
(2012) 12 MAD CK 0043

In the Madras High Court

Case No : Writ Petition (MD) No. 3898 of 2008

N. Ramakrishnan

APPELLANT

Vs

Deputy Inspector General of Police

RESPONDENT

Date of Decision : 21-12-2012

Acts Referred:

Penal Code, 1860 (IPC) — Section 313, 376(2A), 379, 506(ii)

Citation : (2013) LabIC 1589

Hon'ble Judges : K. Ravichandra Baabu, J

Bench : Single Bench

Advocate : M. Ajmalkhan, for the Appellant; G. Muthukannan, G.A., for the Respondent

Final Decision : Dismissed

Judgement

K. Ravichandrabaabu, J.—Challenge in this writ petition is against a charge memo, dated 15.3.2008. The case of the petitioner is that he was appointed as "Sub-Inspector of Police" on 28.9.1987 and thereafter, promoted as "Inspector of Police" on 28.9.2000. While the petitioner was working as Inspector of Police at Kulasekarapattinam Police Station, a criminal case was foisted against him in Cr. No. 261 of 2004, on the file of Kulasekarapattinam Police Station, for the offences said to have been committed under Sections 376(2A), 313 and 506(ii), IPC r/w Section 4 of Tamil Nadu Prohibition of Harassment of Women Act, 2002. The said case in Cr. No. 261 of 2004 was taken cognizance of in S.C. No. 224 of 2005, by the learned Additional District and Sessions Judge (Fast Track Court No. II), Tuticorin. After a full-fledged trial, the learned Judge acquitted the petitioner by holding that there was no evidence available for convicting the petitioner for the offences said to have been committed by him. The acquittal is an honourable acquittal and not by way of giving benefit of doubt. The said Judgment was passed by the Sessions Court on 18.1.2006. Thereafter, the respondent issued the impugned charge memo on 15.3.2008.

2. The respondent filed a counter-affidavit and stated that the petitioner

developed illicit intimacy with one Seethalakshmi and made her pregnant by falsely assuring her to marry. Based on the complaint given by said Seethalakshmi, a case in crime No. 261 of 2004 under Sections 379, 313, 506(ii), IPC and 4(1) of Tamil Nadu Prohibition of Harassment of Women Act was registered against him. The petitioner was also absent from duty between 2.7.2004 and 25.10.2004 without any leave or permission from the competent authority, in order to evade arrest in connection with the said criminal case. The petitioner, thus, committed "desertion" for having absented from duty for 21 days, without permission. Therefore, disciplinary proceedings were initiated against the petitioner by issuing a charge memo. Though he was acquitted by the learned Additional District and Sessions Judge on 18.1.2006, the department is entitled to issue the charge memo, if there is preponderance of probability in disciplinary proceedings, wherein high standard of proof is not necessary as required under the criminal proceedings. There is no time limit fixed for initiation of the departmental proceedings and therefore, the petitioner cannot raise the plea of limitation or delay.

3. Mr. M. Ajmalkhan, learned Senior counsel appearing for the petitioner submitted that when the petitioner was honourably acquitted by the criminal Court, there is no basis for issuing the first charge, when the subject-matter of criminal case as well as the first charge in the charge memo are one and the same and arising out of same set of facts and circumstances. Insofar as the second charge is concerned, the learned Senior counsel submitted that when admittedly, the petitioner was placed under suspension from 2.7.2004 to 21.3.2006, the question of absent without permission does not arise at all between the period 2.7.2004 and 25.10.2004 and therefore, there is no basis for issuing the second charge also. Thus, the very attitude of the respondent in issuing the second charge shows malice. He also submitted that there is an inordinate delay of four years in issuing the charge memo which is not reasonably explained by the respondent. When there is no bar for proceeding against the petitioner simultaneously, the respondent has to explain the undue delay of four years in initiating the departmental proceedings. The absence of such explanation vitiates the entire proceedings.

