

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 22-9-2015

Pronounced on : 5-10-2015

CORAM:

THE HON'BLE MR. JUSTICE P.N.PRAKASH

Crl.O.P.No.6752 of 2014 & M.P.Nos.1 of 2014, 1 of 2015
Crl.O.P.No.6753 of 2014 & M.P.Nos.1 of 2014, 1 of 2015
Crl.O.P.No.20992 of 2015 & M.P.Nos.1, 2 of 2015

Crl.O.P.No.6752 of 2014

Hrishikeshkundu ...Petitioner/Accused-1

Vs.

1. State through the
Deputy Superintendent of Police,
Crime Branch C.I.D.,
Coimbatore
Kambainallur P.S. Cr.No.277/2012 ...1st Respondent/Complainant
2. Karruppusamy
Deputy Tahsildar, Special Projects,
Taluk Office,
Harur. ...2nd Respondent/DefactoComplainant

Criminal Original Petitions filed under Section 482 of Code of Criminal Procedure with a prayer to call for the records in C.C.No.11 of 2014 on the file of the learned Judicial Magistrate No.I, Dharmapuri, quash the above case against the petitioner.

Crl.O.P.No.6753 of 2014

Hrishikeshkundu ...Petitioner/Accused-1

Vs.

1. State through the
Deputy Superintendent of Police,
Crime Branch C.I.D.,
Coimbatore
Erode Town P.S. Cr.No.1423/2012 ...1st Respondent/Complainant
2. E.Liyakath Ali,
Special Tahsildar (Civil Supplies),
Special Officer,
Mobile Unit for TNPSC Examination,
Erode District. ...2nd Respondent/Defacto
Complainant

Criminal Original Petitions filed under Section 482 of Code of Criminal Procedure with a prayer to call for the records in C.C.No.14 of 2014 on the file of the learned Judicial Magistrate No.III, Erode, quash the above case against the petitioner.

Crl.O.P.No.20992 of 2015

S. Balaji ...Petitioner/Accused-25

Vs.

1. State through the
Deputy Superintendent of Police,
Crime Branch C.I.D.,
Coimbatore
Kambainallur P.S. Cr.No.277/2012 ...1st Respondent/Complainant
2. Karruppusamy
Deputy Tahsildar, Special Projects,
Taluk Office,
Harur. ...2nd Respondent/Defacto
Complainant

Criminal Original Petitions filed under Section 482 of Code of Criminal Procedure with a prayer to call for all records pertaining to the complaint pending in C.C.No.11 of 2014 on the file of the learned Judicial Magistrate No.I, Dharmapuri, and quash the same as against the Petitioner.

For Petitioners in Crl.O.P.6752 & : Mr.A.Ramesh, Sr.Counsel,
& 6753 of 2014 for Mr.R.Thiagarajan

For Petitioner in Crl.O.P.20992/2015: Mr.A. Natarajan, Sr.Counsel,
for Mr.J.Ramesh

For 1st Respondent in all Petitions: Mr.C.Emalias,
Additional Public Prosecutor

COMMON ORDER

On a complaint lodged by Mr.E.Liyakath Ali, Special Tahsildar (Civil Supplies) and Member of Flying Squad, Erode, the Erode Town Police registered a case in Crime No.1423 of 2012 on 13.8.2012 under Sections 120B, 406 and 420 IPC against one Senthil and Danakodi and after completing investigation, the Erode Police have filed a final report in C.C.No.14 of 2014 before the Judicial Magistrate No.III, Erode, under Sections 120B, 406, 420 IPC read with Section 66B and 84B of the Information Technology Act, 2008, against 30 accused. Challenging the said prosecution, Hrishikeshkundu (A1) has filed Crl.O.P.No.6753 of 2014.

2. On a complaint lodged by Mr.Karuppusamy, Deputy Tahsildar and Member of Flying Squad, Dharmapuri, the Kambainallur Police registered a case in Crime No.277 of 2012 on 12.8.2012 under Section 120B, 417, 420, 465 and 468 IPC against (1) Sureshkumar, (2) Vivekanandhan, (3) Rengaraj, (4) Boopesh, and after completing the investigation, filed final report in C.C.No.11 of 2014 before the Judicial Magistrate No.I, Dharmapuri for the offences under Sections 120B, 417 read with 109, 411 IPC and Sections 66B and 84B of the Information Technology Act, 2008 against 30 accused. Challenging the said prosecution, Hrishikeshkundu (A-1) has filed Crl.O.P.No.6752 of 2014 and S.Balaji (A-25) filed Crl.O.P.No.20992 of 2015.

