

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.11.2020

CORAM :

The Hon'ble Mr.A.P.SAHI, THE CHIEF JUSTICE

AND

The Hon'ble Mr.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.A.No.966 of 2020

and C.M.P.Nos.11727 and 11729 of 2020

S.Kamalraj

.. Appellant

-vs-

1. The State of Tamil Nadu,
Rep. by its Secretary,
Home Department, Secretariat,
Chennai 600 009.
 2. The Commissioner of Police,
Office of the Commissioner of Police,
Greater Chennai Police,
Vepery, Chennai 600 007.
 3. The Joint Commissioner of Police,
Office of the Joint Commissioner of Police,
Greater Chennai Police, East Zone,
Chennai 600 008.
 4. The Deputy Commissioner of Police,
Greater Chennai Police,
Triplicane District, Chennai.
 5. The Assistant Commissioner of Police,
Greater Chennai Police, Triplicane District,
Egmore Range, Chennai.
- ... Respondents

Appeal filed under Clause 15 of the Letters Patent against the order dated 08.09.2020 passed in W.P.No.12315 of 2020 on the file of this Court.

W.P.No.12315 of 2020 Prayer:-

This Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of writ of certiorarified mandamus, calling for the records relating to the impugned charge memo dated 10.06.2020 issued by the 5th

respondent under Tha.Ku.No.51/Thapi/Kima/2019 received on 27.07.2020 and all proceedings related there to and quash the same and consequently direct the 3rd respondent to re - instate the petitioner as head constable in F-2, Egmore Police Station with all back wages and all other benefits.

For Appellant : Mr.Prakash Goklaney

For Respondents : Mr.M.Elumalai
Addl. Govt. Pleader

JUDGMENT

(Delivered by The Hon'ble Chief Justice)

We have heard Mr.Prakash Goklaney, learned counsel for the appellant and Mr.M.Elumalai, learned Additional Government Pleader for the respondents.

2.The appeal arises out of a writ petition where the relief prayed was for a certiorarified mandamus to quash the charge memo dated 10.06.2020 served on 27.07.2020 and all consequential proceedings relating thereto, with a further request to reinstate the appellant as Head Constable, who has been suspended by the order dated 20.04.2020.

3.The background in which the proceedings have been initiated has been narrated in the pleadings and we find that two complaints were laid, one by Gayathri and the other by one Balaji in May, 2019 before the Central Crime Branch, urging that the appellant by adopting dubious methods had induced the complainants to enter into land transactions. In fact, he did not have any title over the land and he, accordingly, appropriated to himself a certain amount of money as disclosed in the complaints as a consequence of the said transactions. The complaint was laid on the basis of a statement made by the said Gayathri, wherein the following has been alleged:-

"Statement of Tmt.Gayathri, F/A 39, W/o.Balamurugan, B 9/3 Police Quarters, North Raja Street, Alandur, Chennai-16.

I am residing at the above said police quarters, along with my family members. My husband joined Police Department in the year 2003, and at present he is working on deputation in Chennai Airport. A known person to me Kamalraj, is working as the constable in Intelligence wing. He represented to my husband that the vacant land which is ancestral property in the

name of his mother Usharani, near Periyar Samathuvapuram, Perungalathur, are being laid out as house sites and are being sold and that if he desires, he is selling for a reduced rate and that further, he said that he will take the responsibility of obtained patta and adangal in respect of the above said plot. We believed his words and agreed to purchase the vacant land. Thereafter my husband went and observed the above said land. As we liked the land, the sale consideration of Rs.3,50,000/- was fixed for the purchase of Plot No.3, in survey No.441, measuring 925 sq.ft. Thereafter on 26.06.2015, the advance amount of Rs.50 lakhs was given at my house in cash to Kamalraj. By that time, my father in law Ponraj and mother in law Janaki were with me. Kamalraj received the above said amount and signed on a Rs.20 stamp paper, that he received the sum of Rs.50,000/- as advance. Thereafter on 08.07.2015, I, my husband and father in law went to the house of Kamalraj at No.59/22, Bajanai Koil Street, West Tambaram, Chennai-45. There Kamalraj wife Usha and mother Usharani were available. Usharani typed on Rs.100 unregistered stamp paper, conveying the above said land in my name. Usharani signed in that. Usha and my father in law signed as witnesses. Thereafter from my SBI Bank, Alandur Branch Account No.10482108535, I transferred Rs.3 lakhs on 10.07.2015 to the account of Usharani in SBI Bank account bearing No.10565418102. Kamalraj who received the said amount from bank came to us and that he will register the land in my name within a period of three months. We also believed that. Thereafter he did not take any effort in respect of the property. Along with me, my husband contacted Kamalraj and his mother Usharani on several occasions over phone and in person. They were giving lame excuses. Then after a period of six month, Kamalraj had given the receipt and patta stating that they were issued for the payment of tax for the above said land. When we enquired in the concerned office about the same, they informed us that the above said land is government grazing poramboke land and that the patta, adangal could not be obtained in respect of the said land and that the notice with you is a fake one. Only by them we came to know that Kamalraj showed the government poramboke land and received Rs.3,50,000/- from us and cheated us. Therefore, when we questioned Kamalraj about this, he said that he will give a different plot and introduced one Vincent to us. In this circumstance, on 12.11.2018, the above siad Franki Vincent came to my house and said that he will convey the vacant land of 1222 sq. ft. in his name to