4. In support of his contentions, the learned Senior counsel relied on the following decisions:--

- (1) V. Kanagasabapathy Vs. The Deputy Inspector General of Police, Villupuram Range and The Additional Superintendent of Police, Prohibition Enforcement Wing,
- (2) The District Revenue Officer Vs. R. Palanisamy, Assistant, Erode District Revenue Unit and The Registrar, Tamil Nadu Administrative Tribunal,
- (3) P. Ramasamy Vs. The Government of Tamil Nadu and Others,
- (4) Union of India (UOI) and Others Vs. Naman Singh Sekhawat,
- (5) G.M. Tank Vs. State of Gujarat and Another,

(6) Somesh Tiwari Vs. Union of India (UOI) and Others,

(7) N.P.K.S. Sheik Abdullah Vs. The State of Tamil Nadu,

(8) (2012) 4 MLJ 576 (K. Deivendran v. The District Collector, Dindigul District, Dindigul).

5. Per contra, the learned Government Advocate appearing for the respondent submitted that even after an acquittal, charge memo can be issued and therefore, the petitioner can-not rely upon the acquittal by the criminal Court, to say that the first charge is unsustainable. Insofar as the second charge is concerned, the learned Government Advocate submitted that the petitioner was absent without permission or leave during the said period mentioned in the second charge and therefore, the second charge is also valid. Insofar as the contention with regard to the delay is concerned, the learned Government Advocate submitted that there is absolutely no time limit fixed for initiating the departmental proceedings and consequently, the impugned charge memo does not warrant any interference by this Court.

6. Heard the learned counsels appearing for either side.

7. The petitioner, while working as Inspector of Police at Kulasekarapattinam Police Station, faced the criminal proceedings in Cr. No. 261 of 2004, on the file of Kulasekarapattinam Police Station for the offences said to have been committed under Sections 376(2)(A), 313 and 506(ii) of IPC r/w Section 4 of Tamil Nadu Prohibition of Harassment of Women Act, 2002. The said criminal case was taken on file in S.C. No. 224 of 2005, by the learned Additional District and Sessions Judge, Fast Track Court No. 1, Tuticorin. The learned trial Judge, after an elaborate consideration of facts and circumstances as well as the evidence let in by the prosecution, had come to the conclusion that the charges levelled against the petitioner were not proved by the prosecution. At paragraph No. 10 of the said Judgment, the learned trial Judge, considered the evidence of P.W. 1, namely, the complainant Seethalakshmi. She had deposed that she did not know the accused (petitioner herein) and she had not given any complaint against him. By taking note of the said evidence of P.W. 1 and considering all other aspects and also by finding that there are no other valid evidences or exhibits marked by the prosecution to prove the guilt against the accused, the learned Sessions Judge acquitted the petitioner herein. As rightly contended by the learned Senior counsel for the petitioner that the said acquittal was not by granting benefit of doubt to the petitioner, but, on the other hand, it is an honourable acquittal. After the judgment of the criminal Court dated 18.1.2006, the respondent issued the impugned charge memo nearly after two years, by inflicting the following charges on the petitioner:--

1. Highly reprehensible conduct in having enticed one girl Seethalakshmi (age 17/04) D/o. Tr. Kasithevar, Annanagar, Thothukudi on the promise of marrying her and had illicit intimacy with her and subsequently cheated her and thereby involved in a criminal case in Kulasekarapattinam P.S. Cr. No. 261/04 u/Ss. 376,

313, 506(ii), IPC and 4(1) of Tamil Nadu Prohibition of Harassment of Women Act.

2. Gross neglect of duty in having absented himself for duty from 2.7.2004 to 25.10.2004 without any leave or permission for evading arrest and avoid suspension order till he surrendered before the Court for bail and thereby committed the offence of "Desertion" for having absented for 21 days from 2.7.2004 to 22.7.2004 and so also completed the period of 60 days for the confirmation of "Desertion" order on 30.8.2004 and escaped unnoticed for all these days and finally surrendered before the Court for bail from his conspicuous absence on 25.10.2004.

