

(2002) 10 MAD CK 0146

Madras High Court

Case No: Writ Petition No. 2112 of 2002 and WPMP No. 2918 of 2002

K. Krishnaveni

APPELLANT

Vs

The Government of Tamil Nadu

RESPONDENT

Date of Decision: Oct. 25, 2002

Acts Referred:

- Penal Code, 1860 (IPC) - Section 109, 323, 341, 342, 354
- Tamil Nadu Police Subordinate Service (Discipline and Appeal) Rules, 1955 - Rule 15(A), 15A(1)

Citation: (2003) 1 MLJ 36

Hon'ble Judges: K. Ganaprakasam, J

Bench: Single Bench

Advocate: J. Rajakalifullah, for the Appellant; R. Lakshminarayanan, GA - RR1 to 4 and K. Venkataraman, - RR5 to 7, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

1. The petitioner, in the affidavit filed in support of the petition, has stated that she was residing within the limits of Pallavaram Police Station. Her husband Kasi was working as Sub Inspector of Police, Special Security Group in Tamil Nadu Police Service. On 1.2.1995, the petitioner's daughter Kanimozhi was kidnapped by one Babu and Palani, while she was returning from School. She was illegally confined and repeatedly raped by those persons, viz. Babu and Palani. On the complaint given by the petitioner to the Inspector of Police, Pallavaram Police Station (R7), a case was registered in Cr. No. 199/1995, for the offence u/s 366(A) IPC. The accused Palani was arrested and the petitioner's daughter was retrieved on 3.2.1995. Babu was not arrested. The 6th respondent, Sakthi Chandrasekaran, was employed as the Sub Inspector of Police, Pallavaram Police Station, between 15.11.1993 to 17.10.1995. The 7th respondent, Gunasekaran was the Inspector of Police, Pallavaram Police Station, during the relevant period. The 5th respondent, Thangam

was the Head Constable, attached to the Pallavaram Police Station. On the pretext of conducting an enquiry, the respondents 5 to 7 took the petitioner's daughter Kanimozhi to the police station on 5.2.1995, and obtained a statement under threat, coercion and intimidation, as if she had sexual intercourse on her own volition and the same was done to suppress the offence and to help the accused. On the basis of the said statement, final report was filed before the court by the respondents 5 to 7 in collusion with the accused to frustrate the complaint. The respondents 5 to 7 abused their powers and grossly failed and neglected to discharge their duties in accordance with law. The petitioner and her relatives protested the said act of the respondents 5 to 7. Instead of taking appropriate action against the culprits, the petitioner and others were arrested, on false charges for the offences u/s 342, 323 and 354 IPC in Cr. No. 721 of 1995 and for the offences under Sections 342, 506(II) IPC in Cr. No. 722 of 1995, by the 6th respondent and they were detained and beaten by the respondents 5 to 7. As the respondents 5 to 7 were helping the accused, the petitioner apprehended that her daughter will not get justice and therefore, she gave a complaint to the Superintendent of Police, Chengleput District, appraising him of all the facts and requested him to entrust the investigation to the District Crime Branch and to hold an enquiry into the reprehensible conduct of the respondents 5 to 6. By order dated 25.7.1995, the Superintendent of Police, Chingleput District, directed the 7th Respondent to hand over the entire C.D. Files of the case (1) Cr. No. 199/1995 (2) Cr. No. 721/1995, (3) Cr. No. 722/195 and FIR. No. 90 of 1995 to the Inspector of Police, District Crime Branch, St. Thomas Mount, Chennai, for reinvestigation. As the respondents 5 to 7 did not discharge their duties properly and also did acts in abuse of their powers, they were placed under suspension, pending enquiry into grave charges against them. On the basis of the enquiry report, charges were framed u/s 3(b) of The Tamil Nadu Police Subordinate Service (Discipline and Appeal) Rules, 1955, against the respondents 5 to 7 in PR.Nos.144 to 146 of 1996. All the charges are grave in nature. The Superintendent of Police, Kancheepuram was appointed as the Enquiry Officer and after issuing charge memo on 14.8.1995, he proceeded with the enquiry.

