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WP.No.14926/2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 01.08.2023

CORAM

THE HONOURABLE MR. JUSTICE C.V.KARTHIKEYAN

WP.No.14926/2017

N.Rajkumar

... Petitioner

Versus

1.The Superintendent of Police
District Police Office,
Kanchipuram District @
Kanchipuram.

2.The Deputy Inspector General of Police
Kanchipuram Range, Kanchipuram.

3.The Director General of Police
Tamil Nadu, Chennai 600004.

... Respondents

Prayer :- Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorarified mandamus calling for the records pertaining to the orders of the 1st respondent herein in his H1/PR.05/2006 dated 13.11.2006 and C.No.J1/PR.05/06, D.O.2001/06 dated 18.12.2006 imposing a punishment of reduction in time scale of pay by one stage for two years and postponement of future increments and the consequential order passed by the 2nd respondent herein in his



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Rc.No.B2/AP.03/2007 dated 31.01.2007 rejecting the petitioner's appeal petition and the consequential order of the 3rd respondent herein passed in his RC.No.108386/AP.1[2]/2013 dated 11.11.2016 rejecting the petitioner's mercy petition and quash the same and consequently direct the respondents herein to treat the period of suspension of 163 days as duty for all purposes with all consequential service and monetary benefits.

For Petitioner	:	Mr.Ravi Shanmugam Senior Counsel
For Respondents	:	Mr. V.Nanmaran, AGP

ORDER

- (1) The writ petition has been filed in the nature of a certiorarified mandamus seeking records of the 1st respondent dated 13.11.2006 and also 18.12.2006 by which, the punishment of reduction in time scale of pay by one stage for a period of two years and postponement of future increments had been passed and which was confirmed by the 2nd respondent by an order dated 31.01.2007 and also the order of the 3rd respondent dated 11.11.2016 whereby the Mercy Petition given by the petitioner herein had been rejected by the 3rd respondent and to quash all the above orders. The petitioner also seeks direction to the respondents herein to treat the period of suspension of 163 days as



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duty for all purposes with all consequential service and monetary benefits.

- (2) The petitioner had joined the Police services as Grade – II Police Constable on 12.12.1988. He was promoted as Grade-I Police Constable on 27.09.1999. He was further promoted as Head Constable on 12.12.2003 and as Special Sub Inspector of Police on 01.10.2014. The petitioner had a very interesting life. He came to be involved in an FIR which was registered against him in Crime No.42/2005 for the offences under Sections 498-A, 306 and 511 of IPC and also read with Section 4 of the Dowry Prohibition Act. This was registered on 11.09.2005 by the Deputy Superintendent of Police at Arakonam Sub Division/Arakonam All Women Police Station. The petitioner was arrayed as the 2nd accused. His wife was arrayed as the 3rd accused. The defacto complainant was the wife of the 1st accused/brother of the 3rd accused. During the pendency of the criminal case, the 1st accused died and the charges abated. Evidence that was recorded during the course of trial, had to be examined only with respect to the allegations or incriminating evidence adduced as



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against the petitioner/2nd accused and his wife/3rd accused.

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Consequent to the fact that the FIR had been registered against the petitioner, departmental proceedings were parallelly initiated against him and the charges framed against the petitioner herein were held to be established. That particular aspect was quite straight forward since at that particular time, the FIR had been registered which was a fact and the Final Report had been taken cognizance and committed to the Court of Sessions for further trial. Consequent to the establishment of the charges, respondents 1 and 2 passed orders which are impugned whereby, the aforementioned punishment was imposed on the petitioner herein.

- (3) The petitioner then concentrated on the further progress of the criminal case. That criminal case, after committal, was taken on file by the learned II Additional District and Sessions Judge, Vellore at Ranipet in SC.No.176/2010. The entire arguments before this Court revolved round the findings given by the learned II Additional Sessions Judge in that particular case. It is contended by the learned Senior counsel appearing for the petitioner that there was no evidence



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at all adduced pointing out to the role of the petitioner herein in any one of the charges. The charges had been framed by the Court were charges under Sections 498-A, 304[B] and 306 of IPC and also under Section 4 of the Dowry Prohibition Act.