8. A bare perusal of the first charge shows that the facts leading to the initiation of the criminal proceedings as well as the facts leading to the framing of the first charge are one and the same and in fact, the very first charge refers the very same criminal case in Cr. No. 261 of 2004, as the basis of framing the first charge. It is also not the case of the respondent/department that the impugned first charge deals with different set of facts and circumstances. No doubt, the department can proceed parallelly and independently against the delinquent. But, in this case, it is not the parallel but only a subsequent proceedings by the department by issuing the impugned charge memo after a period of two years from the date of the criminal Court's decision. Therefore, once the criminal Court had found the delinquent not guilty and acquitted him, what would be the effect of such judgment on the departmental proceedings, is the core issue to be considered by this Court insofar as the first charge is considered.

9. At this Juncture, the following decisions relied on by the learned Senior counsel on this aspect are relevant to be quoted. In V. Kanagasabapathy Vs. The Deputy Inspector General of Police, Villupuram Range and The Additional Superintendent of Police, Prohibition Enforcement Wing, he learned single Judge of this Court found that the departmental proceedings cannot be continued after the criminal Court's acquittal on merits, especially when the charge is one and the same in both the proceedings. The relevant portions of the said judgment are extracted hereunder:--

8....The crux of the issue is when the facts and evidence in the criminal proceeding and departmental proceeding are same, the department will not be justified in pursuing the departmental proceeding after acquittal in the criminal case...

9....It is not in dispute that irrespective of the verdict of the criminal Court, either acquittal or conviction, undoubtedly, the Department can proceed with the departmental enquiry in respect of the charges levelled against the officer. However, if the criminal Court acquitted the very same person on merits, on the ground that the charges framed against him had not been proved, the Department cannot ignore the said order of acquittal. It cannot be expected that all cases in criminal proceedings on the very same set of facts will end in acquittal and the departmental action should not be proceeded with. It is settled

law that if the acquittal in the criminal proceedings is not an honourable one, it is always open to the Department to proceed with the departmental proceedings or enquiry. An honourable acquittal would only mean an acquittal which is free from any doubt....

10. Applying the proposition laid down in the above referred Division Bench decisions of this Court to the facts of this case, as the charges is one and the same in both the criminal case and in the departmental proceeding and in view of the fact that the criminal Court acquitted the petitioner on merits, it is not desirable on the part of the respondents to proceed with the departmental proceeding.

10. In The District Revenue Officer Vs. R. Palanisamy, Assistant, Erode District Revenue Unit and The Registrar, Tamil Nadu Administrative Tribunal, the Hon''ble Division Bench of this Court at paragraph 5 had held as follows:--

Acquittal of the accused by a Judicial Magistrate, therefore, does not ipso facto absolve him from the liability under the disciplinary jurisdiction of the Revenue administration. The contention that since he was acquitted by a Criminal Court, the department is completely debarred to proceed with the enquiry cannot be accepted. However, as observed in Capt. M. Paul Anthony Vs. Bharat Gold Mines Ltd. and Another, , since the facts and the evidence in both the proceedings viz., departmental proceedings and the criminal case were the same, without there being an iota of difference, the distinction which is usually drawn as between the departmental proceedings and the criminal case on the basis of approach and burden of proof, would not be applicable. In the case on hand, the facts and the evidence in both the proceedings, viz., departmental and criminal were the same and in view of acquittal of the criminal case on merits, we are of the view that the Revenue administration is not justified in pursuing the departmental enquiry.

11. In P. Ramasamy Vs. The Government of Tamil Nadu and Others, the Hon''ble Division Bench of this Court considered the very same issue and held as follows at paragraph No. 4:--

4.....Inasmuch as the charges both in the departmental enquiry and in the criminal case are one and the same, and the criminal Court acquitted the accused on merits, we are of the view that the disciplinary authority and the Tribunal ought to have focussed their attention to the verdict of the criminal Court and considered the same before passing the order. As a matter of fact, the Tamil Nadu Police Standing Orders and the instructions by the Government make it clear that if the charge in the departmental enquiry and the criminal case are identical, the dismissal of the criminal case acquitting the accused on merits is to be considered by the Department before proceeding further. We are satisfied that inasmuch as the charge in the departmental enquiry and the grounds leading to the prosecution of the accused is on the same set of facts and in view of the fact that the criminal case ended in honourable acquittal on merits even as early as on 2.11.1995, the disciplinary authority and the-Tribunal ought to have

considered the same before proceeding further. We are satisfied that the petitioner has made out a case for interference.

