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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 22.06.2018

DELIVERED ON : 29.06.2018

CORAM :

THE HONOURABLE MRS. JUSTICE R. THARANI

Crl.R.C.(MD) No.305 of 2018

and

Crl.M.P.(MD) Nos.4208 and 4209 of 2018

Janaki

... Petitioner

vs.

State

rep. By the Sub Inspector of Police,
CS.CID Police Station,
Crime No.37 of 2013,
Civil Supplies Crime Investigation,
Department,
Thanjavur.

... Respondent

Prayer:- Criminal Revision Petition filed under Sections 397 r/w. 401 of the Code of Criminal Procedure, 1973, to call for the records of the learned Judicial Magistrate No.I, Pudukottai in Cr.M.P.No.5246 of 2017 in C.C.No.61 of 2014 by which dismissing the discharge petition by an order dated 08.05.2018 and set aside the dismissal order of the Court.

For Petitioner

: Mr.D.Rameshkumar

For Respondent

: Mr.K.Suyambulinga Bharathi

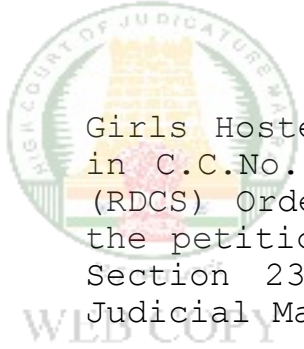
Government Advocate (Crl. Side)

ORDER

Heard Mr.D.Rameshkumar, learned counsel appearing for the petitioner and Mr.K.Suyambulinga Bharathi, learned Government Advocate (Crl. Side) appearing for the respondent.

2.This petition has been filed to set aside the order passed in Cr.M.P.No.5246 of 2017 in C.C.No.61 of 2014 dated 08.05.2018 on the file of the learned Judicial Magistrate No.I, Pudukottai.

3.The case against the petitioner is that on 10.02.2013 at about 05.00 a.m., when the police seized a vehicle bearing Registration No.TN-55-X-0207 TATA ACE they found 1,300 kgs of PDS Rice in 26 bags (each carries 50 kgs). In the confession of A2, it is stated that the petitioner who was working as a Teacher and additional incharge as Warden in Thirumayam Government Adi-Dravidar



Girls Hostel, supplied PDS rice to the second accused and the case in C.C.No.61 of 2014 for the offence under Sections 6(4) of TNSC (RDSCS) Order 1982 r/w. 7(i)a(ii) of E.C.Act, 1955 is filed against the petitioner. The petitioner has filed a discharge petition under Section 239 Cr.P.C., and the same was dismissed by the learned Judicial Magistrate.

4.On the side of the petitioner, it is stated that the petitioner was impleaded in the case only on the basis of the confession of A2. The petitioner is only a Teacher doing the additional duty of the Warden as an incharge arrangement at the time of occurrence. It is further stated that disciplinary proceedings was initiated against the petitioner and in the disciplinary proceedings, the petitioner was exonerated from the charges as it was held that there is no shortage of stock and there is no discrepancies in the stock register.

5.On the side of the petitioner, the learned counsel relied on the order passed by this Court in the case of Karuppaiyan v. State rep. By the Inspector of Police in Crl. O.P.(MD)No.4925 of 2010, which reads as follows:

"In the circumstances aforementioned, this Court would hold that the findings in the departmental proceedings of the petitioner not being guilty also would hold good in the criminal proceedings."

6.On the side of the petitioner, the learned counsel relied on the order passed by the Hon'ble Supreme Court in the case of P.S.Rajya v. State of Bihar reported in (1996) 9 Supreme Court Cases 1, which reads as follows:

"On these premises, if we proceed further then there is no difficult in accepting the case of the appellant. For if the charge which is identical could not be established in a departmental proceedings and in view of the admitted discrepancies in the reports submitted by the valuers one wonders what is there further to proceed against the appellant in criminal proceedings."

