

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 19.06.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P.No.1130 of 2012

S.Gopal

.. Petitioner

Vs.

1.The Home Secretary
State Government of Tamil Nadu
Fort St.George
Chennai-5.

2.The Additional Director General of Police
(Law and Order)
having office at DGP office
Mylapore, Chennai-4.

3.The Deputy Inspector General of Police
Kancheepuram Range
having office at
Kancheepuram Town, Taluk and District

4.The Superintendent of Police
Kancheepuram District, having office at
District Police Head Quarters
Kancheepuram Town, Taluk and District.

5.The Additional Superintendent of Police
(Crime) Tiruvellore
having office at District Police Head Quarters
Tiruvellore Town, Taluk and District.

.. Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of a writ of Certiorari calling for records relating to the order passed by the 1st respondent in G.O.(D)No.886, dated 07.09.2011, confirming the order passed by the 2nd respondent in R.C.No.075720/AP1(2)/2009, dated 03.07.2009 and the final order passed by the 3rd respondent in PR.No.42/2008, dated 30.12.2008 and quash the same.

For Petitioner : Mr.S.Parthasarathy

For R1 to R5 : Ms.R.Janaki
Additional Government Pleader

O R D E R

Writ Petition is filed for issuance of a writ of Certiorari calling for records relating to the order passed by the 1st respondent in G.O.(D)No.886, dated 07.09.2011, confirming the order passed by the 2nd respondent in R.C.No.075720/AP1(2)/2009, dated 03.07.2009 and the final order passed by the 3rd respondent in PR.No.42/2008, dated 30.12.2008 and quash the same.

2(i).The petitioner while working as Inspector of Police, Prohibition Enforcement Wing, Chengalpet, was issued with charge memo containing four charges, which read as follows:

"(i). Gross dereliction of duty in having released the accused Maha @ Mahadevan concerned in Chengalpattu PEW Crime No.38/08 under Section 4(1) (aaa) 4(1-a) TNP Act read with 6 & 11 of RS Rules 2000 without valid reason who was secured earlier which resulted in the heinous and dreadful murder of one Veerabadran on 30.01.2008 by the said accused along with Ravi, S/o.Chokalingam, Babu S/o.Durai and five others for betraying and informing him to police.

(ii). Gross disobedience of the order of the Superintendent of Police, Kancheepuram District vide memo in Rc.No.57/memo/10/SB/KPM/08, dated 24.01.2008.

(iii). Not obeying the instructions of Deputy Superintendent of Police, PEW conveyed in memos C.No.17, 18 and 19/08, dated 27.01.2008 showing lack of motivation and involvement in implementation of TNP Act 1937.

(iv). Gross neglect of duty in having entered on Medical Leave from 31.01.2008 without informing his superior officers."

2(ii). The petitioner submitted his explanation to the charge memo on 15.01.2008. Not being satisfied with the explanation submitted by the petitioner, the 5th respondent was appointed as Enquiry Officer to conduct domestic enquiry in respect of the charges levelled against the petitioner. The Enquiry Officer by his report dated 19.11.2008 held that the charges 1, 3 and 4 were proved against the petitioner and the 2nd charge was not proved. The 3rd respondent considering the enquiry report filed by the 5th respondent imposed punishment of reduction in time scale of pay by one stage for one year and order shall operate to postpone his future increment. The two appeals filed by the petitioner before the 2nd respondent and 1st

respondent were rejected. Against the orders of respondents 1 to 3, the petitioner has come out with the present writ petition.