12. In Hon''ble Supreme Court in a decision reported in Union of India (UOI) and Others Vs. Naman Singh Sekhawat, held as follows:--

29. There cannot be any doubt whatsoever, as has been submitted by the learned Additional Solicitor General, that initiation of departmental proceeding is permissible even after the judgment of acquittal is recorded by the criminal Court. But the same would not mean that a proceeding would be initiated only because it is lawful to do so. A departmental proceeding could be initiated if the Department intended to adduce any evidence which is in its power and possession to prove the charges against the delinquent officer. Such a proceeding must be initiated bona fide. The action of the authority even in this behalf must be reasonable and fair.

35. It is not a case where a mere benefit of doubt had been given to the respondent in the criminal proceeding. The criminal Court has given a positive finding that the prosecution has not been able to prove that the accused had misappropriated the goods.

13. In another decision reported in G.M. Tank Vs. State of Gujarat and Another, , the Hon''ble Supreme Court, held at paragraph 30, as follows:--

30.....In this case, the departmental proceedings and the criminal case are based on identical and similar set of facts and the charge in a departmental case against the appellant and the charge before the criminal Court are one and the same. It is true that the nature of charge in the departmental proceedings and in the criminal case is grave. The nature of the case launched against the appellant on the basis of evidence and material collected against him during enquiry and investigation and as reflected in the charge-sheet, factors; mentioned are one and the same. In other words, charges, evidence, witnesses and circumstances are one and the same. In the present case, criminal and departmental proceedings have already noticed or granted on the same set of facts, namely, raid conducted at the appellant's residence, recovery of articles therefrom. The Investigating Officer Mr. V.B. Raval and other departmental witnesses were the only witnesses examined by the enquiry officer who by relying upon their statement came to the conclusion that the charges were established against the appellant. The same witnesses were examined in the criminal case and the criminal Court on the examination came to the conclusion that the prosecution has not proved the guilt alleged against the appellant beyond any reasonable doubt and acquitted the appellant by its judicial pronouncement with the finding that the charge has not been proved. It is also to be noticed that the judicial pronouncement was made after a regular trial and on hot contest. Under these circumstances, it would be unjust and unfair and rather oppressive to allow the findings recorded in the departmental proceedings to stand.

14. Thus, from the reading of the above Judgments and the law laid down

therein, it could be seen that though there is no bar for proceeding against a delinquent departmentally, irrespective of the verdict of the criminal Court, the department, however, cannot ignore the order of the criminal Court, acquitting the accused on merits. In other words, if there is an honourable acquittal which only means that an acquittal is free from any doubt, such honourable acquittal would certainly have a bearing on the departmental proceedings against the delinquent in respect of the very same set of facts and charges. No doubt, the degree of proof is not required that much higher in the departmental proceedings as required under the criminal Court. That does not mean that the findings of the criminal Court can be totally ignored and the department can proceed independently, especially when the criminal Court acquitted the accused on merits, by holding that there is no evidence or material placed before the Court to prove the guilt.

15. Admitted facts of this case show that the complainant in the criminal case, namely, the said Seethalakshmi was examined as P.W. 1 and she had deposed that she did not give any complaint against the petitioner and she did not know him also. Such being the categorical statement of P.W. 1, the department cannot ignore the same and maintain the very same charge against the petitioner, based on the very same complaint given by the said Seethalakshmi. Therefore, by applying the case laws referred to supra to the facts and circumstances of the case, I hold that the department is precluded from proceeding against the petitioner in respect of charge No. 1.

