



W.P.No.7099 of 2011

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.11.2023

CORAM

THE HONOURABLE MR.JUSTICE K.KUMARESH BABU

W.P.No.7099 of 2011

M.P.No.1 of 2011

R.Prasanna Kumar

... Petitioner

Vs

The Secretary to Government,
Home (Police II) Dept.,
Fort St., George,
Chennai – 600 009.

... Respondent

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 respondent in connection with the impugned order passed by respondent in GO(2D) No.583, Home (Pol.II) Dept., dated 15.12.10 and quash the same and grant other further relief.

For Petitioner : Mr.K.Venkataramani Sr.Counsel for
Mr.M.Muthappan

For Respondent : Mr.S.Ravichandran AGP

ORDER

The Writ Petition had been filed challenging the order of

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punishment of censure that had been imposed upon the petitioner.

2.Heard Mr.Venkataramani, learned Senior counsel appearing for Mr.Mr.M.Muthappan, learned counsel appearing for the petitioner and Mr.S.Ravichandran learned Additional Government Pleader appearing for the respondent.

3.The petitioner was directly recruited as a Sub-Inspector of Police in the year 1979 and was promoted as an Inspector of Police in the year 1993. He was further promoted as Deputy Superintendent of Police, Category-I in the year 2007 and that he had received more than 75 awards. During his tenure as Inspector of Police, Virdhachalam Circle, based upon a complaint of murder, the petitioner who was the Investigating Officer took up the investigation and examined the witnesses. Since, there was no direct eye witness, the case was investigated based on the circumstantial evidences. During the investigation, two of the witnesses namely Muthusamy and one Arumugam had categorically deposed about the conduct of the husband

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of the deceased which cause suspicion on the husband of the deceased. Further circumstances that lead to a suspicion on the husband of the deceased, is that he had not given the complaint immediately on the recovery of the body and had also infact removed the body from the original place and had also tried to destroy the evidence by rearranging the dead body. The aforesaid two witnesses had also given a statement before the Magistrate under Section 164 Cr.P.C. In such view of the matter, the petitioner had taken into custody the husband of the deceased under those circumstances. But however, later one Pillur Ramesh was arrested on the allegation that he had raped and murdered a lady. During the investigation, the said Pillur Ramesh had confessed to various other similar crimes including his role in rape and murder of the wife of the person, who was arrested by the petitioner. Immediately the petitioner had come to know about the same, had taken necessary steps to release the husband of the deceased when the case under investigation. But however a charge memo had been issued to the petitioner for per-functionary investigation in the case. The petitioner

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had given a detailed representation in reply to the above said charges and an enquiry officer was appointed to conduct the enquiry.

4.The Senior learned counsel appearing for the petitioner would submit that the enquiry officer even though had given a finding that the petitioner had conducted the investigation properly and had acted only according to the circumstances available on record had given a finding that there was some omission in the investigation of the petitioner and if such omissions were not made, the petitioner would have come to a different conclusion. He would submit that even though the enquiry officer recorded that there were omissions what was the omission that was made, was never been stated in his enquiry report. Based upon the enquiry report, the petitioner was given a further opportunity by the disciplinary authority namely the Government to which also, the petitioner had submitted a detailed representation, but however based upon the enquiry officer's report that the charges against the petitioner

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had been partially proved for the omissions, the government passed an order of censure. According to him, the enquiry report itself is based on the assumption and presumption. Having held that the petitioner had enquired properly and had acted in a fair manner, the charge of per-functionary investigation itself would not stand and therefore, the petitioner ought to have been exonerated from the charges. In support of his contention, he would rely upon the judgment of the Hon'ble Apex Court in the case of ***Inspector Prem Chand vs. Govt., of NCT of Delhi & Ors.***, reported in ***(2007) 4 SCC 566***, and contend that an error of judgment and negligence simpliciter cannot be held to be a misconduct.

5.Countering the submissions made by the learned Senior counsel appearing for the petitioner, Mr.S.Ravichandran, learned Additional Government Pleader would contend that the petitioner had failed to investigate the offence in a proper manner, so that an innocent person would not have been incarcerated in prison for 56 days for no offence that had been committed by him. He would further submit it is not

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known on what basis the said Selvaraj had given his confession, if he had not committed the crime. Further, he would submit that the petitioner had been imposed only with the punishment of censure, which is the minimum punishment that could have been inflicted upon the petitioner, and since the petitioner had already retired from service, no useful purpose would be served in modifying the order of punishment.

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

7.The charges that were framed against the petitioner was per-functionary investigation in a murder case. It is a case that during the investigation, evidences were collected from the independent witness which lead to suspicion of involvement of one Selvaraj. The witnesses have also recorded their statement under Section 164 Cr.P.C. before the Magistrate which have more evidenciary value. Only based upon such

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statements of witnesses, the petitioner had taken into custody the said Selvaraj. However, one other individual named Pillur Ramesh, in an investigation in another case of similar offence had admitted to have also been involved in the offence of which the Selvaraj was charged and arrested. It is not a case that investigation had been completed in the present case and the charge sheet filed and had come to a conclusion that the petitioner had performed a per-functionary investigation and filed a charge sheet. The case was still under investigation. If an Investigation Officer based on circumstantial evidence suspects an individual to be an offender of a heinous crime/ cognizable crime, he is duty bound to secure the offender atleast till the investigation is over so that he does not indulge himself in destroying the evidence. In the present case, there was no eye witness and the case was only being investigated based on the circumstantial evidences and much more it would be only proper to secure the offender so that he does not destroy the evidences. Further the enquiry officer had also held that the petitioner had conducted an investigation properly only based upon

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circumstantial evidence and 164 statement of witnesses but had recorded that there are some omissions without indicating what those omissions are.

8.A reading of the above said enquiry report would only pre-suppose that there was an error of judgment on the part of the petitioner and such error in view of the judgment of the Hon'ble Apex Court in the case of *Inspector Prem Chand* (stated supra), cannot be held to be a misconduct.

9.In the present case, the petitioner had acted upon the circumstantial evidence particularly Section 164 Cr.P.C., statement of two other witnesses to secure the accused for which I do not find that there was any per-functionary investigation, since the investigation was not over and the charge sheet has not been laid. Therefore, I am of the opinion that the petitioner ought to have been exonerated of the charges that had been framed rather than imposing a punishment on him.

10.In fine, the impugned order of punishment of censure is set

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aside and the Writ Petition is allowed. However, there shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

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Speaking order : Yes/No

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K.KUMARESH BABU,J.

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