my name and had given an absolute sale deed which was typed on Rs.100 stamp paper and he and myself signed in the same. By that time, he said that instead of the land to be conveyed to Kamalraj to me, he will convey his property in his name mentioned above. He also said that he will register the document in the Registrar Office soon. But till date he did not convey the property. Further when my husband asked for the return of money from Kamalraj, he is cheating us without returning the money. In the same manner, Balaji was also cheated by Kamalraj and his mother Usharani. Therefore, I request that the action to be taken against Kamalraj and his mother Usharani and to recover the money and the Inspector of Police, Crime Branch enquired me and I deposed what had transpired. I read and found to be correct."

Similarly, Balaji's complaint also narrates the following allegations:-

Thiru Balaji, M/A 42, S/o.C.Perumal, No.19B, Malanganandapuram 4th Street, Pallavaram, Chennai 43.

I am residing in a rented house at the above said address for the past 5 years along with my family members. I worked in Nokia Cellphone earlier and at present I am not going to work. My wife V.Barathi, is working as the Immigration Office in International Airport, Meenambakkam, Chennai. Though Balamurugan (Police) known to my wife, in 2015, Kamalraj, who is working as constable in Intelligence wing of Police Department was known to us. He represented to us that there is ancestral vacant land which in the name of his mother Usharani and that it is being laid out as plots near Periyar Samathuvapuram, Perungalathur, and that if you are willing to buy those plots, he will offer for a lesser rate and that further he will take the responsibility of getting the adangal, patta for the above said land, and that he said that the officers working in revenue department are his relatives and made us to believe. As per that, we and Balamurugan agreed to buy the vacant lands. Thereafter I went and saw the above said land. As I liked the land, for the purchase of Plot No.1 and Plot No.2 in survey in 450/A measuring 1850 sq.ft. the consideration was fixed at of Rs.7 lakhs. As we did not have the money, I availed the personal loan of Rs.8 lakhs in SBI Bank, Pallavaram Branch in the name of my wife and I, my wife Barathi, paid the sum of Rs.7 lakhs on 24.08.2015 to Kamalraj. Kamalraj received that amount and asked me to sign in the Deed

of Absolute Sale typed on Rs.50/- stamp paper. I also signed in that. He promised that he will register the document in my name in respect of the above said property within three months and that further he made us to believe that he will get the patta and adangal in respect of the above said land. We also believed that. Thereafter he did not take any steps in respect of the property. Therefore, I and my wife spoke to Kamalraj, over phone and in person on several occasions. He had given lame excuses and had been delaying. Thereafter after a period of six months, Kamalraj had given the receipt saying that it is issued for the payment of tax in respect of the above said land. When we enquired in the concerned office about that, we were informed that the above said land is government grazing poramboke and that the patta, adangal could not be obtained for that land and that the notice with you is a fake one. Only by that time we came to know that Kamalraj had shown the government poramboke land and received Rs.7 lakhs from me and cheated me. Therefore, when I and my wife asked about this to Kamalraj, he said that he will convey a different plot and introduced one Vincent to us said that he will convey the land of Frank Vincent to us. Thereafter, on 02.12.2018, the above said Frank Vincent came to my house and had given the Deed of Absolute Sale which typed on Rs.100 stamp paper to me. I and Vincent signed in that. By that time, he promised that in lieu of the land to be conveyed by Kamalraj he will convey the above said property which his in his name. But till date he did not convey that. In this connection, when my wife asked Kamalraj to return the money, he is cheating us without returning the money. Therefore, I lodged a complaint with the Commissioner of Police to take action against Kamalraj and his mother Usharani and to recover the money. As per that Inspector of Police, Central Crime Branch enquired me and I deposed what had transpired. Read and found to be correct."

