

(2006) 09 MAD CK 0262

In the Madras High Court

Case No : Writ Petition (MD) No. 5241 of 2006 and M.P. No. 1

Deivendrapandian

APPELLANT

Vs

The Superintendent of Police

RESPONDENT

Date of Decision : 14-09-2006

Acts Referred:

Penal Code, 1860 (IPC) — Section 34, 409, 419, 420, 477A

Citation : (2006) 09 MAD CK 0262

Hon'ble Judges : N. Paul Vasanthakumar, J

Bench : Single Bench

Advocate : M.V. Venkataseshan, for the Appellant; Jessi Jeevapriya, Special Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

N. Paul Vasanthakumar, J.—Petitioner has filed this writ petition with a prayer to quash the charge memo dated 30.3.2006 issued against him.

2. Petitioner was appointed as Police Constable in the Armed Reserve, Madurai district in the year 1984 and he was transferred to Melur Police Station as Constable (Law & Order) in the year 1987. He was promoted as Head Constable in the year 2000 and posted at Avaniyapuram Police Station. Thereafter he was posted as Head Constable in the "Q" Branch CID, Madurai city on 7.7.2004.

3. A criminal case was registered against the Petitioner in C.C. No. 26 of 2006 on the file of the Judicial Magistrate, Melur, under Sections 419 and 420 read with Section 34 IPC. The said case was registered on the allegation that the Petitioner and three others collected funds from the ongoing heavy vehicles in the ring road near Mattuthavani Bus stand. Petitioner was placed under suspension on 13.12.2005 and later on the suspension order was revoked and now he is serving as Head Constable at Villoor Police Station in Madurai District.

4. According to the Petitioner, in the criminal case, the learned Judicial Magistrate, Melur acquitted him and three other accused, by judgment dated

21.4.2006. No appeal or revision is filed against the said judgment and as such the matter has become final.

5. The learned Counsel for the Petitioner submitted that on 30.3.2006, i.e, during pendency of trial in C.C. No. 26 of 2006, the impugned charge memo was issued to the Petitioner and the criminal Court having acquitted the Petitioner by its judgment dated 21.4.2006, the Respondent has no jurisdiction to proceed against the Petitioner with the charge memo. The learned Counsel further submitted that as the Petitioner has been acquitted in the criminal case, departmental proceedings on the same charge cannot be allowed to proceed. The learned Counsel also cited a decision reported in G.M. Tank Vs. State of Gujarat and Another, , wherein the Honourable Supreme Court held that if in the criminal case a person is honourably acquitted, it is not justified on the part of the department to proceed with the departmental action.

6. I have considered the rival submissions of the learned Counsel for the Petitioner as well as the learned Special Government Pleader for the Respondent.

7. The point in issue is whether the contents of the charge memo issued against the Petitioner is identical to that of the criminal charge in C.C. No. 26 of 2006 and whether the Criminal Court honourably acquitted the Petitioner from the offences and whether the department can proceed with the charge memo dated 30.3.2006, even after his acquittal in the criminal case.

8. The judgment of the Criminal Court in C.C. No. 26 of 2006 dated 21.4.2006 is filed in the typed set of papers and a perusal of the same clearly reveals that the acquittal of the Petitioner is not on merits, but on giving benefit of doubt. Hence the contention of the learned Counsel for the Petitioner that the acquittal is on merits and the Petitioner has been honourably acquitted, cannot be sustained.

9. It is not in dispute that even after the acquittal by the Criminal Court, the department has the right to continue with the disciplinary proceedings as held by the Honourable Supreme Court in the decision reported in Chairman and Managing Director, United Commercial Bank and Others Vs. P.C. Kakkar, , wherein in paragraph 15 it is held as follows,

... Acquittal in the criminal case is not determinative of the commission of misconduct or otherwise, and it is open to the authorities to proceed with the disciplinary proceedings, notwithstanding acquittal in criminal case. It per se would not entitle the employee to claim immunity from the proceedings. At the most the factum of acquittal may be a circumstance to be considered while awarding punishment. It would depend upon facts of each case and even that cannot have universal application.

10. The Honourable Supreme Court in a very recent decision reported in JT 2006 (1) SC 444 : (2006) 1 M.L.J. 166 (S.C.) : 2006 2 L.W.R 532 (Chairman-cum-M.D., T.N.C.S. Corpn. Ltd. and Ors. v. K. Meerabai) considered a similar issue as to whether departmental proceeding can be initiated or continued after the

acquittal in the criminal case for the criminal charges. In paragraph 25, the Honourable Supreme Court held thus.

The scope of disciplinary proceedings and the scope of criminal proceedings in a court of criminal law are quite distinct, exclusive and independent of each other. The prosecution proceedings launched against the Respondent herein were in respect of offences punishable under Sections 409 and 477A IPC, whereas the departmental proceedings as initiated against her were in respect of the charges of misappropriation and other fraudulent practices such as deliberate omission to bring into accounts the stock received showing bogus issues in the records, falsification of accounts, submission of defective accounts, tampering of records, manipulation of accounts and records etc. Thus, the Respondent herein was proceeded against for quite different charges and on different sets of facts before the court of Chief Judicial Magistrate, on the one hand, and before the departmental enquiry on the other.

In the said judgment it is further held that the High Court was wrong in setting aside the order of dismissal on the ground that the criminal Court acquitted the delinquent and in paragraph 24 held thus,

The order of dismissal passed by the disciplinary authority was based on dispassionate and independent examination and appreciation of the entirety of facts and evidence on record relating to the malpractices and misappropriation indulged in by the Respondent in collusion with the other members of the staff causing thereby huge loss to the Corporation.

In view of the above said decisions, it cannot be disputed that the Respondents/ Management are entitled to proceed with the departmental proceeding, in spite of the acquittal in the criminal case, more particularly, when the criminal Court acquitted the Petitioner by giving benefit of doubt.

11. Following the above cited decision, I have also considered the jurisdiction of the department to proceed with the departmental proceeding after acquittal in the criminal case, where the acquittal was not on merits, but on the ground of giving benefit of doubt and the same is reported in M.K. Dange Vs. Chairman-cum-Managing Director, Oil and Natural Gas Corporation, The Director (Finance), Oil and Natural Gas Corporation and The General Manager (F and A), Oil and Natural Gas Corporation, .

12. Since the criminal case acquittal is not on merits, there is no necessity to go into the question as to whether the charges in both the proceedings are identical or not.

13. Following the above said decisions, I hold that the impugned charge memo cannot be quashed since the Petitioner has not been acquitted on merits in the criminal case.

14. There is no merit in the writ petition and the same is dismissed. No costs. Connected miscellaneous petition is also dismissed.