3. Heard Mr.A.Ramesh, learned Senior Counsel for Hrishikeshkundu (A-1)/petitioner in Crl.O.P.Nos.6752 & 6753 of 2014; Mr.A.Natarajan, learned Senior Counsel for S.Balaji (A-25)/petitioner in Crl.O.P.No.20992 of 2015, as well as Mr.C.Emalias, learned Additional Public Prosecutor appearing for the State.

4. On 13.6.2012, the Tamil Nadu Public Service Commission (in short TNPSC) issued notification inviting applications for Group-II Examinations. The question papers for the examination was prepared by the TNPSC and the task of printing the question papers was entrusted with M/s.Security Hi-Tech Graphics Private Limited, Kolkatta, owned by Hrishikeshkundu (A-1) on 19.7.2012. Hrishikeshkundu (A-1) appears to have entered into a contract with the TNPSC for confidentially and secretly printing the question papers and sending the same to TNPSC ahead of the examination. Examination for General Tamil and General Knowledge/General English and General Knowledge paper was scheduled to be held on 12.8.2012 at various centres spread throughout Tamilnadu. At Erode Centre, Mr.E.Liyakath Ali, Special Tahsildar (Civil Supplies) and Member of the Flying Squad caught red-handed one Senthil and Danakodi, who were in possession of hand written answers for all the questions that appeared in the above said question paper. As stated above, they both were handed over to the Erode Police and a case in Cr.No.1423 of 2012 was registered.

5. Similarly, at the Harur centre, Mr.Karuppasamy, Deputy Tahsildar and Member of Flying Squad caught one Sureshkumar (A-30) with papers containing hand written answers for all the questions in the question paper and he handed over Sureshkumar to Dharmapuri Police, based on which a case in Cr.No.277 of 2012 was registered.

6. To dispel certain doubts, it may be necessary to expatiate on some aspects. The question paper set by the TNPSC will have objective type questions and the candidates will be provided with a Coding Sheet, in which they will have to blacken corresponding correct answer and submit both the Coding Sheet and the question paper to the Invigilator. The standard of education has come down to such deplorable levels that it is not sufficient for the candidates to have the question paper leaked, but they also require to be told the correct answers, which they have to tick in the Coding Sheet. Thus, at both the Centres, some persons were caught red-handed with hand written answer sheets even at the beginning of the examination, which prompted the Crime Branch CID to take up the investigation of both the cases, as the leakage has stirred the hornet's nest in the State of Tamilnadu. The arrest of those in the examination centres led to a trail, which ultimately ended in Hrishikeshkundu (A-1). It may be relevant to state here that out of 30 accused in each case, at least first four accused are common in both the cases. The gravamen of the allegation against Hrishikeshkundu (A-1) is that he had in connivance with his trusted lieutenant Kethra Mohan Manthan (A-2) had leaked the question papers.

7. After the final reports were filed, these quash petitions were filed and were heard extensively by this Court on 17.9.2014. It was contended before this Court that there is no iota of material implicating Hrishikeshkundu (A-1). This Court ordered the Police to conduct further investigation. After conducting further investigation, the CBCID have filed supplementary final reports in both cases, which were also assailed before this Court.

8. Mr.A.Ramesh, learned Senior Counsel appearing on behalf of the Counsel on record for Hrishikeshkundu (A-1) submitted that M/s.Security Hi-Tech Graphics Private Limited is a Company and Hrishikeshkundu (A-1) is the Managing Director and therefore he cannot be held vicariously liable for the offences under the Indian Penal Code. He also submitted that during the further investigation, the Police have recorded the statement of one V.S.Raju @ Rajendran, which has intrinsic contradictions and cannot be relied upon to fasten criminal liability on Hrishikeshkundu. Learned Senior Counsel further contended that the Police had recorded the statement of one Arul, who belongs to Kambainallur in Tamilnadu and is said to have been working with Hrishikeshkundu (A-1) in Kolkatta. The averments in his Police statement have over-lapped into the statement of V.S.Raju @ Rajendran, which was recorded during the

course of further investigation. Therefore, the learned Senior Counsel contended that the statements of both Raju @ Rajendran and Arul are not worthy of acceptance.

