



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 26.09.2019

CORAM

THE HONOURABLE MR.JUSTICE **S.S.SUNDAR**

W.P. (MD)No.1877 of 2011

and

M.P. (MD)No.1 of 2011

WEB COPY

A.M.Nazeer Ahmed Khan

... Petitioner

vs.

1.The Director General of Police,
Office of the Director General of Police,
Chennai.

2.The Director General of Police,
Office of Deputy Inspector General of Police,
Tirunelveli Range, Tirunelveli.

3.The Superintendent of Police,
Office of Superintendent of Police,
Tirunelveli Range, Tirunelveli.

4.The Deputy Superintendent of Police,
Office of Deputy Superintendent of Police,
Sankarankovil, Tirunelveli.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari, to call for the records and quash the impugned order of the first respondent vide his proceeding R.C.No.175630/AP2[1]/09, dated 17.11.2009, confirming the orders passed by the second respondent vide his proceeding No.C.No.C/AP104/2009, dated 12.08.2009 and the order passed by the third respondent, vide his proceeding No.P.R.No.35/2009, dated 31.03.2009 imposing a punishment of postponement of increment of the petitioner without cumulative effect for three years.

For Petitioner : Mr.Ramesh alias Ramiah

For Respondents: Mr.M.Jeyakumar

Additional Government Pleader

ORDER

This Writ Petition is filed for issuing a Writ of Certiorari, to quash the impugned order passed by the first respondent, dated 17.11.2009.

2.The brief facts that are necessary for the disposal of this Writ Petition are as follows:

3.The petitioner, while serving as Sub Inspector of Police at Alwarthiruchi, Ambasamuthram Taluk, faced charges that he



committed a misconduct by giving a false complaint, which was registered in Cr.No.116 of 2009 for the offences punishable under Sections 279, 337 and 338 of IPC, through the Driver of a Police Jeep.

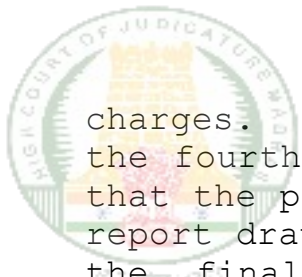
4. On 04.11.2008, at about 05.15 pm, the petitioner was on patrol duty and travelled in a Police Jeep with his Driver. The said Jeep met with an accident and a man and his wife, who travelled in a motorcycle, got injury. The petitioner and the Driver of the Police Jeep took the injured to the hospital. It is admitted that the Driver of the Police Jeep gave a complaint at Karivalamvandhanallur Police Station and the said complaint was registered in Cr.No.116 of 2009 against the rider of motorcycle for the offences punishable under Sections 279, 337 and 338 of IPC.

5. It is admitted that the brother-in-law of the rider of motorcycle gave a complaint against the Driver of the Police vehicle before the Superintendent of Police, Tirunelveli. In the said complaint, the allegation was that the Driver of the Police Jeep, who caused the accident, gave a false complaint and that therefore, action should be taken against the Driver of the Police vehicle. Based on the said complaint, an enquiry was started by presuming that a false complaint has been registered at the instance of the Driver of the Police vehicle with the support of the petitioner, who travelled along with the Driver of the said vehicle at the time of accident.

6. It is seen from the files that the Superintendent of Police directed for preliminary enquiry and report by Deputy Superintendent of Police, Sankarankovil. Thereafter, the Deputy Superintendent of Police, Sankarankovil, conducted a preliminary enquiry and it is admitted that no opportunity was given to the petitioner. However, on 12.01.2009, the fourth respondent, submitted a report to the third respondent, finding the petitioner guilty and recommending to initiate disciplinary proceedings against the petitioner. Thereafter, the Deputy Superintendent of Police, who submitted the preliminary report and who recommended for initiating disciplinary proceeding against the petitioner, was entrusted to proceed with the disciplinary proceedings.

7. A charge memo, dated 20.02.2009 was issued to the petitioner under Rule 3[a] of Tamil Nadu Police Subordinate Service [Discipline and Appeal] Rules. The charge against the petitioner was that he was responsible for registration of a false complaint for the offences punishable under Sections 279, 337 and 338 of IPC through the Driver of the Police Vehicle.

8. The petitioner submitted his explanation refuting the



charges. The charge memo and the explanation were forwarded to the fourth respondent and he submitted his findings to the effect that the petitioner is guilty of charges. Based on the preliminary report drawn by the fourth respondent, the third respondent passed the final order agreeing with the findings of the fourth respondent, holding that the charges against the petitioner are proved. The petitioner was awarded with the punishment of postponement of increment for three years without cumulative effect by proceedings, dated 31.03.2009. The petitioner then filed an appeal before the second respondent, namely, the Deputy Inspector General of Police, Tirunelveli Range, Tirunelveli. The second respondent confirmed the order of punishment. Once again, the petitioner submitted a review petition before the first respondent and the first respondent declined to interfere with the order of punishment.

