

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on	5/12/2018
Orders Pronounced on	3/1/2019

C O R A M

THE HON'BLE MR.JUSTICE S.MANIKUMAR
AND
THE HON'BLE MR.JUSTICE SUBRAMONIUM PRASAD

Writ Appeal No.2683 of 2018

and
C.M.P.No.21879 of 2018

1. The Superintendent of Police
Erode District
Erode.
 2. The Deputy Inspector General of Police
Coimbatore Range
Coimbatore.
- ... Appellants

Vs

R.Gnanasekaran ... Respondent

Prayer:-

Appeal filed under Clause 15 of Letters Patent against the order dated 14/2/2018, made in W.P.No.22804 of 2012.

W.P.No.22804 of 2012:-

Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, Calling for the records of the respondents 1 & 2 in connection with the impugned orders passed in PR No.J1/5/2007 dated.22.02.2012 and RC No. D2/AP11/2012 dated 15.06.2012 and quash the same

For appellants ... Mr.R.Udaya Kumar
Additional Government Pleader
For respondent ... Mr.M.Muthappan

J U D G M E N T

(Judgment of the Court was made by Subramonium Prasad,J)

Superintendent of Police, Erode District, has challenged an order dated 14/2/2018, passed by a learned Single Judge of this Court, in W.P.No.22804 of 2012, by which the learned Single

Judge has allowed the writ petition and quashed the order of dismissal, dated 22/2/2012, passed by the Superintendent of Police, Erode District, affirmed by the Deputy General of Police, Coimbatore Range, Coimbatore, by order, dated 15/6/2012.

2. Brief facts leading to the appeal are as under:-

The respondent was recruited, as Grade II Police Constable, in the District Armed Reserve, Erode District, on 17/11/1988. He was promoted as Grade I Police Constable and was transferred to the Taluk Police Establishment, in the year 1998. While serving as Head Constable, the respondent was issued with a charge memo, on 10/1/2007, under Rule 3 (b) of the Tamil Nadu Police Subordinate Service (Disciplinary & Appeal) Rules.

3. The following three charges were framed against the respondent:-

(i). Highly reprehensible criminal conduct of demanding dowry and used to beat his wife Kalaichelvi and subsequently murdered his wife in the old police line hut D.No.397;

(ii). Highly reprehensible conduct by involving in Perundurai PS Crime No.391/2008 under Section 498 (A), 306 IPC altered to Sec.498 (A), 302 and 201 IPC by subjecting his wife Kalaichelvi to cruelty by beating her and created a scene as if she committed suicide by hanging in the police hut D397 allotted to him on 29/9/2006.

(iii). Highly reprehensible criminal conduct by causing nuisance, annoyance and disturbance to the police families residing in the Police quarters, thereby tarnished the image of the Police force."

4. First Information report was lodged against the respondent, for offences, under Sections 498 (A), 306 IPC, 498 A, 302 and 201 of the Indian Penal Code. The respondent faced trial, in S.C.No.68 of 2007, on the file of the First Additional Sessions Judge, Erode. The Additional Sessions Judge, Erode, by his order, dated 20/8/2007, acquitted the respondent. The revision petition filed by the complainant has been dismissed by this Court. Relevant portion of the judgment of the trial Court, reads as under:-

"..... Therefore, the evidence available on record coupled with the law laid down by the Honourable Supreme Court will throw serious doubts over the prosecution case. We may at the risk of repetition, state once again that new stories have been introduced by the witnesses when they were examined by the D.S.P after 6 months and more significantly these

statements were recorded only to suit the answers given by the doctor for a questionnaire supplied by the police agency. These facts will only show that the accused is not proved to be guilty for the offence under Section 302 IPC for which there is no adequate evidence at all and the charge against the accused under Section 302 IPC fails.

53. Once the charge under Section 302 IPC fails, the other charges namely, the offences under Sections 201 and 203 IPC also would fail since the accused did not take any such efforts to screen the evidence and therefore, the charges against the accused under Sections 201 and 203 IPC also are held to be not proved.

54. In the light of the above evidence, the prosecution has failed to prove the guilt of the accused for the offences and the accused is entitled for the benefit of doubt and consequently, he is acquitted of all the charges levelled against him."

(emphasis supplied)

5. Departmental proceedings and criminal trial proceeded simultaneously. The Enquiry Officer, after conducting the enquiry, on the three charges, referred to above, gave a report, dated 20/8/2007, holding that the charges were proved.

