they involved in the criminal

case which ended in acquittal viz., honorable acquittal, as it cannot be maintained at all. Further once the Criminal Court has conclusively held that the second marriage between both the writ petitioners was not established, the question of proving the said charge in the departmental enquiry does not arise. In the absence of any evidence in the criminal prosecution, once the complainant herself and her relatives were the primary witnesses, who retracted their statements, it would be a futile exercise for the Department to go through the departmental enquiry for proving the same charge against the petitioners. It is unlikely that in the departmental enquiry, in the absence of any statement against the petitioners by prime witness like the complainant and her relatives, the charge against the petitioners would be established.

6. Upon notice, Mrs.P.Rose Kamalam, learned Additional Government Pleader, entered appearance and made her submissions.

7. Learned Additional Government Pleader would submit that the standard of evidence in the departmental enquiry is different from that of the criminal prosecution, since the departmental proceedings are based on the preponderance of probabilities and it is a settled law that even when the criminal case ended in acquittal, there was no bar in initiating departmental proceedings. Therefore, she would submit that challenging the charge memo without facing departmental enquiry is per se not maintainable and liable to be rejected. According to her, it is always open to the petitioners to face departmental proceedings and come out unscathed on merits, in case, the prosecution failed to prove the charge against the petitioners. However, it is not open to the petitioners to stall the departmental proceedings from reaching its logical end by challenging the charge memo.

8. At this, the learned counsel for the petitioner would draw the attention of this Court to the following decisions:

(i) The decision laid down by this Court in the case of SHAIK KASIM V. THE SUPERINTENDENT OF POST OFFICES, reported in AIR 1965 Madras page 506, wherein the relevant paragraph is extracted below:

8. Thirdly, where the acquittal is substantially on merits, on identical facts and charges, it will not be proper for a disciplinary Tribunal to record a finding of guilt, and to punish thereon. This is a basic principle of jurisprudence and I cannot see that it makes any difference that the departmental authority acts before the criminal proceeding, or after it. This court, in exercise of the jurisdiction under Art. 226 of the Constitution, would be justified in striking down the action based on such findings as not in consonance with

principles of natural justice. Otherwise, grave anomalies might follow, as stressed by Rajamannar C. J. and Venkatarama Aiyar J in 1952-1 Mad LJ 35: (AIR 1952 Mad 853).

(ii) Learned counsel for the petitioner would further draw the attention of this Court to the decision laid down by the Hon'ble Supreme Court in the case of CAPT. M. PAUL ANTHONY V. BHARAT GOLD MINES LTD. AND ANOTHER reported in (1999) 3 Supreme Court Cases 679, as found in paragraphs 34 and 35 are extracted below:

"34. There is yet another reason for discarding the whole of the case of the respondents. As pointed out earlier, the criminal case as also the departmental proceedings were based on identical set of facts, namely, 'the raid conducted at the appellant's residence and recovery of incriminating articles therefrom'. The findings recorded by the enquiry officer, a copy of which has been placed before us, indicate that the charges framed against the appellant were sought to be proved by police officers and panch witnesses, who had raided the house of the appellant and had effected recovery. They were the only witnesses examined by the enquiry officer and the enquiry officer, relying upon their statements, came to the conclusion that the charges were established against the appellant. The same witnesses were examined in the criminal case but the Court, on a consideration of the entire evidence, came to the conclusion that no search was conducted nor was any recovery made from the residence of the appellant. The whole case of the prosecution was thrown out and the appellant was acquitted. In this situation, therefore, where the appellant is acquitted by a judicial pronouncement with the finding that the 'raid and recovery' at the residence of the appellant were not proved, it would be unjust, unfair and rather oppressive to allow the findings recorded at the ex parte departmental proceedings to stand.

