
(1994) 04 KL CK 0020
In the High Court Of Kerala
Case No : O.P. No. 4899 of 1994

A.C. Thomas

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 12-04-1994

Acts Referred:

Kerala Police Departmental Inquiries, Punishment and Appeal Rules, 1958 — Rule 6, 7

Citation : (1994) 04 KL CK 0020

Hon'ble Judges : G.H. Guttal, J

Bench : Single Bench

Advocate : Prabha R. Menon, for the Appellant; Hemalatha, Government Pleader, for the Respondent

Judgement

G.H. Guttal, J.—The Petitioner, a Sub Inspector 1 of Police, attached to the Chingavanam Police Station in Kottayam District, impugns the Order No. B1-864/94, dated 31st March 1994 made by the Inspector General of Police, Ernakulam, whereby the Petitioner was suspended from service pending disciplinary proceedings.

2. Complaint by Elizabeth that the Petitioner made amorous demands on her led to an enquiry by the Superintendent of Police, Kottayam. The Superintendent of Police questioned Elizabeth, Biju, Santhosh, Panicker and Elizabeth's aunt Saramma. He concluded that the allegation of Elizabeth was prima fade true. He filed his report in the first week of April, 1994. On the basis of this report, the Inspector General of Police, Ernakulam made the impugned order under Rule 7 of the Kerala Police Departmental Inquiries Punishment and Appeal Rules, 1958 ("the Rules" for brevity).

3. Rule 6 of the aforesaid rules mandates a preliminary enquiry into the allegation made in a complaint- Upon such inquiry the Superintendent of Police held that "prima facie grounds" for departmental action were, established.

4. Substance of the complaint which led to the enquiry is this. A lady by name

Nissy was a tenant of C.M. Panicker. Panicker complained on 12th March 1994, of non-payment of rent, sub-letting to Elizabeth and use of the premises by Elizabeth for illicit relationship with a person by name Biju. The dispute about the rent was settled", on 14th March 1994. Elizabeth alleged that on that day the Petitioner came to the tenanted premises and asked her to go to the Police Station. She suspected that Petitioner had evil intentions. Therefore, she did not go to the Police Station. She left the job and stayed with her aunt Saramma. On 19th March 1994 the Petitioner allegedly called Elizabeth on the telephone at her aunt's house and repeated his demand that she should go with him and issued certain threats. He also called her to the nearby telephone booth and made the same demand.

5. According to the Petitioner, Elizabeth has been set up to make a false complaint and frame him. A gang of criminals by name Ravi, Biju, Vijayan and Ors. were involved in different crimes. The Petitioner had taken action against them. They, had even made false complaint against him- Apprehending that this gang of criminals which is alleged to be connected with the underworld of crimes might implicate him in a false case, the Petitioner addressed a letter to the Director General of Police on 30th January 1994 (Ext-P-5). He specifically urged that he apprehends false implication-a frame up-by the aforesaid criminals. Elizabeth who is known to these criminals has been set up by these criminals.

6. Though the Superintendent of Police questioned Elizabeth and Ors. , the Petitioner's apprehension that he may be involved in a false complaint has not been investigated before the impugned order was made. The allegation that the Petitioner, by using his authority as Sub Inspector, of Police attempted to coerce Elizabeth" into illicit-relationship with him, is serious- But, all serious allegations may not be true. In the course of investigation a police officer encounters resistance from criminals. False complaints by criminals against innocent officers are not unknown. The allegation made against the Petitioner involves his reputation. If he is innocent, the assault on his character and reputation, causes injury which in its depth and intensity exceed? the paid of death. Therefore, a superior officer investigating into such a serious complaint ought to be circumspect. He ought not to accept every complaint at its face value. The Petitioner's apprehension of false" implication by the criminals should have been considered. The enquiry ought to have, taken into account this angle also.

7. This is no doubt a case of mere suspension and not termination of service. "But suspension is no less injurious than termination" of service, especially when the employee is accused of misbehaviour with women. Suspension of an employee on such a serious ground, if made without regard to the employees" case, is repugnant to the principles of natural justice and fairplay. It has been held in State of Kerala v. K.C. George 1984 KLT 315 that the executive has no absolute power in any administrative " matters. Before a police, officer is suspended under Rule 7 read with Rule 6 of the rules, "the nature of the charges levelled against a servant and the circumstances of the case and the necessity or

desirability of placing a member of the service under suspension" should be considered by the concerned authority A.K. Veeramani v. State of Kerala 1974 K.L.L. 880. The words "circumstances of the case" are wide enough to include consideration of whether the gang of criminals could have falsely set up Elizabeth to make the complaint. Experience shows that the authorities wield the power to suspend their subordinates without circumspection and with total disregard to the need to suspend- In all cases where disciplinary proceedings are contemplated or pending, suspension is not a compulsory step. The authority has the duty to consider whether keeping an employee in service will not be conducive to discipline or the maintaining of the efficiency or the honesty of the administration. The consideration of the necessity of the suspension must take into account the delinquent officer's contention, where it is made that he has been falsely implicated.

8. No doubt, the Superintendent of Police questioned the witnesses like Elizabeth, Santhosh, Biju, Panicker and Saramma- But, the possibility, that Biju, a member of the criminal gang, with the aid of Ravi and Ors. could have set up Elizabeth to frame the Petitioner, has not been considered by the Superintendent of Police. While the enquiry made by the Superintendent of Police satisfies the external form of a preliminary enquiry, it leaves the possibility of a frame up unenquired. The Petitioner might have actually done what he is accused of having done, but there is still a chance that the gang of criminals framed him up to wreak vengeance. I am unable to hold that the enquiry made by the Superintendent of Police does not fulfil the formal requirement of "a preliminary enquiry" and the need to "establish prima facie grounds". I cannot but observe that the Superintendent of Police ought to have considered the Petitioner's case as well

9. Although the Petitioner's case demands consideration, this is not a case in which suspension should be quashed. Appropriate directions would serve the ends of justice. The enquiry officer shall consider the case not only, from the angle of Elizabeth and other witnesses but also from the angle Of the Petitioner. The Petitioner is entitled to a speedy conclusion of the departmental proceedings. I therefore make the following order:

(i) I direct the Respondents, and the inquiry officer appointed by them, to complete the disciplinary proceedings against the Petitioner and "make a final order thereon, on or before 31st May, 1994.

(ii) If a final order in the disciplinary proceedings is made on or before 31st May, 1594 as directed above, the order made in such proceedings shall take effect.

(iii) If the disciplinary proceedings against the Petitioner are not concluded with a final order, on or before 31st May, 1994, the impugned order shall stand quashed and the Petitioner shall thereupon stand reinstated with effect from 1st June, 1994.

(iv) I direct the Inquiry Officer to consider all angles of the case including

whether, the Petitioner has been falsely implicated as claimed by him.

10. Subject to these directions, the Original Petition is dismissed.