



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 30.01.2019
Coram :
THE HONOURABLE MR.JUSTICE P.VELMURUGAN

Cr1.R.C(MD).No.338 of 2015 and
MP(MD).No. 1 of 2015
WP(MD).No.15128 of 2016

Cr1.R.C(MD).No.338 of 2015

1. A. Ravichandran
2. R. Indra

.. Petitioners

-Vs-

The State rep. by
The Deputy Superintendant of Police,
Vigilance and Anti Corruption Wing,
Dindigul.

... Respondent

Prayer: This Criminal Original Petition is filed under Section 397 r/w. 401 Cr.P.C., to set aside the order dated 29.05.2015 passed in Cr1.M.P.No.114 of 2015 in Spl.C.C.No.21 of 2014 on the file of the learned Chief Judicial Magistrate, Dindigul.

W.P(MD).No.15128 of 2016

A. Ravichandran

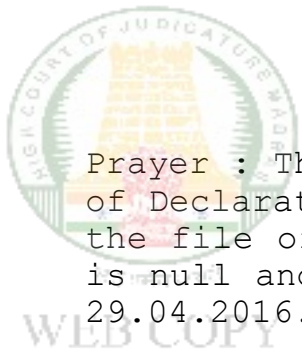
Petitioner

-Vs-

- 1.The Chief Secretary Cum Vigilance Commissioner,
Secretariat, Chennai.
- 2.The Secretary to Government of Tamil Nadu,
PWD Department, Secretariat, Chennai.
- 3.The Chief Judicial Magistrate,
Dindigul, Dindigul District (deleted)
(R3 is deleted vide Court order
dated 22.08.2016 in WMP(MD).No.11439/16 by PDSJ)
- 4.The Director of Vigilance and Anti Corruption,
Chennai.
- 5.The Inspector of Police,
Vigilance and Anti Corruption,
Dindigul District.
(R3 and R4 are impleaded vide Court
order dated 22.08.2016 in

<https://hcservices.ecourts.gov.in/hcservices/>
WMP(MD).No.11439/16 by PDSJ)

... Respondents



Prayer : This Writ Petition is filed to direct in the nature of Writ of Declaration declaring the proceedings in Spl.C.C.No.21 of 2014 on the file of the Chief Judicial Magistrate, Dindigul / 3rd respondent is null and void by dint in the findings of the 2nd respondent dated 29.04.2016.

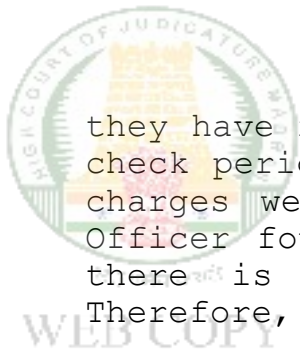
For Petitioner : Mr. B. Prahalad Ravi in both cases
For respondents : Mr.M. Chandrasekaran, APP
in both cases.

COMMON ORDER

The respondent police in CrI.R.C(MD).No.338 of 2015, registered a case against the Petitioners, who are the husband and wife, for the offences under Sections 13(2) r/w. 13(1)(e) of P.C. Act., 1988 r/w. 109 IPC r/w. 13(2) r/w. 13(1)(e) of Tamil Nadu Prevention of Corruption Act, 1988 in Crime No. 4 of 2008. After completing the investigation, charge sheet has been filed and the same was taken on file in Spl.C.C.No.21 of 2014, on the file of learned Chief Judicial Magistrate, Dindigul. During the pendency, both the petitioners filed a discharge petition in CrI.M.P.No.114 of 2015 in Spl.C.C.No.21 of 2014, before the learned Chief Judicial Magistrate, Dindigul and the same was dismissed. Against which the petitioners have preferred the Criminal Revision Case in CrI.R.C (MD).No.338 of 2015.

