



W.P.(MD).Nos.13427, 13458 and 13459 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 26.09.2023

CORAM

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

W.P.(MD).Nos.13427, 13458 and 13459 of 2022
and W.M.P(MD) Nos.9530, 9531, 9555 to 9558 of 2022

In all the petitions:

G.Chakkaravarthy

... Petitioner

Vs

1. The State of Tamil Nadu,
Represented by its Principal Secretary,
Home Department, Secretariat, Chennai - 600 009.
2. The Director General of Police,
Office of the Director General of Police,
Tamil Nadu, Chennai - 600 004.
3. The Additional Director General of Police,
Office of the Director General of Police,
Law and Order, Chennai - 4.
4. The Inspector General of India / Commissioner of Police,
Tirunelveli City, Tirunelveli.
5. The Deputy Commissioner of Police,
Office of the Deputy Commissioner of Police, Law and Order,
Tirunelveli City, Tirunelveli.

... Respondents



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Prayer in WP(MD) No.13427 of 2022 : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari calling for the records relating to the impugned order passed by the 4th respondent in his proceedings PR No.27/2021 dated 22.10.2021 and quash the same as illegal.

Prayer in WP(MD) No.13458 of 2022 : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, calling for the records relating to the impugned order passed by the fourth respondent in his proceedings PR No.28/2021 dated 22.10.2021 and quash he same as illegal and arbitrary.

Prayer in WP(MD) No.13459 of 2022 : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, calling for the records relating to the impugned order passed by the fourth respondent in his proceedings PR No.29/2021 dated 22.10.2021 and quash he same as illegal and arbitrary.

For Petitioner : Mr.C.Venkatesh Kumar
for Ajmal Associates

For Respondents : Mr.P.Veera Kathiravan
Additional Advocate General
Assisted by Mr.M.Prakash
Additional Government Pleader



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COMMON ORDER

The petitioner was visited with three charge memos under Rule 17(B) of Tamil Nadu Civil Service (Discipline & Appeal) Rules on 22.10.2021 by the proceedings of the third and fourth respondents. Challenging the same, three separate writ petitions came to be filed.

2.Heard, Mr.C.Venkatesh Kumar, learned counsel appearing for the petitioner and Mr.P.Veera Kathiravan, learned Additional Advocate General appearing for the respondents. Perused the materials on record.

3(i).The petitioner was initially appointed as Sub-Inspector of Police through direct recruitment. Subsequently he was promoted as Inspector of Police and further promoted as Deputy Superintendent of Police, Krishnagiri at the office of the Social Justice and Human Rights and transferred and posted as Assistant Commissioner of Police, Palayamkottai, Tirunelveli District.

(ii).While he was working in Palayamkottai, Tirunelveli District he received a call from a person claiming to be the Inspector General of Police, South Region and informed that a complainant, namely M.Sheik Meeran would



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approach him and the petitioner should proceed with his complaint. Accordingly, the said M.Sheik Meeran approached the petitioner in his office on 13.12 2018 and gave a complaint in writing. The said complaint is with respect to one Ratinakumar, who got 25 sovereigns jewels from the complainant and failed to return the same, as a result of which, when he asked to return the said jewels, he threatened him with dire consequences and the said incident took place in Tirunelveli new bus stand.

(iii).The petitioner conducted a preliminary enquiry and brought the said Rathinakumar to his office on 03.01.2019. On enquiry, the petitioner found that the complaint, dated 30.12.2018 was absolutely a false one and he came to know that Rathinakumar brought two electronic speakers weighing about 1.5kgs each from Malaysia to hand over the same to some other person at Trichy Airport. However, without handing over the same, he brought it to his native place at Periyathalai, Thoothukudi District. It was found that the said electronic speakers brought by Rathinakumar contains 3 Kgs of jewellery and in order to recover the same, the complaint was lodged with false particulars. It was also informed to the petitioner that entire facts were known to one Ravi, Additional Director General of Police, Head Quarters (Admin), Chennai and



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the said Ravi has requested the petitioner to find out the jewellery on the basis of his complaint.

(iv).Further the investigation conducted by the petitioner revealed the fact that complaint was given only on reference of the I.G.of Police and the entire incident revolved in and around the said Ravi. However, the said Rathinakumar and M.Sheik Meeran failed to attend further enquiry in the petitioner's office on 05.01.2019. On 05.01.2019 at about 9.30p.m., the petitioner received a call from Ravi and he enquired as if the petitioner had recovered the jewels from Rathinakumar. However, the petitioner explained the entire facts, whereas, the said Ravi disconnected the phone call.

(v).While so, the fourth respondent on 12.01.2019 passed an order stating that in accordance with fax message, dated 11.01.2019 issued by the second respondent, the petitioner has been brought to vacancy reserved at Chief Office, Control Room, Chennai and in respect of his place, an additional charge was given to Assistant Commissioner of Police, Tirunelveli City. The transfer order, dated 11.01.2019 was not served to the petitioner. In pursuance to the order, dated 12.01.2019, the fifth respondent vide his order, dated 12.01.2019 passed a relieving order, without issuance of transfer order. The relieving order



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came to be served on the petitioner, which is against the established principle of law.

(vi).Further, the petitioner got the audio clipping, which sounded like the petitioner recovered the jewels from Rathinakumar and it was only on account of recovery of jewels, he was transferred and in the event of surrendering the jewels, the petitioner would not proceed departmentally otherwise and besides transfer, the petitioner would also be suspended. The transfer is not effected on account of administrative reasons.

