

W.A.(MD)No.2504 of 2024

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 28.04.2025

PRONOUNCED ON : 18.07.2025

CORAM:

**THE HONOURABLE MRS.JUSTICE J. NISHA BANU
and
THE HONOURABLE MRS.JUSTICE S.SRIMATHY**

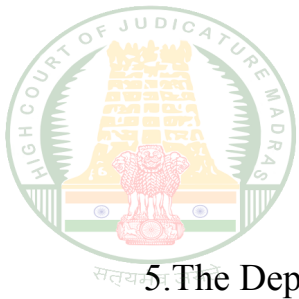
**W.A(MD)No.2504 of 2024
and
C.M.P.(MD)No.17590 of 2024**

C.Ilavarasu

... Appellant

Vs.

- 1.The Secretary to the Government,
Home Department,
Secretariat, St. George Fort,
Chennai-600 009.
- 2.The Secretary to the Government,
Public (Law and Order) Department,
Secretariat, St. George Fort,
Chennai-600 009.
- 3.The Director General of Police,
Office of the Director General of Police,
Chennai-600 004.
- 4.The Additional Director General of Police,
(Law and Order),
Office of the Director General of Police,
Chennai-600 004.



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5.The Deputy Inspector General of Police,
Office of the Deputy Inspector General of Police,
Dindigul Range, Dindigul.

6.The Deputy Inspector General of Police,
Office of the Deputy Inspector General of Police,
Ramanathapuram Range, Ramanathapuram.

... Respondents

Prayer: Writ Appeal filed under Clause 15 of the Letter Patent against the order of this Court in W.P.(MD)No.16227 of 2023, dated 04.03.2024.

For Appellant :Mr.D.Shanmugarja Sethupathi
For Respondents :M/s.D.Farjana Ghoushia
Special Government Pleader

JUDGMENT

(Judgment of the Court was delivered by **S.SRIMATHY, J.**)

The present writ appeal is preferred against the order dated 04.03.2024 passed in W.P.(MD)No.16227 of 2023. The writ petition was filed for issuance of Writ of Certiorarified Mandamus, to quash the punishment order, dated 05.11.2020, passed by the 6th respondent and the consequential order, dated 02.04.2021, passed by the 4th respondent and the revision order, dated 21.12.2021, passed by the 3rd respondent and consequentially provide notional promotion to the post of Deputy Superintendent of Police from the date on which the juniors



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were promoted with all other attendant monetary benefits and consequential promotion to the post of Additional Superintendent of Police.

2. The brief facts are that the writ petitioner was appointed as Sub-Inspector of Police on 01.03.1996 and was promoted as Inspector of Police in the year 2005. While the petitioner was working as Inspector of Police, Periyakulam Police Station on 15.11.2010 a complaint was given by one Thiru. Jeyakumar of Periyakulam in Crime No. 1071 of 2010 for the offences under Sections 457 and 380 of the Indian Penal Code for having committed theft in the dwelling house of the complainant. During the course of investigation, it was revealed that four accused namely John (A1), Sasikumar (A2), Sathish @ Imran Ahamed (A3) and Chandrasekhar (A4) were involved in the crime, the Accused Nos.1 to 3 were arrested and remanded to judicial custody. The 4th accused namely Chandrasekhar was absconding, but on 21.11.2010, one Thiru.Chinnavar @ Edward had given a complaint to the Special Sub-Inspector of Police Thiru.Kalaichelvan, Periyakulam Police Station alleging that on 21.11.2010 at about 2 o'clock in the early morning, when he was proceeding towards Samathuvapuram by his bicycle for the purpose of engaging labours, the deceased Chandrasekhar, son of Anantharaj, was found struggling with chest pain in the Periyakulam - Madurai Main Road. He was taken