2. Since the Criminal case is pending against the first petitioner, who is working as an Assistant Executive in the Office of the Secretary to Government of Tamil Nadu, PWD Department, Secretariat, Chennai, charge memo has been issued against him under Rule 17(b) of Tamil Nadu Civil Services (Discipline and Appeal) Rules, on 11.03.2014 by way of framing three charges. After filing of charge memo, the first petitioner was called for explanation by appointing an Inquiry Officer. On conclusion of inquiry, the Inquiry officer found that the charges levelled against the delinquent Officer are not proved and he submitted an Inquiry report before the disciplinary authority, however, the disciplinary authority deviated from the said finding, he called for an explanation from the delinquent officer. For which, the delinquent had also submitted his explanation. But, till date they have not passed any final order. Once the Inquiry Officer found the charges levelled are not proved, charge sheet filed in Spl.C.C.No.21 of 2014 is not maintainable and the same has to be quashed. Hence, the first petitioner has filed a writ petition in W.P(MD).No.15128 of 2016.

3. The learned counsel appearing for the writ petitioner would submit that originally, the check period was 01.01.1993 to 31.12.2005 and they have called for explanation. Subsequently, the same was reduced as 01.03.1999 to 30.11.2001 and 01.11.1996 to 31.07.2004 and further reduced to 01.03.1992 to 30.11.2001. But,



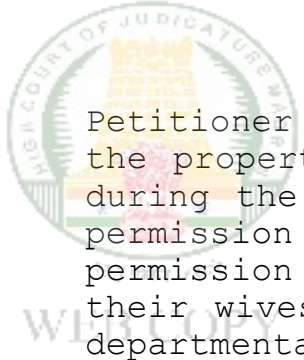
they have not called for any fresh explanation for the reduction of check period. Further in the departmental proceedings the very same charges were levelled against the Government Servant, the Inquiry Officer found that the charges have not been proved and therefore, there is no material to prove the case of the prosecution. Therefore, the writ petitioner can be discharged.

4. The learned Additional Public Prosecutor appearing for the respondents would submit that the departmental proceedings initiated against the writ petitioner is entirely different from the criminal prosecution. Though the Inquiry Officer has wrongly given a finding that the department has not proved charges levelled against the writ petitioner, but, subsequently, when the report was submitted before the disciplinary authority, he found that the charges 2 and 3 in charge memo are proved and he called for an explanation in this regard, no final order has been passed. Even otherwise the scope of the departmental proceedings are entirely different from the criminal proceedings and the charges proved were discharged, the same is not a reason for facing the criminal case in Spl.C.C.No.21 of 2014. Therefore, the Writ Petition is not maintainable and the same is liable to be dismissed.

5. I have heard the learned counsel appearing on either side and perused the materials available on record.

6. Against the revision petitioner and his wife, a case has been registered and thereafter, a charge sheet has been filed and the same was taken on file in Spl.C.C.No.21 of 2014, on the file of the learned Chief Judicial Magistrate, Dindigul and the same was pending. During the pendency, a discharge petition in Cr.M.P.No.114 of 2015 in Spl.C.C.No.21 of 2014 was filed and the same was dismissed by the Trial Court. Against which, the petitioners have preferred a revision in Crl.R.C.No.338 of 2015.

7. In the meanwhile, departmental proceedings was initiated against the Writ petitioner and an Inquiry Officer was also appointed. After enquiry, the Inquiry Officer found that charges framed against the writ petitioner are not proved, but the disciplinary authority, not accepting the finding given by the Inquiry Officer, given an independent finding stating out of three charges two of the charges levelled against the Writ Petitioner are proved and therefore, they called for further explanation, regarding the question of punishment to be imposed. Though no final order is passed and it is still pending, as stated by the learned counsel for the respondent, the scope of the departmental proceeding is only with regard to violation of the disciplinary Rules. Whereas the criminal case is concerned, it is with regard to assets acquired by the Government Servants with their family members are disproportionate to the known source of income for which the public servants could not satisfactorily account. Therefore, the Departmental proceedings was conducted only against the Writ petitioner. Whereas the criminal case was filed against the Writ



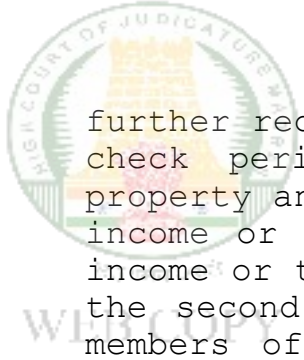
Petitioner and his wife, who is also arrayed as accused and some of the properties were acquired in her name by the Government Servant during the check period. Whether the writ petitioner obtained any permission or rectification and whether it is necessary to get permission or rectifications by the public servants in the name of their wives, before acquiring the property is to be decided in the departmental proceedings. Whereas in the Criminal case, whether the assets acquired in the name of the public servants or their family members are disproportionate to the known source of income for which the public servants could not satisfactorily account for the check period or not to be decided. Therefore, in these circumstances, the departmental proceeding is nothing to do with the criminal proceedings. Hence, the Writ Petition is liable to be dismissed.

