



W.P.No.25871 of 2010

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.11.2023

CORAM

THE HONOURABLE MR.JUSTICE K.KUMARESH BABU

W.P.No.25871 of 2010
and M.P.No.1 of 2010

K.Rajendran

... Petitioner

Vs

1.The Dy Inspector General of Police,
Villupuram Range,
Villupuram.

2.The Addl., Director General of Police, L & O
Chennai – 4

... Respondents

PRAYER:- Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari to call for the records of the respondents 1 & 2 in connections with the impugned orders passed by them in R.O.No.241/2009 C.No.B2/PR No.19/2009, dated 27.08.2009 and RC.No.179362/AP1(2)/2009, dated 03.07.2010 and quash the same and grant such other further relief.

For Petitioner : Mr.K.Venkataramani Sr., Counsel for
Mr.M.Muthuppan

Page No: 1/12



W.P.No.25871 of 2010

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For Respondents : Mr.R.Neethi Perumal GA for RR1 & 2

ORDER

The instant Writ Petition had been filed challenging the order of punishment and the order modifying the initial order of punishment.

2.Heard Mr.K.Venkataramani, learned Senior counsel appearing for the petitioner and Mr.R.Neethi Perumal, learned Government Advocate appearing for the respondents.

3. The learned Senior counsel appearing for the petitioner would submit that the petitioner while working as a Head Constable at Arakantanallur Police Station had received an intimation of a crime on 16.03.2006, from the Government hospital Pondicherry. Based upon the said intimation, the petitioner had gone to Pondicherry and had registered an FIR. Pursuant to the said FIR, he had also visited the spot and prepared a rough sketch by recording the statement of witnesses there. He would further submit that thereafter the FIR had been altered,

Page No: 2/12



W.P.No.25871 of 2010

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investigation was carried out by the Sub-Inspector of Police and Inspector of Police. While that being so, a charge memo was issued to him for filing the FIR belatedly and also for preparing a rough sketch which was not correctly prepared and not arresting the third accused. He would submit that as regards the first charge, there was no information about the crime that had taken place on 14.03.2006 and only on intimation from the hospital at Pondicherry, the petitioner was aware of such a crime and as on the day, he was on duty and he had proceeded to Pondicherry and examined the victim and recorded a complaint from her and thereafter registered an FIR. During the pendency of the FIR, the complainant's husband, who was also inflicted with the injuries and who had been admitted to the hospital in Villupuram, was discharged on 23.03.2006 and thereafter, on 29.03.2006 he died. On his death, the original FIR was altered as an FIR 302, including the offence under Section 302 and was investigated by his superiors. A charge sheet had also come to be filed in SC.No.42 of 2008 and in the said case by the judgment of the Trial Court, dated

Page No: 3/12



W.P.No.25871 of 2010

WEB COPY

13.07.2009, acquitted all the accused as the prime witnesses to the case who had turned hostile. He would heavily rely upon the judgment of the Trial Court to contend that the complainant had admitted in the examination that the petitioner had examined the complainant only at Pondicherry hospital, which was pursuant to the intimation that had been received by him.

4.He would further contend that there is no intimation of the crime either from Thirukoilur hospital where originally the complainant had taken for treatment and also from Villupuram hospital, where the husband of the complainant had taken treatment. He would also submit that the imputation of the charges also do not suggest any intimation from either Villupuram hospital or Thirukoilur hospital. He would further submit that the incident had been reported only after two days and immediately on intimation, he had registered the FIR on visiting the complainant at Pondicherry, where she was being treated and visited the site and drawn a rough sketch based on the witnesses

Page No: 4/12



W.P.No.25871 of 2010

WEB COPY

available at the place of incident. He would submit even that witness had turned hostile. He would submit that the husband of the complainant had died on 29.03.2006, after his discharge from the hospital and even the Trial Court had held that the death had not taken place due to the alleged injuries that had been caused to him. He would also take me to the findings of the Trial Court holding that the Sub-Inspector and Inspector of the said Police Station have not investigated the case properly. He would submit that even in the complaint given by PW-1 namely the wife of the deceased, had not named any person and had claimed, she was unaware of the identity of the alleged attackers. Therefore, there is no question of arrest of any person before the investigation and having identified any suspect of the crime. Therefore, he would submit that the entire charges that had been levelled against the petitioner was farce and the punishment imposed against the petitioner by the original authority as has been modified, is wholly uncalled for and therefore, he would seek interference of this Court of the punishment that had been imposed against him.

