

(2009) 03 MAD CK 0060
In the Madras High Court
Case No : Writ Petition No. 32184 of 2006

Sekhar

APPELLANT

Vs

The Government of Tamil Nadu

RESPONDENT

Date of Decision : 30-03-2009

Acts Referred:

Dowry Prohibition Act, 1961 — Section 4
Penal Code, 1860 (IPC) — Section 304, 306
Tamil Nadu Government Servants Conduct Rules, 1973 — Rule 19(2)
Tamil Nadu Police Subordinate Service (Discipline and Appeal) Rules, 1955 — Rule 3

Citation : (2009) 03 MAD CK 0060

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : Shanmugapriya, for the Appellant; P. Gurunathan, GA, for the Respondent

Final Decision : Dismissed

Judgement

K. Chandru, J.—The petitioner was the Police constable attached to Armed Reserve in Dharmapuri District. The petitioner was involved in

a criminal case in Crime No. 63/1988 at Pochampalli Police station. He was charge-sheeted in terms of Section 306 IPC read with Section 4 of

Dowry Prohibition Act, 1961 and Section 304(B) IPC. On being referred to trial by the Sessions Court, the matter was taken up on file as

S.C.No. 83 of 1989.

2. The charge against the petitioner was that he developed intimacy with one Vasuki and also had sexual intercourse with the said lady and also

demanding Rs. 25,000/- or a bullet motor cycle, as a precondition for marrying that lady. The said Vasuki on 6.5.1988 committed suicide by

pouring kerosene on her and self immolated herself. A dying declaration from

that Vasuki was also taken.

3. The criminal court, after trial, by a judgment, dated 16.9.1991, acquitted the petitioner. In fact, in paragraph 28, the learned Sessions Judge held

that even though the petitioner might have demanded dowry and the girl would have become heart broken and committed suicide and it should

have been the reason for suicide, that cannot be termed as abetment in terms of I.P.C. The learned Judge also held that the charges were not

proved beyond reasonable doubt and therefore, he was acquitted.

4. However, the respondents desired to proceed against the petitioner departmentally and therefore, framed charges under Rule 3(b) of the Tamil

Nadu Police Subordinate Service (Discipline and Appeal) Rules, 1955, by a charge memo, dated 22.6.1991. The petitioner did not question the

charge memo at the relevant time by stating that the charge framed by the department was identical and therefore, there was no reason to proceed

after acquittal by the trial court. The petitioner sent his explanation, denying the charges. He largely relied upon the evidence recorded in the

criminal case as the reason for his non involvement in the said case.

5. However, an oral enquiry was conducted and in that oral enquiry, the witnesses were examined and some of them were also the witnesses

before the criminal court. The second respondent, by an order, dated 26.11.1991, came to the conclusion that the findings rendered by the

Enquiry Officer was supportable by evidence. He also disbelieved the defence evidence produced by the petitioner. It is on that ground, the

second respondent came to the conclusion that the petitioner was responsible for the suicide of the girl after leading her to believe that he would

marry her. This conduct of the petitioner was unbecoming of a police man and there was no extenuating circumstance to take a lenient view over

the conduct of the petitioner. In that view of the matter, he dismissed the petitioner from service.

6. As against the dismissal, the petitioner preferred an appeal to the first respondent. Since the said appeal was filed on 20.02.1997, the State

Government refused to entertain the appeal on the ground that it was filed after a period of four years. This was communicated by an order, dated

29.4.1997. Thereafter, the petitioner filed O.A. No. 6817 of 1997 before the Tamil Nadu Administrative Tribunal.

7. On notice from the Tribunal, on behalf of the first respondent, a reply affidavit, dated 11.9.1998 was filed. In view of the abolition of the

Tribunal, the matter stood transferred to this Court and was renumbered as W.P. No. 32184 of 2006.

8. In the reply affidavit, it was stated that the conduct of the petitioner was unbecoming of a policeman and that is the ground for dismissing the petitioner from service. In paragraphs 7 and 9, it was averred as follows:

7. ...Though the criminal case ended in acquittal, in the departmental enquiry, it is made out from the evidence of P.W.1 and P.W.2 that the

applicant visited the village Santhoor, the date on which the girl Vasuki poured Kerosene on her body and committed suicide. The preponderance

of probability is made out from the evidence of witnesses and documents which is enough to prove that the applicant was responsible for the death

of the girl Vasuki. In a court of law, the Honourable court requires fool proof evidence proving the offences of the accused beyond doubt for

giving conviction, whereas in a departmental enquiry, the preponderance of probability of evidence to prove the charge is enough to give a

punishment, as laid down in various cases.

