IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.07.2023

CORAM

THE HON'BLE Mr. JUSTICE **C. V. KARTHIKEYAN**

W.P.No.43537 of 2016
and
W.M.P.No.37355 of 2016

K. Mariappan .. Petitioner

Vs.

1.The State of Tamilnadu
Rep. by the Deputy Inspector General of Police,
Salem Range, Salem.

2.The Superintendent of Police
Krishnagiri District,
Krishnagiri. .. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the records pertaining to the orders in D.O.No.812/2016, C.No.G2/20171/2016 dated 15.11.2016 on the file of the 2nd respondent and the consequential order thereof in Na.Ka.No.G2/20171/2016 dated 17.11.2016 on the file of the 2nd respondent and to quash the same.

For Petitioner .. Mr. R. Selvakumar

For Respondents .. Mr. V. Nanmaran, AGP

ORDER

This Writ Petition has been filed in the nature of Certiorari questioning the orders in D.O.812/2016, C.No.G2/20171/2016 dated 15.11.2016 passed by the 2nd respondent and the consequential order in Na.Ka.No.G2/20171/2016 dated 17.11.2016 on the file of the 2nd respondent and to set aside all the orders.

2.The petitioner had joined the Department of Police in the year 1985 as a constable and from 1989 onwards he was working as Special Branch Constable and in the year 2005, he was promoted as Head Constable. He was then given promotion as Special Sub-Inspector of Police in the year 2012. He was then posted at District Special Branch at Krishnagiri. On 22.02.2016, he was posted as Special Sub-Inspector of Police, at Thali Police Station. He worked between the years 1989 and 2016 with the Denkanikottai Circle of the Tamilnadu Police Department.

3.He was then issued with a notice by one Periyasamy, who alleged that the petitioner and his wife Vanaja had issued a cheque for a sum of Rs.15,00,000/-, which was returned for want of sufficient funds. Thereafter, further proceedings were initiated by the said Periyasamy who had initiated C.C.No.121 of 2014 under Section 138 of the Negotiable Instruments Act, before the Fast Track Judicial Magistrate Level, Dharmapuri. After the conclusion of trial, the petitioner and his wife had been convicted to undergo one year imprisonment apart from payment of compensation of twice the amount of cheque namely, Rs.15,00,000/- each to the accused. A total compensation of Rs.30,00,000/- was imposed by the learned Judicial Magistrate.

4.The petitioner had filed an application for suspension of sentence and the application was dismissed. Consequent to the punishment imposed, the impugned order was passed on 15.11.2016 taking note of all these facts and finally, by the impugned order, the petitioner was compulsorily retired from service with effect from 21.10.2016 afternoon. The petitioner however, questioned the conviction by filing C.A.No.13 of 2016. The appellate Court, by judgment dated 16.02.2018, confirmed the order of conviction passed by the trial Court. Questioning the judgment of the appellate Court, the petitioner and his wife filed Crl.R.C.No.259 of 2018 before this Court. A learned Single Judge, by an order dated 02.11.2022 placed reliance on the judgment of the Hon'ble Supreme Court reported in ***2021 (6) CTC 240, Ramgopal and others Vs. The State of Madhya Pradesh*** and taking into consideration the fact that there had been a compromise which had been reached between the petitioners and the defacto complainant had directed that a sum of Rs.2,00,000/- shall be paid in addition to the cheque amount and therefore, set aside the conviction passed by the trial Court and the appellate Court.

5.Mr. R. Selvakumar, learned counsel for the petitioner, placed reliance on the order in Crl.R.C.No.259 of 2018 and stated that since the petitioner had been acquitted, the order of punishment imposed by the respondent namely, to compulsorily retire the petitioner should now be re-examined and revisited by this Court.

6.It is also contended that the rules provide that there should not be any borrowal of any money by any police officer only within the local limits of his authority.

7.It is contended by the learned counsel that the petitioner was working in Thali Police Station and the entire incident occurred outside the jurisdiction of the Thali Police Station.