4.The appellant, on 27.01.2020 is said to have sent a legal reply in the shape of a notice through an advocate, which is as follows:-

"I have been instructed by my client Mr.KAMALRAJ, residing at No.59, 22, Bajanai Koil Street, West Tambaram, Chennai 600 045, to issue this notice to both of you as following:

My client states that my client's mother-in-law USHA RANI sold out a poramboke land of 985 Sq. Ft. and

1800 Sq. Ft. for an amount of Rs.3,50,000/- and Rs.6,90,000/- on 2015 to Mrs.GAYATHRI, W/o.Balamurugan and to Mrs.BHARATHI BALAJI. Both properties are NATHAM PORAMPOKKU.

My Client states that both of you purchase on wilful consideration. But you both lodged a complaint in S5 Pallavaram P.S. against my client, U/s..420 of I.P.C.

My client states that my Client and his wife Usha called by the Assistant Commissioner of Police and with ulterior motive and urged to pay the amount of Rs.10 lakhs and my client paid Rs.3,50,000/- on 05.01.2020 in cash at S5 Pallavaram P.S.

My client states that my client lodged a Complaint in COP on 27.01.2020 for relief. That Complaint forwarded to Pallavaram P.S.

Hence I am issuing this notice my client will not pay any amount hereafter towards and rest in Civil Court.

My client will not come for Kattapanchayat here afterwards to any Police Station including S5 Station. It is for your information."

It would thus be seen that the transactions are between 2015 to 2019.

5.What is more apparent is that these are transactions relating to immovable property, namely, plots of land, which the complaint alleges to be Government grazing poramboke land. Apart from this, the money which has been transacted is on non-judicial stamp papers and not through any registered document. It is, therefore, evident that immovable property was sought to be negotiated both by the complainants and by the appellant, who are somehow the other related to the police force of the State of Tamil Nadu. It is these complaints which were brought to light resulted in the process being adopted that came to be crystallised in the suspension order dated 20.04.2020. The same is extracted hereinunder:-

SUSPENSION ORDER

WHEREAS a complaint against Tr.S.Kamalraj, HC 35815 V.R. @ F2 Egmore Police Station, (L&O) of a Criminal Offence, was proved on preliminary enquiry conducted by the Deputy Commissioner of Police, Triplicane District.

2) And Whereas in the circumstances of the case, it is necessary in the public interest to place the said Tr.S.Kamalraj Head Constable, 35815, V.R. @ F-2 Egmore Police Station (L&O) under suspension with

immediate effect.

3) Now, therefore under sub rule 3(e) (i) (ii) of Tamilnadu Police Subordinate Service (D&A) Rules, 1955, the said Tr.S.Kamalraj Head Constable 35815, V.R. @ F-2 Egmore Police Station, (L&O) is with immediate effect from the date of his placed under suspension until further orders.

4) During the period of suspension, the said Tr.S.Kamalraj Head Constable 35815, V.R. @ F-2 Egmore Police Station, (L&O) will be paid Subsistence Grant and Dearness allowance as admissible under FR 53(1) of Fundamental Rules and he will in addition to be paid HRA & CCA as admissible.

5) The Headquarters of the said Tr.S.Kamalraj Head Constable 35815, V.R. @ F-2 Egmore Police Station, (L&O) during the period of suspension shall be at Chennai City and he shall not leave the Head Quarters without obtaining prior permission from the authority concerned.

6) He should surrender the kit supplied by the Government to the Inspector of Police, F-2 Egmore Police Station (L&O) immediately with reference to rule 90(7) of PSO, Vol.I.

7) The Inspector of Police, F-2 Egmore Police Station (L&O) should send the kit within 48 hours of suspension to the Greater Chennai Police Office Stores through a special messenger under proper acknowledgment."

6.We may put on record that the order of suspension is not under challenge directly nor any prayer to quash the same has been made. The only prayer is to quash the charge memo and all other consequential proceedings and to reinstate the appellant.

7.Learned counsel for the appellant basically raised three points, that there was an inherent bias reflected throughout of the officials of the police department, who neither supplied the documents for meeting the charges nor did they adhere to the procedure which is prescribed in the Rules. The third ground taken is that even otherwise once the learned single Judge while dismissing the writ petition had observed that the appellant would be entitled to the documents relating to the controversy, the same has also not been complied with and therefore, the respondents are under contempt. He has, however, tried to supplement his arguments by contending that the charge memo appears to be anti-dated, for which has filed an additional typed set of papers.

