

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date:07.08.2019

CORAM

THE HON'BLE MR. JUSTICE V.PARTHIBAN

W.P.No.23120 of 2019 and
W.M.P.Nos.22828 & 22830 of 2019

M.Kumar

...Petitioner

Vs.

1.The Superintendent of Police
Cuddalore District,
District Police Office, Cuddalore.

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

...Respondents

Prayer: Petition filed under Article 226 of Constitution of India, for issuance of Writ of Certiorarified Mandamus to call for the records culminating in the impugned Memo dated 22.04.2019 made in proceedings C.No.D1/PR 70/2009 issued by the first respondent, quash the same and consequently direct the respondents to not continue the enquiry proceedings initiated against the petitioner, as per Impugned Memo dated 22.04.2019 made in C.No.D1/PR 70/2009.

For Petitioner : Mr.Sai Sathya Jith

For Respondents : Mr.J.Pothiraj
Special Government Pleader

ORDER

The petitioner, while working as Constable in the Tamil Nadu Police Department, was implicated in a criminal case for offences under Sections 498 A, 304(b) read with Section 4 and 6 (2) of the Dowry Prohibition Act. The criminal case was registered against him due to his wife committing suicide and there was allegation of dowry harassment at the hands of the petitioner which led to the death of the petitioner's wife. On 24.09.2009 the petitioner was placed under suspension and ultimately the Criminal Court ended in conviction on 19.02.2010 in S.C.No.289/2009 and the petitioner was sentenced to 10 years of imprisonment and fine. Thereafter, the petitioner was dismissed from service on 13.05.2010 by the respondent.

2.As against the order passed by the trial Court, an Appeal was filed before this Court in Appeal No.123/2010 and the same was allowed on 19.07.2017 by acquitting the petitioner of all charges. The petitioner, in the said circumstances, challenged the order of dismissal dated 13.05.2010 in W.P.No.33586 of 2018 and the said writ petition was disposed of on 20.12.2018 whereby the respondents were directed to take into account the subsequent acquittal in the Criminal Appeal and reconsider the order of dismissal from service. Thereafter, on 12.04.2019, an order of reinstatement was issued and the petitioner joined the Department. Subsequent to the joining of the Department, a memo dated 22.04.2019 was issued to follow up on the original departmental charge issued against him on 12.10.2009, proceeding with the charge memorandum which was issued in respect of the incident which led to the framing of criminal charges against him.

3.The learned counsel appearing for the petitioner would submit that the departmental action proceeding with the charge memorandum even after the acquittal by this Court in the Criminal Appeal is unwarranted, since such charge memorandum need not be pursued on the basis of same set of facts and grounds as held by this Court and by the Hon'ble Supreme Court of India. Once the petitioner was acquitted of all charges in the Criminal Appeal, it is not open to the Department to proceed against him in the departmental charges for the same alleged incident. Moreover, the charge was issued in 2009 and after the petitioner was ordered to be reinstated and after petitioner joining the Department, the petitioner is now being proceeded against departmentally after a period of 10 years. Therefore, he would urge that such action on the part of the respondents is arbitrary, unreasonable and violative of Articles 14 and 21 of the Constitution of India.

4.This Court is unable to appreciate as to how the writ petition could challenge the charge memorandum when the Department felt that it could proceed against the petitioner departmentally even in the face of the acquittal by this Court in the Criminal Appeal. It is trite in law that even in the face of acquittal, it is always legally possible for the Department to proceed against the delinquent official departmentally and can sustain the charges by letting in evidence in the disciplinary proceedings. Undoubtedly and admittedly, the standard of proof in the departmental action is entirely different from the standard of proof that is required to hold some one guilty of the charges in the criminal trial. The departmental action cannot be rescinded or withdrawn only because of the fact that the criminal case has ended in acquittal. In fact, in this case, the petitioner was originally

convicted by the trial Court and was sentenced to 10 years imprisonment and only in the Appeal, the conviction was reversed and acquittal order was passed.