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to the Periyakulam Government Hospital by the said Chinnavar @ Edward, admitted at about 3.15 A.M. in the morning and the Medical Officer Thiru.Karthikeyan had recorded Accident Register, after giving preliminary treatment, he was taken to the Government Medical College Hospital, Theni, where he was declared brought dead by the doctors. The complainant Mr.Chinnavar @ Edward alleged that the police had gone in search of the deceased Chandrasekhar on 20.11.2010 at about 10.30 P.M in connection with the theft case. On the basis of the complaint of Thiru.Chinnavar @ Edward, a case in Crime No. 1077 of 2010 was registered in Periyakulam Police Station under Section 174 Cr.P.C. The petitioner was placed under suspension on 08.12.2010 alleging that he had failed to handle the situation by not taking precautionary measure while enquiring the accused concerned in Crime No.1077 of 2010 under Rule 3(e)(1)(i) of the Tamil Nadu Subordinate Service (Discipline and Appeal) Rules, 1955. Thereafter, the District Collector, Theni has directed the Sub-Divisional Magistrate / Revenue Divisional Officer (RDO), Periyakulam to hold full-fledged Magisterial enquiry under Clause 151 (3) of the Tamil Nadu Police Standing Order to enquire into the alleged suspicious death of Mr. Chandrasekar. The RDO conducted an enquiry and submitted enquiry report 20.06.2011 holding that the allegations that the said Chandrasekar was beaten up by five police



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officials as true, also there had been no eyewitness to the said occurrence, but on circumstantial evidence, an inference could be drawn that the petitioner and other police constables attached with Periyakulam Police Station had attacked the deceased. The finding of the RDO was mainly relied upon by the Enquiry Officer who had conducted oral enquiry.

3. Besides RDO enquiry, the Inspector of Police CBCID, Madurai District was directed to conduct enquiry by the Additional Director General of Police, CBCID vide proceeding dated 18.05.2011 to ascertain the cause of death. The Inspector of Police, the Deputy Superintendent of Police CBCID, Madurai Range conducted enquiry and submitted a report on 29.09.2011 requesting to take appropriate action against the erring police personnel attached with the Periyakulam Police Station. The Inspector of Police, CBCID has allegedly recorded the statement of witnesses, but admittedly not obtained signature of the witnesses in the statements. On the other hand, the DSP, CBCID mainly relied on the report of RDO, Periyakulam for recommending initiation of departmental proceeding against the petitioner and others. In the meanwhile, the petitioner was reinstated in service by the Deputy Inspector General of Police, Dindigul Range vide proceeding dated 29.06.2011 and the petitioner joined duty. While so, the first respondent issued G.O.M.No.85, Public (Law & Order-A) Department dated



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21.01.2013, whereby the disciplinary authority was directed to take disciplinary action against the petitioner and others. Again, the petitioner was placed under suspension on 08.04.2015, the petitioner filed W.P.(MD)No.6160 of 2015 and the same was dismissed on 27.04.2016, then W.A.(MD)No.993 of 2016 was filed and obtained stay of suspension order on 15.11.2016, then suspension was revoked and reinstated on 30.01.2017. In the meanwhile, the Deputy Superintendent of Police, Periyakulam has conducted elaborate investigation in Crime No.1077 of 2010 in connection with the death of Chandrasekar, recorded the statement of various witnesses and filed final report of “Action Dropped”. The witnesses including the wife of the deceased have categorically stated that her husband met with an accident when he was returning from Kodaikanal and further stated her husband had come to the house on 20.11.2010 at about 8.30 P.M, with injuries and he had informed to his wife that when he was coming down from the hill area by motorcycle, he lost his control over the bike which has sledded and rolled down. In the process, the deceased had sustained multiple injuries, bruise and contusion all over the body. In the meanwhile, the RDO, Periyakulam filed a private complaint before the learned Judicial Magistrate, Periyakulam vide unnumbered P.R.C of 2014 against the petitioner and three others alleging that they have committed the offence under Section 342 and 304 (II) read with 34 of

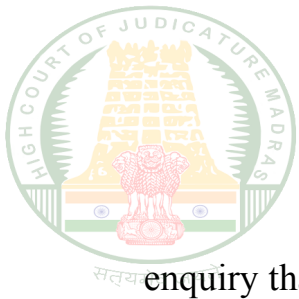


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Indian Penal Code. Aggrieved by the filing of the private complaint the petitioner filed CrI.O.P.(MD)No.22888 of 2016 to quash the private complaint and this Court quashed the same by order dated 05.04.2019 holding that the private complaint filed by RDO, Periyakulam is illegal and without jurisdiction.