2. The respondents 5 to 7 filed O.A.Nos.3392/1996, 3391/1996 and 3390/1996 respectively, to quash the order of suspension. Those petitions were dismissed by order dated 12.9.1996 with the following observations:-

"In this charge memo also, a detailed statement of allegations is made, which contains particulars to substantiate the charges.... The Tribunal is not expected to go into the merits of the allegations contained in the charges, even before the enquiry was completed by the Enquiry Officer..... The impugned orders of suspension can neither be set aside on the ground that the grave charges for which the applicants were placed under suspension has got no basis."

3. It is stated that by suppressing the orders passed in the above OAs, the respondents 5 to 7 have filed O.A.NOs.1089/1997, 9625/1997 and 9191/1997,

respectively, before the Tamil Nadu State Administrative Tribunal, to quash the charge memo issued by the 2nd respondent and the Tribunal passed an interim order on 25.11.1997, restraining the 2nd and 3rd respondents from passing final orders on the charge memo, till the criminal case registered against the accused persons in SC. No. 19/1997, on the file of the Sessions Judge, Chingleput is disposed of.

4. The petitioner is given to understand that the Enquiry Officer proceeded with the enquiry and witnesses were examined and no final orders were passed, pursuant to the stay order granted by the Tribunal. In the meanwhile, the 6th respondent was promoted as Inspector of Police. The petitioner also filed WP. No. 2603/1996 to frame charges against the respondents 5 to 7 and the same is pending. In the meanwhile, the District Crime Branch, Chingleput, after reinvestigation, filed a charge sheet against the accused Babu and Palani, for the offences u/s 366(A) and 376 read with 109 IPC. Pending trial, accused Palani died. The other accused Babu was convicted by the learned Principal Assistant Sessions Judge, Chingleput in SC. No. 19 of 1997 by order dated 6.11.2000 and sentenced to undergo Rigorous Imprisonment for 7 years and imposed a fine of Rs.1,000/-. As the trial against the accused, who have committed the offence of rape, is completed, the petitioner represented the matter to the respondents 2 to 4, requesting them to pass orders, on the enquiry held against the respondents 5 to 7, as per the orders of the tribunal. Then only, the petitioner came to know that the 2nd respondent herein by his proceedings No. 241341/AP-IV(2)/2000, dated 3.2.2001, passed an order, thereby charges against the respondents 5 and 6th respondents were ordered to be dropped with a severe warning memo. No order was passed as against the respondent 7, Gunasekaran. Pursuant to the said order, the respondents 5 and 6, withdrew the pending OA.Nos.1089/1997 and 9625/1997, before the Tamil Nadu Administrative Tribunal. The petitioner stated that the order passed by the 2nd respondent is not justifiable and dropping the charges against the respondents 5 to 7 is illegal. There is no justification to treat all pending disciplinary cases alike and pass a general order. The 2nd respondent has no power to review the pending enquiry under Rule 15(A)(i)(ii)(a) of the TNPSS (D&A) Rules. Only in the said circumstances, the order passed by the 2nd respondent is challenged in this writ petition.

5. Thangam, the 5th respondent filed a counter affidavit, wherein he has stated that while he was serving as a Head Constable, in the Pallavaram Police Station from 24.8.1984 to 7.6.1996, one Sathya and Anjuham, daughters of Kasi, husband of the writ petitioner presented a petition on 28.3.1995, stating that one Palani @ Palanidasan threatened them with knife on 27.3.1995 and the said petition was numbered as PT.90/1995 and it was enquired into and found that no such occurrence took place. The petition was subsequently reinvestigated by the Inspector of Police, District Crime Branch, who registered a case in Cr. No. 18/1995 u/s 506(2). On 9.5.1995, one Kangammal preferred a complaint stating that Ratnam

and others assaulted her and outraged her modesty and a case in Cr. No. 921/1995 u/s 341, 323 and 354 IPC was registered. On the same date, the accused in Cr. No. 721/1995 preferred another complaint and the same was registered as Cr. No. 722/1995 u/s 421 and 341 IPC. He referred about the investigation made in the complaints and it is stated that on the opinion given by the Assistant Public Prosecutor (G.II), a case was registered against the accused in Cr. No. 721/1995, as he is the aggressor. The respondent has stated that he has nothing to do with laying of the charge sheet, except making first investigation of the case. The charges framed against him are repudiated, particularly that he has not suppressed the fact in the course of the investigation in Cr. No. 721/1995 in Pallavaram Police Station. He admits about the petition filed before the Tamil Nadu State Administrative Tribunal and about the stay granted by the tribunal. It is also stated by him that the Director General of Police reviewed the punishment role for departmental lapses against the police personnel throughout the State and found that the charges against the respondents are minor and not grave and decided that the delinquent officer can be let off with a severe warning memo. It is stated that the order passed by the Director General of Police, (R2) is valid.

