

THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 22.03.2016

PRONOUNCED ON : 15.04.2016

CORAM:

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

Criminal Revision Nos.197 to 201 of 2014

J.Duraimunusamy .. Petitioner in Crl.R.C.No.197/2014
S.Chinnathambi .. Petitioner in Crl.R.C.No.198/2014
S.Anbalagan .. Petitioner in Crl.R.C.No.199/2014
N.Ravichandran .. Petitioner in Crl.R.C.No.200/2014
A.Karuppasamy .. Petitioner in Crl.R.C.No.201/2014

- Vs -

State by
Additional Superintendent of Police,
CBI:SPE:ACB, Chennai - 6.
(Crime No.R.C.No.58(A)/2006) .. Respondent in all the cases

Prayer:- Petitions filed under Sections 397 and 401 of the Code of Criminal Procedure to set aside the orders passed by the learned XIII Additional Special Judge for CBI Cases, Chennai - 104 in Crl.M.P.Nos.565, 570, 564, 566 and 571 of 2011 respectively, in C.C.No.10 of 2009 dated 04.02.2014.

For petitioners: Mr.A.E.Chelliah
in all cases Senior Counsel for Mr.K.Ramanujam

For respondent : Mr.K.Srinivasan
in all cases Special Public Prosecutor for CBI
Cases

C O M M O N O R D E R

The petitioners in Crl.R.C.Nos.197 to 201 of 2014 are the accused 1, 2, 6, 9 and 11 in C.C.No.10 of 2009 on the file of the learned XIII Additional Special Judge for C.B.I. cases, Chennai. They have come up with these petitions challenging the orders passed by the trial Court dismissing their petition filed under Section 227 Cr.P.C. for discharge.

2. The facts of the case in brief would be as follows:

2.1. The Government of Tamil Nadu issued G.O.Ms.No.1080,

Home (Police-III) Department dated 08.09.2004, directing the Tamil Nadu Uniformed Services Recruitment Board (in short, "The TNUSRB") to recruit 1997 Grade-II Police Constables. In pursuance of the same, the TNUSRB issued a notification calling for applications from eligible candidates. The applicants were subsequently subjected to physical measurements test, endurance test and physical efficiency test. These tests were conducted between 21.02.2005 and 07.03.2005. The candidates who passed these tests were called for written test which was scheduled to be held on 27.03.2005. Accordingly the examination was held on 27.03.2005, in which, several thousands of candidates participated. But since, it was suspected that the question paper relating to General Knowledge for the said examination had been stealthily leaked out to some candidates before the examination, the Government in its letter No.SC/2062/2005, dated 26.04.2005 cancelled the said examination and ordered for re-test in the General Knowledge paper alone. Accordingly, re-test was conducted on 01.06.2005. Again, it came to light that this time also, the question paper relating to General Knowledge paper was stealthily leaked out to some candidates before the examination. Since, it came to light there was truth in the allegations, the said examination held on 01.06.2005, was also cancelled.

2.2. In view of the above two instances, the Government ordered an enquiry into the leakage of question paper pertaining to the examination held on 27.03.2005 as well as on 01.06.2005. One Mr.P.Thamaraikannan, I.P.S. the then Deputy Commissioner of Police, St.Thomas Mount was appointed as Enquiry Officer and was ordered to hold enquiry. He held enquiry and submitted a report to the Director General of Police on 25.07.2005.

2.3. According to the report, the leakage of question paper for both the examinations was found to be true. The report further revealed that the leakage of question paper for the examination held on 27.03.2005, was through two clearly identified sources. The first source of leakage was, two police constables viz., PC 1025 Durai Munusamy of TNUSRB (A1) and PC 571 Chinna Thambi of Dharmapuri Armed Reserve (A2), who was also serving in the TNUSRB. The report further alleged that on 23/24.03.2005, around 2.00 a.m. they scaled over the wall of TNUSRB office from the rear side entry into the chamber of the Director General of Police / Chairman, TNUSRB and had stolen away the question papers pertaining to the General Knowledge examination and Psychology. The questions papers were thereafter leaked out by Durai Munusamy and Chinna Thambi to 21 candidates and 22 police Constables.

2.4. The second source of leakage, according to the report, was through Mr.T.Radhakrishnan, I.P.S. the Inspector General of Police, who was holding additional charge of the post of

Inspector General of Police and Member Secretary of TNUSRB. The report further revealed that Mr.T.Radhakrishnan, I.P.S. leaked the question paper to a retired Head Constable by name Jani Basha (one of the accused), through whom, Mr.T.Radhakrishnan, I.P.S. supplied the question paper to another person also. Mr.Jani Basha passed on the said question paper to three police Constables, who in turn, handed over the same to nine candidates.

