



W.A(MD)No.1257 of 2018

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 01.03.2023

CORAM:

**THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN
AND
THE HON'BLE MR JUSTICE K.K.RAMAKRISHNAN**

**W.A(MD)No.1257 of 2018
and
C.M.P(MD)No.8786 of 2018**

P.Paramasivam

... Appellant

.Vs.

**The Deputy Inspector General of Police,
Tirunelveli Region,
Tirunelveli.**

... Respondent

PRAYER: Writ Appeal filed under Clause 15 of the Letters Patent Act, to set aside the order, dated 11.01.2018 in W.P(MD)No.5816 of 2010.

For appellant : Mr.G.Prabhu Rajadurai

**For Respondent : Mr.D.Sasikumar
Additional Government Pleader**



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JUDGMENT

DR.G.JAYACHANDRAN,J.
AND
K.K.RAMAKRISHNAN,J.

The appellant herein while working as Head Constable in Prohibition Enforcement Wing (PEW) Thakkalai, a case was registered in Cr.No.391/2006 under Section 174 Cr.P.C., on the file of the Kadayanallur police Station for man missing based on the complaint given by M.Asanammal, W/o.Mohamad Masood. According to the complaint, the said Mohamed Masood was taken to the police station for interrogation in connection with the decoity case on 28.11.2005, thereafter, he was found missing.

2. To be noted that the man missing case later altered into offences under Sections 120(b) IPC r/w 343, 344, 348, 323, 355, 302, 201, 218 r/w 109 IPC. Final report has been filed and committed to Court of Sessions in S.C.No.195 of 2011, on the file of the Additional Sessions Court, Tenkasi. The trial is still pending. In the said case, the appellant Mr.P.Paramasivam is a listed witness. Simultaneously it appears that an enquiry was conducted by the Revenue Divisional Officer and based on the statement of one Maria Arul, the petitioner



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was also implicated as a party to the torture and beaten to the crime. The Revenue Divisional Officer has given a report implicating the appellant Paramasivam also. In the said circumstances, a private complaint has been filed before the learned Judicial Magistrate arraying the said Paramasivam as one of the accused. The learned Judicial Magistrate has taken cognizance of the private complaint filed under Section 200 Cr.P.C., and assigned in C.C.No.77 of 2012 on the file of the learned Judicial Magistrate, Boothapandi.

3. The said Paramasivam has filed CrI.O.P(MD)No.6937 of 2018 for transferring the private complaint pending on the file of the learned District Munsif-cum-Judicial Magistrate, Bhoothapandi to the Additional District Judge, Tenkasi to be tried jointly along with S.C.No.195 of 2011. This petition came to be disposed of by this Court on 19.02.2020 with the following observations:-

“9.1. If the Sessions Court treats Paramasivan as an accused, then C.C.No.77/2012 should necessarily stand terminated. And, if the Sessions Court decides that he is not an accused, still C.C.77/2012 shall have to be terminated.



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9.2. But it may be appropriate to have C.C.77/2012 on the file till the conclusion of trial of S.C.195/2011 to avoid any possible technical difficulties that might arise. (For instance, if C.C.77/2012 is quashed now, and if the Sessions Judge intends to make use of any of the material in C.C.77/2012 for the purposes indicated, then there could be an objection as to permissibility of using the materials available in a case quashed by this Court. After all in this country, road blocks to justice are more than the ways available for achieving justice, and this has to be anticipated). A case of prospective quashing of a criminal case may appear novel, but given the circumstances, the present course is inevitable.”

4. In the said background, the department has initiated the proceedings against the appellant Paramasivam and issued a memo of charge under Rule 3(b) of Tamil Nadu Police Subordinate Service (Discipline and Appeal) Rules 1955 alleging that his conduct been highly reprehensible liable to be punished for following the Rule 22 of the Tamilnadu Subordinate Police Officers Conduct Rules 1964. The said charge which is annexed to the charge memo reads as below:-



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“Charge: Highly reprehensible conduct in having beaten and tortured one secured suspected accused namely Mohamed Masood, S/o.Abdul Jabar, a resident of Chanthai Nadupettai, Kadayanallur, Thenkasi Taluk in Tirunelveli District while he was detained at Keeriparai P.S from 28.11.2005 to 30.11.2005 midnight under the guise of interrogation in the decoity case in Aralvoimozhy P.S. Cr.No.482/2005 u/s.395, 397 & 427 IPC registered on 28.11.2005 at 01.30 hours.”

