

(2005) 12 MAD CK 0034

In the Madras High Court

Case No : Writ Petition No's. 21998 and 21999 of 2003

Deputy Inspector General of Prisons, Madurai Range and The
Superintendent of Prisons Central Prison

APPELLANT

Vs

C. Manikandan, J.J.J. Milton and The Registrar Tamil Nadu
Administrative Tribunal

RESPONDENT

Date of Decision : 23-12-2005

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 102

Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) — Section 20

Citation : (2005) 12 MAD CK 0034

Hon'ble Judges : P. Sathasivam, J; Chitra Venkataraman, J

Bench : Division Bench

Advocate : E. Sampathkumar, for the Appellant; Anna Mathew, for R.1, for the Respondent

Final Decision : Dismissed

Judgement

P. Sathasivam, J.—Since the issue raised in both the writ petitions is one and the same, they are being disposed of by the following common order.

2. Aggrieved by the common order of the Tamil Nadu Administrative Tribunal dated 21.10.2002 made in O.A.Nos.2710 of 2001 and 2839 of

2001, the Deputy Inspector General of Prisons, Madurai, and the Superintendent of Prisons, Palayamkottai, have filed the above writ petitions.

Writ Petition No. 21998 of 2003 relates to C.Manikandan, Grade II Warder and Writ Petition No. 21999 of 2003 relates to J.J.J. Milton, Grade

II Warder.

3. The charge against both the petitioners is that C. Manikandan was in possession of cash of Rs. 10,341.40 and J.J.J. Milton was in possession of

50 grams of ganja. Though C. Manikandan participated in the enquiry, Milton, after conveying his grievance that he was not furnished with all the required documents, abstained from the enquiry. The Enquiry Officer submitted a report holding that the charge leveled against the delinquents was proved. Based on the report of the Enquiry Officer, the Disciplinary Authority, viz., Deputy Inspector General of Prisons, Madurai, by order dated 31.03.2001, dismissed both of them from service. Though there is a remedy by way of an appeal, the delinquents approached the Tribunal to vindicate their grievance. The Tribunal, after finding that there is no evidence to connect the applicants with the contraband articles, viz., cash and ganja, and that the contrary finding of the Enquiry Officer is perverse, set aside the order of dismissal and ordered reinstatement of the applicants with all monetary and service benefits, etc., Questioning the said common order, the Deputy Inspector General of Prisons and the Superintendent of Prisons have filed the present writ petitions.

4. Heard Mr. E. Sampath Kumar, learned Government Advocate for the petitioners and Ms. Anna Mathew, learned counsel for the first respondent in both the writ petitions.

5. The only point for consideration in this writ petitions is, whether the Tribunal is justified in arriving a conclusion that there is no evidence to connect the applicants with the contraband articles, viz., cash and ganja and setting aside the punishment of dismissal?

6. We have already referred to the charge, viz., in so far as C. Manikandan is concerned, he was in possession of cash of Rs. 10,431.40;

whereas, J.J.J. Milton was in possession of 50 grams of ganja. It is not in dispute that both of them were Grade II Warder in Central Prison,

Palayamkottai. In the enquiry proceedings, the Department heavily relied on the evidence of Additional Superintendent of Prisons- Rajendran and

Jailer-Kannan. According to them, on 14.03.2000, at about 06.15 a.m. search was conducted by the Commissioner of Police, Tirunelveli

accompanied by the Deputy Inspector General of Prisons, Madurai, the revenue authorities, viz., the Revenue Divisional Officer, Tirunelveli, the

Tahsildar, Palayamkottai and a team of police officers including the Assistant Commissioner, Tirunelveli City Police. During the search, it was

found that C.Manikandan, Grade II Warder, was in possession of Rs. 10,341.40

and other Grade II Warder J.J.J. Milton was in possession of 50

grams ganja. It is their further case that the said money and ganja were found in a wooden box. Their statement was accepted by the Enquiry

Officer and based on which the Disciplinary Authority imposed a punishment of dismissal against both the delinquents.

