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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 28.06.2023

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P (MD) No.11573 of 2023
and
W.M.P. (MD) No.10060 of 2023

S.Elankumaran

... Petitioner

Vs.

1.The Superintendent of Police,
Virudhunagar District.

2.The Additional Superintendent of Police,
Cyber Cell,
Virudhunagar District.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the records in impugned proceedings in C.No.F1/PR.No.62/2022 dated 30.01.23 on the file of the 1st respondent and set aside the evidence recorded on 09.03.2023 and consequently directing the 1st respondent to appoint a new enquiry officer and pass such further orders to conduct departmental proceedings afresh in accordance with law.

For Petitioner : Mr.S.Srikanth,
For M/s.APN Law Associates.

For Respondents : Mr.R.Baskaran,
Additional Advocate General,
Assisted by Mr.N.Ramesh Arumugam,
Government Advocate.

ORDER

Heard the learned counsel for the petitioner and the learned Additional Advocate General assisted by the learned Government Advocate for the respondents.



2.The petitioner is a suspended Head Constable. He has been implicated as an accused in Crime No.4 of 2022 registered on the file of Special Team, Idol Wing, Chennai for the offences under Sections 457, 380, 411, 414 120(b) and 102 of IPC. The petitioner has also been parallelly proceeded against departmentally. Charge memo was issued on 30.12.2022. Enquiry Officer was appointed 30.01.2023. The enquiry commenced on 09.03.2023. P.W.1 was examined. The petitioner cross-examined the said witness. For continuation of the enquiry, the matter was adjourned to 12.04.2023. On 12.04.2023, the petitioner did not attend the enquiry and pleaded illness. Thereafter, instead of participating in the enquiry, the present writ petition came to be filed on 08.05.2023. The prayer made by the petitioner is two fold. He wants the evidence to be eschewed. He wants change of enquiry officer.

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 allow the writ petition as prayed for.

4.The respondents have filed counter affidavit and the learned Additional Advocate General took me through its contents. He pointed out that both the prayers are not maintainable. He drew the attention of this Court to the fact that after taking full part in the enquiry on 09.03.2023, complaint was made as an after thought on 13.03.2023. He also would point out that one of the requests made by the writ petitioner was for videographing the entire proceedings. This request has already been conceded. The learned Additional Advocate General submitted that all the future hearings will be duly videographed so as to avoid the allegations that are now being made. He pressed for dismissal of the writ petition.

5.I carefully considered rival contentions and went through the materials on record. It is admitted that the earlier enquiry officer had been transferred and a new enquiry officer has taken his place. Hence, the prayer for change of enquiry officer has become infructuous. It is a fact that one Alex @ Alexander was examined as the first witness. His previous statement was served on the petitioner and cross-examination was done on 09.03.2023. As many as fifteen questions were posed to the said witness and the petitioner has also affixed his signature in the proceedings. If as now claimed by the petitioner, he was threatened or coerced into putting his signature, he would have lodged a complaint on the same day. The petitioner is holding the rank of Head Constable. He has already been implicated in two criminal cases. I find it difficult to believe that such a person can be coerced and threatened. In any event, failure on the part of the



petitioner to lodge a complaint immediately after the said alleged occurrence belies his version. I am therefore not inclined to accept the petitioner's prayer for eschewing the evidence on record.

6. However to address the concerns expressed by the petitioner, I direct the enquiry officer to recall P.W.1. The next enquiry will be held on 10.07.2023 at 10.00 am. The venue of the enquiry will be the place where it was earlier held. The petitioner will not receive any fresh summon. P.W.1/Alex @ Alexander shall be produced on the said date. The petitioner will be given opportunity to cross-examine P.W.1 further. All the future hearings will be duly videographed. The testimony of the witnesses as well as the questions posed by the delinquent shall be duly audiographed also. This in my view should more than address the concerns of the writ petitioner.

7. This writ petition is disposed of accordingly. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(T & P)

// True Copy //

11/07/2023

Sub Assistant Registrar(CS)

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To:-

1. The Superintendent of Police,
Virudhunagar District.
2. The Additional Superintendent of Police,
Cyber Cell,
Virudhunagar District.
- 3 The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

W.P(MD) No.11573 of 2023

28.06.2023