9. Mr.A.Ramesh, learned Senior Counsel further contended that Hrishikeshkundu (A-1) was not in Kolkatta from 5.8.2012, and that he had left for U.K. via Dubai on 3.8.2012. In support of his contention learned Counsel filed along with the typed set of papers, photo copies of Hrishikeshkundu's passport and air tickets. Learned Senior Counsel further relied upon a communication dated 3.9.2012 from the Director of Government Examinations, Tamilnadu, addressed to the accused wherein it is stated that during inspection by the officials, she found two Tamilians working in the Press as Proof Readers and she had recommended to Hrishikeshkundu (A-1) to oust them forthwith. Learned Senior Counsel also submitted that the prosecution has not established any consideration that has been received by Hrishikeshkundu (A-1) for leaking the question papers. He has further contended that TNPSC had entrusted with Hrishikeshkundu (A-1) only printing of the question papers, but the charge sheet refers to answer sheets also, and therefore the final report is vitiated. Learned Senior Counsel relied upon the following decisions in support of his contentions:

- (a) K.S.Narayanan v. S.Gopinathan (1982 CrL.L.J. 1611)
- (b) CBI, Hyderabad v. K.Narayana Rao ((2012) 9 SCC 512)
- (c) Rajiv Thapar v. Madan Lal Kapoor ((2013) 3 SCC 330), and
- (d) Prashant Bharati v. State ((2013) 9 SCC 293).

10. Mr.A.Natarajan, learned Senior Counsel appearing for S.Balaji (A-25), petitioner in CrL.O.P.No.20992 of 2015 submitted that the allegation that S.Balaji (A-25) sold a copy of the question paper to Rengaraj (A-26) is not true, because Rengaraj (A-26) had got the question paper much earlier through his brother Kumar @ Karthik @ Karthikeyan (A-18). Therefore, he submitted that the proceedings against S.Balaji (A-25) should be quashed.

11. The State has filed a detailed Counter affidavit narrating the sequence of events and involvement of the petitioners in the offence.

12. This Court gave its anxious consideration to the arguments advanced by both sides.

13. The parameters for quashing the prosecution has been set out in Rajiv Thapar v. Madan Lal Kapoor ((2013) 3 SCC 330), which read as follows:

"30. Based on the factors canvassed in the foregoing paragraphs, we would delineate the following steps to determine the veracity of a prayer for quashment raised by an accused by invoking the power vested in the High Court under Section 482 CrPC:

30.1. Step one: whether the material relied upon by the accused is sound, reasonable, and indubitable i.e. the material is of sterling and impeccable quality?

30.2. Step two: whether the material relied upon by the accused would rule out the assertions contained in the charges levelled against the accused i.e. the material is sufficient to reject and overrule the factual assertions contained in the complaint i.e. the material is such as would persuade a reasonable person to dismiss and condemn the factual basis of the accusations as false?

30.3. Step three: whether the material relied upon by the accused has not been refuted by the prosecution/complainant; and/or the material is such that it cannot be justifiably refuted by the prosecution/complainant?

30.4. Step four: whether proceeding with the trial would result in an abuse of process of the court, and would not serve the ends of justice?

30.5. If the answer to all the steps is in the affirmative, the judicial conscience of the High Court should persuade it to quash such criminal proceedings in exercise of power vested in it under Section 482 CrPC. Such exercise of power, besides doing justice to the accused, would save precious court time, which would otherwise be wasted in holding such a trial (as well as proceedings arising therefrom) specially when it is clear that the same would not conclude in the conviction of the accused."

14. The fact that Hrishikeshkundu's company was entrusted with the task of printing the question papers is not under dispute. The papers containing the answers were recovered from two different places, two different persons, and by two different Police.