Page No: 5/12



W.P.No.25871 of 2010

WEB COPY

5. Countering his arguments, R.Neethi Perumal, learned Government Advocate would submit that he being the officer, had failed to register a complaint immediately after the occurrence of the incident, but had only registered the complaint after two days. He had also prepared an incorrect sketch of the place of the incident and had failed to perform his part of his duties. Therefore, he would submit that whatever punishment had been imposed that had been modified by the appellate authority is a reasonable punishment that had been imposed upon the petitioner, which calls for interference by this Court.

6.I have considered the rival submissions made on either side and perused the materials placed on record.

7.A perusal of the charge memo would show that the charge against the petitioner was per-functionary investigation in crime No.52/2006, under Section 294B, 323, 324, 506 (ii) r/w 302 IPC at

Page No: 6/12



W.P.No.25871 of 2010

WEB COPY

Arakantanallur Police Station. The imputation of the charges was that he had registered an FIR belatedly i.e., on 16.03.2006, when the incident had taken place on 14.03.2006. He had also not prepared the proper sketch, did not record the statement of witnesses in detail and has also not mention the time of arrest in the remand report and that the confession statement has not been recorded from the accused and no evidences were seized from the scene of crime. Further allegation is that he had not arrested the third accused and the victim was not at all examined. It is to be noted that originally an FIR was not registered for an offence under Section 302. It was altered on the death of the husband of the complainant only after his death on 29.03.2006.

8.It is also pertinent to note that when the crime involves an offence under Section 302, it cannot be investigated by a person who holds the rank of a Head Constable. It is also to be further noted that even though the crime had taken place on 14.03.2006 intimation had come to the Police Station only on 16.03.2006, upon which the

Page No: 7/12



W.P.No.25871 of 2010

WEB COPY

petitioner had visited the hospital and recorded the statement of complainant, who was also a victim and thereafter, registered an FIR had also visited the scene of crime and prepared a rough sketch. It is very surprisingly that a charge memo has been issued to him also on the imputation that he had failed to record a confession statement. It is pertinent to note that Section 164 of Cr.P.C., only mandates a confession statement to be recorded by the Magistrate and had also barred a Police Officer who had been vested with the power of the Magistrate to record any confession. The provision of Section 164 Cr.P.C., does not empower any Police Officer, even if he holds the powers of Magistrate under any other enactment to record a confession statement. Infact there is a bar of recording confession statement by the Police officer.

9. When that being so, it is not known as to how such an imputation had been made against the petitioner. This itself would be clear enough to hold that the entire charge memo is a farce charge memo. That apart, it had been not substantiated by any material

Page No: 8/12



W.P.No.25871 of 2010

WEB COPY

evidence that an information of crime had been received from any quarters till the intimation came from the hospital at Pondicherry on 16.03.2006. When that being so, the petitioner could not be held liable for delayed registering of the FIR.

10.In view of the above reasonings, I am of the considered view that the entire proceedings based on the charge memo is a farce one and the petitioner ought not to have been proceeded with based upon such farce allegation.

11.In view of the reasonings above, the disciplinary proceedings itself is liable to be quashed and the orders passed by the respondents 1 and 2 would also have to be set aside.

12.In fine, the Writ Petition is allowed and the impugned orders passed by the respondents are set aside. However there shall be no order as to costs. Consequently connected Miscellaneous Petition is

Page No: 9/12



W.P.No.25871 of 2010

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closed.

07.11.2023

pbn

Index : Yes/No

Speaking order : Yes/No

Neutral Citations : Yes/No

To

1.The Dy Inspector General of Police,
Villupuram Range,
Villupuram.

2.The Addl., Director General of Police, L & O
Chennai – 4

Page No: 10/12



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W.P.No.25871 of 2010

K.KUMARESH BABU,J.

pbn

W.P.No.25871 of 2010
and M.P.No.1 of 2010

Page No: 11/12