6. The 6th respondent, viz. Sakthi Chandrasekaran, in his counter affidavit, has stated that on 1.2.1995, when he was serving as the Sub Inspector of Police, Pallavaram Police Station, one Kasi preferred a complaint, stating that his daughter Kanimozhi, aged about 17 years was missing from 1.2.1995 and he had registered a case in Cr. No. 199/1995 and took up investigation and apprehended Palani @ Palanidasan along with the victim girl Kanimozhi at Vedal Village, on 4.2.1995. After apprehending the accused Palani, the 6th respondent took assistance of one Babu and another person, and the victim girl was secured and brought to the Pallavaram Police Station and in the presence of the Inspector of Police, Pallavaram, M. Gunasekaran, the victim girl Kanimozhi gave a statement that on the persuasion of Palani @ Palanidasan, she had gone along with him and they had sexual intercourse. The certificate produced by the victim girl's father shows that she was born on 1.7.1977 and she had completed the age of 17 years and not 18 years and the case was altered one u/s 366(A) IPC and the victim girl was produced before the Judicial Magistrate, Tambaram, who in turn, sent her for medical examination and thereafter she was sent along with their parents. On further investigation by the 7th respondent, a charge sheet was laid. It is stated that he had investigated the matter without any fear or favour. On the petition given by the victim girl's father, the case was transferred to the District Crime Branch for further investigation and it was investigated upon and the charge was altered to one u/s 376 read with 109 IPC against the accused Palani and Babu. But, however charge memo was issued to this respondent and he repudiates the charges levelled against him. He has stated that he was not aware of the involvement of the co-accused Babu initially and only after examining the victim girl, it was revealed that Babu was also involved and was arrested and remanded to judicial custody. He also stated that investigation was

done properly and the Director General of Police reviewed the punishment role for departmental lapses against the police personnel throughout the State and he was of the opinion that the charges against this respondent are minor and not grave in nature and decided that the delinquent officer can be let off with a severe warning memo and the same cannot be questioned in this writ petition.

7. The 7th respondent, Gunasekaran filed a separate counter affidavit, which embarrasses the counter filed by the 5th and 6th respondents. This respondent took up investigation and apprehended the accused, viz. Palani @ Palanidasan and arrested him along with the victim girl on 4.2.1995. The victim girl gave a statement, stating that on the persuasion of Palani, she went along with him and lived together as husband and wife. A school certificate produced by her father shows that the victim girl was born on 1.7.1977 and aged 17 years and therefore, the case was altered u/s 366(A) IPC. After completing the investigation, the accused Palani was remanded to judicial custody. At the instance of the father of the victim girl, the case was transferred to the Superintendent of Police, Chengai East District, District Crime Branch and the matter was further investigated. It is stated that he has carried out the investigation properly and fairly and therefore, the charges framed against him are not proper. He also admits that he moved to Tamil Nadu State Administrative Tribunal, challenging the charge memo and the Tribunal passed an interim order. The criminal case ended in a punishment to the 2nd accused and he was sentenced to rigorous imprisonment for 7 years and imposed a fine of Rs.1,000/-. He also narrated the investigation taken by him. It is stated that the Deputy Inspector General of Police, Chengai Range, in his order dated 14.2.2001, has imposed a punishment of with holding the next increment for one year without cumulative effect and this respondent has already suffered the punishment and due to this punishment his promotion as Dy. Superintendent of Police, Cat-I was denied. As such, the action was not withdrawn as contended by the writ petitioner.

