



W.A.No.2620 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.01.2023

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

AND

THE HONOURABLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

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P.Siddeswaran

...Appellant

Vs.

1.The Secretary to Government,
Government of Tamil Nadu,
Home Department,
Fort St. George, Chennai – 9.

2.The Additional Director General of Police,
Law & Order, Chennai.

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

4.The Superintendent of Police,
Dharmapuri District,
Dharmapuri.

...Respondents

Prayer: Writ Appeal filed under Clause 15 of the Letters Patent, challenging the order passed in W.P.No.17356 of 2011 dated 05.10.2012.

For Appellant : Mr.K.Venkataramani, Senior Counsel
for Mr.M.Muthappan

For Respondents : Mr.G.Nanmaran,



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Special Government Pleader

J U D G M E N T

(Judgment was made by **R.SUBRAMANIAN, J.**)

The facts which are necessary for disposal of the appeal are as follows:-

1. The appellant was working as a Head Constable at Pennagaram Police Station. On 12.02.2007 the appellant along with a women Sub-Inspector Malarvizhi and four Constables went on a raid to apprehend illicit arrack traders. They got hold of one Murugan and one Madhaiyan who were selling arrack within the limits of the police station. While Madhaiyan was let off after a short detention in the police station, the other accused person Murugan was produced before the Magistrate and remanded to judicial custody and he was taken to the sub-Jail at Dharmapuri. There they were told that there was no space and directed them to take him to Salem Central jail. The accused was taken to the Salem Central Jail and he was assigned prisoner number.

2. However, when the accused person Murugan was being



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examined he suffered fits and he was taken to the jail Doctor. Upon the advice of the jail Doctor he was moved to the Government Hospital at Salem and he was admitted in the Emergency Ward. A surgery was performed in his head and he was sent to the post-operative ward on 15.02.2007. However, the accused person died on 16.02.2007.

3. Since the death happened in police custody, a preliminary enquiry was conducted by the Magistrate as contemplated under Section 176 of Cr.P.C. As per the report of the Magistrate, disciplinary proceedings were launched against the appellant and the Sub-Inspector of Police. The allegation against the appellant was that he caught hold of the accused and hit him against the wall, which resulted in the head injury, which was the reason for the death of the accused person.

4. At the domestic enquiry that was held, atleast 16 witnesses were examined. The Enquiry Officer returned a finding of guilt, which was accepted by the Disciplinary Authority and punishment of reduction in rank for a period of 3 years with consequential effect on the service and pension



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benefits of the appellant was imposed. The appellant challenged the same in the writ petition, after exhausting the appeal remedy that were available under the police standing orders.

5. The writ Court dismissed the writ petition mainly relying upon the conclusion of the Magistrate in the preliminary enquiry held under Section 176 of the Code of Criminal Procedure. Based on the findings rendered by the Magistrate in the preliminary enquiry, the writ Court concluded that the disciplinary Authority was right in imposing punishment and dismissed the writ petition. Hence, this appeal.

6. We have heard Mr.K.Venkataramani, learned Senior Counsel appearing for the appellant and Mr.G.Nanmaran, learned Special Government Pleader appearing for the respondents.

7. Mr.K.Venkataramani, learned Senior Counsel appearing for the appellant would vehemently contend that the reliance placed upon by the enquiry officer, Disciplinary Authority and writ Court on the report of the



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Magistrate in the enquiry conducted under Section 176 of Cr.P.C is flawed.

Being a fact finding enquiry in which the delinquent has no role to play, the report submitted by the Magistrate pursuant to the enquiry cannot be made a basis for punishment in the disciplinary proceedings.

8. He would also further contend that it is for the charging officials to demonstrate guilty by independent evidence during domestic enquiry. Drawing our attention to the deposition of the witnesses before the enquiry officer, Mr.K.Venkataramani, learned Senior Counsel would submit that none of the witnesses have spoken about the involvement of the appellant in the alleged assault that is said to have taken place in the police station.

9. One Madhaiyan who was the nephew of the deceased Murugan was apprehended along with Murugan and taken to the police station has deposed as PW3. We have gone through the entire evidence of the said Madhaiyan. While he accuses Sub-Inspector of assaulting the deceased, he has not spoken a word against the appellant. PW1 and PW2 who are said to be two wives of the deceased are only hearsay witnesses and they were not



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present at the time of the alleged assault. We have also gone through the deposition of other witnesses. None of them have spoken about the alleged assault by the appellant.

10. A perusal of the documents produced before the enquiry officer and the evidence that is placed before the enquiry officer do not indicate any guilt against the appellant. However, the enquiry officer has chosen to rely upon the report of the magistrate filed under Section 176 of Cr.P.C to conclude that the accused person died because of the injury inflicted by the appellant. The said report has also been placed before us. We find that the Magistrate after having recommended disciplinary action against the appellant and the Sub-Inspector has recommended further investigation since there was a conflict between the two scan reports of the deceased person.

11. However, the Government has accepted the recommendation of the enquiry officer viz., Magistrate and ordered disciplinary action against the appellant. While the report of the Magistrate pursuant to the enquiry under Section 176 of Cr.P.C can form the basis for launching of disciplinary



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proceedings, it cannot be considered as a proof of delinquency. Delinquency must be established by independent evidence during the enquiry. Principles of Natural Justice will have to be complied with during the enquiry. The scope of enquiry under Section 176 Cr.P.C is totally different from the disciplinary enquiry for no opportunity is given, to the delinquent, by the Magistrate in proceedings under Section 176 Cr.P.C, to cross-examine the witnesses.