9.The learned Counsel for the petitioner referring to the charge memo, enquiry report and the relevant documents, submitted that the impugned order imposing punishment of postponement of increment for three years without cumulative effect is contrary to the facts admitted and that the preliminary enquiry itself was in violation of principles of natural justice. The learned Counsel also submitted that the charges were framed on the basis of a preliminary report and the person, who has drawn the findings against the petitioner, was entrusted to proceed with the disciplinary proceeding.

10.It was pointed out that there is likelihood of some bias and the order is vitiated, since the findings of the fourth respondent are biassed and resulted in serious prejudice to the petitioner. The learned Counsel then submitted that the Driver of the Police vehicle, who drove the vehicle, caused the accident and gave the complaint, was not even issued with any charge memo. The learned Counsel for the petitioner further submitted that the said Driver was not even enquired by the fourth respondent. In the absence of any proceeding initiated against the Driver, the learned Counsel for the petitioner submitted that the whole proceedings, culminated in the punishment of stoppage of increment, is wholly illegal and arbitrary.

11.The learned Counsel for the petitioner further contended that the respondents 3 and 4 have made up their mind by making unwarranted endorsement against the petitioner, even at the initial stage of complaint. The learned Counsel then relied upon the factual findings and the impugned orders passed by the respondents, which are under challenge in this Writ Petition.

12.From the admitted facts, it can be seen that the petitioner, who was working as Sup Inspector of Police, travelled



in a Police Vehicle drove by the official Driver. Pursuant to the accident, the Driver of Police Jeep lodged a complaint, as if the rider of the motorcycle was responsible for the accident. Absolutely, there is no material produced before this Court to prove that the complaint was given at the instance of the petitioner. It is not in dispute that no damage caused to the Police vehicle. It is the natural attitude of the Government Drivers to give a complaint making others responsible for the accident, if any damage is caused to the vehicle on account of road accident.

13.Assuming that the petitioner has advised the Driver to lodge such complaint, the petitioner alone is not responsible for such complaint, as the Driver has signed the complaint and lodged the same to protect his interest. Without any proceedings being initiated against the Driver, it is unnatural for anyone to proceed departmentally against the petitioner. From the events that were recorded, the petitioner is only a witness to the accident and it is not a case where the accident was on account of any act of the petitioner. The brother-in-law of the victim of the accident had given the complaint. The victim might have filed a petition before the Motor Accidents Claims Tribunal for getting compensation. No motive can be attributed to the petitioner for giving a false complaint.

14.In response to a specific query raised by this Court, the Superintendent of Police has admitted that no departmental action was initiated against the Driver, by name, Tvl.M.Sethu Ramakrishnan, who drove the Police Vehicle. It is further stated that no damage was caused to the Police vehicle and no repair charge was claimed by the Driver of the Police Vehicle. The said M.Sethu Ramakrishnan, died on 01.06.2010, due to illness.

15.In the above circumstances, it is seen that the Driver, who was alive for about two years from the date of alleged accident, was not even enquired in connection with the accident or about the complaint given by him. Though the preliminary report of the fourth respondent was drawn on 12.01.2009 and the punishment of the third respondent was imposed on 31.03.2009, there was no independent departmental action initiated as against the Driver. In these circumstances, this Court is unable to see any *bona fide* in drawing charges against the petitioner alone in respect of a presumed misconduct that the petitioner was responsible for giving a false complaint. Even with regard to the charges, absolutely there is no record to prove that the complaint given by the Driver contains false accusation. Therefore, this Court believes that the whole case started only on the complaint lodged by the brother-in-law of the rider of the motorcycle. Even in the complaint, it was only stated that the Driver of Police



jeep had given a false complaint and that there is no mentioning of the petitioner's name. In such circumstances, the departmental proceedings against the petitioner appears to be for extraneous reasons.

16. Having regard to the above facts, this Court is not inclined to sustain the order of punishment that was imposed on the petitioner. Accordingly, this writ petition is allowed and the order of first respondent, dated 17.11.2009, confirming the order passed by the second respondent, dated 12.08.2009 and the order passed by the third respondent, dated 31.03.2009, is quashed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (AS)

// True Copy //

Sub Assistant Registrar (CS)

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To

1. The Director General of Police,
Office of the Director General of Police,
Chennai.

2. The Director General of Police,
Office of Deputy Inspector General of Police,
Tirunelveli Range, Tirunelveli.

3. The Superintendent of Police,
Office of Superintendent of Police,
Tirunelveli Range, Tirunelveli.

4. The Deputy Superintendent of Police,
Office of Deputy Superintendent of Police,
Sankarankovil, Tirunelveli.

+1 CC to M/s.S.RAMESH @ RAMIAH, Advocate (SR-89593[F] dated 26/09/2019)

+1 CC to M/s.GP (SR-90249[F] dated 27/09/2019)

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