Let me answer that particular issue in the first instance. In the affidavit, the petitioner had stated that he worked between the years 1989 to 2016 within the Denkanikottai Circle of the Tamil Nadu Police Department. The cheque, which he and his wife had issued was from the Indian Bank in Denkanikottai, and the cheque was returned as dishonoured. The defacto complainant had an option. He could have filed the complaint within his jurisdiction or within the jurisdiction where the petitioner resided or the jurisdiction where the cheque was actually dishonoured. The cheque was issued by Denkanikottai Branch of Indian Bank. Therefore, it has to be held that the transaction was within the area the petitioner exercised authority.

8.With respect to the order in revision petition, it is seen that though conviction had been set aside, the fact that the petitioner had borrowed money had not been interfered with by the learned Single Judge. The petitioner was still directed to pay a sum of Rs.2,00,000/- over and above the cheque amount of Rs.15,00,000/-. This only emphasises that the petitioner had actually borrowed the amount. The rules provided that the petitioner should not borrow any amount.

The rules had been reduced in the impugned order itself. They are as follows:

“The Rule provision 8 and 24 of Tamil Nadu Police Conduct Rules 1964 are as follows:

i).Rule Provision 8 of Tamil Nadu Police Conduct Rules 1964 says that,

1.No police officer shall except with the previous sanctions of the Government, lend money to any person possessing land or valuable property within the local limits of his authority or at interested to any person.

Provided that a police officer may make an advance of pay to personal friend or relative, even if such person *possesses land or valuable property within the local limits of his authority.*

2.No police officer shall save in the ordinary course of business with a bank or a firm of standing, borrow money from or otherwise place himself under pecuniary obligation to any person within the local limits of his authority, or any of the person with whom he is likely to have official dealings nor shall he permit any member of his family except with the previous sanction of the Government to enter into any such transaction.

Provided that, a police officer may accept a purely temporarily loan of not exceeding Rs.10,000/- free of interest from a personal friend or relative or operate a credit account with a bonafide trademan.

ii).Rule provision 24 of Tamil Nadu Police Conduct Rules 1964 says that

1.Every police officer shall at all times maintain absolute integrity and devotion to duty.

2.Every police officer, shall take all possible steps to ensure integrity and devotion to duty by all subordinate police officer for the time being under his control and authority.

3.(i)No police officer shall, in the performance of his official duties or in the exercise of powers conferred on him, act otherwise than in his best judgment except when he is acting under the direction of his official superiors.

(ii)The direction of the Official Superior shall ordinarily be in writing oral direction to subordinates shall be avoided. Where the issue of oral direction becomes unavoidable, the official superior shall confirm in writing immediately thereafter.

(iii)A police officer who has received oral direction from his official superior shall see the conformation of the same in writing as early as possible. Where upon it shall be the duty of the official superior to confirm the direction in writing.

4.No police officer shall in the performance of his official duties or in the exercise of powers conferred on him *evade the responsibility devolving legitimately on him seek instructions from, or approval of a superior authority when such instruction or approval is not necessary in the scheme of distribution of powers and responsibility."*

9.The rules are clear. The rules makes it obligatory that a police officer, in this case, the petitioner should not borrow any amount. Even if he so borrows, he should not have issued a cheque which had been returned for want of sufficient funds. He could have settled the issue at the earliest, at last when the matter was pending before the Magistrate Court. But however, he had suffered an order of conviction, which was later upheld by the appellate Court. In the revision, the fact that he had borrowed money was also affirmed and he was directed to pay an additional sum of Rs.2,00,000/-. Therefore, I find no reason to interfere with the impugned order. Accordingly, the Writ Petition stands dismissed. No costs. Consequently, connected Writ Miscellaneous Petition is closed.

10.The learned counsel for the petitioner placed a grievance that the petitioner had not been paid with the benefits which are payable to him, since the punishment is only to compulsorily retire him from the service. Let the respondents examine that particular grievance, and if any amounts are payable, may pay the same within a period of two months from the date of receipt of a copy of this order.

11.It is stated by the learned Additional Government Pleader that the entire amounts had been paid through ECS, but let the respondents re-examine that aspect and if there is any amount to be paid that may be paid to the petitioner.

19.07.2023

Index:Yes/No
Internet:Yes/No
Neutral Citation:Yes/No
Speaking order: Yes/No
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To

1.The Deputy Inspector General of Police,
Salem Range, Salem.

2.The Superintendent of Police
Krishnagiri District,
Krishnagiri.

C.V.KARTHIKEYAN,J.

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W.P.No.43537 of 2016

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