35. 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. "

(iii) Learned counsel would draw the attention of this Court to the ratio laid down by the Hon'ble Supreme Court in the case of G.M.TANK V. STATE OF GUJARAT & ANOTHER reported in TNLJ 2006 (3) 457 (Civil), the relevant portion found in paragraphs 31 and 32, are extracted below:

31. It is also to be noticed the judicial pronouncement was made after a regular trial and on hot contest. Under these circumstances, it would be unjust and unfair and rather oppressive to allow the findings recorded in the departmental proceedings to stand.

32. In our opinion, such facts and evidence in the department as well as criminal proceedings were the same without there being any iota of difference, the appellant should succeed. The distinction which is usually proved between the departmental and criminal proceedings on the basis of the approach and burden of proof would not be applicable in the instant case. Though finding recorded in the domestic enquiry was found to be valid by the courts below, when there was an honourable acquittal of the employee during the pendency of the proceedings challenging the dismissal, the same requires to be taken note of and the decision in Paul Anthony's case(supra) will apply. We, therefore, hold that the appeal filed by the appellant deserves to be allowed. "

9. The learned counsel would rely on three decisions of this Court rendered recently on 30.08.2017, 12.03.2018 and 28.03.2018. The first order being rendered in W.P.No.3257 of 2014, wherein this Court in paragraphs 7 to 9 held as follows:

7. In the said circumstances, this Court can safely conclude particularly, with reference to the observations of the Division Bench of this Court as found in paragraph Nos.9 and 10, which was extracted supra that the acquittal by the criminal Court is honourable not by giving benefit of doubt. Moreover this Court in the criminal appeal has also found that there was no evidence against the accused and ultimately found that there was no infirmity in the order passed by the trial Court.

8. In view of the same, this Court has no hesitation in accepting the case of the petitioner that though the respondent had proceeded with departmental action by issuance of impugned charge memo in relation to the same set of allegations which formed the basis of the criminal trial and which of course ended in honourable acquittal, cannot be countenanced both on facts and on law.

9. Therefore, this Court is of the considered view that the impugned charge memo for conducting departmental action against the petitioner is liable to be interfered with. Hence, the charge memo dated 21.08.2003 for the above stated reasons is set aside and therefore, the writ petition is allowed. No costs. Consequently, connected miscellaneous petitions are closed.

10. He would rely on yet another order of this Court in W.P.No.20526 of 2012 dated 12.03.2018. While allowing the writ petition, this Court has observed as follows:

12. Once the criminal finding has become final, the departmental action proceeded against the petitioner on the same set of facts and circumstances cannot be countenanced in law, as the petitioner was admittedly acquitted not on technicalities but on merits. Once the petitioner has been acquitted on merits, the departmental action in imposing the penalty for the same incident, is completely without any justification. Therefore, this Court is of the considered view that the petitioner has to succeed on this ground alone. Even otherwise, when one side the criminal Court has given a clear acquittal viz., honourable acquittal to the petitioner, the Department cannot find the petitioner guilty of the same charges which was a subject matter of the criminal prosecution. Such action on the part of the respondents cannot be justified under any circumstances. Since this Court is of the view that the departmental action as proceeded against the petitioner is illegal and cannot be countenanced in law, it refrains from going into the issue of whether the penalty with cumulative effect can be imposed on the petitioner or not under the service rules.

13. In view of the above said narrative

and discussion, this Court set aside the impugned proceedings in No.V-15014/Rev/GS/SS/2010-85 dated 04.02.2011, proceedings No.V-11014/56/2006/L&R (SZ) 6460 dated 17.11.2006 and proceedings No.V-15014/GHC/AD.VI/GS/SSP/2005-1978, dated 14.06.2006. This Court is also of the considered view that the petitioner is entitled to be considered for promotion as Sub-Inspector of Police with effect from the date his juniors were considered for such promotion with all attendant and service benefits as admissible to the petitioner. The respondents are directed to implement the direction passed by this Court, within a period of eight weeks from the date of receipt of a copy of this order.

