



W.P.(MD)No.15 of 2022

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 01.10.2024

CORAM

THE HONOURABLE MR.JUSTICE J.SATHYA NARAYANA PRASAD

W.P.(MD)No.15 of 2022

and

W.M.P(MD)No.4 of 2022

K.Muniyasamy

... Petitioner

Vs.

1.The Superintendent of Police,
Ramanathapuram,
Ramanathapuram District.

2.The Deputy Superintendent of Police,
Prohibition and Exercise Wing,
Ramanathapuram,
Ramanathapuram District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, to call for the records on the file of the first respondent in connection with the impugned charge memo issued in Tha.Pa.No. 67/2021, dated 17.09.2021 and the consequential impugned enquiry notice issued by the second respondent in his proceedings in Na.Ka.No. 81-2/Ka.Thu.Ka/Ma.V.Aa/Rama/2021 dated 13.12.2021 and quash the both within the time limit that may be stipulated by this Court.



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For Petitioner : Mr.G.Thalaimutharasu

For Respondents : Mr.J.K.Jeyaseelan
Government Advocate

ORDER

The writ petition has been filed challenging the impugned charge memo vide Tha.Pa.No.67/2021, dated 17.09.2021 and the consequential impugned enquiry notice issued by the second respondent vide Na.Ka.No. 81-2/Ka.Thu.Ka/Ma.V.Aa/Rama/2021, dated 13.12.2021.

2. The case of the petitioner is that the petitioner was inducted in the Police Department as Grade-II Police Constable on 01.03.2022 and promoted as Grade-I Police Constable on 01.03.2012 and further promoted as head constable on 01.04.2014 and hold the same post at Abiramam Police Station on the date of filing of the writ petition.

3. The petitioner was blessed with two children, namely, M.Bharathi Nisha and M.Vishal. While her daughter was pursuing her B.Sc., 1st year Agri course in Nammalvar Agricultural College, Peraiyur, she went missing on 01.04.2021. The petitioner gave police complaint at Kenikarai Police Station and she was secured at Coimbatore. Thereafter, she returned with the petitioner



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on her own will. One Ajithkumar filed Habeas Corpus Petition before this Court in HCP(MD)No.723 of 2021 as he has married her and she is in illegal custody with the petitioner. When the petitioner's daughter was produced before this Court, she deposed that no marriage took place between her and Ajithkumar and she wants to live only with the petitioner. Therefore, HCP was dismissed on 12.05.2021.

4. The petitioner went in person to the Ajithkumar's house on 13.06.2021 to ascertain whether the marriage took place between Bharathi Nisha and Ajithkumar or not, but unfortunately, the peace negotiation ended in wordy quarrel and resulted in assault, in which, the petitioner and his wife and in-laws suffered grievous injury. Since the incident took place in the Ajithkumar's village, they registered a false case against the petitioner in FIR No.273 of 2021 on 13.06.2021 for offence under Sections 147, 148, 294(b), 323, 324 of IPC and Section 4 of Tamil Nadu Prohibition of Harassment of Women Act, 2002. The petitioner was arrayed as A1 and his wife as A2 and other relatives as A3 to A8. Since the petitioner suffered injury, the petitioner's wife registered a police complaint that came to be registered in FIR No.274 of 2021 for offence under Sections 147, 148, 294(b), 323, 324 and 506 (ii) of IPC and Section 4 of Tamil Nadu Prohibition of Harassment of Women Act, 2002.



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5. The petitioner was transferred from Ramnad Police Station to Chathirakudi Police Station on 25.05.2021. Due to the registration of criminal case against the petitioner, the petitioner was immediately placed under suspension by the first respondent vide C.No.F1/16294/2021, dated 18.06.2021. Subsequently, the suspension came to be revoked on 21.09.2021 after the issuance of charge memo on 17.09.2021. After revocation of suspension, the petitioner discharging his duty at Abiramam Police Station.

6. In view of the criminal case, the first respondent has issued the charge memo under Rule 3(b) vide Tha.Pa.No.67/2021, dated 17.09.2021 for a single count of charge that he has brought disrespect to the uniform service by involving in the criminal case. Based on the impugned charge memo, the second respondent has issued the enquiry notice vide Na.Ka.No. 81-1/Ka.Thu.Ka/Ma.V.Aa/Rama/2021, dated 06.12.2021, fixing the enquiry date as 10.12.2021.

7. Aggrieved by the notice issued by the first respondent and the charge memo issued by the second respondent, the petitioner has come forward with the present writ petition.



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8. The learned counsel for the petitioner submitted that initially the name of the petitioner was mentioned in FIR No.273 of 2021 on 13.06.2021. Thereafter, an alternation report was filed before the Judicial Magistrate, Ilayankudi, wherein, the name of the petitioner was deleted from the FIR. The learned counsel for the petitioner further submitted that 2 witnesses of the incident that is the daughter of the petitioner, namely, Bharathi Nisha and his son in law Ajithkumar died on 28.12.2021 and 05.11.2021 respectively, in a road accident, which took place on 04.11.2021. These 2 witnesses were crucial evidence in the enquiry proceeding proposed to be initiated by the respondents.

