



W.P.No.26108 of 2011

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.11.2023

CORAM :

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

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C.Suresh Kumar

.. Petitioner

Versus

1. The Additional Director General of Police /
Inspector General of Prisons,
CMDA Tower-II, No.1, Gandhi Irwin Road,
Egmore, Chennai - 600 008.
2. The Deputy Inspector General of Prisons,
Chennai Range, CMDA Tower-II,
No.1, Gandhi Irwin Road,
Egmore, Chennai - 600 008.
3. The Superintendent of Prisons,
Central Prison-1 (Convict),
Puzhal, Chennai - 600 066.

.. Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, pleaded to issue a Writ of Certiorarified Mandamus to call for the records relating to the impugned order of the first respondent in No.4319/EW2/2011, dated 16.05.2011 and the order passed by the second respondent in No.3221/Mu U/2009, dated 17.02.2010 and quash the said



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orders and direct the respondents to grant all consequential benefits to the petitioner.

For Petitioner : Mr.P.Manoj Kumar

For Respondents : Mr.T.K.Saravanan,
Government Advocate

ORDER

This Writ Petition is filed challenging the order of the first respondent, dated 16.05.2011, in and by which, the punishment imposed by the second respondent by the order, dated 17.02.2010, is confirmed.

2. The petitioner was an accused in a criminal case, whereunder, upon inspection, *ganja*, weighing 110 gms, was recovered from the petitioner. While a case was registered and the criminal case was proceeding, a charge memorandum was issued against the petitioner on 30.10.2007. The petitioner denied the charges and submitted his explanation on 27.08.2008. Thereafter, an Enquiry Officer was appointed and during the course of enquiry, the petitioner took a stand that since the criminal case is on going, he did not want to disclose his defence. In spite of the enquiry being proceeded, no evidence was let in on behalf of the petitioner. In the said circumstances, the Enquiry Officer found the charges as proved. Thereafter,



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second show-cause notice was issued to the petitioner and taking a lenient view considering the long number of years of service left to the petitioner, the punishment of reducing the pay of the petitioner to basic pay for a period of five years without cumulative effect alone was imposed. The said punishment is confirmed in appeal. Aggrieved thereof, the present Writ Petition is filed.

3. The learned Counsel appearing on behalf of the petitioner would submit that it can be seen that in the Criminal Court also, the petitioner was acquitted honourably. As a matter of fact, only because the trial was on going, the petitioner was not inclined to disclose his defence. The authorities ought to have taken into consideration of the same.

4. It is the further contention of the petitioner that the petitioner is put to grave and precarious position on account of the punishment and the Enquiry Officer erroneously relied upon the statement of the witnesses, who were otherwise put to cross-examination in the criminal prosecution and the consideration of their deposition did not result in conviction. Therefore, the learned Counsel would submit that the impugned punishment has to be set



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aside and in any event, atleast, an opportunity may be given afresh for the petitioner to prove his innocence.

5. Per *contra*, the learned Government Advocate appearing on behalf of the respondents would submit that due procedure has been followed during the enquiry. It is settled law that the Departmental Enquiry and criminal trial can proceed simultaneously. The petitioner did not obtain any stay of the Departmental Enquiry pending the criminal proceedings. In that view of the matter, the Departmental Proceedings were rightly proceeded in accordance with law and very lenient punishment is only imposed against the petitioner.

6. I have considered the rival submissions made on either side and perused the material records of the case.

7. As rightly contended by the learned Government Advocate, it is trite that Departmental Proceedings and criminal trial can proceed simultaneously. If only the petitioner has any grave prejudice, he has to approach the Disciplinary Authority to keep the Disciplinary Proceedings in



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abeyance pending the criminal trial and if the said request is not acceded to, then it was open for him to approach this Court for an appropriate relief. The petitioner did not take any steps to stop the Disciplinary Proceedings. The standard of proof in criminal proceedings and the Disciplinary Proceedings are different. On the basis of preponderance of probability, upon considering the evidence of the official witnesses, who recovered the *ganja* from the socks of the petitioner, the Enquiry Officer has held the charges to be proved. On a perusal of the judgment of the learned Magistrate, it cannot be said that the petitioner was acquitted on merits. It was only on reasons like delaying in filing the F.I.R and giving benefit of doubt, the petitioner is acquitted. In that view of the matter, no ground is made out for interference by way of judicial review.

8. Accordingly, there are no merits in the Writ Petition and this Writ Petition is dismissed. No costs.

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Index : yes
Speaking order
Neutral Citation : yes
grs

To



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4. The Public Prosecutor,
High Court of Madras.



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D.BHARATHA CHAKRAVARTHY, J.

grs

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