3.The learned counsel appearing for the petitioner contended that finding of the Enquiry Officer that the charges levelled against the petitioner were proved is perverse in law and contrary to the evidence let in by the prosecuting authority. The order dated 30.12.2008 passed by the 3rd respondent imposing punishment is improper, perverse and contrary to the available materials. The 3rd respondent while exercising quasi judicial power ought to have examined each and every material placed before him and the evidence let in before the Enquiry Officer. The respondents 1 and 2 without independently considering the appeals filed by the petitioner and discrepancies pointed out in the petition, dismissed the appeals mechanically following the order of the 3rd respondent. The various irregularities and defects in the prosecution case and contradiction by the prosecution witness with regard to identification of the accused Maha @ Mahadevan and Ravi have not been considered either by the 5th respondent or 3rd respondent. Prior to murder of Veerabadran on 30.01.2008, there was a quarrel between Veerabadran, Ravi, Maha @ Mahadevan and others. The Inspector of Police, Maraimalai Nagar Police Station, Sivapathasekaran, visited the spot and had an occasion to control the quarrel. Had he taken proper action, further problem could have been averted. The respondents 1 to 3 and 5th respondent failed to note that the prosecution witnesses could not establish the actual area, from where the contrabands were seized and it is highly improper that the said witness identified the accused as Maha @ Mahadevan and Ravi. The 5th and 3rd respondents failed to see that the petitioner had properly conducted investigation in Crime No.38/2008 on the file of the Prosecution Enforcement Wing, Chengalpet and he was not biased and influenced. The 1st respondent failed to peruse and consider the entire materials along with CD file in Crime No.38/2008 and the 1st respondent ought to have formed independent opinion then the conclusion of the respondents 2 and 3 and prayed for allowing the writ petition.

4.The Additional Secretary to the Government filed counter affidavit on behalf of the respondents. The learned Additional Government Pleader appearing for the respondents contended that Sivapathasekaran, Inspector of Police, Maraimalai Nagar Police Station, Sub-Inspector of Police Soundarrajan and other Police Constables formed a special team and had a surveillance for prohibition offence. On seeing the police party, one Ravi and Maha @ Mahadevan ran away from the place and contrabands were seized from the house. A case was registered in Crime No.42/2008 by the Maraimalai Nagar Police Station for the offences under Sections 4(1)(aaa) and 4(1-A) of Tamil Nadu Prohibition Act, 1937 read with 6 and 7 of Rectified Spirit Rules, 2000, against

Ravi and Maha @ Mahadevan. The said crime number was transferred to Prohibition Enforcement Wing, Chengalpet, in which, the petitioner was Inspector of Police. He registered the said case in Crime No.38/2008. The petitioner secured Maha @ Mahadevan and his brother Sahadevan on 30.01.2008 and brought them to the Police Station. The petitioner knowing fully well that Maha @ Mahadevan is an accused in Crime No.38/2008 on the file of Chengalpet Prohibition Enforcement Wing, had released Maha @ Mahadevan at his own will contrary to the law and sent Sahadevan only for remand. Maha @ Mahadevan let off deliberately without any valid reason, without consulting the superior officers and without taking any action against him. On coming to know about the quarrel during the night hours on 30.01.2008, Sivapathasekaran, Inspector of Police, Maraimalai Nagar Police Station immediately rushed to the spot, ensured peace and returned back. Veerabadran was murdered on the same night and wife of Veerabadran gave a complaint that her husband was killed by Ravi, Babu and Maha @ Mahadevan. A case was registered in Maraimalai Nagar Police Station in Crime No.75/2008 under Sections 147, 148, 341 and 302 IPC, accused were arrested and remanded to judicial custody. The petitioner without informing the higher officials went on medical leave with effect from 31.01.2008. The petitioner was placed under suspension by the order dated 12.02.2008 by the Deputy Inspector General of Police, Vellore Range, In-charge of Kanchipuram vide R.O.No.31/2008 C.No.B2/10048/2008, dated 07.02.2008 for dereliction of duty for not arresting the notorious offender Maha @ Mahadevan even after securing him, which resulted in a brutal murder of Veerabadran. The 5th respondent was appointed as Enquiry Officer. The 5th respondent after conducting enquiry submitted his report dated 19.11.2008 holding that the charges 1, 3 and 4 levelled against the petitioner were proved. The 3rd respondent considering the report of the Enquiry Officer and entire materials on record has imposed punishment of reduction in time scale of pay by one stage for one year and order shall operate to postpone his future increment. The appeals filed by the petitioner were considered by the 2nd and 1st respondents and the same were rejected. There is no error in the impugned orders and prayed for dismissal of the writ petition.