6. Regarding Charge No.1, it is highly reprehensible criminal conduct of demanding dowry, beating his wife and subsequently, murdering his wife, the Enquiry Officer, examined fifteen witnesses, who are - P.W.1 Durisamy, father of the deceased; P.W.2 mother of the deceased; P.W.3 brother of the deceased; P.W.4 wife of P.W.3, P.W.5 relative/friend; P.Ws.6 to 10 and 12, being friends/neighbours and relatives of the deceased; P.W.11 being the Doctor; P.W.13 Inspector of Police; P.W.14 Assistant District Police Officer and P.W.15 the Deputy Superintendent of Police.

7. The Enquiry Officer, after analysing the entire evidence, came to a conclusion that all the witnesses had categorically stated that respondent herein used to torture his wife Kalaiselvi and that it was he, who murdered his wife. Enquiry Officer, held as under:-

"During the oral enquiry and preliminary enquiry P.Ws.1 to 4 have clearly mentioned that

due to the torture by the delinquent only the said Kalaiselvi died. P.Ws.5, 6, 8, 9, 10 and 12 have confirmed that the delinquent frequently picked up quarrel with his wife in a drunken mood. Further, these witnesses also noticed that the delinquent knocked the front door of his house and subsequently went behind his house and opened the back door and stated that his wife committed suicide by hanging and he cut the saree used for committing suicide by hanging. In his explanation, he had stated that only with an intention to save his wife only he knocked the door. If it is true, who had informed the delinquent that his wife committed suicide by hanging. On his own, the delinquent knocked the front door and subsequently went behind his house and opened the back door. Further P.W.5 Tmt.Pushparani and P.W.6 Uma in their statements have stated that Kalaiselvi came for fetching water and she did not come for the second time and at about 12.00 hours, the delinquent knocked the door. There is scope for suspecting that the delinquent murdered his wife by wrecking her neck, locked the main door inside, went outside through the backdoor and came out and knocked the front door and went through the back door which was already kept open by him and came out through front door and stated that his wife committed suicide by hanging and he cut the saree used for hanging. Further, P.W.1 Duraisamy, S/o. Ramasamy gounder has stated in the complaint given at Perundurai P.S that due to the torture by his son in law only his daughter died (Ex.P.14). On his complaint a case in Perundurai P.S.Cr.No.391/2006 under Section 498 (A) and 306 IPC was registered (Ex.P.14) and P.W.13 Inspector Thiru Ramasamy took up investigation, arrested the accused and sent him for judicial custody. The post-mortem Doctor Tmt.Lakshi (P.W.11) in her final opinion had stated that the deceased would appear to have died of violent ligature compression over neck and hence the Section of Law was @ to 498 (A), 302, 201 IPC and sent his report to the Court (Ex.P.15). Since the delinquent was concerned in a criminal case (Ex.P.16), he was placed under suspension by the Superintendent of Police, Erode vide D.O.No.645/2006 C.No.J1/24555/06 dated 30/6/2006 which was

narrated by P.W.14 Thiru.Anandakumar, Assistant. The preliminary enquiry Officer Thiru.A.R.Velu, D.S.P. (Retd) (P.W.15) in his report (Ex.P.18) had stated that there is a prima facie in the case of delinquent, he had created a scene as if his wife Kalaiselvi committed suicide by hanging. Since the criminal case against the delinquent was acquitted in the Court, he need not be acquitted from this count of charge. Because he had involved in this criminal case. Further, the departmental enquiry and judicial enquiry against the delinquent have separate files and objectives. Further, in the judicial action, the charges should be proved beyond reasonable doubt by the witnesses. But in the departmental enquiry preponderance of probability of the offence is enough. This point will apply for proving the charge in count No.2 against the delinquent by means of the statement of P.Ws.1 to 15 and the documents filed by them vide Exs.P.1 to P.18 and hold this count of charge also as proved against the delinquent."

8. The Enquiry Officer also found that he used to frequently pick up quarrel with his wife and created nuisance. The Disciplinary Authority, viz., the Superintendent of Police, Erode District, went through the entire report and found that enquiry was conducted properly and that there was no need to differ with the Enquiry Officer. He accepted the finding of the Enquiry Officer and awarded a punishment of dismissal from service.

9. On appeal, the Appellate Authority, affirmed the order of Disciplinary Authority. A reading of the order of the Appellate Authority would reveal that the Appellate Authority has gone through the statements of all the witnesses and also perused the prosecution exhibits.

10. Order of the Appellate Authority is under challenge in the writ petition.

11. Learned Single Judge found that the disciplinary authority and the appellate authority have not taken into consideration, the acquittal by the trial Court and order of the High Court, dismissing the revision petition, while imposing the extreme penalty of dismissal from service. The learned Single Judge upheld the contention of the respondent that since

criminal Court had acquitted the respondent, charges 1 and 2 have not been proved and therefore, the finding of guilt on the third charge alone cannot entail severe action, on the part of the authority, i.e., dismissal from service.