- (4) The learned Senior counsel appearing on behalf of the petitioner took the Court through the findings of the learned Sessions Judge. The relevant paragraphs No.10 and 11 are extracted below:-

"10.PW1 and the victim have spoken about the cruelty suffered by the victim in the hands of her husband Ravi and her sister in law namely A3 Nirmala. This evidence cannot be ignored. Pws.1 and 2 are silent about the nature of cruelty committed by A2 and A3. However, the confession statement given by the deceased before the Judicial Magistrate shows that the victim's husband Ravi and his sister A3 Nirmala have abused the deceased and harassed her. Ex.P9 is the complaint given by the deceased Lalitha explaining the cruelty suffered in the hands of A1 Ravi and A3 Nirmala. Ex.P3 is the dying declaration of the victim to corroborate cruelty in the hands of A1 Ravi and A3 Nirmala. Ex.P5 is a supporting document to



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prove the cruelty. P.Ws.1 and 2 have also spoken about the demand of Rs.5,000/-. For the above reasons, this Court goes to conclude that prosecution side evidence and documents go to show that A3 Nirmala has subjected the deceased Latha to cruelty. Defence side argument about the delay in registering FIR to make up a prosecution case is not acceptable. The harassment and the cruelty are continuous in nature and therefore, the delay will not prejudice the accused. Statement before doctor about the stove burst is not an admissible evidence and cannot be relied on. Therefore, this Court gives the finding that the prosecution is able to prove the offence u/s.498-A IPC against A3 beyond all the reasonable doubts and therefore, the accused A3 Nirmala is found guilty for the offence u/s.498-A IPC. Prosecution has failed to prove the offences u/s.304-B, 306 IPC and u/s.4 of Dowry Prohibition Act against A3 Nirmala beyond all the reasonable doubts. Similarly, prosecution has failed to prove the offences u/s.498-A, 304-B and 3-6 IPC and u/s.4 of the Dowry Prohibition Act against A2 beyond all the reasonable doubts.



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11. Prosecution is able to prove the offence u/s.498-A IPC against A3 Nirmala beyond all the reasonable doubts and A3 is found guilty for the charges u/s.498-A IPC and before punishing the accused, the accused was asked about the sentence and she has replied that she may be pardoned and she is ailing from heart disease. Keeping the reply in mind and hearing the learned advocate for the defence, this Court considers leniently and having found A3 guilty for the charge u/s.498-A IPC, this Court passes the following punishment.

In the result, charges against A1 stands abate and A2 is found not guilty u/s.498-A, 304-B and 306 IPC and u/s.4 of Dowry Prohibition Act and acquitted u/s.235[1] of Cr.P.C. A3 is found not guilty u/s. 304-B and 306 IPC and u/s.4 of Dowry Prohibition Act and acquitted u/s.235[1] of Cr.P.C., for the said charges. A3 is found guilty u/s.498-A IPC and convicted and sentenced to undergo R.I. for one month and to pay a fine of Rs.5000/- in default, to undergo R.I. for further period of one week for the offence u/s.498-A IPC. Set off allowed for the period from 13.09.2005 to 19.10.2005 u/s.428 of Cr.P.C.



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M.O.1 to 3 are ordered to be destroyed on expiry of the appeal time."

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- (5) It is contended on behalf of the petitioner that this was a case of no evidence at all and therefore, the prosecution could never establish the charges against the petitioner herein. It was not a case of evidence being let in which was found unsatisfactory and therefore, on analysis of such evidence, benefit of doubt was given to the petitioner and therefore he was acquitted. It is contended that since the petitioner had been acquitted as there was no evidence, taking advantage of Rule 15A[1][ii] of the Tamil Nadu Police Subordinate Services [Discipline and Appeal] Rules, 1955, he had forwarded a Mercy Petition to the 3rd respondent/Director General of Police, State of Tamil Nadu.
- (6) The order passed by the 3rd respondent is also impugned in the writ petition. The 3rd respondent came to reject the Mercy Petition holding as follows:-

"6.I have gone through his petition along with PR file and other connected records carefully. The petitioner was dealt with on a charge for having involved in a criminal case in Arakonam AWPS,



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Cr.No.42/2005, u/s.498-A, 305, 511 IPC r/w. 4 of DP Act on 11.09.2005. On a proved minute he was awarded the punishment of reduction in pay by one stage for two years which shall operate to postpone his future increments by the Discipline Authority and it was confirmed on appeal by the Appellate Authority. He has chosen to prefer the petition after the lapse of 7 years and in his petition among other things, he has contended that the criminal case against him ended in acquittal. But, it is seen that a criminal case against him ended in acquittal only on the ground that the prosecution have failed to prove the charges against him beyond reasonable doubt. However, in the departmental proceedings the Enquiry Officer have held the charges proved through depositions of Pws.1 to 4 and Exhibits P1 to 8. His contention to drop action in the PR is not acceptable, as there is no need to drop action in the Departmental Proceedings even when the criminal case ended in acquittal. Because, a criminal court requires high standard of proof for conviction while such proof is not necessary for finding a person guilty in a Disciplinary Enquiry. In a Disciplinary Proceedings, it is preponderance of



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probabilities which matters to fix the delinquent's guilt. I therefore, find no merit in his claim. I do not want to interfere with the punishment and reject his petition."

