

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.01.2020

CORAM

THE HON'BLE Mr. JUSTICE M.GOVINDARAJ

W.P.No.22545 of 2009

and

M.P.No.1 of 2009

K.Murali

... Petitioner

Vs.

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

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

... Respondents

Prayer : Petition filed under Article 226 of the Constitution of India praying for issuance of writ of certiorarified mandamus, to call for the entire records of the impugned charge memo issued by the first respondent in P.R.No.69/2009 u/s. 3 (b) dated 03.10.2009 and quash the same.

For Petitioner : Mr.V.Ravikumar

For Respondents: Mr.R.Janaki

Additional Government Pleader

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ORDER

The writ petitioner is working as a Grade II constable under the 1<sup>st</sup> respondent. On 27.06.2008 in P.R.No.D1/37/08 a charge memo was issued against him under Rule 3 (b) of Tamil Nadu Police Subordiante Service Rules. The gravamen of the charge is that he committed misconduct, by having illicit intimacy with one married women and that she has committed suicide on 27.01.2008. Pursuant to the charge memo, a enquiry was held. While matter stood thus, simultaneously criminal proceedings were also initiated in Crime No.20 of 2008 under Section 174 of Criminal Procedure Code and later it was altered for an offence under Section 306 IPC.

2. Insofar as the departmental enquiry is concerned, witnesses on the side of the department as well as on the side of the delinquent were examined and cross-examined. Under proceedings in C.No.D1/P.R.37/08 dated 13.09.2008, further

action in the charge memo in P.R.No.37/2008 under Rule 3 (b) of the above said Rules was closed with option to initiate fresh charges under the same Rules. On 03.10.2009, a fresh charge memo was issued for the very same charge. Aggrieved over the same, the petitioner is before this Court.

3. According to the learned counsel for the petitioner, after having conducted full fledged enquiry into the charges and having closed the charge memo it was not open to the respondent to initiate fresh proceedings for the very same charge which was enquired and closed. Conduct of 2<sup>nd</sup> enquiry is an abuse of process of law as held by Hon'ble Supreme Court in 2003 SCC (L&S) 791 [Union of India Vs. K.D.Pandey and another]. Further for the same offence a criminal case was filed before the Criminal Court and in which the petitioner was acquitted and therefore, the 2<sup>nd</sup> charge memo is not sustainable in law.

4. Respondents filed a detailed counter. The learned Government Advocate contended that the charge memo was closed with an option to re-issue the very same charge memo. The disciplinary proceedings were not completed, but it was closed in view of the alteration of charges from Section 174 Cr.P.C to Section 306 IPC. In the change of circumstances, subsequent charge memo was issued. There is no discrepancy in such procedure and therefore, it is not illegal to issue 2<sup>nd</sup> charge memo.

5. I have considered the rival submissions and perused the materials produced before this Court.

6. On a perusal of the charge memos issued on 27.06.2008 and 03.10.2009, I do not find any difference, the charge was verbatim the same and under the very same conduct rules. It is also seen that an enquiry officer was appointed and an elaborate enquiry was conducted by examining the witnesses. From the examination of witnesses and cross examination, it is seen that the witnesses have deposed in favour of the writ petitioner and picturaized him as an innocent person. After having obtained the documents and deposition of the witnesses and also the explanation on the enquiry report, a decision could have been taken to close the charge memo. However, the disciplinary authority without passing any order on the basis of enquiry has closed the charge memo in view of the fresh criminal investigation with option to initiate fresh charges for Domestic Enquiry.

7. In the considered opinion of this Court, once an enquiry was conducted and deposition of witnesses was recorded and on the basis of the same, objection is called for from the delinquent, the only option for the disciplinary authority is to pass orders and he cannot close with option to re-initiate the proceedings. It will amount to 2<sup>nd</sup> enquiry on the same set of charges and clear abuse of process of law as held by the

Hon'ble Supreme Court in Union of India Vs. K.D.Pandey and another reported in [2003 SCC (L&S) 791]. The 2<sup>nd</sup> charge memo issued by the respondents are verbatim the same. If a fresh enquiry is conducted, there are very many chances for the respondents to fill up the lacuna and to subvert the fair process. It is also pertinent to note that for the very same offence under Section 306 IPC, the criminal Court has conducted trial and acquitted the petitioner. In such circumstances, the alteration of charge from Section 174 Cr.P.C to Section 306 IPC will no way support the procedure adopted by the departments. Therefore, the issuance of fresh charge is not sustainable in the eyes of law in view of the judgment of the Hon'ble Supreme Court in K.D.Pandey's case.

8. I am of the considered opinion that the 2<sup>nd</sup> charge memo for the very same misconduct after completion of full fledged enquiry is not sustainable in the eyes of law. Accordingly, I hold that the impugned 2<sup>nd</sup> charge memo is liable to be set aside.

9. Accordingly, the writ petition stands allowed. The impugned charge memo issued by the first respondent in P.R.No.69/2009 u/s. 3 (b) dated 03.10.2009 is set aside. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-  
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To

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

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

+1 cc to Mr.V.Ravikumar, Advocate,sr.305

+1 cc to Government Pleader,sr.958.

Krd 25/6

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