4. On the basis of G.O.Ms.No.85, Public (Law & Order-A) Department dated 21.01.2013 the petitioner was issued with a charge memo dated 10.04.2015 by the 5th respondent framing two charges on the basis of the report submitted by RDO, Periyakulam and DSP, CBCID. The Superintendent of Police, Theni was appointed as Enquiry Officer for conducting oral enquiry with respect to the said charges. 30 witnesses were examined on the side of the prosecution and no document was produced before the Enquiry Officer during the oral enquiry. The petitioner was given opportunity to cross-examine the witnesses produced by the prosecution. None of the witnesses made any specific allegations incriminating the petitioner in the alleged suspicious death of the said Chandrasekhar. Since most of the witness did not speak anything against the petitioner, strangely the Enquiry Officer himself cross examined the witnesses with malafide intention to implicate the petitioner in the departmental proceedings. On the side of defence DW 1 to DW 4 and DW 6 were examined during oral enquiry. DW1 to DW4 who are police personnel attached with Periyakulam Police Station had stated in the



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enquiry that the deceased was not at all brought to the Periyakulam Police Station on 20.11.2010. Further, DW6, one Senthilkumar who had been performing duty at Devadhanapatti Police shooting range for more than 10 months during the relevant period, deposed before the Enquiry Officer that the deceased was not brought to the police shooting range on 20.10.2010 and as alleged by the prosecution. However, after enquiry, the Enquiry Officer submitted his report dated 11.03.2019 holding that both the charges are proved. The Enquiry Officer mainly relied on the deposition of P.W.31, Inspector of Police, CBCID and P.W. 32, Revenue Divisional Officer, Theni. On the basis of the enquiry report, the petitioner was issued show cause notice by the disciplinary authority on 20.08.2020 seeking explanation, for which the petitioner submitted a detailed explanation on 24.09.2020 and without considering the explanation, the disciplinary authority had passed the impugned order of punishment dated 05.11.2020 by which the petitioner was imposed with a major punishment of removal from service. The petitioner filed an appeal before the 4th respondent as against the order of punishment dated 05.11.2020 and the appeal was dismissed on 02.04.2021. As against the same, the petitioner filed a mercy petition before the 3rd respondent on 04.09.2021, wherein the punishment was modified from “removal from service” to “postponement of increment for a period of 2 years



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without cumulative effect” by order dated 21.10.2021. Challenging the impugned punishment order and the modified order the petitioner has filed this writ petition.

5. After hearing rival submissions, the Writ Court held that judicial review is not an appeal from the decision of the departmental proceedings. The respondents had considered the issue and had reduced the punishment. The Court further held it is not known why the wife changed her mind and withdrew the petition claiming compensation after alleging custodial death. Hence the writ Court failed to interfere with the punishment order.

6. The allegation against the delinquent is that the petitioner involved in the custodial death of one Chandrasekar, an accused. After the incident, the relatives of the deceased were agitated, blocked the roads and demanded enquiry. Hence Revenue Divisional Officer were directed to conduct enquiry. In the enquiry, it is stated even though there is no direct evidence for custodial death, it has been recommended to take disciplinary action against the police personal. Hence the disciplinary proceedings were initiated. Simultaneously the criminal proceedings were initiated by registering FIR, but the same was closed as “action dropped”. But the disciplinary proceedings were continued, held the charges were



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proved and imposed punishment of removed from service. On appeal the same was confirmed. But on mercy petition the punishment was reduced to postponement of increment for a period of 2 years without cumulative effect. Aggrieved over the same writ petition was filed and the same was dismissed. Hence the present writ appeal.