15. The Examinees were arrested and from the information provided by them, the Police reached the Operators outside the State of Tamilnadu viz., Anandarao (A-4), Subashkumar Doss (A-7) in Bhuvaneswar, Odissa; and Kantha Rao (A-5), Srinivasa Rao (A-6), Rajesh @ Ramesh in Visagapattinam, Andhra Pradesh, from whom they got information about the involvement of Gagan Bihari Senapathy @ Gagan (Advocate/A-3) and Kethra Mohan Manthan (A-2) the lieutenant of Hrishikeshkundu (A-1). Thus, one thing is abundantly clear that the question paper did not leak after it reached Tamilnadu and the leakage started from Kolkatta and it traveled from East down South through Odissa, Andhra Pradesh and reached the destination viz., Tamilnadu. Apart from the statement of Arul and Raju @ Rajendran, the Police have

recorded the statements of Sriresh Sha, Shyamal Ghosh, Jyotiramoy Mitra, Sudarshan, who are working in the Press of Hrishikeshkundu (A-1) and who have stated that Hrishikeshkundu (A-1) and Kethra Mohan Manthan (A-2) are into the business and involved themselves in leaking the question papers for huge consideration.

16. Mr.C.Emalias, learned Additional Public Prosecutor submitted that this is not the first case against Hrishikeshkundu (A-1), and that he was involved in a similar offence by leaking the question papers of Andhra Pradesh Public Service Commission, in which case he was granted anticipatory bail by the Andhra Pradesh High Court, which came to be set aside by the Supreme Court in State of Andhra Pradesh v. Bimal Krishna Kundu & Another (<http://JUDIS.NIC.IN>). Mr.A.Ramesh, learned Senior Counsel submitted that in that case the accused were acquitted. Be that as it may, the fact remains that Hrishikeshkundu (A-1) was implicated for similar offence in Andhra Pradesh.

17. While appreciating the evidence collected in conspiracy cases, the following statement of law made by the Supreme Court in Firozuddin Basheeruddin v. State of Kerala ((2001) 7 SCC 596) may be relevant,

"26. Regarding admissibility of evidence, loosened standards prevail in a conspiracy trial. Contrary to the usual rule, in conspiracy prosecutions, any declaration by one conspirator, made in furtherance of a conspiracy and during its pendency, is admissible against each co-conspirator. Despite the unreliability of hearsay evidence, it is admissible in conspiracy prosecutions. Explaining this rule, Judge Hand said:

"Such declarations are admitted upon no doctrine of the law of evidence, but of the substantive law of crime. When men enter into an agreement for an unlawful end, they become ad hoc agents for one another, and have made 'a partnership in crime'. What one does pursuant to their common purpose, all do, and as declarations may be such acts, they are competent against all. (Van Riper v. United States, (13 F 2d 961, 967 (2d Cir 1926))"

27. Thus conspirators are liable on an agency theory for statements of co-conspirators, just as they are for the overt acts and crimes committed by their confrères."

18. On a reading of the statement of Raju @ Rajendran in the

preamble portion he has stated how he joined the Printing Press of A-1 and how long he is working and also stated how A-1 and A-2 are very close. He further stated that in the first week of August, 2012 around 6 O'Clock A-1 and A-2 were talking in the room and when he entered the room, he over heard A-1 saying A-2 to give the question paper for TNPSC examination to their contacts. When they realised the presence of Raju @ Rajendran, they stopped the conversation and angrily questioned him as to why he entered the room. The statements of Arul, Sriresh Sha, Shyamal Ghosh, Jyotiramoy Mitra to some extent corroborate with the statement of Raju @ Rajendran.

19. The argument of Mr.A.Ramesh, learned Senior Counsel is that this Court should not believe the statement of Raju @ Rajendran and Arul on the ground that a portion of Arul's statement finds place in Rajendran's statement, does not find favour with this Court. In quash petitions, this Court cannot minutely examine the statements and hold that it is not credible without giving an opportunity to the prosecution to examine the witness during trial.

20. Coming to the four steps propounded by the Hon'ble Supreme Court in Rajiv Thapar v. Madan Lal Kapoor (supra), it is necessary for this Court to meet that argument.

(i) Step One: The materials produced by the accused viz., the passport and air tickets are not of sterling quality, and they have to be tested only during trial. The genuineness of the passport and air tickets are something which cannot be gone into by looking at the photo copies filed in the paper book. Even if the passport and air tickets are accepted as genuine documents, it may still not lead to the inference that there was no conspiracy between A-1 and A-2 for leaking the question paper. After all Company is hatched in secrecy. Physical confabulation of conspirators is not always necessary. It is only consensus ad idem between the conspirators, even if they are physically apart, that will form the fulcrum of conspiracy, which is an inchoate offence. It is also possible that A-1 had carefully planned his trip abroad to set up a defence of alibi.

