

(2010) 10 MAD CK 0258

In the Madras High Court

Case No : Writ Petition (MD) No. 781 of 2009 and M.P. (MD) No's. 1 and 2 of 2009

M. Muthuraj

APPELLANT

Vs

The State

RESPONDENT

Date of Decision : 07-10-2010

Acts Referred:

Constitution of India, 1950 — Article 226
Criminal Procedure Code, 1973 (CrPC) — Section 174, 293

Citation : (2010) 10 MAD CK 0258

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : Veera Kathiravan, for the Appellant; S.C. Herold Singh, GA, for the Respondent

Final Decision : Dismissed

Judgement

K. Chandru, J.—The Petitioner is working as an Inspector of Police attached to the Vigilance and Anti Corruption Department, Theni, has come forward to challenge an order of the Respondent State Government made in G.O.Ms. No. 1094, Public (Law & Order) Department, dated 26.09.2008. By the said Order, the State Government acting on the report of the District Collector, Madurai, directed criminal prosecution as well as departmental proceedings to be initiated against seven police men, including the Petitioner who was at the relevant time was a Sub Inspector of Police. The Petitioner, challenging the validity of the said order, filed this writ petition and got an interim stay pending notice on the writ petition.

2. Heard the arguments of Mr. Veera Kathiravan, learned Counsel appearing for the Petitioner and Mr. S.C. Herold Singh, learned Government Advocate appearing for the Respondent.

3. It is seen from the records that a FIR was registered in the Avaniapuram Police Station on 05.12.2004 on account of death of one Eswaran. It was registered as

Crime No. 820 of 2004 u/s 174 Code of Criminal Procedure. Since the complaint disclosed an offence committed by police officers, the matter was referred to the Revenue Divisional Officer, Madurai by the District Collector as per PSO 151 (Old PSO 145). The Revenue Divisional Officer conducted an enquiry after making a publication in the newspapers on 21.12.2004 asking persons who are familiar with the case to give their statements.

4. The Revenue Divisional Officer, Madurai recorded statements of 31 persons. The Petitioner was also examined as a 23rd person. On the basis of the statements recorded as well as documents made available, the Revenue Divisional Officer sent his report, dated 4.10.2005 to the District Collector, Madurai. Though there was no external or internal injuries, but the postmortem report showed that he would not have died only on consumed excessive alcohol. When the policemen brought him to the station in a drunken stage, they should have got him medically tested and treated. The policemen in the station did not do so. Though he was sent out after the enquiry along with his father, on reaching the home within a short time, he died. Though the Doctors gave an opinion that he might have died because of excessive intake of liquor and there should have been an heart attack, but the fact was that when he was kept in the station, he would have been beaten up by the police. Since the attack was made without inflicting external or internal injuries, his health condition would have been affected. As soon as he reached home, he fainted and died. These facts were established by the statements given by the witnesses. Therefore, he recommended action against the seven policemen found in the station.

5. The District Collector while forwarding his report to the State Government (Respondent) did not agree with the recommendations of the Revenue Divisional Officer. He stated that the death might have happened due to natural circumstances and that the report of the medical doctors can be accepted. He recommended action against Inspector Santha Soruban.

6. The State Government considered the report of the Revenue Divisional Officer sent on the basis of the enquiry under PSO 151 as well as recommendation made by the District Collector. It came to the conclusion that the death of Eswaran might have been due to natural causes, but since the police men who brought him to the police station in a drunken stage, did not send him for medical examination and for further treatment, it gave rise to an unnecessary suspicion and problems. Therefore, all the seven police men attached to that police station were directed to be suspended and departmental action should be initiated. They were also directed to be transferred to some other distant Armed Reserve police. A criminal action was also directed to be initiated.

7. The Petitioner challenged the said order stating that it is without any basis or material. However, it is brought to the notice of this Court that five other policemen including the Inspector of Police covered by the G.O., filed a writ petition being W.P.(MD) No. 13308 of 2009 challenging the very same order. This Court found that the order does not suffer from any infirmity. In paragraph 5 of

the order, it was observed as follows:

5. Ms. V. Chellammal, learned Additional Advocate General, State of Tamil Nadu, submitted that an enquiry has been conducted under the provisions of Police Standing Order by the Revenue Divisional Officer, Madurai. Though the District Collector, Madurai has forwarded a report recommending only departmental action, it is for the Government, the ultimate authority, to take a final decision in the matter, either to agree or disagree with the views expressed by the District Collector and that the Government can take a independent decision. She further submitted that the Government, in the instance case, have disagreed with the views of the District Collector, Madurai and found that the Petitioners and others were responsible for the death of the above said individual. She also submitted that approval of the Hon"ble Chief Minister has been obtained in terms of the Hon"ble Chief Minister's Standing Order No. 4, Personnel and Administrative Reforms (A) Department, dated 28.07.2006. Inasmuch as the approval stated supra, has been obtained in terms of the standing orders from the competent authority, the issue raised in this writ petition is no longer exists and therefore, prayed that the writ petition be dismissed. The submission of the learned Additional Advocate General, State of Tamil Nadu, is placed on record. The relevant original file has also been perused. The authority has accorded sanction for prosecution and departmental action against the Petitioners. Therefore, the only contention raised in the writ petition is negatived. Hence, the writ petition has to be dismissed and accordingly dismissed.

