

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 29-09-2015

CORAM:

THE HONOURABLE MR. JUSTICE A. SELVAM

Criminal Revision Cases Nos.527, 561, 699, 700 and 789 of 2015
and M.P.Nos.1of 2015(4)

Dr. Tushar K. Nath(A10) Petitioner/Petitioner/A10
in Cr1.R.C.527/15

1. Dr.R. Nataragjan (A6)

2. Dr. R.C.Malhotra (A9) Petitioners/Petitioners/A6 and 9
in Cr1.R.C.561/15

Dr.J.P. Gupta Petitioner/Petitioner/A8
in Cr1.R.C.699/15

Dr. G.J.V. Jaganatha Raju Petitioner/Petitioner/A7
in Cr1.R.C.700/15

Dr. Ramalingaiah(A5) Petitioner/Petitioner/A5
in Cr1.R.C.789/15

Vs.

State rep. by
Inspector of Police
CBI/ACB, Chennai
(R.C.No.48/A/2009) ... Respondents/Respondents
Complainants in all Cases

Criminal Revision Case filed under Sections 397 and 401 of Cr.P.C.
against the order passed in Cr1.M.P.Nos. 628, 303, 434, 435 and 345
of 2012 in C.C.No.17 of 2012, dated 21-05-2015 by the XIII Additional
Special Judge for CBI cases at Chennai.

For petitioners :: Mr. S. Venkatesh in Cr1.R.C.527/15
Mr. N.R. Elango, SC for
Mr. R. Vivekanandan in Cr1.R.C.561/15
Mr. K. Chandrasekaran
in Cr1.R.C.699 & 700/15
Mr. V.R. Balasubramaniam
in Cr1.R.C.789/15

For respondent :: Mr. K. Srinivasan,
Spl.P.P. for CBI cases

COMMON ORDER

These criminal revision cases have been preferred against the orders passed in Crl. M. P. Nos. 628, 303, 434, 435 and 345 of 2012 in C.C. No.17 of 2012, dated 21-05-2015 by the XIII Additional Special Judge for CBI cases at Chennai.

2. The case of the prosecution is that the first accused, by name John Alfred and second accused, by name Jayanthi John are the trustees of St. Alfred Educational Trust (A11) and they established J.A. Institute of Engineering and Technology, Koyambedu, Chennai and the third accused, by name M.S.Raghunathan is the Principal, the fourth accused, by name Edwin Prabhakar, is the Lecturer of the said College. Dr.Ramalingaiah(A5), Dr. Natarajan(A6), Dr. G.J.V.J. Raju (A7), Dr. J.P. Gupta(A8), Dr. R.C. Malhotra(A9), T.K. Nath(A10) have been arrayed as accused Nos.5 to 10. During the period 1996-2009, Dr. Hariharan, Dr. K. Jayakumar and Dr. B.N. Devaraj(deceased) have entered into criminal conspiracy at Chennai, New Delhi and other places to cheat AICTE, Government of Tamil Nadu, Madras University, Anna University, CMDA, students of JAIET, Indian Bank and others, in the matter of providing technical education for the aspiring students in the respective academic years. In pursuance of their conspiracy, John Alfred (A1) and Jayanthi John(A2) of St. Alfred Educational Trust knowing fully well that the Trust has not acquired immovable properties at Parukkal Village and no temporary building/site existing at Mogappair, Chennai and also the land and building at Koyambedu are not sufficient and fulfill the condition to establish an Engineering College as per the norms of AICTE, dishonestly submitted proposals for approval of AICTE in establishing the JAIET and further extension of approvals for the respective years by endorsing/representing false documents/averments to AICTE and respective Expert Committee who visited the said Institution on various visits in the respective years, in furtherance of conspiracy, Dr. L.M. Patnaik, Dr. P. Ramalingaiah and Dr. B.N. Devaraj (deceased), instead of visiting temporary site at Mogappair and permanent site at Parukkal, visited JAIET at Koyambedu and recommended for issuance of letter of approval to JAIET for the engineering courses for academic year 1997-98 and in pursuance of conspiracy, Dr. Natarajan(A6) knowing fully well that JAIET is an ineligible institution to run its courses, being Chairman of AICTE recommended approval to JAIET for 2004-05, Dr.G.J.V.J. Raju (A7), Dr. J.P. Gupta (A8), Dr. R.C. Malhotra (A9) being the members of Appellate Committee/ EC Sub Committee of AICTE, Delhi knowing fully well that JAIET is an ineligible institution to run courses and CMDA had not issued any approval for building plan, recommended to restore the intake in the Data Sheet vide their inspection report; in pursuance of conspiracy, Shri Tushar Khan Nath(A10) knowing fully well that CMDA had not issued any approval for building plan to JAIET, aided AICTE to accord its approval to JAIET for 2005-06; in pursuance of conspiracy Shri M.S. Raghunathan (A3) knowing fully well that his qualification is only B.E., MBA and as per the norms of