16. While coming to the second charge, it only exhibits the non-application of mind of the authority in framing the said charge against the petitioner, when admittedly, during such period, he was placed under suspension. When a person was placed under suspension, the question of absent from duty does not arise as he is not expected to attend the office, in spite of such suspension order. It is also a fact that the very suspension order was revoked only on 21.3.2006. Therefore, when the petitioner was on suspension during the said period, he cannot be charged as if he had absented himself without leave or permission. Hence, I find the second charge also baseless. As rightly contended by the learned Senior counsel, the second charge appears to have been passed in total non-application of mind. It also shows some malice as there is a suppression of the fact regarding suspension of the petitioner during such period. Hence, I find that the second charge also suffers from malice in law. In support of such conclusion, I follow the decision of the Hon''ble Supreme Court reported in Somesh Tiwari Vs. Union of India (UOI) and Others, as follows:--

16. Indisputably an order of transfer is an administrative order. There cannot be any doubt whatsoever that transfer, which is ordinarily an incident of service should not be interfered with, save in cases where inter alia mala fide on the part of the authority is proved. Mala fide is of two kinds one malice in fact and the second malice in law. The order in question would attract the principle of malice in law as it was not based on any factor germane for passing an order of transfer

and based on an irrelevant ground i.e. on the allegations made against the appellant in the anonymous complaint....

21.....No vigilance enquiry was initiated against him. The order of transfer was passed on material which was non-existent. The order, therefore, not only suffers from total non-application of mind on the part of the authorities of respondent 1, but also suffers from malice in law.

17. While coming to the next submission with regard to the delay in issuing the charge memo, I find that the respondent did not explain the reason for issuing the charge memo after nearly four years from the date of the alleged delinquency. Admittedly, the alleged incident took place during the year 2004 and the Criminal Court also delivered the judgment in the year 2006. However, the charge memo came to be issued only on 15.3.2008. The delay is not at all explained by the respondent in the counter-affidavit. On the other hand, it is only stated that there is no time limit fixed for initiating the departmental proceedings. I am unable to appreciate the said contention of the respondents. Certainly the department is expected to initiate disciplinary proceedings within a reasonable time, unless it is prevented from doing so by means of any conduct of the delinquent. When there was no bar for initiating the departmental proceedings parallelly, there is no explanation as to why the respondents have kept quite for more than four years. Therefore, the inordinate delay in issuing the charge memo also vitiates the entire proceedings and in support of such conclusion, I follow my own decision reported in 2012 (4) MLJ 576 (as cited supra), wherein, after considering the various decision of the Hon''ble Apex Court and this Hon''ble Court, I found that undue and unexplained delay in issuing the charge memo vitiates the entire proceedings.

18. In another decision reported in N.P.K.S. Sheik Abdullah Vs. The State of Tamil Nadu, has held that unexplained delay would cause serious prejudice to the employee. The paragraphs 12 and 14 of the above said decision read as follows:--

12. The Supreme Court repeatedly held that the inordinate delay in initiation of the disciplinary proceedings is a ground for quashing the charge memo unless the respondent satisfactorily explains the delay. When no explanation is forthcoming with regard to the delay, necessarily the unexplained delay would cause serious prejudice to the employee. Thereafter, the charge memo will have to be quashed as held by the Supreme Court in State of Andhra Pradesh Vs. N. Radhakishan, P.V. Mahadevan Vs. M.D., Tamil Nadu Housing Board, and Rangeet Singh v. State of Haryana & others, 2008 (3) CTC 781. There are no special circumstances to explain the inordinate delay and therefore, the charge memo is vitiated.

14. Normally, the disciplinary proceedings should be allowed to take their course as per the relevant rules, but then the delay defeats justice, delay causes prejudice to the charged officer, unless it can be shown that he it to be blamed for the delay or where there is proper explanation for the delay in conducting

disciplinary proceedings. In this case, the respondent has not explained the reason as to why there was an inordinate delay for the issuance of the charge dated 3.11.2009. Therefore, the delay caused in initiating the disciplinary proceedings for more than seven years appears to be inordinate and unexplained.

Thus, by considering all the facts and circumstances of the case as well as by relying the decisions referred to as stated supra, I find every justification in allowing the writ petition and accordingly, the same is allowed and the impugned charge memo is quashed. Consequently, connected miscellaneous petitions are closed. No costs.