



W.P(MD)No.11434 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 16.06.2023

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.11434 of 2021

and

W.M.P.(MD)Nos.8938 and 13661 of 2021

Kaleeswaran

... Petitioner

Vs.

1.The State of Tamil Nadu,
Rep. by its Secretary to Government,
Home Police (VI) Department,
Chennai.

2.The Director General of Police,
Chennai.

3.The Commissioner of Tribunal
for Disciplinary Proceedings,
Madurai.

4.The Superintendent of Police,
Sivagangai District.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, calling for the



W.P(MD)No.11434 of 2021

records of the 1st respondent in connection with impugned order passed in G.O.(D) No.1653 by Home (Pol.VI) Department, dated 31.12.2019 and the order RC.No.239214/Con.V(1) 2008-2 dated 19.08.2009 passed by the 2nd respondent herein and quash the same.

For Petitioner : Mr.M.Vijayarathinam

For Respondents : Mr.T.Villavan Kothai,
Addl. Government Pleader.

ORDER

Heard the learned counsel on either side.

2.The petitioner joined the Police Department as Grade II Police Constable in the year 1993. In the year 2005, he was working in S.S.Kottai Police station. He was implicated in a vigilance case. Crime No.2 of 2005 was registered on the file of Vigilance and Anti-Corruption Detachment, Sivagangai. The criminal case was closed and instead departmental action was initiated. The matter was referred to the Commissioner of Tribunal for Disciplinary Proceedings, Madurai. Two



W.P(MD)No.11434 of 2021

charges were framed against the petitioner. The Tribunal came to the conclusion on 31.07.2008 that both the charges framed against the petitioner have been proved. The disciplinary authority namely, the Director General of Police, Tamilnadu, Chennai concurred with the said findings and punished the petitioner with reduction in rank by one stage for two years with cumulative effect. Aggrieved by the same, the petitioner filed appeal before the Government. The appeal was rejected vide G.O.(D)No.1653, Home Department, dated 31.12.2019. Challenging the same, the present writ petition came to be filed.

3.The learned counsel for the petitioner reiterated all the contentions set out in the affidavit filed in support of the writ petition and called upon this Court to set aside the impugned orders and grant relief as prayed for.

4.The respondents have filed counter affidavit and the learned Additional Government Pleader took me through its contents. The stand of the respondents is that the petitioner was caught red-handed in a trap case and the department has dealt with the petitioner rather leniently and



W.P(MD)No.11434 of 2021

that therefore, the matter does not call for interference. He pressed for dismissal of the writ petition.

5.I carefully considered the rival contentions and went through the materials on record. The learned counsel for the petitioner would argue that when once final report was filed closing the case, there cannot be initiation of departmental proceedings thereafter. Her contention is that closure of the criminal case tantamounts to acquitting the accused honourably. There is no merit in this contention. It is too well settled that once the investigation officer comes to a conclusion that the materials available with him are not sufficient to sustain criminal prosecution, the FIR can be closed and recommendation can be made to the disciplinary authority to initiate departmental action. It is open to the disciplinary authority to accept the recommendation and issue charge memo on the delinquent. It is incorrect to argue that merely because the FIR has been closed, there cannot be subsequent issuance of charge memo on the same set of facts. The standard of proof obtaining in a criminal case and the standard of proof obtaining in a department proceedings are totally different. It may not be possible to prove the case



W.P(MD)No.11434 of 2021

against the delinquent before the Criminal Court. But then, with the materials available, it is quite possible to establish the charge against the delinquent in departmental enquiry. I, therefore, do not find anything wrong on the part of the respondents in proceeding against the petitioner before the Commissioner of Tribunal for Disciplinary Proceedings.

6.Before the Tribunal, as many as six persons were charged. The petitioner was figuring as charged officer No.2. The petitioner faced two charges. The first charge was that he demanded and accepted a sum of Rs.3,000/- for the Inspector of Police and Rs.300/- for himself from one Abdul Aziz on 06.03.2005. The second charge was that the petitioner did not keep the note-book with him to enter his daily activities. In support of the charges, as many as eight witnesses were examined and thirty documents were marked. As already noted, the Tribunal came to the conclusion that both the charges against the petitioner have been established.

7.The petitioner does not deny having gone to the house of Abdul Aziz or accepting a sum of Rs.3,300/- from him. The trap laid by the



W.P(MD)No.11434 of 2021

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vigilance was successful in this case. The defence of the petitioner was that Abdul Aziz does not have good antecedents and that he was a habitual goat thief. One Meenakshi Sundaram had lodged complaint against the said Abdul Aziz and Abdul Aziz had also admitted his liability and to clear the same in installments. S.S.Kottai police station has been acting as a recovery agent for Meenakshi Sundaram. The factum of receipt of installment amounts on the earlier occasions and giving the same to Meenakshi Sundaram after obtaining receipt are matters of record. The petitioner would argue that he joined the police station only some four months prior to the occurrence and that had gone to the house of Abdul Aziz only on instruction received from the Inspector of Police. The learned counsel for the petitioner rightly argued that in such cases, mere recovery of money from the delinquent is not sufficient. The prosecution must independently establish that there was demand for payment of illegal gratification. In this case, there has been recovery of a sum of Rs.3,300/- from the petitioner. The demand has not at all been established. Abdul Aziz no doubt lodged FIR. But in the FIR, one Eswaramoorthy was mentioned as an accused. The petitioner has not been implicated in the complaint. After carefully going through the



W.P(MD)No.11434 of 2021

materials on record, I am more than satisfied that the complainant has failed to establish that the petitioner demanded any bribe amount. From the sequence of events, it has again been established that the liability of Abdul Aziz was progressively being cleared in installments and those transactions have been entered in the general diary of the police station itself. Therefore, the defence projected by the writ petitioner appears to be quite probable.

8. Probably that was why Vigilance and Anti-Corruption Detachment, Sivgangai decided not to prosecute the petitioner. When the trap has been successful, it is unlikely that Vigilance and Anti-Corruption would casually drop the proceedings. The trap was successful and the petitioner was also arrested and he was also suspended from service. If the petitioner had not dealt with departmentally, that would probably led to some loss of face and that is why, Vigilance and Anti-Corruption after filing closure report closing had recommended that the petitioner should be departmentally dealt with. I am therefore more than satisfied that the finding rendered by the Tribunal as regards the first charge is perverse.



W.P(MD)No.11434 of 2021

9.As regards the second charge, the Tribunal itself had noted that the note-book of the petitioner was examined and it has been entered therein that at 07.00 am on 06.03.2005, he had appeared for the day's roll call. It is true that a person belonging to police force must keep his note-book with him at all times. But the petitioner has given an explanation that the note-book would be kept in the station when he was sent on such duties and that it was seized only from the police station. The second charge in my view is not a major one. There is no element of misconduct. In any event, it is not a conduct warranting the impugned punishment.

10.In this view of the matter, the orders impugned in this writ petition are set aside and the writ petition is allowed. No costs. Consequently, connected miscellaneous petitions are closed.

16.06.2023

NCC : Yes/No
Index : Yes / No
Internet : Yes/ No
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W.P(MD)No.11434 of 2021

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To:-

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W.P(MD)No.11434 of 2021

G.R.SWAMINATHAN, J.

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**Pre-Delivery Order in
W.P(MD)No.11434 of 2021**

16.06.2023