...

9. ...The order passed by the second respondent in the Punishment Roll against the applicant is a speaking order with all points covered, and the

request of the applicant to set aside the punishment is not reasonable. In this case, the applicant though not married the girl Vasuki, lived with her

and through him, she conceived 3 or 4 times. This shows that he lived with her though not married to her. The contention of the applicant that he

was acquitted by the court of law is correct. But in the departmental enquiry, it is proved that he was the cause of death of the girl Vasuki.

9. However, Ms. Shanmugapriya, the learned Counsel appearing for the petitioner submitted that since it is a case of enquiry after acquittal by the

criminal court, the respondents should not have proceeded with the enquiry. She also placed reliance upon the judgment of the Supreme Court in

Capt. M. Paul Anthony Vs. Bharat Gold Mines Ltd. and Another, . The learned Counsel also relied upon the judgment of the Supreme Court in

G.M. Tank Vs. State of Gujarat and Another, and placed reliance upon the findings rendered in paragraph 30 of the said judgment. Therefore, in

the absence of any power to conduct an enquiry, the dismissal order passed by the respondent was wholly unjustified.

10. Before dealing with the submissions raised by the petitioner, it is necessary to refer to Rule 19(2) of the Tamil Nadu Government Servants"

Conduct Rules 1973, which is as follows:

(2) No Government servant shall involve himself in any act involving moral turpitude on his part including any unlawful act, which may cause embarrassment or which may bring, discredit to Government.

11. In the present case, the question whether an enquiry can be conducted after the acquittal by the Criminal court, came to be considered by the

Supreme Court in *Ajit Kumar Nag Vs. General Manager (P.J.), Indian Oil Corporation Ltd., Haldia and Others*, . The Supreme Court in that case

very clearly held that an acquittal by the criminal court does not preclude the employer from taking an action if it is otherwise permissible. They

have also held that an acquittal by the criminal court would not debar the employer from exercising the power in accordance with the rules and

regulations in force. Two proceedings, criminal and departmental, are entirely different and they operate in different field and have different

objectives.

12. Similarly, the Supreme Court in *Depot Manager, Andhra Pradesh State Road Transport Corporation Vs. Mohd. Yousuf Miya, etc.*, has held

that the purpose of departmental enquiry and of prosecution are two different and distinct aspects. The crime is an act of commission in violation of

law or of omission of public duty. The departmental enquiry is to maintain discipline in the service and efficiency of public service. They have also

held that it is always a question of fact to be considered in each case depending on its own facts and circumstances.

13. In fact, in *G.M.Tank case*, the Supreme Court did not disagree with the earlier binding precedents of the Supreme Court. On the contrary, a

reference to paragraph 30 clearly shows that the Supreme Court had followed the earlier decisions. In that particular case, it was found out that the

charges, evidence, witnesses and the circumstances are one and the same. In that particular case, the Government servant was acquitted on merits.

Therefore, the Supreme Court held that it would be unjust and unfair and rather oppressive to allow the findings recorded in the departmental

proceedings to stand.

14. The case relied on by the petitioner does not advance the case of the petitioner. On the contrary, as noted above, the criminal court was very narrow in reading the term ""abetment"" and has held that the petitioner was not guilty of abetment to bring the case u/s 306 IPC.

15. In a later decision, the Supreme Court in *Indian Overseas Bank, Anna Salai and Anr. v. P. Ganesan and Ors.* reported in 2008 (1) SCC 650

held that the standard of proof in disciplinary proceedings and that in criminal trial is different. It is also held that what was necessary to be noticed

by the High Court was not only the existence of identical facts and evidence in matter, it was also required to take into consideration the question

as to whether the charges levelled against the delinquent officer, both in criminal case as also in disciplinary proceedings, were same.

16. In the present case, as found by the second respondent, the conduct of the petitioner was unbecoming of a Government servant and he has

mis-utilized the confidence reposed by an innocent girl and thereafter, deceived her, which might have forced the girl to commit suicide. However,

the conduct of the Government servant in dealing with the modesty of an innocent girl was found proved in the oral enquiry and it cannot be said

that the punishment awarded on the petitioner was disproportionate considering the gravity of charge.

17. In the light of the same, this writ petition stands dismissed. No costs.