12. Learned Single Judge, therefore, converted the punishment of dismissal from service to one of compulsory retirement and directed the department to give all the benefits on compulsory retirement. It is this order which is under challenge in this appeal.

Heard the learned counsel for the parties and perused the materials available on record.

13. Mr. R. Udaya Kumar, learned counsel for the Department/ appellants would contend that departmental proceedings and criminal case can be proceeded simultaneously. He further submitted that there is sufficient evidence to arrive at the finding of guilt of the charges. The Enquiry Officer, who has analysed the evidence on the principles of preponderance of probability has held the charges as proved. The disciplinary authority has carefully considered the same, ascertained as to whether procedure has been followed and considering the gravity of the charges, imposed a punishment of dismissal, which ought not to have been interfered with.

14. On the basis of acquittal and order made in the revision petition by this Court, Mr. M. Muthappan, learned counsel for the respondent made submissions to sustain the order of the writ court.

15. It is trite law that disciplinary proceedings and criminal case can proceed together. It is also well established that nature of proof in both the cases is different. In criminal case, the standard of proof is that the prosecution would establish that accused is guilty beyond reasonable doubt, whereas in service law, punishment can be inflicted, even on the basis of preponderance of probability. It is also well established that the evidence in criminal case cannot be read into the enquiry proceeding as evidence.

16. The proceeding of the Enquiry Officer would show that the Enquiry Officer had considered as many as fifteen witnesses, besides other exhibits. The Enquiry Officer on the basis of the evidence produced before him, came to the conclusion that charges have been proved. If the charges have been proved, then the disciplinary authority and the appellate authority were correct in dismissing the employee. The issue, therefore, which arises for consideration is

"Whether the evidence collected in a Criminal trial and the findings which are based on the evidence collected during trial can be imported into the disciplinary proceedings".

17. It is well settled that the High Court, while considering the findings of the disciplinary proceedings cannot substitute its conclusion to the one arrived at by the Enquiry Officer and more so, when it is affirmed by the disciplinary authority and the appellate authority. High Court has to see whether the procedure or the decision making process has been properly followed or not. Scope of interference with the findings of the enquiry authority and more so, when it is affirmed by the disciplinary authority and the appellate authority, is extremely limited. In fact, it is well settled that the High Court will interfere only where the error/irregularity/illegality touching upon the jurisdiction or procedure committed by the Tribunal of first instance is so patent and loudly obtrusive that it leaves on its decision and indelible stamp of infirmity which cannot be obliterated or cured on appeal or revision (refer State of Uttar Pradesh Vs. Mohammad Nooh {1958 SCR 595}). In the very same judgment, the Hon'ble Supreme Court, further holds that if an inferior court or tribunal of first instance acts wholly without jurisdiction or patently in excess of jurisdiction or manifestly conducts the proceedings before it in a manner which is contrary to the rules of natural justice and all accepted rules of procedure and which offends the superior court's sense of fair play, the superior court may exercise its power to issue the prerogative writ of certiorari to correct the error of the court or tribunal of first instance. It is trite law that unless the infirmity is so glaring and palpable, High Court must not ordinarily interfere with the findings of the authorities below.

18. Learned Single Judge has been predominantly swayed by the fact that the respondent herein has been acquitted by the trial Court. The trial Court, on the basis of evidence adduced before it came to a conclusion that the prosecution has not proved the guilt of the accused beyond reasonable doubt. Though both proceedings are based on the same set of facts the nature of proceedings are entirely different. The question before the Enquiry Officer is, whether on the proved misconduct of the employee, is the employee liable to be punished, in accordance with the Discipline & Appeal Rules.

19. It is well settled that the findings of the criminal Court cannot bind a civil Court or a civil proceedings. Viewed in this light, the learned Single Judge ought not to have come to a conclusion that charges 1 and 2 have not been proved only on the basis of the acquittal of the respondent in the criminal

Court. The learned Single Judge should have only restricted himself to the evidence which was placed before the Enquiry Officer in the departmental proceeding and ought not have traversed beyond it. The finding of the Enquiry Officer arrived at, on the basis of the evidence placed before him by the employee and the department, ought not to have been interfered with by the the learned Single Judge, on the basis of material which did not emanate from the departmental proceeding.

20. The learned Single Judge ought not to have interfered with the punishment of the dismissal from service and converted it, into one of compulsory retirement, granting all benefits to the respondent. For the reasons stated supra, the judgment of the learned Single Judge is set aside. Order of dismissal from service is restored.

21. In the result, writ appeal stands allowed. No costs. Consequently, the connected Civil Miscellaneous Petition No.21879 of 2018 is closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

mvs/gsp

To

+4cc to Mr.M.Muthappan, Advocate, S.R.No.620
+1cc to Government Pleader, in sr.no.1068

W.A.No.2683 of 2018

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