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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.08.2021

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THE HON'BLE MR.JUSTICE C.SARAVANAN

W.P.NO.3133 OF 2019

AND

W.M.P.NO.3400 OF 2019

(THROUGH VIDEO CONFERENCING)

R.Gomathi

... Petitioner

Vs.

1. The Secretary to Government,
Home (Police II) Department,
Fort St. George, Chennai 9.
2. The Director General of Police,
Dr. Radhakrishnan Salai,
Mylapore, Chennai 4.
3. The Deputy Inspector General of Police,
Kancheepuram Range,
Kancheepuram.

... Respondents

Prayer:-

Writ Petition filed under Article 226 of Constitution of India, for issuance of a Writ of Certiorari, to call for the records of the third respondent in connection with the impugned charge memo issued in PR No.95/2018 dated 12.12.2018 and quash the same and grant such other further relief.

For Petitioner : Mr.Venkataramani, Senior Counsel
for Mr.M.Muthappan

For Respondents : Mr.L.S.M.Hasan Fizal, Govt. Adv.

O R D E R

The petitioner has challenged the impugned Charge Memo dated 12.12.2018 issued by the third respondent based on a trap laid on the petitioner on 18.02.2008.



2. The petitioner was serving as a Sub Inspector of Police, Tiruvelangadu Police Station, Tiruttani Taluk, Trivallur District. The petitioner was accused of demanding and accepting bribe of Rs.50,000/- from one K.Dhamodharan for not registering a complaint against him and his wife lodged by the said person's daughter and son-in-law who decided to get marriage each other. Originally, a complaint was earlier lodged by the K.Dhamodharan's daughter and his son-in-law on 17.02.2008 against the defacto complainant K.Dhamodharan and his wife.

3. The family dispute between the family members of the defacto complainant K.Dhamodharan, wife, daughter and son-in-law was resolved even according to the case before the Authorities. However, the allegation was that the petitioner who was serving as a Sub Inspector of Police, Tiruvelangadu Police Station, Tiruttani Taluk, Trivallur District had demanded a sum of Rs.50,000/- from defacto complainant K.Dhamodharan for not registering a complaint. Therefore, the trap was laid and Phenolphthalein and Sodium Carbonate Test was conducted, wherein, the finger prints of the petitioner was found for having received a sum of Rs.50,000/- from defacto complainant K.Dhamodharan.

4. Under these circumstances, a criminal complaint in Crime No.1/AC/2008/KM under Sections 7, 13(2) and 13(1)(d) of the Prevention of Corruption Act was taken on the file of Vigilance and Anti-corruption, Kanchipuram and thereafter, a charge was also filed on 02.04.2009, pursuant to which, the learned Chief Judicial Magistrate, Tiruvallur took the case in Special Case No.2 of 2009.

5. During the interregnum, the petitioner was placed under suspension vide Suspension Order dated 20.02.2008. The petitioner had filed W.P.No.15421 of 2009 and interim order came to be passed on 05.08.2009 by directing the respondents to allow the petitioner to re-join the duty. Pursuant to the interim direction of this Court in W.P.No.15421 of 2009, the order of suspension dated 20.02.2008 was revoked by the respondents by an order dated 03.12.2009.

6. During the course of time, the Special Court by its Judgment dated 02.02.2017 in Special Case No.2 of 2009, acquitted the petitioner of the charges in Crime No.1/AC/08/KM filed under Sections 7, 13(2) and 13(1)(d) of the Prevention of Corruption Act.

7. The petitioner later filed W.P.No.30183 of 2018 and an order came to be passed in the aforesaid Writ Petition on 20.03.2020, pursuant to which, the petitioner has now been promoted as Inspector of Police.



8. It is the case of the petitioner that since in the criminal case, the petitioner has been acquitted, impugned Charge Memo dated 12.12.2018 is unsustainable. In the light of the decision of the Hon'ble Supreme Court and that of this Court in the following cases, the impugned charge memo dated 12.12.2018 is liable to be quashed.

- i. Capt. M. Paul Anthony Vs. Bharat Gold Mines Ltd. and Another, (1999) 3 SCC 679.
- ii. G. M. Tank Vs. State of Gujarat and Others, (2006) 5 SCC 446.
- iii. A. Thangavelu Vs. The Managing Director, Tamil Nadu Housing Board, order dated 14.06.2018 passed by this Court in W.A.No.976 of 2018.
- iv. S. Balasubramanian Vs. The Chief Engineer (General) and Another, order 10.07.2019 passed by this Court in W.A.Nos.589 to 591 of 2018.