(vii).The petitioner filed W.P(MD)No.1028 of 2019 on the file of this Court and on 01.02.2019 this Court was pleased to dismiss the case, on the ground that the transfer order was passed on administrative grounds. The petitioner preferred an appeal in W.A(MD) No. 219 of 2019 and the Division Bench vide order, dated 22.01.2020 quashed the transfer order and further directed the Government to nominate the officer of CBCID to probe into this serious matter to find out the persons, who are aiding the gold smugglers. This Court further directed the second respondent to post the petitioner as Assistant Commissioner of Police in any other district and as such, the petitioner was posted as Assistant Commissioner, Control Room, Madurai City. Under such circumstances, the petitioner was visited with three charge memos under rule



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17(b) Tamil Nadu Civil Service (Discipline & Appeal) Rules by the third and fourth respondents vide their separate impugned proceedings, dated 22.10.2021.

(viii).The crux of the first charge memo is that the petitioner demanded a bribe amount of Rs.35,000 on 17.12.2018 from Advocate Daniel Xavier to free him from the case in Palayamkottai PS in Cr.No.825 of 2018. The crux of the second charge memo is that the petitioner with malafide intention and without getting prior permission, he had detained one Rakesh Kumar illegally by violating Police Standing Orders and allowed him to escape from the custody with the hand-cuff and also failed to follow Section 57 of Cr.P.C and Rule 20 of Tamil Nadu Government Servants Conduct Rules, 1973 by not maintaining absolute integrity and devotion to duty. The crux of the third charge memo is that the petitioner had demanded a bribe amount of Rs. 80,000/- on 13.12.2018 from one Arul Immanuvel Stephen for omitting his name as an accused in Crime No.332 of 2018 under sections 3(1), 3(2)(b), 4(1), 4(2)(a),4(2)(c),5(1)(a),5(1)(c) of ITP Act in connection with running prostitution and thereby, tarnish the image of police force and violating the duties and responsibilities of police as laid down in the Police Standing Orders. Challenging all these charge memos, separate writ petitions came to be filed.



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4.The learned Senior Counsel appearing for the petitioner argued that the entire issue revolves around the conspiracy hatched by the then Additional Director General of Police, Head Quarters (Admin), Chennai, one Ravi in collusion with the gold smugglers Rathinakumar and M.Sheik Meeran and the petitioner has been made as a scapegoat in the entire issue and he has been falsely issued with charge memos alleging that he had received bribe amounts in two cases and allowed the said Rathinakumar to escape from the custody with hand-cuff, while taking to his village.

5.Per Contra, the fifth respondent filed a counter in all the writ petitions. The learned Additional Advocate General appearing for the respondents contended that the petitioner has been visited with charge memos and the petitioner is entitled to submit a detailed written explanation for the same and the charges, which have been framed as against him are grave, since he had indulged in irregularities and illegalities with the solitary intent of recovering alleged gold from the said Rathinakumar, as a result of which, he transported the said Rathinakumar to Periyathalai and detained him illegally and he has also indulged in receiving bribes from two persons, for which,



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separate charge memos have been issued. It is not necessary for this Court to interfere with the disciplinary proceedings at this point of time and pressed for dismissal of the writ petitions.

6.At this juncture, it is worthwhile to note the decision of *Hon'ble Apex Court in Union Of India And Another vs Kunisetty Satyanarayana* reported in **2006(12)SCC 28**, wherein, it is held that the Writ jurisdiction is a discretionary jurisdiction and hence such discretion under Article 226 should not ordinarily be exercised by quashing a show-cause notice or charge sheet. No doubt, in some very rare and exceptional cases, the High Court can quash a charge-sheet or show-cause notice if it is found to be wholly without jurisdiction or for some other reason if it is wholly illegal. However, ordinarily the High Court should not interfere in such a matter.

7.In yet another case in *The Secretary, Min.Of Defence & vs Prabhash Chandra Mirdha*, reported in **2012(11) SCC 565** and in *Secretary, Forest Department & Ors. v. Abdur Rasul Chowdhury*, reported in **(2009) 7 SCC 305**, the relevant portion is as follows:



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“10. ...this Court dealt with the issue and observed that delay in concluding the domestic enquiry is not always fatal. It depends upon the facts and circumstances of each case. The unexplained protracted delay on the part of the employer may be one of the circumstances in not permitting the employer to continue with the disciplinary proceedings. At the same time, if the delay is explained satisfactorily then the proceedings should not be permitted to continue.

11. Ordinarily a writ application does not lie against a chargesheet or show cause notice for the reason that it does not give rise to any cause of action. It does not amount to an adverse order which affects the right of any party unless the same has been issued by a person having no jurisdiction/competence to do so. A writ lies when some right of a party is infringed. In fact, chargesheet does not infringe the right of a party. It is only when a final order imposing the punishment or otherwise adversely affecting a party is passed, it may have a grievance and cause of action. Thus, a chargesheet or show cause notice in disciplinary proceedings should not ordinarily be quashed by the Court.”

8. Thus, the law on the issue can be summarised to the effect that charge sheet cannot generally be a subject matter of challenge as it does not adversely affect the rights of the delinquent. In view of the settled legal



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principle, the writ Court cannot entertain against the charge memos issued against the petitioner.

9. In view of the above discussed facts, the petitioner has to participate in the enquiry conducted by the competent authority and the departmental enquiry has to be completed by the competent authority within a period of two months from the date of receipt of copy of this order.

10. Accordingly, all these writ petitions stand dismissed. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

26.09.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes
PNM



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To

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Home Department, Secretariat, Chennai - 600 009.
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L.VICTORIA GOWRI, J.

PNM

**COMMON ORDER IN
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and W.M.P(MD) Nos.9530, 9531, 9555 to 9558 of 2022**

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