

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.01.2019

CORAM

THE HON'BLE MR.JUSTICE M.M.SUNDRESH
AND
THE HON'BLE MR.JUSTICE KRISHNAN RAMASAMY

W.A.NO.352 OF 2013

G.Chandrasekaran

.. Appellant

Vs

1. The Commandant,
Tamil Nadu Special Police Force
I Battalion, Trichy - 620 012.
2. The Deputy Commandant,
Tamil Nadu Special Police Force
I Battalion, Trichy - 620 012.

.. Respondents

Appeal preferred under Clause XV of Letters Patent against the order dated 15.07.2010 made in W.P.No.45632 of 2006.

W.P.No.45632 of 2006:-

This Writ Petition came to be numbered under Article 226 of the Constitution of India, by way of transfer of O.A.No.1508 of 2000 from the file of the Tamil Nadu Administrative Tribunal, to call for the records relating to the imugned order passed by the first respondent in his proceedings PR.47/99 u/r 3(b) dated 16.1.2000 and quash the same and consequently direct the respondents to reinstate the petitioner into service with all consequential monetary and service benefits.

For Appellant .. Mr.K.Venkataramani,
Sr.Counsel for Mr.Muthappan

For Respondents.. Ms.A.Sri Jayanthi,
Spl. Govt. Pleader

JUDGMENT

(Judgment of the Court was delivered by M.M.SUNDRESH, J.)

This writ appeal is directed against the order dated 15.07.2010 made in W.P.No.45632 of 2006.

2.Two charges have been framed against the appellant by the charge memo dated 26.10.1999. The first charge is with respect to the offence under Section 376 I.P.C. The second charge is taking the vehicle to the destination without permission. Incidentally, criminal case has also been registered against the appellant. The defacto complainant is none other than the another woman police constable.

3.The case of prosecution and the respondents is that the defacto complainant viz., P.W.1 sought for a lift to drop her at her destination in a vehicle driven by the appellant. Despite repeated plea made, the appellant did not stop it and indulged in the offence of Section 376 I.P.C. On her cry, the vehicle was stopped and the appellant was rounded by the villagers. On the persistent plea to villagers, the appellant was let off. In the criminal case, the conviction rendered by the trial Court was overturned by this Court.

4.The appellant was proceeded departmentally as well by framing two charges. Consistent with the stand taken before the trial Court, the prosecutrix turned hostile and so also the other witnesses except the official witnesses. We do not have the judgment of the Trial Court but we take the submissions made in this regard.

5.Before the departmental proceedings also, P.W.1, who is the prosecutrix turned hostile. Being a police constable, strangely, she made a statement that she was asked to sign in the dotted lines though she has written the complaint in her own handwriting. The same was echoed by the other witnesses. P.W.2 is the Inspector of Police, who has stated about the police complaint and the investigation made. P.W.7 is a doctor who has deposed that P.W.1 made a statement before her and she also spoke about the injuries. According to her, there were not much injuries found. P.W.8 is the Inspector of Police, who filed a report under Ex.P11. P.W.2 has also been cross-examined by the appellant.

6.The enquiry officer, placing substantial reliance upon the evidence of P.Ws.7 and 8 found the charges proved. The disciplinary authority also concurred with it. Learned single Judge by analysing the materials available on record dismissed the writ petition and hence the appeal.

7.Learned senior counsel appearing for the appellant would submit that we are dealing with the case of no evidence except the evidence of P.Ws.7 and 8 witnesses, who are not eye witnesses. There is no other evidence to implicate the appellant. In a departmental proceedings, it is for the Department to substantiate the charges as against the delinquent

officer. The confession made before the police is inadmissible under Section 27 of the Indian Evidence Act. To buttress his submission, reliance has been made on the decision of the Supreme Court in Roop Singh Negi Vs. Punjab National Bank and Others ((2009) 2 SCC 570) and the order of this Court in W.P.No.28893 of 2008 dated 18.09.2009.

8.Learned Special Government Pleader appearing for the respondents would submit that what is required is preponderance of probabilities. It is a case where the appellant has went over many of the witnesses. However, there are sufficient materials available on record, which has been taken into consideration rightly by the disciplinary authority. Admittedly, the criminal case cannot be a bar for the departmental action. Therefore, no interference is required.

9.We have considered the submissions made.

10.What is required in a departmental proceeding is preponderance of probabilities. Here is the case where P.W.1, who herself as a police constable, gave the complaint against the appellant. Strangely, for the reasons known to her, she retracted the statement. She had no axe to grind against the appellant. Under what circumstances, the complaint was given and the circumstances which made her to give such a complaint were never raised by the appellant. Even P.W.1 has stated, as admitted by the appellant, that she sought for a lift and she was going along with the appellant. P.W.7 has stated that P.W.1 made the statement before her. Therefore, we are of the view that notwithstanding the acquittal rendered by this Court reversing the judgment of the trial Court, the finding rendered by the disciplinary authority accepting the enquiry officer's report cannot be termed as perverse. Factually, the appellant also failed to report before the appropriate authority on 27.09.1999 along with vehicle on the relevant date. We are not concerned with the confession made in the case on hand. We are concerned with the conduct of the parties especially P.W.1 and the appellant. Merely because P.W.1 changed her version before the enquiry officer, the appellant cannot be exonerated in the light of the attending circumstances. Even the medical officer P.W.7 has stated that P.W.1 did make a statement before her. In such view of the matter, considering the nature of charges framed, we are not able to find that the process adopted is perverse, warranting interference. We also find that the decisions relied upon by the learned senior counsel for the appellant are not applicable to the case on hand as they have been rendered on the facts involved.

11.We may also note that the appellant was working in Police Force. Police Force requires discipline. The charges made are

very serious in nature. Therefore, we are of the view that the matter will have to be looked with a sense of seriousness. Thus, taking into consideration the facts governing, especially the de facto complainant and the appellant are police officials, there is no need to exercise the discretion in favour of the appellant. Accordingly, the writ appeal stands dismissed. No costs.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

mmi

To

1. The Commandant,
Tamil Nadu Special Police Force
I Battalion,
Trichy - 620 012.
2. The Deputy Commandant,
Tamil Nadu Special Police Force
I Battalion,
Trichy - 620 012.

+1cc to Mr.Muthappan, Advocate, S.R.No.1279
+1cc to the Government Pleader, S.R.No.1459

W.A.No.352 of 2013

RR(CO)
CS/06/03/2019

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