AICTE he is not eligible as a Principal and worked as Principal for JAIET, and enclosed the xerox copy of Ph.D degree in his favour along with other forged enclosures, as if the same was given by Jawaharlal Nehru Technological University without mentioning the place of the University, on 26-07-1980 for Rail Tester and Testing Rails in South Central Railway, for compliance report of JAIET for the year 2008-09 sent to AICTE; in pursuance of conspiracy, Shri Edwin Prabhakar (A4), knowing fully well that without obtaining proper attestation in second copy of some of the sale deeds from the executants, altered that the building is approved by Chennai Corporation in respect of survey no.186/02 of Koyambedu village vide document Nos.4340 to 4344 of 2002 and document No.4339 of 2002. Further, Shri John Alfred (A1) and Smt. Jayanthi John (A2), showed altered FDRs of Indian Bank, Casa Major Road, Egmore, Chennai in favour of A11 and A12 which were already closed, to the Expert Committee, who visited on 23-08-2004, and made them to believe that the Trust is having funds of Rs.50 lakhs and Rs.30 lakhs to run the institution as per norms of AICTE and further, Shri John Alfred (A1) and Smt. Jayanthi John (A2), sent xerox copies of approved plan dated 29-04-1997, allegedly given by Commissioner of Corporation, showing the proposed residential construction under door No.41/1, 42/2, plot No.57 & 58, Srinivasan Nagar, 2nd Street, Koyambedu and further, enclosed forged xerox copy of NOC of Government of Tamil Nadu and forged viability letter of University of Madras as if the same was issued for JAIET at Koyambedu, for change of address to AICTE vide their letter, dated 22-10-2008 and further, knowing fully well that CMDA has not approved for the construction at Annadheenam land in survey No.160/2, mentioned falsely that the JAIET is situated in survey no.186/2 and false correspondences sent to AICTE and thus obtained approvals/extension of approvals either from AICTE or through directions from the High Court to AICTE for extension of approvals.

(b) A1 to A12 in connivance with the AICTE officials had cheated the AICTE by submitting forged land documents, forged FDR, forged Ph.D. degree, forged CMDA approval, forged affiliation letter, forged government approval letter for change of site and established a college in a residential apartments with lack of basic facilities flouting the norms prescribed by the AICTE without considering the future of the students and thus cheated AICTE, Government of Tamil Nadu, Madras University, Anna University, CMDA, students of JAIET, Indian Bank and others and committed offences punishable under Sections 120-B read with 420, 467, 468, 471, IPC and Section 13(2) read with 13(1)(d) of Prevention of Corruption Act, 1988.

3. On the basis of the allegations levelled against the accused mentioned supra, the respondent has conducted investigation and ultimately, filed a final report on the file of the Court-below and the same has been taken on file in C.C.No.17 of 2012. During the pendency of the same, the tenth accused has filed CrI.M.P.No.628 of 2012, accused Nos. 6 and 9 have filed CrI.M.P.No.303 of 2012 and eighth accused has filed CrI.M.P.No.434 of 2012, seventh accused has

filed Crl.M.P.No.435 of 2012 and fifth accused has filed Crl.M.P.No.345 of 2012 under Section 239 of the Code of Criminal Procedure, 1973, praying to discharge them from the proceedings of C.C.No.17 of 2012.

4. The Court-below after considering the divergent contentions raised on either side has dismissed all the petitions. Against the dismissal orders, tenth accused has filed Crl.R.C.No.527 of 2015, accused Nos.6 and 9 have filed Crl.R.C. No.561 of 2015, eighth accused has filed Crl.R.C.No.699 of 2015, seventh accused has filed Crl.R.C.No.700 of 2015 and fifth accused has filed Crl.R.C.No.789 of 2015.

5. Since common questions of law and facts are involved in all the criminal revision cases, common order is passed.

6. The consistent case of the prosecution is that the accused Nos.1 and 2 have decided to start a College in Parukkal Village, Kancheepuram District and temporarily, they have shown a place in Pannir Nagar, Mogappair. But, without putting up construction, they started the College in Srinivasa Nagar, II Street, Koyambedu. Some of the accused have not seen either permanent place or temporary place. But, necessary approval has been given. On that basis, the accused Nos.1 and 2 have been running a College for years together. Under the said circumstances, all the accused are said to have committed offences punishable under Sections 120-B read with 420, 467, 468, 471, IPC and Section 13(2) read with 13(1)(d) of Prevention of Corruption Act, 1988.