8. The revision petitioners in Crl.R.C(MD).No.338 of 2015 filed Crl.M.P.No.114 of 2015 in Spl.C.C.No.21 of 2014 under Section 239 of Prevention of Corruption Act to discharge them from the said offences. The learned Trial Judge has found prima facie force in the said case and dismissed the said petition, for which, the revision petitioners have filed Crl.R.C(MD).No.338 of 2015.

9. The learned counsel appearing for the respondent submitted that initially the check period was fixed from 1993 to 2005, then, after subsequent inquiry, reduced the same from 01.03.1999 to 30.11.2001 and 01.11.1996 to 31.07.2004 and further reduced the same from 01.03.1992 to 30.11.2001. Within the period of check period only, the first revision petitioner has purchased the property in the name of the second petitioner. Therefore, there is a prima facie case showing that the second petitioner has no independent source of income to purchase the property in her name, during the check period. He further submitted that the departmental proceedings are taken only for violation of disciplinary Rules by the public servant and it is nothing to do with the criminal prosecution.

10. Further the learned counsel for the petitioners would submit that the Writ petitioner is the public servant, but, the property shown in the check period was purchased in the name of the second petitioner. There are documents produced to show that the second petitioner has independent source of income to purchase the property in her name.

11. In the departmental proceedings, Inquiry officer also found that the charges levelled against the first petitioner were not proved. It is well settled proposition of law that the departmental proceedings is only for violation of the disciplinary Rules by the public servant, whereas the criminal case is concerned, it is with regard to the charges levelled against the public servant along with their family members. Therefore, in this case, on reading of the entire materials, it is clear that the check period was fixed between 1993 and 2005, then, after subsequent Inquiry, reduced to 01.03.1999 to 30.11.2001 and 01.11.1996 to 31.07.2004 and



further reduced to 01.03.1992 to 30.11.2001. Therefore, during the check period, whether the second petitioner has purchased the property and whether the second petitioner has independent source of income or she has purchased the property out of her own source of income or the first petitioner purchased the property in the name of the second petitioner. Whether the assets acquired by the family members of the public servants is dis-proportionate to the known source of income or not to be decided by the trial Court, after the trial but not at this stage.

12. While dealing with the petition in this nature, the Court has to see only the documents filed by the prosecution under Section 173 Cr.P.C., and find out as to whether the prima facie case is made out against the revision petitioners or not but the defence taken by the revision petitioners / accused need not be looked at this stage. On reading of the document filed by the prosecution under Section 173 Cr.P.C., this Court finds that there is a prima facie case made out against the petitioners and there are enough materials to proceed the case. Further, it is for the Writ petitioner to prove whether the assets were purchased out of independent income of the second petitioner or from the income of the public servant which is from known source of income and it has to be decided only by the trial Court after the trial and not at this stage.

13. In the result, both the criminal revision and the writ petition are dismissed. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CO)

/ True Copy /

Sub Assistant Registrar (CS-)

trp

To

1. The Deputy Superintendant of Police,
Vigilance and Anti Corruption Wing, Dindigul.
2. The Chief Secretary Cum Vigilance Commissioner,
Secretariat, Chennai.
3. The Secretary to Government of Tamil Nadu,
PWD Department, Secretariat, Chennai.
4. The Chief Judicial Magistrate,
Dindigul, Dindigul District
5. The Director of Vigilance and Anti Corruption,
Chennai.



6.The Inspector of Police,
Vigilance and Anti Corruption,
Dindigul District.

7.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

Copy To:

The Record Keeper,
Criminal Section(Record) ,
Madurai Bench of Madras High Court,Madurai.(2 Copies)

+2 CC to M/s.B.PRAHALAD RAVI, Advocate
(SR-44157, 44156[F] dated 01/02/2019)

Crl.R.C (MD) .No.338 of 2015 and
MP (MD) .No. 1 of 2015
WP (MD) .No.15128 of 2016
30.01.2019

ES/16.07.2019/6P/12C