12. It is for this reason, the Hon'ble Supreme Court had in *Nirmala J.Jhala Vs. State of Gujarat and another* reported in (2013) 4 SCC 301 held that such preliminary enquiry report cannot be made a basis for entering a finding of guilt in the disciplinary proceedings. The Hon'ble Supreme Court considered the said question and had this to say in paragraph No.42 of the said judgment.

'42. A Constitution Bench of this Court in Amalendu Ghosh V. North Eastern Railway [AIR 1960 SC 992], held that the purpose of holding a preliminary inquiry in respect of a particular alleged misconduct is only for the purpose of finding a



particular fact and prima facie, to know as to whether the alleged misconduct has been committed and on the basis of the findings recorded in preliminary inquiry, no order of punishment can be passed. It may be used only to take a view as to whether a regular disciplinary proceeding against the delinquent is required to be held.'

13. Again at paragraph No51, the Hon'ble Supreme Court had observed as follows:-

'51. There is nothing on record to show that either the preliminary enquiry report or the statements recorded therein, particularly, by the complainant – accused or Shri C.B.Gajjar, Advocate, had been exhibited in regular inquiry, in the absence of information in the charge-sheet that such report/ statements would be relied upon against the appellant, it was not permissible for the enquiry officer or the High Court to rely upon the same. Natural Justice is an inbuilt and inseparable ingredient of fairness and reasonableness. Strict adherence to the principle is required, whenever civil consequences follow up, as a result of the order



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passed. Natural Justice is a universal justice. In certain factual circumstances even non-observance of the rule will itself result in prejudice. Thus, this principle is of supreme importance. (Vide S.L.Kapoor v.Jagmohan [(1980) 4 SCC 379], D.K.Yadav v. J.M.A. Industries Ltd., [(1993) 3 SCC 259] and Mohd. Yunus Khan v. State of U.P [(2010) 10 SCC 539]).'

14. In *Union of India and others Vs. Mohd. Ibrahim* reported in **(2004) 10 SCC 87**, a three Judge Bench of the Hon'ble Supreme Court had held that disciplinary proceedings and order of dismissal were vitiated as findings have been based on the consideration of the statement of the persons examined during the preliminary enquiry.

15. The above judgments of the Hon'ble Supreme Court have been followed by this Court in *K.Ramalingam Vs. The Superintendent of Police* dated **20.04.2009** in *WP.No.39098 of 2006* by the Hon'ble Mr.Justice Paul Vasanthakumar [as he then was], wherein it was held that it would not be open to the enquiry officer to rely upon the findings in the preliminary report.



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The same position was reiterated by the Hon'ble Mr.Justice M.Sathyanarayan in ***C.Murugan Vs. Director General of Police*** dated ***14.12.2016*** in ***W.P.No.5724 of 2016***.

16. Therefore, the law is well settled to the effect that the observation or finding made in the preliminary enquiry conducted under Section 176 Cr.P.C cannot be a basis for finding of guilt in the disciplinary enquiry. Independent evidence has to be placed before the enquiry officer in support of the claim.

17. No doubt, we have repeatedly held that proof beyond doubt is not necessary, preponderance of probability would be enough to conclude guilt in disciplinary enquiry. We have also reiterated that some proof is required and that proof cannot be in the form of a report of a preliminary enquiry. We have already observed that none of the witnesses examined before the enquiry officer spoken anything about the appellant. No overt act has been attributed by the appellant. Unfortunately the disciplinary Authority has taken into account the report of the enquiry officer and concluded that the



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appellant is guilty of the charges.

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18. We are unable to agree with the observations of the enquiry officer that PW1, PW2 and PW3 have spoken about the overt act by the appellant. In fact, the said finding is contrary to the evidence on record. PW1 and PW2 were admittedly not present at the time of the incident and therefore their evidence is only hearsay. In any event, they have not spoken about the alleged act of the appellant, which resulted in the head injury. PW3 has not made any reference to the appellant in his entire evidence. Therefore, the observation of the enquiry officer that the evidence of PW1 to PW3 would prove the delinquency of the appellant cannot be accepted. The enquiry officer has also observed that the report of the Magistrate in the proceedings under Section 176 Cr.P.C cannot be ignored. The same stand is taken by the disciplinary Authority while imposing the punishment. The writ Court has also committed the same error and held that the report of the Magistrate would be sufficient to prove the guilt.

19. Once we find that the report of the Magistrate cannot be



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accepted as proof of guilt we have to necessarily interfere with the findings of the writ Court. The other evidence available before the enquiry officer do not lend support to the conclusions of the enquiry Officer and the disciplinary Authority.

20. Hence, the order of the writ Court is set aside. The writ appeal will stand **allowed**. The punishment imposed on the appellant will stand set aside. Needless to observe that the appellant will be entitled to all the benefits that would have accrued to him, but for the punishment. No costs.

(R.S.M., J.) (S.S.K., J.)
30.01.2023

dsa

Index :Yes

Internet :Yes

Neutral Citation :Yes

Speaking order

To

1.The Secretary to Government,
Government of Tamil Nadu,

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Home Department,
Fort St. George, Chennai – 9.

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