7. The Court-below has dismissed all the petitions mainly on the ground that so many evidence are available to prove that the revision petitioners are having nexus with crime.

8. The learned counsel appearing for the accused Nos.7 to 10 has contended that accused Nos.7 to 10 are the members of Appellate committee and EC Sub-Committee, AICTE, Delhi and they simply played a role in official capacity and in fact their performance has been noted in the data of appellate proceedings, but the respondent has erroneously implicated them under Section 120B, IPC and in fact, they raised their objections and the Court below without considering the role alleged to have been played by accused Nos.7 to 10 has erroneously dismissed their petitions and therefore, the dismissal orders passed by the Court-below are liable to be interfered with.

9. The learned counsel appearing for the fifth accused has contended to the effect that the fifth accused by name Dr. Ramalingaiah has simply inspected the site and he has had no role along with other accused. Under the said circumstances, he has filed the petition in question for getting discharge. But the Court below has erroneously dismissed the same and therefore, the dismissal order passed by the Court-below is liable to be set aside.

10. The learned counsel appearing for the sixth accused has contended that the sixth accused being Chairman of AICTE has simply recommended approval of JALET for the year 2004-2005. Under the said circumstances, he cannot be muttered with liability under Section 120B, IPC and therefore, he along with ninth accused has filed a separate petition for getting discharged. But the Court-below has erroneously dismissed the same.

11. In order to controvert, the contentions put forth on the side of the criminal revision petitioners, the learned Public Prosecutor appearing for the respondent has strenuously contended that the accused Nos.1 and 2 have decided to start a College in technical education in Parukkal Village, Kancheepuram District and they have temporarily shown Pannir Nagar, Mogappair. But they started a College in Srinivasa Nagar, Koyambedu a residential area. The remaining accused including members of appellate Committee and EC Sub Committee of AICTE have erroneously given approval for conducting College in a different place and therefore, all the accused have contrived themselves so as to commit the offences mentioned in the final report and the Court-below after considering the alleged involvement of the revision petitioners has rightly dismissed all the petitions and therefore, the dismissal orders passed by the Court-below do not call for any interference. Further, in C.C.No.17 of 2012, most of the witnesses have been examined. Under the said circumstances, the reliefs sought for in these criminal revision cases cannot be granted.

12. For considering the rival submissions made on either side, the Court has to look into the statement alleged to have been given by one Devvrat Singh, wherein it is stated thus:

"In this file, I am shown a letter dt. 02.12.2008 along with photocopies of documents of J.A. Institute of Engineering and Technology, Chennai in page numbers 138-171. This letter was addressed to the Chairman, AICTE, NewDelhi for change of address. In this letter, I am seeing a letter dt.25.04.1997 of University of Madras and a letter dt.30.07.1997 of Secretary to Government, Higher Education Department, Tamilnadu. These two letters conveying the no objection for establishment of college at Koyembedu. I identify my signature in the letter. I also identify the signature of Chairman Dr. R.A. Yadev."

It has already been pointed out in many places that the accused Nos.1 and 2 have decided to start a College in Parukkal Village in Kancheepuram District and shown a temporary place in Mogappair. But, they started a College in Koyambedu and that too, in a residential area. The Court-below has mainly dismissed all the petitions to the effect that the Inspection Committee without considering the original proposal of the accused Nos.1 and 2 has simply inspected the place in which the accused Nos.1 and 2 have been running a College and

likewise, the Appellate Committee and the EC Sub-Committee of AICTE have also given necessary approval.

13. It has already been pointed out that the specific charge framed against all the accused is that they contrived themselves to commit the remaining offences. Since the specific charge has been framed against all the accused under Section 120(B), IPC, the same can be decided only at the time of trial. In the instant criminal revision cases, the Court has to analyse as to whether prima facie materials are available so as to proceed further against particular accused. As pointed out in many places, the accused Nos.1 and 2 have completely changed the place of running the College. As mentioned supra, the original proposal of the accused Nos.1 and 2 is to start a College at Parukkal Village, Kancheepuram District and they have shown a temporary place in Mogappair. But they started a College in Koyambedu within the residential area. Therefore, the Court can unflinchingly come to a conclusion that prima facie materials are available against all the accused so as to proceed further.

14. It is true that in the data of appellate proceedings some materials are available. But, those things can also be decided at the time of trial. Therefore, the contentions put forth on the side of the criminal revision petitioners cannot be accepted.