5. Heard the learned counsel appearing for the petitioner as well as the learned Additional Government Pleader appearing for the respondents and perused the materials available on record.

6. From the materials available on record, it is seen that Inspector of Police, Maraimalai Nagar Police Station registered a case in Crime No.42/2008 for the offences under Sections 4(1) (aaa) and 4(1-A) of Tamil Nadu Prohibition Act, 1937 read with 6 and 7 of Rectified Spirit Rules, against one Ravi and Maha @ Mahadevan. The said case was transferred to Prohibition Enforcement Wing, Chengalpet, on the ground that the offence

involves prohibition case. The petitioner who was the then Inspector of Police, Prohibition Enforcement Wing, Chengalpet, registered the said case in Crime No.38/2008 under Sections 4(1) (aaa), 4(1-A) of Tamil Nadu Prohibition Act read with 6 & 11 of RS Rules 2000. After conducting investigation on 30.01.2008, he secured Maha @ Mahadevan and his brother Sahadevan. Admittedly, the petitioner sent only Sahadevan for remand and released Maha @ Mahadevan even though he was shown as accused in Crime No.42/2008, which was again registered as Crime No.38/2008 by the petitioner, when the same was transferred to Prohibition Enforcement Wing, Chengalpet. The reason given by the petitioner for letting out Maha @ Mahadevan that Sahadevan admitted that he and Ravi alone were involved in the offence and Maha @ Mahadevan is not involved in the offence, is not acceptable, when he was shown as accused in Crime Nos.42 and 38/2008.

7.It is pertinent to note that according to the petitioner, he has taken an undertaking from Maha @ Mahadevan, to appear for enquiry before the petitioner on 31.01.2008. If really, the said Maha @ Mahadevan is innocent and he has not committed any offence, there is no necessity for the petitioner to direct the said Maha @ Mahadevan to appear before him for enquiry on the very next day. According to the petitioner, Veerabadran is relative of Sahadevan and Maha @ Mahadevan. The petitioner has taken confessional statement from Sahadevan in the presence of witnesses and sent him for judicial custody to the Magistrate on 30.01.2008 itself. Before the 5th respondent, the petitioner appeared for enquiry. 12 witnesses were examined and 20 documents were marked. The petitioner cross-examined all the prosecution witnesses except P.W.2. The petitioner examined one witness and filed 7 documents. From the Minutes of enquiry, it is seen that Enquiry Officer has elaborately considered the evidence let in by both the prosecution and petitioner and has given a finding that charges 1, 3 and 4 levelled against the petitioner were proved. After receipt of enquiry report, the 3rd respondent sent FR memo along with Enquiry Officer's report dated 19.11.2008 and the petitioner submitted his explanation to the FR memo on 18.12.2008. The 3rd respondent considering the enquiry report, documents marked and witnesses examined to prove the charges levelled against the petitioner, has accepted the findings of the Enquiry Officer. The 3rd respondent considering the long service of the petitioner took a lenient view, awarded punishment of reduction in time scale of pay by one stage for one year and order shall operate to postpone his future increment. It is not the case of the petitioner that enquiry was not conducted in a fair and proper manner, opportunity was denied to put forth his case and the principles of natural justice were violated. On the other hand, from the averments made in the affidavit, it is seen that Inspector of Police, Maraimalai Nagar Police Station, registered the case against