- (7) There are two reasons which had been taken into consideration by the 3rd respondent. The first one is the issue of delay and the other is the nature of acquittal and that the acquittal would not override the findings in the disciplinary proceedings. With respect to the delay, though there is a statement made that the petitioner had given the application after a lapse of seven years, it would only understandable that such time would be taken since the Mercy Petition had been given after the judgment was delivered by the Sessions Court acquitting the petitioner of all charges. The second aspect is on the issue of nature of proof as against the petitioner herein and it was the contention of the 3rd respondent that the petitioner had been acquitted only because the prosecution had failed to prove the charges. The prosecution can prove the charge only on the basis of the evidence, both oral and documentary adduced during the course of trial.

- (8) In the aforementioned extract of the learned Sessions Judge's



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judgment, it is seen that the witnesses have not spoken about the involvement of the petitioner in the charges which had been framed against him. It was not a issue of witnesses turning hostile or though there was evidence and such evidence did not cross the stages of admissibility or of proof. There was no evidence at all. Since there was no evidence, there was no possibility of the learned Sessions Judge convicting the petitioner of any of the offences. If some evidence had been let in and it was found to be not satisfactory or not proved or not admissible, then a benefit of doubt could have been given to the accused. If that be the case, to a little extent the 3rd respondent could have been justified in holding that the petitioner could still be proceeded against as was done in the departmental proceedings and the punishment imposed to be sustainable. But here is a case where there was no evidence at all.

- (9) On the side of the respondents, it had been very vehemently argued that the petitioner had given the representation nearly after seven years. It is contended that the respondents 1 and 2 had earlier considered the findings in the disciplinary proceedings and had



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imposed a punishment as was reasonable in those cases. Judicial review will never lie against the nature of punishment imposed but would lie against the procedure adopted during departmental proceedings.

- (10) No ground has been raised by the petitioner that there was denial of opportunity during the disciplinary proceedings. He had suffered a punishment and he had abided by it. Thereafter, he had taken the issue regarding punishment imposed only after the judgment of the Sessions Court. Therefore, though it has been contended very strongly on behalf of the respondents that the petitioner had approached the 3rd respondent after a considerable delay, as is seen from the dates, it is only understandable that the petitioner had approached the 3rd respondent after the date of acquittal. One aspect which could be held against the petitioner was that the judgment of the Trial Court was on 09.04.2013 whereas he had given the Mercy Petition only on 08.08.2014, about a year and four months later. But, taking into consideration the fact that the petitioner had been acquitted of all charges since there was no evidence adduced, that



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could not be considered a significant factor.

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- (11) It is also contended very vehemently on behalf of the respondents that the disciplinary proceedings are independent of the conclusion reached in the criminal trial. That statement is correct. But the Mercy Petition had been rejected not on the ground that the punishment imposed was proper and just, but only because the prosecution had failed to prove the charges during criminal trial. There was no balancing done by the 3rd respondent, *vis-a-viz.*, the punishment imposed during disciplinary proceedings and the findings of the learned Sessions Judge. What went in the mind of the 3rd respondent was that the prosecution had failed to prove the charges. As repeatedly pointed out, though the prosecution had marshalled of several witnesses, unfortunately, none of them had spoken against the petitioner or on his involvement necessitating the charges should be examined with more scrutiny by the Sessions Court. Therefore, that particular stand will also have to be taken to the advantage of the petitioner alone. In view of all these reasons, though the matter has



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been quite strongly contested on behalf of the respondents, I must hold that the judgment of the Trial Court in SC.No.176/2010 would prevail and some credence should be given to the findings of the learned Sessions Judge.

- (12) In view of that particular fact, I hold that the 3rd respondent had not examined the issue properly and therefore, that particular finding of the 3rd respondent is set aside. The matter is now remitted back to the 2nd respondent to once again re-examine the issue in the light of the judgment of the Sessions Court and examine whether still the punishment imposed is sustainable or requires interference. The 2nd respondent may also examine the entire aspect in the light of the observations of this Court with respect to the said judgment of the Sessions Court and pass necessary orders. The orders can be passed within a period of sixteen weeks from the date of receipt of a copy of this order. The petitioner may give a fresh representation to the 2nd respondent enclosing a copy of this order.

- (13) The writ petition stands **partly allowed**. No costs.



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Internet : Yes

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- 1.The Superintendent of Police
District Police Office,
Kanchipuram District @
Kanchipuram.
- 2.The Deputy Inspector General of Police
Kanchipuram Range, Kanchipuram.
- 3.The Director General of Police
Tamil Nadu, Chennai 600004.



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C.V.KARTHIKEYAN, J.,

AP

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