5.This Court is unable to appreciate whether the Department is pursuing the departmental action on the basis of same set of facts or grounds as made available in the criminal Court or in different set of facts. It is even possible for the Department to hold the petitioner guilty of the charge in the departmental proceedings on the basis of preponderance of probabilities and in which event, the petitioner can be imposed with appropriate penalty for committing gross acts of proved misconduct. The argument advanced on behalf of the petitioner that the departmental action is being pursued belatedly after nine years cannot be an acceptable piece of argument for the reason that the Department has correctly waited till the conclusion of the criminal trial and the Appeal and only thereafter, the Department felt that it could sustain the departmental action against him. Therefore, the Department cannot be faulted for proceeding against the petitioner, in respect of the charges issued in 2009. On the whole, this Court does not find any compelling or exceptional circumstances to interfere with the present stage of issuance of charge memo and in such circumstances, this Court does not think that the petitioner can be granted any relief in the writ petition.

6.Even otherwise, no prejudice would be caused to the petitioner, if he participates in the enquiry proceedings and vindicates his innocence. On the other hand, grave prejudice would be caused to the administration if the petitioner is not proceeded against departmentally for the serious acts of misconduct alleged against him. Every action of the Department has to be tested on the touchstone of prejudice and in this case, no prejudice could be shown if the petitioner is to face the disciplinary action and it is always open to him to come out unscathed in the disciplinary action, in case the petitioner is innocent of the alleged act of misconduct committed by him.

7.For the above said reason, the challenge to the charge memo appears to be prematured and also the same is devoid of merits and hence, the Writ Petition is dismissed. No costs. Consequently, connected miscellaneous petitions are also dismissed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

To

1.The Superintendent of Police,
Cuddalore District,
District Police Office, Cuddalore.

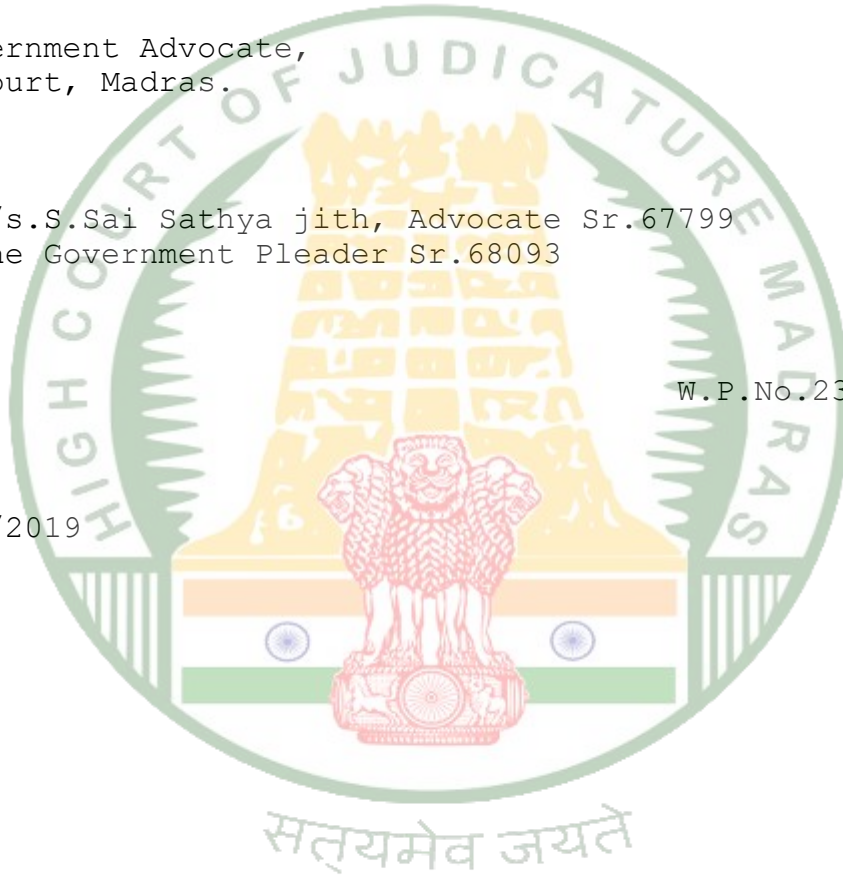
2.The Deputy Superintendent of Police,
Cuddalore District
District Police Office, Cuddalore.

3.The Government Advocate,
High Court, Madras.

+lcc to M/s.S.Sai Sathya jith, Advocate Sr.67799
+lcc to the Government Pleader Sr.68093

W.P.No.23120 of 2019

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srg 26/09/2019



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