7. The primary contention of the appellant is that the FIR against the petitioner was closed as action dropped Crime No.1077 of 2010, in such circumstances the respondent cannot proceed with the disciplinary proceedings. It is settled proposition that strict evidence is necessary in criminal proceedings, whereas in disciplinary proceedings the evidence is based on the principles of preponderance of probabilities. Therefore, the contention of the petitioner that the criminal case was dropped cannot be a ground to drop the disciplinary proceedings.

8. The next contention of the petitioner is that none of the witnesses has stated that the petitioner has committed the custodial death. While dealing with this issue the Writ Court observed that the wife had took a 'U' turn and also the other witnesses had changed their stand. But the wife and other witnesses had

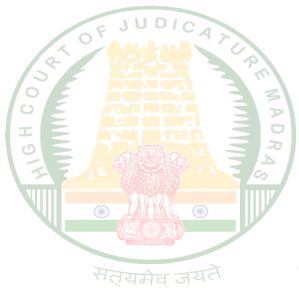


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deposed before the RDO at first instance against the petitioner, hence the Writ Court was not inclined to deal with this issued.

9. It is seen that the wife of the deceased had filed a writ petition seeking compensation for custodial death. However, while deposing before the authorities had stated that the deceased husband had injuries due to accident while coming from Kodaikanal. Further the wife had also withdrew the writ petition which was filed claiming compensation. It is crucial that the report of the RDO states that there was no eye witness to the custodial torture, but only states that the circumstances lead to the conclusion of custodial death. In such circumstances, the respondents are not having any direct evidence to confirm the charge as guilty, hence the respondents have relied on the preliminary enquiry report and had confirmed the charge that the petitioner had committed custodial death. It is settled principles of law, that the employer cannot confirm the charge based on the preliminary report. Based on the preliminary report enquiry ought to be conducted to prove the charge based on evidence. If there is no evidence in the disciplinary enquiry, then the charges ought to be dropped. The respondents cannot rely on the preliminary report and impose punishment. Therefore, this Court is of the considered opinion that the impugned punishment order needs interference.



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10. Moreover, the custodial death had become sensational, when the relatives' conducted agitation, blocked the road. Thereafter the RDO was directed to conduct the enquiry. In such sensational the respondents ought to have strictly relied on evidence. When no such evidence, then the respondents ought to drop the case.

11. Infact the competent authority while considering the mercy petition had considerably reduced the punishment and the reason for the same is to grant an opportunity to the petitioner to correct himself. When the authority had rightly come to the conclusion, then the authority ought to have either warned the petitioner or dropped the charge. This Court has come to such conclusion for one more reason, since the alleged incident occurred when the petitioner was 38 years old and as on date the petitioner is more than 50 years, hence by now the petitioner would have acquired some maturity about human values. Therefore, this Court is of the considered opinion that the imposed punishment is unwarranted. Having held so, this Court inclined to remit back the case to the authorities for reconsidering the punishment. It is made clear that the authorities shall consider to reduce the punishment further or drop the punishment and the said exercise shall be considered within a period of six weeks from the date of



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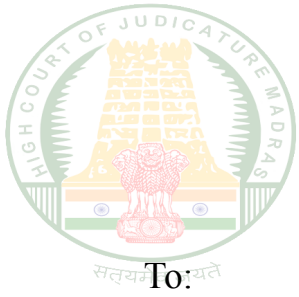
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12. With the above said directions, the writ appeal is allowed by setting aside the impugned order passed in writ petition. Consequently, the impugned punishment orders are set aside. No costs. Consequently, connected miscellaneous petition is closed.

[J.N.B., J.] [S.S.Y., J.]
18.07.2025

Index : Yes / No

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(Law and Order),
Office of the Director General of Police,
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- 5.The Deputy Inspector General of Police,
Office of the Deputy Inspector General of Police,
Dindigul Range, Dindigul.
- 6.The Deputy Inspector General of Police,
Office of the Deputy Inspector General of Police,
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