15. Now, the Court has to look into the other contention put forth on the side of the respondent. As stated earlier, the learned Special Public Prosecutor has contended that in C.C.No.17 of 2012 most of the witnesses have been examined. Under the said circumstances, question of discharge does not arise. In respect of his contentions he relied upon the following decisions:

(i) In 2007 (1) LW CrL 493 (A. Govindarajan & 6 others Vs. The Inspector General of Police), this Court has specifically held that in a criminal case, witnesses are examined on the side of the prosecution, question of discharging the accused does not arise, at that stage.

(ii) In AIR 1973 SC 799 = 1974 L.W. (CrL.) 40 S.N. (Amar chand Vs. Shanti Bose) the Honourable Supreme Court has observed as follows:

"Where the accused moved the High Court at the time when the trial was almost coming to a close and what remained to be done was the examination of two prosecution and one Court witnesses and the High Court quashed the charge and the entire proceedings on the grounds that the complainant suppressed material facts and that the evidence on record did not establish the alleged offence, the order was liable to be set aside. The proper course at that stage to be adopted by the High Court was to allow the proceedings to go on and to come to its logical conclusion, one way or the other, and decline to interfere with those proceedings.

The questions whether there was suppression and whether the evidence established the alleged offence were matters to be considered by the trial Court after an appraisal of the entire evidence."

(iii) In 2000 SCC (Cri.) 1486 (State of Delhi Vs. Gyan Devi) the Honourable Supreme Court has held thus:

"Where the accused moved the High Court at the time when the trial was almost coming to a close and what remained to be done was the examination of two prosecution and one Court witnesses and the High Court quashed the charge and the entire proceedings on the grounds that the complainant suppressed material facts and that the evidence on record did not establish the alleged offence, the order was liable to be set aside. The proper course at that stage to be adopted by the High Court was to allow the proceedings to go on and to come to its logical conclusion, one way or the other, and decline to interfere with those proceedings. The questions whether there was suppression and whether the evidence established the alleged offence were matters to be considered by the trial Court after an appraisal of the entire evidence."

16. From a conjoint reading of the decisions mentioned supra, it is easily discernible that in a criminal case when the witnesses have been examined, question of discharge does not arise. Therefore, it is quite clear that the dismissal orders passed by the Court-below are perfectly correct and the same cannot be interfered with.

17. The learned counsel appearing for the petitioner in CrI.R.C.No.561 of 2015 has drawn the attention of this Court to the decision reported in 2009 (8) SCC 617 (State of Madhya Pradesh Vs. Sheetla Sahai) wherein the Honourable Supreme Court has held that criminal thoughts must be put to the action in the form of a concrete agreement. Offence can be proved through circumstantial evidence. Further, it is observed that while framing charges, Court may consider whether or not accused committed offence, but for recording conviction, commission of offence has to be proved by prosecution beyond reasonable doubt. Further, it is observed that charges can be framed; two views are possible; but, if only one and one view is possible to be taken, the court shall not put the accused to harassment by asking him to face a trial.

18. In the instant case, it has already been pointed out that sufficient materials are available so as to proceed further for the purpose of showing that the accused Nos.1 and 2 have started their College in a place which has not been shown in their proposal. The main allegation of the prosecution is that the remaining accused have also lent their support to the accused Nos.1 and 2, in furtherance of conspiracy hatched amongst them. Under the said circumstances, the

Court-below has framed necessary charges and also examined most of the witnesses and therefore, by way of relying upon the decision referred to earlier, the Court cannot discharge the criminal revision petitioners. Therefore, viewing from any angle, the contentions put forth on the side of the revision petitioners cannot be accepted and altogether these criminal revision cases are liable to be dismissed.

In fine, these criminal revision cases are dismissed. The dismissal orders passed in Crl.M.P.Nos. 628, 303, 434, 435 and 345 of 2012 in C.C.No.17 of 2012, dated 21-05-2015 by the XIII Additional Special Judge for CBI cases at Chennai are confirmed.

The connected M.Ps. are closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

glp

To

1. The Inspector of Police
CBI/ACB, Chennai
2. The XIII Additional Special Judge
for CBI cases at Chennai.
3. The Section Officer, Crl. Section,
High Court, Madras.

Copy to: Mr.K. Srinivasan,
Special Public Prosecutor, (CBI Cases),
High Court, Madras-104.

+ 1 cc to Mr.V.R. Balasubramanian, Advocate SR.52645
+ 2 ccs to Mr.K. Chandra Sekaran, Advocate SR.52668 52669
+1 cc to Mr.R.Vivekananthan, Advocate (sr.53585) 27/10/2015

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