(ii) Step Two: The assertion by the accused that he was not in India is a question of fact, which cannot be decided in a quash petition. Alibi is a fact relevant under Section 11 of the Evidence Act, and that has to be proved by the person who asserts it only during trial.

(iii) Step Three: The contention that A-1 left India on 3.8.2012 even if accepted, will not in any way make the prosecution version suspicious because Rajendran in his statement to the Police has stated that he saw A-1 and A-2 talking in the first week of August, 2012, which may very well be either on 1st or 2nd of August. Therefore, the prosecution should be given the opportunity to prove

its case.

(iv) Step Four: The proceedings before the trial Court will not in any way be an abuse of process of law. The allegation is gargantuan in nature. The police have not merely foisted the case against the petitioners for any oblique motive.

21. The Revenue Officials, who were in the Vigilance Squad, caught the examinees red-handed with the objective type answer papers, through which various accused were arrested, and ultimately landed on an Advocate in Bhuvaneshwar, who pointed Kethra Mohan Manthan (A-2) and Hrishikeshkundu (A-1). That apart, conspiracies are hatched in secrecy and seldom will there be direct evidence unless there is an approver. Therefore, Section 10 of the Indian Evidence Act has been introduced to take care of such contingencies. There are sufficient materials to show that A-1 was entrusted with the task of printing the question paper and the Police have also collected materials to show that it had got leaked at the source itself. Therefore, when once the prosecution discharges its initial burden, it is for the accused to prove certain facts like alibi, etc., under Section 106 of the Indian Evidence Act.

22. As regards the decision in K.S.Narayanan v. S.Gopinathan (1982 CrL.J. 1611), it was a case where a private complaint was filed in a company matter and in those circumstances this Court quashed the proceedings. In Central Bureau of Investigation v. K.Narayana Rao ((2012) 9 SCC 512), the issue was whether a Lawyer, who gave professional opinion in a case, can be brought within the fold of criminal conspiracy. Only in those circumstances, the Hon'ble Supreme Court has held so in para 20 of the Judgment. It is true that in Rajiv Thapar ((2013) 3 SCC 330) and Prashant Bharati ((2013) 9 SCC 293) the Hon'ble Supreme Court quashed the proceedings in grave offences viz., under Section 376 and 302 IPC. A careful reading of these rulings shows that the Supreme Court had gone into all the facts of the case and has held that there is no iota of material to implicate the accused therein.

23. In the case on hand, as stated above, the statement of witnesses viz., Raju @ Rajendran, Arul, Sriresh Sha, Shyamal Ghosh, Jyotiramoy Mitra are sufficient for the prosecution to proceed against the petitioners herein.

24. Coming to the case of S.Balaji (A-25) (petitioner in CrL.O.P.No.20992 of 2015), it is obvious that after the arrest of S.Balaji, Police have recovered from him 59 sheets containing questions and answers of the subject matter of the examination. S.Balaji (A-25) is an Examinee and the recovery was from him. Therefore it cannot be stated that there is no material against him.

25. In the result, all these Criminal Original Petitions are

devoid of merits and consequently the same are dismissed. Connected miscellaneous petitions are also dismissed.

-s/d-
Assistant Registrar(CO)
dt:08/10/2015

True Copy

Sub-Assistant Registrar

vr

To

- 1.The Judicial Magistrate-I Dharmapuri
- 2.Thro The Chief Judicial Magistrate Dharmapuri
- 3.The Judicial Magistrate No.III,Erode
- 4.Thro'The Chief Judicial Magistrate Erode
5. The Deputy Superintendent of Police, Crime Branch C.I.D.,
Coimbatore
6. The Public Prosecutor, High Court, Madras.
- 7.The Deputy Tahsildar,
Special projects, Taluk Office,
Harur
8. The Special Tahsildar (CivilSupplies)
Special officer, Mobile unit for TNPSC
Examination Erode District
9. The Section officer,
Criminal Section, High Court, Madras

+2 ccs to Mr.R.Thiagarajan Advocate sr.54320 & 54322
+1 cc to Mr.J.Ramesh,Advocate(sr.54574)27/10/2015

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20992/2015

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