8. The learned advocate for the writ petitioner has submitted that in view of the fact that the 7th respondent was punished on the charges levelled against him, no argument was advanced as against the 7th respondent. But, however, the 2nd respondent's order, to drop the charges with severe warning is not proper and the 3rd respondent did so without any application of his mind. It is also submitted that the punishment in respect of 48 officers were taken together in a batch and the 3rd respondent by order dated 3.2.2001, without considering the charges against each and every individual officer, has passed a common order, by stating that, "after careful examination of the cases, it is decided that further action in certain punishment role may be dropped since the charges are not so grave in nature and that the delinquent officers can be let off with a severe memo." The said order is unjustifiable. It is further submitted that Rule 15A(1)(ii)(a) of the TNPSS (D&A) Rules can be invoked only to confirm, modify or set aside the order. But, as far as the cases of the respondents 5 and 6 are concerned, there is no such order, which can be modified or set aside. As such, the order passed by the 2nd respondent is not

legal. As the 2nd respondent is the superior officer of the respondents 5 and 6, he has passed such a very mild order and the same is nothing short of a colourable exercise of powers. It is also in gross derogation of powers vested with the 2nd respondent.

9. In the above said context, it will be useful to refer the concerned rules. Rule 15A(1) of the TNPSS (D&A) Rules, 1955, states, " Notwithstanding anything contained in these rules.

i. The Statement Government, or

ii. The head of the Department directly under the State Government in the case of a Government servant serving in a department or office under the control of such Head of Department; or

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iv. Any other authority specified in this behalf by the State Government by a general or special order, and within such time as may be prescribed in such general or special order, may at any time, either on their or its own motion or otherwise call for the records of any inquiry any review any order made under these rules, after consultation with the Tamil Nadu Public Service Commission, where such consultation if necessary and may:-

a) Confirm, modify or set aside the order; or

b) Confirm, reduce, enhance or set aside the "penalty" imposed by the order, or impose any penalty where no penalty has been imposed.

10. Pointing out the above said rules, it is argued on behalf of the writ petitioner that the order passed by the 2nd respondent with regard to the charges levelled against the respondents 6 and 7 ever before passing an order, either imposing penalty or no penalty, is not proper.

11. On the contrary, the learned advocate for the respondents 5 and 6 has submitted that under Rule 15A(1)(ii)(a) of the TNPSS (D&A) Rules, the 2nd respondent is empowered to review the pending punishment role for minor and major penalty and could pass orders and the act of the 2nd respondent is in conformity with the above said rules and he has not done anything in violation or derogation of the said rule.

12. The rules of TNPSS (D&A) Rules, which has been placed before me by the learned advocate for the writ petitioner does not contain any Rule 15A(1)(ii)(a), but, whereas Rule 15A(1)(iv)(a) states that "the authorities concerned may confirm, modify or set aside the order. In order to invoke the power under (iv)(a), there must be an order either to confirm or modify or set aside. The charge memos levelled against the respondents 5 and 6 are still pending and the same have got to be enquired into and the enquiry officer has to furnish his report either approving the charges or

otherwise and only thereafter, the 2nd respondent could pass any order, as contemplated under Rule 15A(iv)(a). In the absence of any order having been passed as against the charge memo levelled against the respondents 5 and 6, the order passed by the 2nd respondent is premature and vitiated and the same is liable to be set aside.

13. It is also admitted by both the learned advocates for the petitioner and the respondents 5 and 6 that on the charge memo levelled against the 7th respondent, the charges were held proved as grave in nature and he was punished. That was done only after the completion of the enquiry on the charges levelled against him. Likewise, an enquiry has got to be conducted as against the respondents 5 and 6 for the charges levelled against them. Then only, further order could be passed under Rule 15A(iv)(a). In the absence of any such order by the investigating officer, the order passed by the 2nd respondent would definitely vitiate and therefore, the investigation against the respondents 5 and 6 have got to be proceeded with.

14. In the result, the writ petition is allowed and the order passed by the 2nd respondent dated 3.2.2001 and the proceedings of the 4th respondent dated 22.3.2001 are quashed and set aside and the respondents 2 and 4 are directed to proceed with the enquiry against the respondents 5 and 6 in PR/144/96 to 146/96/CE, in accordance with law. No costs. Consequently, connected WPMP is closed.