8. After rejecting the contentions of those five policemen, this Court also found that a criminal case had been registered in PRC No. 1/2010 on a private complaint lodged by the Revenue Divisional Officer, Madurai before the Judicial Magistrate, Madurai. The complaint had been taken on file on 21.7.2010. On the question of departmental enquiry, the learned Judge directed the enquiry to be completed within a short time frame. Further, in paragraph 7, the learned Judge observed as follows:

7. ...As the Petitioners have come forward with a request to fix a specific time frame for completion of the departmental enquiry, the Petitioners and others shall co-operate in the conduct of departmental enquiry, so as to enable the completion of enquiry within the time frame fixed by this Court. If there is any attempt to protract the enquiry, it is open to the competent authorities to seek for extension of time.

9. Even a petition seeking for compensation filed by Sangaiah, the father of the deceased Eswaran was also allowed by this Court in W.P.(MD) No. 5272 of 2006 on 6.8.2010. Therefore, it is too late for the Petitioner to challenge the said order. First of all, the Petitioner's challenge to the order of the State Government directing the Director General of Police is only an internal communication between the State and the head of the police department and that is not amenable to challenge. By the said order, the State Government directed the Director General of Police to initiate departmental action as well as criminal

prosecution. In cases of criminal prosecution, it is always open to the Petitioner to make grievance as and when he is in receipt of the charge sheet in the manner known to law.

10. At the stage of according sanction, he cannot bring his defence including that he was not in the police station at the relevant time as per the GD entries. It has been held by Courts that even a charge sheet cannot be subjected to challenge on the basis of best defence. The parameters of challenging the charge memo is not even available when sanction is accorded for prosecution by the Government. Even in the present case, the Petitioner has not been given any charge memo under the relevant rules of Tamil Nadu Police Subordinate Services (Discipline and Appeal) Rules so as to examine as to whether any application of mind was made. Even assuming that the Petitioner was given a charge memo, that by itself cannot give a cause of action to the Petitioner to rush to this Court without defending himself in the departmental enquiry. Hence the contentions raised by the Petitioner cannot be accepted.

11. It is relevant to refer to the judgment of the Supreme Court in *A.S. Parmar v. State of Punjab and Ors.* reported in 2007 (15) SCC 565. The following passage found in paragraph 3 may be usefully extracted below:

3. Since no criminal proceedings have been taken against the Appellant, there was no cause of action for the Appellant to file a petition under Article 226 of the Constitution. As and when the Appellant is tried in a court of law, it is always open to the Appellant to take such defence as may be permissible under law including defence u/s 293 Code of Criminal Procedure. In that view of the matter, the writ petition filed by the Petitioner was premature and ought not to have been entertained by the High Court.

12. Though the counsel for the Petitioner brought to the notice of this Court two judgments of the Supreme Court, i.e. *Sher Bahadur Vs. Union of India (UOI) and Others*, and *Mahmadhusen Abdulrahim Kalota Shaikh (2) v. Union of India* reported in (2009) 2 SCC 1, these judgments have no relevance to the case on hand. In *Sher Bahadur's* case (cited supra), it was considered to be case of no evidence, but after scrutinizing the final order passed. But that question does not arise at this stage. Likewise, *Mahmadhusen Abdulrahim Kalota Shaikh's* case (cited supra) is regarding withdrawal of prosecution for offences under Prevention of Terrorism Act (POTA). That was relied upon only to state that the revocation of sanction can be scrutinized by the court under Article 226 of the Constitution of India. That exercise had already been done by this Court as stated already.

13. In the light of the earlier developments, wherein the Petitioner's colleagues themselves have lost their case before the court and that order as having become final, the other policemen who were covered by the impugned order are facing both prosecution as well as departmental action, the Petitioner's case cannot stand alone. By continuing to entertain the case of the Petitioner, the case

against others also cannot be proceeded with, thereby defeating the very order passed by this Court.

14. Hence the writ petition will stand dismissed. No costs. Consequently, connected miscellaneous petitions stand closed.