

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.01.2020

CORAM:

THE HON'BLE MR.JUSTICE S.VAIDYANATHAN

Review Application (Writ) No.191 of 2019
in W.P.No.22167 of 2019

K.P.Tamilmaran

.. Review Petitioner

vs.

1. The Deputy Inspector General of Police,
Villupuram Range, Villupuram.

2. The Superintendent of Police,
Cuddalore, Cuddalore District.

... Respondents

Review Application filed under Order 47 Rule 1 C.P.C.
seeking to review the order dated 29.07.2019 passed by this
Court in W.P.No.22167 of 2019.

Writ Petition is filed under Article 226 of the
Constitution of India, praying this Honourable Court to issue a
Writ of Mandamus, forbearing the first respondent from further
proceeding with the charge memo bearing PR.No.9 of 2019 under
rule 3(b) dated 02.05.2019 issued by the first respondent
against the petitioner until conclusion of the criminal trial in
S.C.No.7 of 2019 on the file of the Chief Judicial Magistrate-
cum-Special Judge, Cuddalore, and thus render justice.

For Petitioner : Mr.M.Radhakrishnan

For Respondents: Ms.Thangavadana Balakrishnan

O R D E R

Seeking to review the order dated 29.07.2019 passed by this
Court in W.P.No.22167 of 2019, the Petitioner has come up with
the above Review Application.

2. In the order dated 29.07.2019 passed in the above Writ
Petition, this Court, taking note of the decision of the Apex
Court in the case of Stanzen Toyotetsu India Private Limited vs.
Girish, reported in (2014) 3 SCC 636, has held that both the

departmental proceedings and the criminal case shall go on simultaneously, and held that there is no need to stall the departmental proceedings. The said Writ Petition was disposed of with a direction to the 1st Respondent/Deputy Inspector General of Police, Villupuram, to proceed against the Petitioner departmentally and bring the issue to a logical end within six months from the date of receipt of a copy of the order, by conducting the enquiry on a day-to-day basis, without adjourning the same beyond several working days at any point of time.

3. At this juncture, it is worth referring to an Apex Court decision in the case of Ajay Kumar Choudhary vs. Union of India reported in 2015 (3) CTC 119, wherein, it is held as under:

"8. Ultimately, the court has to balance and weigh the several relevant factors - 'balancing test' or 'balancing process' - and determine in each case whether the right to speedy trial has been denied in a given case. (9) Ordinarily speaking, where the court comes to the conclusion that right to speedy trial of an accused has been infringed the charges or the conviction, as the case may be, shall be quashed. But this is not the only course open. The nature of the offence and other circumstances in a given case may be such that quashing of proceedings may not be in the interest of justice. In such a case, it is open to the court to make such other appropriate order - including an order to conclude the trial within a fixed time where the trial is not concluded or reducing the sentence where the trial has concluded - as may be deemed just and equitable in the circumstances of the case.

14. We, therefore, direct that the currency of a Suspension Order should not extend beyond three months if within this period the Memorandum of Charges/Chargesheet is not served on the delinquent officer/employee; if the Memorandum of Charges/Chargesheet is served a reasoned order must be passed for the extension of the suspension. As in the case in hand, the Government is free to transfer the concerned person to any Department in any of its offices within or outside the State so as to sever any local or personal contact that he may have and which he may misuse for obstructing the investigation against him. The Government may

also prohibit him from contacting any person, or handling records and documents till the stage of his having to prepare his defence. We think this will adequately safeguard the universally recognized principle of human dignity and the right to a speedy trial and shall also preserve the interest of the Government in the prosecution. We recognize that previous Constitution Benches have been reluctant to quash proceedings on the grounds of delay, and to set time limits to their duration. However, the imposition of a limit on the period of suspension has not been discussed in prior case law, and would not be contrary to the interests of justice. Furthermore, the direction of the Central Vigilance Commission that pending a criminal investigation departmental proceedings are to be held in abeyance stands superseded in view of the stand adopted by us."

4. Subsequently, the Apex Court in the case of State of Tamil Nadu vs. Promod Kumar IPS reported in AIR 2018 SC 4060, has held as under:

"20. The first Respondent was placed under deemed suspension under Rule 3(2) of the All India Services Rules for being in custody for a period of more than 48 hours. Periodic reviews were conducted for his continuance under suspension. The recommendations of the Review Committees did not favour his reinstatement due to which he is still under suspension. Mr.P. Chidambaram, learned Senior Counsel appearing for the first Respondent fairly submitted that we can proceed on the basis that the criminal trial is pending. There cannot be any dispute regarding the power or jurisdiction of the State Government for continuing the first Respondent under suspension pending criminal trial. There is no doubt that the allegations made against the first Respondent are serious in nature. However, the point is whether the continued suspension of the first Respondent for a prolonged period is justified.

21. The first Respondent has been under suspension for more than six years. While releasing the first Respondent on bail, liberty was given to the investigating agency

to approach the Court in case he indulged in tampering with the evidence. Admittedly, no complaint is made by the CBI in that regard. Even now the Appellant has no case that there is any specific instance of any attempt by the first Respondent to tamper with evidence.

23. This Court in Ajay Kumar Choudhary v. Union of India, (2015) 7 SCC 291 has frowned upon the practice of protracted suspension and held that suspension must necessarily be for a short duration. On the basis of the material on record, we are convinced that no useful purpose would be served by continuing the first Respondent under suspension any longer and that his reinstatement would not be a threat to a fair trial. We reiterate the observation of the High Court that the Appellant State has the liberty to appoint the first Respondent in a non sensitive post."

5. In the light of the above two decisions of the Apex Court, this Court is inclined to review paragraphs 8 and 9 of the order dated 29.07.2019 passed in W.P.No.22167 of 2019, and accordingly, they are modified as under:

"This Court is of the view that the departmental enquiry shall be kept in abeyance for a period of one year from the date of registration of the F.I.R./complaint. If the criminal proceedings are not concluded within a period of one year, it is open to them to proceed with the departmental enquiry on a day-to-day basis, without adjourning the matter beyond three working days at any point of time.

6. The Review Application is disposed of to the extent indicated above.

Sd/-

Assistant Registrar (CCC)

//True Copy//

Sub Assistant Registrar

(aeb)

TO

1. The Deputy Inspector General of Police,
Villupuram Range, Villupuram.
2. The Superintendent of Police,
Cuddalore, Cuddalore District.

+1cc to Mr.M.Radhakrishnan, Advocate, S.R.No. 7386

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SV(CO)
GN(05/03/2020)