9. Appearing on behalf of the petitioner, the learned Senior Counsel submits that Hon'ble Supreme Court in Capt. M. Paul Anthony Vs. Bharat Gold Mines Ltd. and Another, (1999) 3 SCC 679, has dealt with the similar circumstances of the case. In this connection, he also drew attention to paragraph 22 of the said decision which reads as under:-

22. The conclusions which are deducible from various decisions of this Court referred to above are:

(i) Departmental proceedings and proceedings in a criminal case can proceed simultaneously as there is no bar in their being conducted simultaneously, though separately.

(ii) If the departmental proceedings and the criminal case are based on identical and similar set of facts and the charge in the criminal case against the delinquent employee is of a grave nature which involves complicated questions of law and fact, it would be desirable to stay the departmental proceedings till the conclusion of the criminal case.

(iii) Whether the nature of a charge in a criminal case is grave and whether complicated questions of fact and law are involved in that case, will depend upon the nature of offence, the nature of the case launched against the employee on the basis of evidence and material collected against



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him during investigation or as reflected in the charge-sheet.

(iv) The factors mentioned at (ii) and (iii) above cannot be considered in isolation to stay the departmental proceedings but due regard has to be given to the fact that the departmental proceedings cannot be unduly delayed.

(v) If the criminal case does not proceed or its disposal is being unduly delayed, the departmental proceedings, even if they were stayed on account of the pendency of the criminal case, can be resumed and proceeded with so as to conclude them at an early date, so that if the employee is found not guilty his honour may be vindicated and in case he is found guilty, the administration may get rid of him at the earliest.

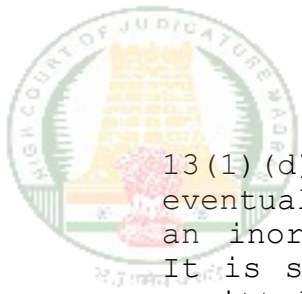
10. The learned Senior Counsel for the petitioner referred to paragraph Nos.30 & 31 from the decision of the Hon'ble Supreme Court in G.M.Tank Vs. State of Gujarat and Others, (2006) 5 SCC 446 which reads as under:-

30. The judgments relied on by the learned counsel appearing for the respondents are distinguishable on facts and on law. In this case, the departmental proceedings and the criminal case are based on identical and similar set of facts and the charge in a departmental case against the appellant and the charge before the criminal court are one and the same. It is true that the nature of charge in the departmental proceedings and in the criminal case is grave. The nature of the case launched against the appellant on the basis of evidence and material collected against him during enquiry and investigation and as reflected in the charge-sheet, factors mentioned are one and the same. In other words, charges, evidence, witnesses and circumstances are one and the same. In the present case, criminal and departmental proceedings have already noticed or granted on the same set of facts, namely, raid conducted at the appellant's residence, recovery of articles therefrom. The Investigating Officer Mr V.B. Raval and other departmental witnesses were the only witnesses examined by the enquiry officer who by relying upon their statement came to the conclusion that the charges were established against the appellant. The same witnesses were



31. In our opinion, such facts and evidence in the departmental as well as criminal proceedings were the same without there being any iota of difference, the appellant should succeed. The distinction which is usually proved between the departmental and criminal proceedings on the basis of the approach and burden of proof would not be applicable in the instant case. Though the finding recorded in the domestic enquiry was found to be valid by the courts below, when there was an honourable acquittal of the employee during the pendency of the proceedings challenging the dismissal, the same requires to be taken note of and the decision in Paul Anthony case [(1999) 3 SCC 679 : 1999 SCC (L&S) 810] will apply. We, therefore, hold that the appeal filed by the appellant deserves to be allowed.