7.On the side of the respondents, it is stated that the case was registered against five persons and the petitioner is A4 in the case and in the discharge petition filed by the petitioner before the trial Court. It is admitted that the petitioner is responsible for the post of Hostel Warden and at that time, there is no necessity for the prosecution to file a false case against a Teacher and that the offence against the petitioner is transporting PDS rice which is meant for distribution for the public.

8.On the side of the respondent, the learned counsel relied upon the judgment passed by the Hon'ble Supreme Court in the case of R. Vijayan v. State of Kerala and Another reported in CDJ 2010 SC 110, which reads as follows:



"Whether the materials at the hands of the prosecution are sufficient or not are matters for trial. At this stage, it cannot be claimed that there is no sufficient ground for proceeding against the appellant and discharge is the only remedy."

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9. On the side of the respondent, the learned counsel has stated that while deciding the discharge petition, the Court has to consider whether there is prima facie case made out against the petitioner and he also relied upon the judgment passed by the Hon'ble Supreme Court in the case of State of Tamil Nadu by Inspector of Police Vigilance and Anti Corruption v. N. Suresh Rajan and Others in (2014) 1 MLJ (Crl) 315 (SC), which reads as follows:

"While passing the impugned orders, the Court has not shifted the materials for the purpose of finding out whether or not there is sufficient ground for proceeding against the accused but whether that would warrant a conviction. We are of the opinion that this was not the stage where the Court should have appraised the evidence and discharged the accused as if it was passing an order of acquittal. Further, defect in investigation itself cannot be a ground for discharge. In our opinion, the order impugned suffers from grave error and calls for rectification."

10. On the side of the respondent, the learned counsel relied upon the judgment passed by the Hon'ble Supreme Court in the case of State of N.C.T. Of Delhi v. Ajay Kumar Tyagi in Criminal Appeal No.1334 of 2012, which reads as follows:

"In fact, there are precedents, to which we have referred to above speak eloquently a contrary view ie., exoneration in departmental proceeding ipso facto would not lead to exoneration or acquittal in a criminal case. On principle also, this view commends us. It is well settled that the standard of proof in departmental proceeding is lower than that of criminal prosecution. It is equally well settled that the departmental proceeding or for that matter criminal cases have to be decided only on the basis of evidence adduced therein. Truthfulness of the evidence in the criminal case can be judged only after the evidence is adduced therein and the criminal case cannot be rejected on the basis of the evidence in the departmental proceeding or the report of the Inquiry Officer based on those evidence."

11. Records perused. A perusal of the records reveals that the petitioner was incharge of the post of the Warden in Thirumayam Government Adi-Dravidar Girls Hostel, at the time of the occurrence. It is stated that on the basis of the confession of A2, the petitioner was implicated in the case. It is stated that the petitioner was exonerated from the disciplinary proceedings initiated on the basis of the same cause of action. Whether the



enquiry is applicable in the criminal case and whether the petitioner is not guilty under the charge can be decided only after the completion of the arguments in the main appeal. On the basis of the available records, there is prima facie case made out against the petitioner. The judgments cited by the petitioner are related to some other offence, particularly relating to Co-operative Societies, wherein the main charge against those petitioner itself is misappropriation in the Co-operative Societies. Hence, the aforesaid citations are not applicable to the facts and circumstances of the case. In this circumstances, there is no sufficient grounds to interfere the impugned order. The reasons stated in the petition are not satisfactory. Hence, this Criminal Revision Case is dismissed. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(Crl. side)

/True Copy/

Sub Assistant Registrar

To

- 1.The Judicial Magistrate No.I, Pudukottai
- 2.The Sub Inspector of Police,
CS.CID Police Station,
Civil Supplies Crime Investigation Department,
Thanjavur.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1cc to M/S.D.Rameshkumar, Advocate SR.No. 70413

Crl.R.C.(MD) No.305 of 2018
29.06.2018

mrn

JM/SV/SAR 1/10.07.2018/4P/5C