

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.02.2018

CORAM:

THE HONOURABLE MR. JUSTICE T.RAJA

W.P.Nos.32861, 42245 and 42246 of 2016

and

W.M.P.Nos.28404, 28405, 36143 and 36145 of 2016

V.Karnan .. Petitioner in W.P.No.32861/2016

N.Jamaludeen Hussian .. Petitioner in W.P.No.42245/2016

T.Kanagaraj ... Petitioner in W.P.No.42246/2016

.. Vs ..

The Joint Commissioner of Police,
Office of the City Police Commissioner,
Central Crime Branch,
Egmore, Chennai - 8.
Now presently running office at
No.132, EVK Sampath Road,
Vepary, Chennai - 600 007. ...Respondent in all W.Ps.

Prayer in all W.Ps.: - Writ Petitions filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records of the respondent in connection with the impugned charge memo issued in Tha.Ko.No.99/Tha.Pi(Ma)2/2003, Tha.Ko.No.102/Tha.Pi(Ma)2/2003 & Tha.Ko.No.101/Tha.Pi(Ma)2/2003 respectively dated 21.08.2003 and quash the same.

In all W.Ps.

For Petitioners : Mr.R.Venkataraman

for Mr.T.Ayngaraprabhu

For Respondent : Mr.V.Jayaprakash Narayanan,
Special Government Pleader

COMMON ORDER

There are three writ petitions filed separately by Mr.V.Karnan, Inspector of Police, Mr.N.Jamaludeen Hussian, Grade-I Police Constable and Mr.T.Kanagaraj, Grade-I Police Constable, challenging the similar Charge Memo dated 21.08.2003 [dates are also same], since this Court has allowed the writ

petition in W.P.No.3257 of 2014 filed by Mr.M.Lakshmipathi, who was A.3 in C.C.No.20 of 2004, quashing the similar Charge Memo issued in Tha.Ko.No.100/Tha.Pi(Ma)2/2003, dated 21.08.2003.

2. Learned counsel appearing for the petitioners would submit that when the petitioners and one Mr.M.Lakshmipathi, Grade-I Police Constable were charge sheeted in a criminal case in Crime No.201 of 2003 on the file of Central Crime Branch, Chennai, for the offences under Sections 7, 13(2), r/w.13(1)(d) of the Prevention of Corruption Act and also under Sections 364 r/w.34, 385 r/w.34 and 252 r/w.34 IPC, the Special Court under the Prevention of Corruption Act, acquitted them from all the charges in the judgment dated 23.12.2009 in C.C.No.20 of 2004, holding that there was no evidence whatsoever against them and also holding further that the evidence given by the prosecution could not be relied upon since the witnesses had also turned hostile. As against the said judgment, the State has preferred an appeal in CrI.A.No.418 of 2010 and this Court, by an order dated 23.08.2016 dismissed the said appeal and confirmed the order passed by the trial Court. The learned single Judge of this Court while entertaining the writ petition in W.P.No.3257 of 2014 filed by Mr.M.Lakshmipathi questioning the correctness of the impugned Charge Memo issued in Tha.Ko.No.100/Tha.Pi(Ma)2/2003 dated 21.08.2003, quashed the same on 30.08.2017. The relevant paragraphs of the order dated 30.08.2017 are given as under:-

"6.This Court has anxiously considered the rival submissions and perused the materials and pleadings placed on record. There is a considerable force on the contention put forth by the learned counsel appearing for the petitioner that the acquittal by the criminal Court can be safely considered as one of honourable acquittal. As this Court in paragraph No.21 of the judgment dated 23.08.2016 in W.A.No.418 of 2010 has concluded that though the evidence given by the prosecution cannot be relied upon, as the witnesses had same motive against the accused and moreover, the witnesses have also turned hostile and therefore, there was no evidence at all which can be relied upon for the purpose of establishing the guilt of the accused.

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."