11. Recently on 28.03.2018, this Court passed the order in W.P.No.24799 of 2013 & 27463 of 2016 in the case of Mr.S.Chinnadurai v. The Deputy Inspector General of Police and others, after adverting to various materials and decisions, had finally held as follows:

"16. This Court is conscious of the fact that the disciplinary action is not to be trifled with during its pendency. However, as far as the present case on hand is concerned that the Criminal Court has given a clear finding of innocence of the petitioner's involvement in the charges framed against him. It is therefore not just and proper for the departmental action to continue and proceed against the petitioner. Therefore, this Court finds that the petitioner has made out a clear case for interfering with the departmental proceedings pending against him."

12. The learned counsel for the petitioner, therefore, would submit that the issue involved in this writ petition is directly covered by the rulings of the Hon'ble Supreme Court of India as well as this Court.

13. This Court, after considering the legal and factual submissions of the learned counsel on either side, is in agreement with the contention put forth on behalf of the petitioners. As rightly pointed out by the learned counsel for the petitioners the criminal Court has given a clear finding and acquitted both the petitioners. In view of the fact as emerged

from the judgement of the Criminal Court that primary witnesses became hostile and therefore, the Criminal Court did not have any worthwhile evidence for establishing the guilt of the petitioners in the criminal trial. It is seen from the criminal Court judgment that even the complainant as Prosecution Witness 1, has turned hostile and retracted her statement and so by her relatives. The Criminal Court has made extensive reasoning to conclude that the marriage between the petitioners was not established at all and no materials were placed before the Criminal Court for establishing the factum of marriage in order to hold the petitioners guilty of bigamous marriage. In the absence of any material to establish the factum of marriage between the petitioners, the substratum of the charge framed against the petitioners stood removed and this Court does not see how the departmental proceedings can be allowed to go on. The other charge viz., involvement of the petitioners in the criminal case is also stood removed in view of the clear acquittal of the petitioners by the Criminal Court.

14. In the above said circumstances, this Court does not see any legal necessity or administrative requirement to continue the disciplinary proceedings initiated against the petitioners. The charges which are framed in the departmental proceedings and the charges which are framed in the criminal proceedings are one and the same and the witnesses to be relied on for establishing the charges are also the same. Once the complainant turned hostile and retracted her statement in the criminal trial, this Court does not see any scope for departmental action to prove the guilt of the petitioners.

15. In view of the clear acquittal of the petitioners by the criminal Court, there is no necessity to proceed with the departmental action further and thereby subjecting the petitioners to the unnecessary ordeal to face departmental proceedings. Such exercise in the opinion of the Court does not serve any purpose except subjecting the petitioners to needless enquiry.

16. Citations relied on by the learned counsel for the petitioners are directly in issue to the point raised in the writ petition. Once the criminal Court has given finding of acquittal to the petitioners, the departmental proceedings, which were initiated on the same set of facts and grounds, cannot be allowed to proceed, in view of the decisions laid down by the Hon'ble Supreme Court and the same were consistently followed by the other High Courts and also by this Court. Therefore, this Court is of the considered view that the legal principles as laid down on the subject matter can be applied in toto to the present case. No useful purpose would be served by allowing the departmental action to proceed in the facts and circumstances of the case, as explained above.

17. Therefore, this Court is of the view that the petitioner has made out a clear case for interfering with the departmental proceedings pending against them. Therefore, the impugned order passed by the respondent in P.R.Nos.2/2010 (W.P.No.2255/2015) 3/2010 (W.P.No.2256/2015) u/r.3() T.N.P.S.S. (D & A) Rules, 1955 dated 02.12.2010, is hereby quashed.

18. In view of the above, both these writ petitions are allowed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

The Inspector General of Police,
Crime (SIT),
Chennai-16.

+2 cc to Mr.Ravi Shanmugam, Advocate, S.R.No.49586
+1cc to the Government Pleader, S.R.No.49977

W.P.Nos.2255 & 2256 of 2015

MG(CO)
SMI/03.08.2018

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