9. The learned counsel for the petitioner drew attention of this Court to Paragraph No.2(1) of G.O.Ms.124, Personnel & Administrative Reforms (Per.N) Department, dated 22.02.1983 and the same is extracted hereunder:

“2. (1) When a criminal case is filed solely on a criminal offence committed by the Government Servant which is in no way connected with the discharge of his official duties there is no need to pursue departmental action except placing the Government Servant under suspensions as contemplated under Tamil Nadu Civil Services (Classification, control and Appeal) Rules. The ultimate departmental action can be initiated against the delinquent officer after the result of the criminal case pending against him is disposed of by the Court of law.”



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As per the above G.O., the criminal offence committed by the Government Servant in no way connected with the discharge of the official duty and there is no need to pursue departmental action and the Government servant may be placed under suspension. The departmental action can be initiated after the result of the criminal case pending against the employee.

10. The learned Government Advocate for the respondents drew the attention of this Court to the counter affidavit wherein, it is stated as follows:

“(b) The petitioner while discharging official duty, went on Naganathapuram Village on 13.06.2021 and indulged in criminal acts for which, a case was registered against the petitioner and others. Mere preponderance of probability would do to initiate disciplinary proceedings against the delinquent and no accurate proof is necessary as required by the Criminal Court.

(c) The disciplinary proceedings could be proceeded with even in the absence of deceased Ajithkumar (PW2) and Bharathi Nisha (PW1) and findings arrived with the available official witnesses and hence the continuance of oral enquiry is mandatory to decide the P.R”.

11. Heard both sides and perused the materials available on record.

12. In the case on hand, criminal case was registered against the petitioner as a result of wordy quarrel between the petitioner and his daughter and son in law. As a result of which, FIR No.273 of 2021, dated 13.06.2021 was



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registered against the petitioner for offence under Sections 147, 148, 294(b), 323, 324 of IPC and Section 4 of Tamil Nadu Prohibition of Harassment of Women Act, 2002. **Thereafter, the respondents have filed an alternation report before the Court of Judicial Magistrate, Ilayankudi, in which, the name of the petitioner was deleted from the FIR. The copy of the alternation report was also furnished before this Court by the learned counsel for the petitioner and the same is not disputed by the learned Government Advocate for the respondents.**

13. The petitioner was suspended mainly on the ground that the petitioner was involved in the criminal case and the enquiry was proposed to be initiated for the same, for which, notice has been issued by the second respondent and the charge memo was issued by the first respondent. Since the name of the petitioner was deleted from the FIR, there is no necessity to conduct enquiry. Moreover the crucial witnesses, who are necessary for the enquiry proceedings, namely, Bharathi Nisha (PW1) and Ajithkumar (PW2) were died on 28.12.2021 and 05.11.2021 respectively, in a road accident, which took place on 04.11.2021, and the two witnesses are not available for the enquiry proceeding to be initiated by the respondents.



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14. At this juncture, it is pertinent to extract Paragraph No.2(1) of G.O.Ms.124, Personnel & Administrative Reforms (Per.N) Department, dated 22.02.1983 and the same is extracted hereunder:

“2. (1) When a criminal case is filed solely on a criminal offence committed by the Government Servant which is in no way connected with the discharge of his official duties there is no need to pursue departmental action except placing the Government Servant under suspensions as contemplated under Tamil Nadu Civil Services (Classification, control and Appeal) Rules. The ultimate departmental action can be initiated against the delinquent officer after the result of the criminal case pending against him is disposed of by the Court of law.”

As per the above G.O., the criminal offence committed by the Government Servant in no way connected with the discharge of the official duty and there is no need to pursue departmental action and the Government servant may be placed under suspension. The departmental action can be initiated after the result of the criminal case pending against the employee.

15. In view of the above Government order, there is no need to conduct departmental proceedings and in the case on hand, the name of the petitioner has been deleted from the FIR and the alternation report was also filed before the Court of Judicial Magistrate, Illayankudi. There is no



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criminal case pending against the petitioner as on date and the same was also admitted by the learned Government Advocate appearing for the respondents.

16. In view of the above factual matrix of the case, impugned charge memo vide Tha.Pa.No.67/2021, dated 17.09.2021 and the impugned enquiry notice issued by the second respondent vide Na.Ka.No. 81-2/Ka.Thu.Ka/Ma.V.Aa/Rama/2021, dated 13.12.2021 are liable to be quashed and the same are hereby quashed.

17. In the result, the writ petition stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

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NCC:yes/no
Index:yes/no
Internet:yes/no
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Ramanathapuram District.

- 2.The Deputy Superintendent of Police,
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