5. Being aggrieved by the said charge memo, the appellant Paramasivan has filed W.P(MD)No.5816 of 2010 for issuance of writ of certiorari and quash the charge memo, dated 12.03.2009. The learned Single Judge has considered the plea of the writ petitioner in the light of the service rules governing the matter as well as the dictum laid down by the Hon'ble Supreme Court in the case of ***Union of India and others Vs. Upendra Singh***, reported in ***(1994) 3 SCC 357*** where, other judgments held that the writ petition challenging the charge memo normally need not be allowed and only in rare and exceptional cases, if it is found to be wholly without jurisdiction or for some other reason if it is wholly illegal. With this observation, the learned Single Judge has directed the department to proceed with the domestic enquiry by appointing an independent enquiry officer and



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conclude the enquiry proceedings as early as possible without causing much delay.

6. Being aggrieved by the above said order, intra court appeal is filed by the writ petitioner on the presumption that his conduct is reprehensible and in violation of Rule 22 of the Tamilnadu Subordinate Police Officers Conduct Rules 1964 is *per se* baseless and the learned Single Judge has failed to take note of the fact that in the case investigated for missing of Mohamed Masood, the appellant is a listed witness and in a private complaint, based on the statement of one Maria Arul to the Revenue Divisional Officer, he has been implicated and the veracity of the statement of the Maria Arul which is contrary to the statement recorded under Section 164 Cr.P.C., before the learned Judicial Magistrate cannot be given any weightage. More so, in a departmental proceedings, when the facts collected during the course of investigation by two different agencies, are quite contrary and yet to be tested by the Court in the trial.

7. The learned counsel appearing for the appellant also states that the criminal trial is still pending. The Revenue Divisional Officer not yet examined.



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Maria Arul whose statement is now been taken adverse and incriminating the petitioner/appellant Paramasivan is no more. Therefore, in the absence of any material evidence to presume reprehensible conduct, the charge as framed in the departmental proceedings cannot sustain.

8. This Court find force in the submission made by the learned counsel appearing for the appellant. No doubt, a criminal prosecution and the departmental enquiry are two independent actions under different statute. One cannot have an undue bearing on the other, unless and until they proceed on same set of facts and there is no other adding material to distinguish each other.

9. As far as the facts of the present case is concerned, a person, who is arrayed as witness, in the case investigated by the police and shown as an accused in a private complaint and pending disposal of the both case before the District Sessions Court, the department ought not to have venture to proceed against the appellant by initiating the departmental proceedings since the ingredient to infer or to prove the reprehensible conduct and violation of Rule 22 of the Tamilnadu Subordinate Police Officers Conduct Rules 1964, as on date, is not available to the departments to proceed with.



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10. The admissible evidence of a person which is recorded under Section 164 Cr.P.C., by the learned Judicial Magistrate *vis-a-vis* a statement before the Executive Officer in an enquiry proceedings, undoubtedly, the evidentiary value of statement under Section 164 Cr.P.C., will prevail, more so, when the maker of the statement has reached his maker it became a previous statement of a person, who cannot be cross-examined. In such circumstances, till the disposal of the case, where, as rightly pointed out by the brother Judge in CrI.O.P(MD)No.6937 of 2018, dated 19.02.2020, if the Sessions Court treats Paramasivan as an accused, then C.C.No.77/2012 should necessarily stand terminated. And, if the Sessions Court decides that he is not an accused, still C.C.No.77/2012 shall have to be terminated.

11. In other words, unless and until the appellant Paramasivam is found guilty in C.C.No.77/2012, there is no foundation for the department to proceed against him under Rule 22 of the Tamilnadu Subordinate Police Officers Conduct Rules 1964. As far as the present case is concerned, the general principles laid by the Court cannot apply to this case due to the peculiar facts and circumstances which is narrated above.



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12. Hence, the writ appeal is allowed and the departmental proceeding initiated against the appellant is quashed. However, this cannot stand in the way of the department if the criminal Court finds Paramasivam is guilty in C.C.No. 77/2012. No costs. Consequently, connected miscellaneous petition is closed.

[G.J.,J.] [K.K.R.K.,J.]
01.03.2023

Index : Yes / No
Internet : Yes / No
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To

The Deputy Inspector General of Police,
Tirunelveli Region,
Tirunelveli.



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and
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JUDGMENT MADE IN
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