8.Learned counsel has further invited the attention of the Court towards the relevant provisions in the Handbook of

Disciplinary Proceedings, where in paragraph 1.10 (4), it is provided as under:-

1.10. DELINQUENCIES TO BE DEALT WITH ON MAJOR PENALTY CHARGE:

This list is only suggestive and not exhaustive.

1)...

2)...

3)...

4)Obtaining or attempting to obtain valuables or pecuniary advantage as illegal gratification.

...

9.Learned counsel for the appellant contends that there is no allegation of illegal gratification and therefore, any transaction of property privately between the appellant and some other person would partake the nature of a civil dispute and is not a conduct which may be relevant for the purpose of construing it to be violation of rules and regulations and be construed as a misconduct in the discharge of official duties. It is, therefore, submitted that even the rules do not permit the issuance of such a chargesheet and consequently, in the absence of the nature of delinquency as defined under the rules, there is no occasion to proceed or conduct the enquiry.

10.He also submits that the principles of fair play and natural justice had been violated and the respondents are hurriedly proceeding to take action without following any procedure prescribed for such disciplinary proceedings.

11.Learned Additional Government Pleader, on the other hand, contends that even if it were a private nature of negotiation of property, the criminal complaint was subjected to a preliminary enquiry and it was found that there was material to conduct a disciplinary proceeding. He, therefore, submits that this is not a case of inherent bias or malafide, but it is based on material which was collected during the enquiry and there being no challenge to the said enquiry proceedings, the contention raised on behalf of the appellant cannot be accepted. Learned counsel for the appellant counters this submission by contending that there is a distinction between an investigation and an enquiry. No investigation has been carried out nor is there any F.I.R. or otherwise any material to substantiate the allegations made in the charges. Not only this, when the appellant asked for the material, the same also was denied and the respondents returned the envelope unfortunately endorsing that there is no correct address of the Assistant Commissioner of Police, Egmore Circle. This, he submits, was an excuse on the part of the respondents only with a view to overreach the directions issued by the High Court and therefore, it is also contemptuous.

12. We have considered the submissions raised and we have extracted the relevant parts of the pleadings hereinabove. Learned counsel for the appellant urged that the learned single Judge did not appreciate the facts and the favourable legal issues in correct perspective and therefore, the impugned judgment deserves to be set aside.

13. In our considered opinion, the foundation of the suspension order is an allegation which is based on a preliminary enquiry. The same does not attach finality to the proceedings and any material collected would be subject to a full scale enquiry by the respondents, who are otherwise also bound to give adequate opportunity to the appellant to meet the allegations on the basis of the documents that are on record. This is also the observation of the learned single Judge. We, therefore, do not find any error in the impugned judgment so as to interfere in this intra-Court appeal.

14. The question of a complete absence of material also does not appeal to us inasmuch as we find that if the charge is investigated, it may also reflect on a negotiation of Government property where not only the appellant but the complainants also appeared to have participated. The enquiry will, therefore, take into account these aspects, as Government servants, particularly working in the police department, have to be careful when they enter into such transactions relating to immovable property which have to be reported to the Government after entering into service. The material of immovable property being transacted in this manner, therefore, does not amount to insufficiency of material and hence, we are not inclined to accept the arguments advanced on behalf of the appellant. We leave it at this stage without prejudice to the rights of the appellant or the respondents to proceed in the enquiry in accordance with law as per the directions of the learned single Judge.

The Writ Appeal is dismissed with the aforesaid observations. No costs. Consequently, C.M.P.Nos.11727 and 11729 of 2020 are closed.

WEB COPY
Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

sra

To

1.The State of Tamil Nadu,
Rep. by its Secretary,
Home Department, Secretariat,
Chennai 600 009.

2.The Commissioner of Police,
Office of the Commissioner of Police,
Greater Chennai Police,
Vepery, Chennai 600 007.

3.The Joint Commissioner of Police,
Office of the Joint Commissioner of Police,
Greater Chennai Police, East Zone,
Chennai 600 008.

4.The Deputy Commissioner of Police,
Greater Chennai Police,
Triplicane District, Chennai.

5.The Assistant Commissioner of Police,
Greater Chennai Police, Triplicane District,
Egmore Range, Chennai.

+1cc to M/s.Prakash Goklamey , Advocate, sr no.35350
+1cc to The Government Pleader, sr no,35230

LN(CO)
RMP(02/12/2020)

W.A.No.966 of 2020

सत्यमेव जयते

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