Ravi and Maha @ Mahadevan in Crime No.42 of 2008. The petitioner in his affidavit had admitted that the said case in Crime No.42/2008 was transferred to Prohibition Enforcement Wing, Chengalpet and he registered the case in Crime No.38 of 2008 against Maha @ Mahadevan and others. It is not the case of the petitioner that he did not register Crime No.38/2008 against Maha @ Mahadevan. On the other hand, when he investigated the case, he secured Maha @ Mahadevan on 30.01.2008 and for the reasons best known to him, he let him off on the very same day without sending him for remand. If really, the petitioner has accepted the alleged confession of Sahadevan and the statement of Maha @ Mahadevan that Maha @ Mahadevan is innocent and not involved in the crime, there is no necessity or reason to direct Maha @ Mahadevan to appear before him for further enquiry on the next day i.e., on 31.01.2008. Except pointing out minor discrepancies in the evidence of prosecution witnesses and blaming Sivapathasekaran, Inspector of Police, Maraimalai Nagar Police Station, the petitioner has not pointed out any violation in conducting domestic enquiry and any defect in the findings of the 5th and 2nd respondent and orders of respondents 1 to 3.

8.For the above reasons, the writ petition stands dismissed as devoid of merits. No costs.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

1.The Home Secretary
State Government of Tamil Nadu
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Chennai-5.

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(Law and Order)
having office at DGP office
Mylapore,
Chennai-4.

3.The Deputy Inspector General of Police
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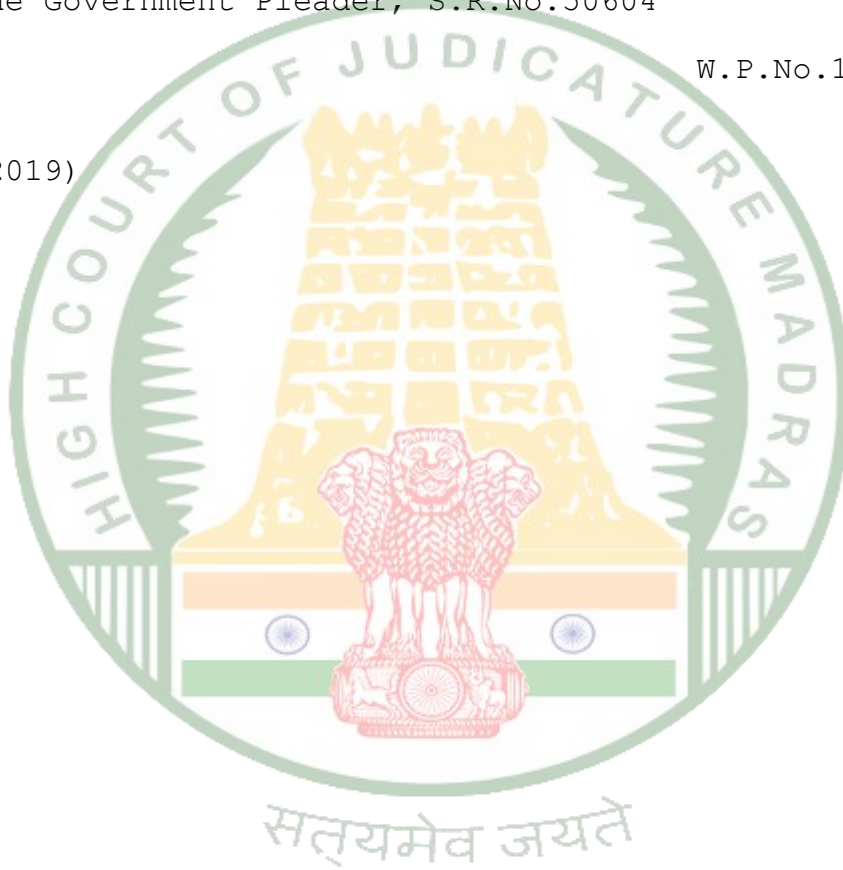
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(Crime) Tiruvellore
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+1cc to Mr.S.Parthasarathy, Advocate, S.R.No.50236
+1cc to the Government Pleader, S.R.No.50604

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CNR(CO)

SP(20/09/2019)



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