

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 11.04.2019

Coram

The Honourable DR.JUSTICE ANITA SUMANTH

W.P. No.32956 of 2017
& WMP. No.36348 of 2017

T.Kamarajan

....Petitioner

/Vs/

1.Director General of Police
Dr.Radhakrishnan Road, Mylapore,
Chennai-600004.

2.The Deputy Inspector General of Police
Vellore Range, Vellore District

....Respondents

P R A Y E R: WRIT PETITION under Article 226 of the Constitution in the nature of Certiorarified Mandamus calling for the records and quash the impugned order of the 2nd respondent dated 09.12.2015 vide C.No.B2/015242/2015 R.O.408/2015 suspending the petitioner from service as an inspector of police with effect from 08.12.2015 and consequently direct the 2nd respondent to reinstate the petitioner within time frame.

For Petitioner : Mr.K.Ravi Anantha Padmanaban

For Respondents : Mr.Zakir Hussain, GA

O R D E R

The petitioner was holding the the position of Inspector of Police and is presently under suspension by virtue of the impugned order of suspension dated 09.12.2015.

2. The short point argued by Mr.K.Ravi.Anantha Padmanaban, learned counsel for the petitioner is that the suspension is unduly prolonged and, as such, there is no justification for the same to continue in the light of judgments of the Supreme Court in the case of Ajay Kumar Choudhary Vs. Union of India and Another ((2015) 7 SCC 291) and State of Tamil Nadu Rep. By Secretary to Govt. Vs. Promod Kumar IPS and Another (C.A.No.8427-8428 of 2018) dated 21.08.2018.

3. The submissions, in brief relating to the merits are as follows:

The petitioner was working as Inspector of Police at Natrampalli Police Station, Vellore District. On 01.10.2015, it appears that six(6) persons had waylaid a lorry and kidnapped the driver and committed robbery of the contents of the lorry. An FIR was registered in Crime No.322/2015 in the Police Station, where the petitioner was serving as Inspector. The gang had also snatched the mobile phone of the lorry driver which led eventually to their arrest. One of the kingpin, co-accused, appeared to be hoarding a sum of Rs.7,00,000/- at his home and upon receipt of this information, the petitioner and his team searched his residence recovering the sum of Rs.7,00,000/- on 19.11.2015. While this is so, a de facto complaint was filed by the kingpin as though the petitioner has received a bribe of Rs.12,00,000/- from him to permit him to leave the police station. In fact, the amount and Rs.7,00,000/- was available even at that time, in safe custody in the police station.

4. Seeing as the ground now agitated before me rests solely upon the fact that the suspicion is unduly prolonged, I do not wish to dwell upon the facts. Suffice it to say that pursuant to the incident as above, an FIR was filed arraying the petitioner as an accused on 07.12.2015. The impugned order, suspending the petitioner, was passed on 08.12.2015 and pursuant thereto, a charge-sheet has also been laid in February 2015 and trial is ongoing in Criminal Case No.1 of 2019 in the Court of Chief Judicial

Magistrate, Vellore.

5. The only question to be determined is whether such prolonged suspension ought to be continued, in the light of the categoric pronouncements of the Supreme Court Judgment in the case of Ajay Kumar (supra) & Promod Kumar (supra) deprecating such a practice.

6. The Bench in Ajay Kumar (supra) case stated at paragraphs 20 and 21 of the judgment as follows:

20. It will be useful to recall that prior to 1973 an accused could be detained for continuous and consecutive periods of 15 days, albeit, after judicial scrutiny and supervision. The Cr.P.C. of 1973 contains a new proviso which has the effect of circumscribing the power of the Magistrate to authorise detention of an accused person beyond period of 90 days where the investigation relates to an offence punishable with death, imprisonment for life or imprisonment for a term of not less than 10 years, and beyond a period of 60 days where the

investigation relates to any other offence. Drawing support from the observations contained of the Division Bench in Raghbir Singh vs. State of Bihar and more so of the Constitution Bench in Antulay, we are spurred to extrapolate the quintessence of the proviso of Section 167 (2) of the Cr.P.C. 1973 to moderate Suspension Orders in cases of departmental/disciplinary inquiries also. It seems to us that if Parliament considered it necessary that a person be released from incarceration after the expiry of 90 days even though accused of commission of the most heinous crimes, a fortiori suspension should not be continued after the expiry of the similar period especially when a Memorandum of Charges/Chargesheet has not been served on the suspended person. It is true that the proviso to Section 167(2) Cr.P.C. postulates personal freedom, but respect and preservation of human dignity as well as the right to a speedy trial should also be placed on the same pedestal.

21. 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.

7. In the light of the aforesaid, I am inclined to quash the impugned order of suspension in this Case. It is made clear that the petitioner will co-operate in the ongoing trial and will not seek unnecessary adjournment in the matter. In the light of the quash of the impugned order of suspension, the petitioner will be reinstated in service to any non-sensitive post forthwith. This writ petition is allowed. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To

1. Director General of Police
Dr. Radhakrishnan Road,
Mylapore, Chennai-600004.

2. The Deputy Inspector General of Police
Vellore Range,
Vellore District.

+1cc to Mr. K. Ravi Anantha Padmanaban, Advocate, S.R.No.36057

सत्यमेव जयते W.P. No.32956 of 2017
& WMP. No.36348 of 2017

RRS (27/04/2019)

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