3. Learned counsel appearing for the petitioners emphatically submitted that since one of the accused Mr.M.Lakshmipathi, based on the judgment passed in C.C.No.20 of 2004 dated 23.12.2009, which was also confirmed by this Court in CrI.A.No.418 of 2010 dated 23.08.2016, has succeeded before this Court in quashing the Charge Memo dated 21.08.2003 in W.P.No.3257 of 2014, the petitioners, who are also similarly placed and issued with similar Charge Memo, be given the similar benefit.

4. Learned Special Government Pleader, who accepts notice for the respondent, is unable to reply to the submissions made by the counsel appearing for the petitioners with regard to the quashing of the Charge Memo dated 21.08.2003 in favour of Mr.M.Lakshmipathi, petitioner in W.P.No.3257 of 2014. Since this Court in CrI.A.No.418 of 2010 dated 23.08.2016 following the reasoning given by the trial Court in C.C.No.20 of 2004 dated 23.12.2009 and the findings and conclusions reached by the appellate Court quashed the Charge Memo in W.P.No.3257 of 2014, this Court has no option except to follow the order dated 30.08.2017 passed in W.P.No.3257 of 2014. Accordingly, all

these three writ petitions stand allowed and the impugned Charge Memo dated 21.08.2003, which was already quashed, also stands quashed. No costs. The connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

Jrl

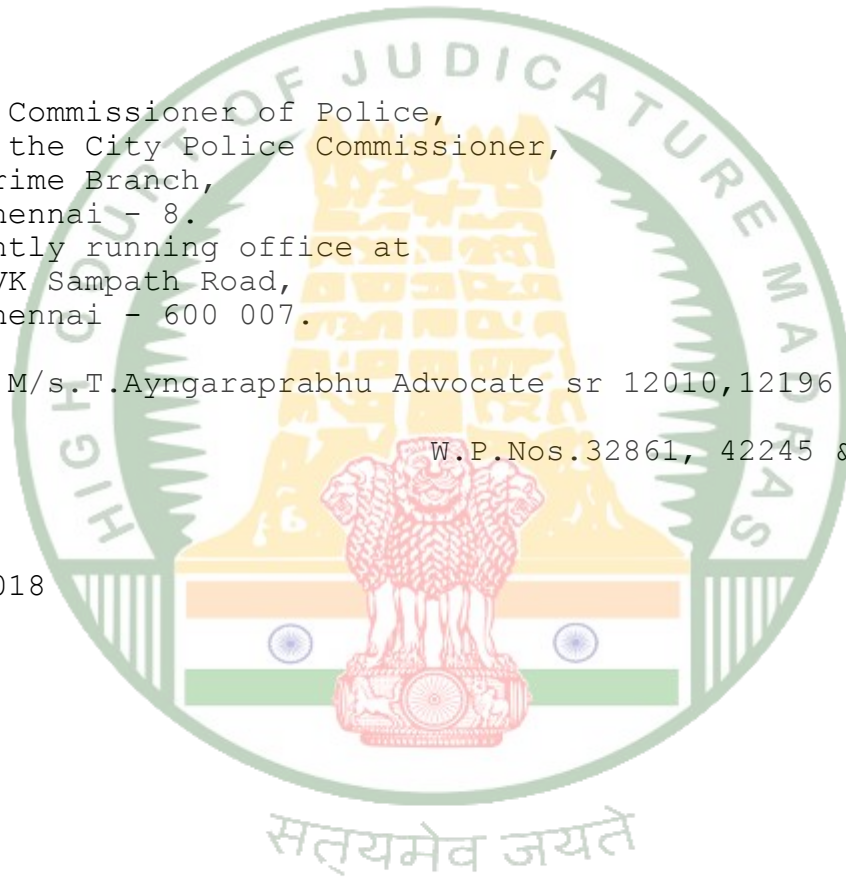
To

The Joint Commissioner of Police,
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+3 ccs to M/s.T.Ayngaraprabhu Advocate sr 12010,12196

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