7. It is the case of the delinquents that the Jail authorities, particularly, Additional Superintendent of Prisons and the Jailer received confidential

information regarding the proposed visit of the higher officials on 14.03.2000 and in order to safe guard the real culprits and also to avoid bad

reputation as well as in the interest of their own, they made a thorough search on the prisoners during the midnight of 13.03.2000 along with the

delinquents. It is their further case that in the course of search, they collected cash to the extent of 10,314.40 from the prisoners and 50 grams

ganja, which were kept in the wooden box. In other words, it is their definite case that neither the cash nor ganja belong to them and they were not

in possession of the same.

8. The Tribunal, analysed the Department witnesses, viz., Rajendran and Kannan, and after perusing other materials, particularly final report

relating to Crime No. 74 of 2000, on the file of Permalpuram Police Station in respect of the very same incident, disbelieved their version. In this

regard, it is relevant to note that after the inspection by the higher officials on the early morning of 14.03.2000, and search and seizure of the

inmates of the prison, the Inspector of Police, Perumalpuram, after thorough investigation, submitted a final report stating that the case was referred

as mistake of fact. The final report in Crime No. 74 of 2000 has been considered by the Tribunal. The final report is prepared and submitted by

the Inspector of Police, Perumalpuram Police Station, in respect of Crime No. 74 of 2000 registered on the complaint made by the Melapalayam

Inspector by name Kanniappan under Sections 20(b) NDPS Act and 102 Cr.P.C. It is also seen that even though the cases have been registered

under these two sections, no specified person has been made as accused in the First Information Report. In the final report submitted by the

Inspector of Police, Perumalpuram, all the contraband articles were reported to have been recovered from the 3rd block in the Jailer's room and

the ganja and amount were said to have been recovered from a wooden box kept

in the guard room. The following conclusion in the final report is relevant, which reads as under.

(Vernacular portion deleted)

9. As rightly observed by the Tribunal, the above conclusion of the Inspector of Police in the final report cannot be ignored. As a matter of fact, the

said conclusion was arrived after a detailed and thorough investigation. In this regard, it is relevant to note that it is the constant stand of

Manikandan and Milton that all these articles were recovered from the prisoners during the unofficial search made by Jailer Kannan with the

assistance of Warders including Manikandan. According to the delinquents, as said earlier, the object of the Jailer is to save the real offenders and

also to make the contrabands not available during the contemplated special raid by top special police officials on the next day.

10. On going through the above mentioned final report and the statements of Rajendran and Kannan, who were examined on the side of the

Department, and also taking note of the fact that the Inspector of Police, Assistant Commissioner of Police, Tahsildar, Palayamkottai, and Revenue

Divisional Officer, Tirunelveli, though were all examined in the enquiry, none of them have stated about the wooden box containing the cash amount

and ganja, we are in agreement with the conclusion arrived at by the Tribunal. The prison authorities are not expected to take a different stand one

in the final report relating to Crime No. 74 of 2000 and another in Departmental proceedings.

11. Though the learned Government Advocate vehemently contended that one of the defence witnesses viz., DW.12 himself informed that

Manikandan was possessed with full of currencies in his hand, we are satisfied that, as rightly pointed out by the Tribunal, the Department failed to

substantiate the allegation by placing acceptable evidence.

12. Though the learned Government Advocate argued that the Tribunal has exceeded its limit in reappraising the evidence, we are satisfied that in

order to ascertain the truth and the claim made by both parties, the Tribunal has rightly considered the materials placed before the Enquiry Officer

and the definite stand taken by the delinquent officials. We are satisfied that the Tribunal is fully justified in considering all the materials.

13. On going through the final report of the Inspector of Police, Perumalpuram,

the evidence of the Departmental witnesses, viz., Rajendran and Kannan, and all other connected materials, we are in entire agreement with the conclusion arrived at by the Tribunal, viz., that there is no acceptable evidence to connect the delinquents with the cash and ganja recovered from the wooden box. We are also of the fact that the finding of the Enquiry Officer cannot be sustained since it lacks acceptable evidence. Under these circumstances, we do not find any error or infirmity or valid ground for interference; on the other hand, we are in entire agreement with the conclusion arrived at by the Tribunal. Consequently, both the writ petitions fail and the same are dismissed. No costs.