12. The learned Senior Counsel for the petitioner further submits apart from the fact that on merits also the issue is covered by the decision of the Hon'ble Supreme Court and the two decision cited above, there is an inordinate delay in the conduct of the disciplinary proceedings and nothing precluded the Department from proceeding against the petitioner earlier. Thus, the learned Senior Counsel for the petitioner submits that even though criminal proceedings were initiated against the petitioner in Crime No.1/AC/2008/KM under Sections 7, 13(2) and



13(1)(d) of the Prevention of Corruption Act which was eventually taken on record as Special Case No.2/2009, there is an inordinate delay in initiation of disciplinary proceedings. It is submitted that the disciplinary proceeding was after the acquittal from the Criminal proceeding and therefore the impugned charge memo is therefore arbitrary and is liable to be interfered with.

13. Appearing on behalf of the respondents, the learned Government Advocate submits that there is no limitation prescribed under the Rules. He further submits that as per G.O.Ms.No.251 Personnel & Administrative Reforms (N) Department, dated 21.04.1988, there is no bar in initiating a collateral disciplinary proceedings even though after conclusion of the criminal proceedings.

14. The learned Government Advocate for the respondents submits that Charges against the petitioner are serious in nature in as much as the drop was laid at the petitioner's house and the petitioner had touched the amount of Rs.50,000/- which stands proved by Phenolphthalein and Sodium Carbonate Test. Therefore, the impugned Charge Memo under Rule 24 of the Tamil Nadu Subordinate Police Officers Conduct Rules cannot be interfered with.

15. I have considered the arguments advanced by the learned Senior Counsel for the petitioner and the learned Government Advocate appearing for the respondents. I have perused the orders passed by the Criminal Court and the decisions cited by the learned Senior Counsel for the petitioner.

16. What is evident is that witnesses who were examined as prosecution witness in Special Case No.2/2009 are the witnesses in the proposed Disciplinary Proceedings as well. The Criminal Court has found the petitioner not guilty, by holding that the prosecution is not proved the case beyond the reasonable doubt. The decision of the Hon'ble Supreme Court G.M.Tank Vs. State of Gujarat and Others, (2006) 5 SCC 446 cited by the learned Senior Counsel indicates that once same witnesses were examined in the criminal case and the criminal court on the examination comes to a conclusion that the prosecution has not proved the alleged guilty against the appellant beyond any reasonable doubt and acquitted the appellant by its judicial pronouncement with the finding that the charge has not been proved, it would be unjust and unfair rather oppressive to allow the findings recorded in the departmental proceedings to stand.

17. Though G.O.Ms.No.251, Personnel & Administrative Reforms (N) Department, dated 21.04.1988 also indicates that the respondents can initiate disciplinary proceedings after the



conclusion of proceedings, it is to be noted that such proceedings can proceed in the light of the decision of the Hon'ble Supreme Court in G.M.Tank Vs. State of Gujarat and Others, (2006) 5 SCC 446. The Division Bench of this Court in A.Thangavelu Vs. The Managing Director, Tamil Nadu Housing Board, by its Judgment dated 14.06.2018 in W.A.No.976 of 2018 has also held that for initiating disciplinary proceedings, fresh material should be there on record.

18. In this case, admittedly, the impugned charge memo does not reveal any other additional material for either prosecuting the petitioner or proceeding against the petitioner departmentally at this distant point of time after a lapse of about 10 years since the petitioner was placed under suspension on 20.02.2008. That apart, the petitioner had obtained several orders from the Court as stated above, by virtue of which, the petitioner was allowed to report the duty and was also given promotion to the post of Inspector of Police vide order dated 20.03.2020.

19. In view of overall facts and circumstances of the case, this Court is of the view the impugned Charge Memo dated 12.12.2018 at this distant point of time, long after the conclusion of criminal proceedings in Special Case No.02/2009 cannot be sustained.

20. Therefore, the Writ Petition filed by the petitioner deserves to be allowed. Thus, the impugned Charge Memo dated 12.12.2018 stands quashed. This Writ Petition stands allowed. No cost.

Sd/-

Assistant Registrar(CS II)

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Sub Assistant Registrar

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To

1. The Secretary to Government,
Home (Police II) Department,
Fort St. George, Chennai 9.
2. The Director General of Police,
Dr. Radhakrishnan Salai,
Mylapore, Chennai 4.



3. The Deputy Inspector General of Police,
Kancheepuram Range,
Kancheepuram.

+1cc to Mr.M.Muthappan, Advocate, S.R.No.43268

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W.M.P.No.3400 of 2019

PMK (CO)
PM/07/10/2021