2.5. In respect of the leakage of question papers relating to the examination held on 01.06.2005, in the report, Mr.P.Thamaraikannan, I.P.S. had stated that there was only one source of leakage. According to him, the question paper was leaked by Mr.T.Radhakrishnan, I.P.S. and Mr.Jani Basha, Head Constable. The report further revealed that Mr.Jani Basha collected the question paper from Mr.T.Radhakrishnan, I.P.S. and passed on the same to 33 policemen and 41 candidates. The question papers were sold for monetary consideration to several recipients. The report further gave a flowchart for the leakage of question paper passed on from one accused to another for easy understanding.

2.6. Based on the above report, the Additional Director General of Police and Member Secretary, TNUSRB Mr.K.Natarajan, I.P.S. forwarded a complaint to the Inspector of Police, Chintadripet Police Station for registration of a case and for investigation in respect of the above leakage on both the occasions.

2.7. The Inspector of Police of Chintadripet Police Station on receipt of the said report, registered a case in Crime No.2600 of 2005 under Sections 120(B), 457, 380, 166 and 409 I.P.C. and Sections 13(1)(c) and 13(1)(d) of the Prevention of Corruption Act, 1988.

2.8. When the investigation was in progress, a writ petition came to be filed in W.P.No.25153 of 2005 by one Mr.A.Dhandapani, seeking investigation of the above allegations by the C.B.I. as in the above episodes, high ranking police officers were also involved. Accordingly, this Court by an order dated 28.10.2005, directed registration of a case by C.B.I. and for investigation. Aggrieved over the said order of this Court, a Special Leave Petition was filed before the Hon'ble Supreme Court by the State of Tamil Nadu and the same was dismissed on 10.10.2006.

2.9. Meanwhile, as per the order of the Director General of Police, the above said case in Cr.No.2600 of 2003 on the file of the Chintadripet Police Station was transferred to the Special Investigating Team, C.B.C.I.D., Chennai. Then, after the dismissal of the Special Leave Petition and consequent upon the orders passed by this Court and the Hon'ble Supreme Court, the

above case in Cr.No.2600 of 2005 was eventually transferred to the C.B.I.

2.10. The C.B.I. on receipt of the case records, re-registered a case in Crime No.RC MA1/2006 A 58 dated 26.12.2005 for offences under Sections 120-B, 457, 380, 166 and 409 I.P.C. and Sections 13(2) r/w Section 13(1)(c) and (d) of the Prevention of Corruption Act, 1988. As per the F.I.R., there were as many as 87 named accused. On completing the investigation, the C.B.I. filed final report against 31 accused alone and omitted the others including Mr.T.Radhakrishnan, I.P.S.

2.11. As per the said final report, these petitioners were also arrayed as accused. According to the final report, it is alleged that the petitioners herein along with other accused have committed offences under Sections 120(B) r/w 420 I.P.C. and Sections 13(2) r/w 13(1)(c) and 13(1)(d) of the Prevention of Corruption Act, 1988.

2.12. On the said final report, the Special Judge for C.B.I. cases took cognizance of the offences and summoned the accused. On appearance, they filed petitions seeking discharge. Their contention was that there were no materials against them so as to frame charges. But all those petitions were dismissed by the Special Court by a common order dated 21.08.2009. Challenging the same, they filed a revision before this Court in CrI.R.C.Nos.1013 to 1018 of 2009 before this Court. By a common order dated 26.04.2010, dismissed all the said criminal revision petitions holding that there were grounds to proceed against the accused by framing appropriate charges. Challenging the same, Mr.R.Anbalagan petitioner in CrI.R.C.No.199 of 2014 filed Special Leave Petition before the Hon'ble Supreme Court and the same was dismissed on 08.07.2010.

2.13. Thereafter, Mr.R.Anbalagan, the petitioner in CrI.R.C.No.199 of 2014 filed a second round of petitions before the Special Judge for C.B.I. cases under Section 227 Cr.P.C. seeking discharge, which was dismissed by an order dated 23.08.2010. Thereafter, the Special Judge framed charges against all the 31 accused.

2.14. After the above charges were framed, the petitioners filed CrI.O.P.Nos.23479, 21794, 21793, 22062 and 22562 of 2010. In those criminal original petitions, among other grounds, it was contended by the petitioners that the charges framed against them were based on no materials on record making out any offence. It was also contended that there was misjoinder of charges as well as the accused. It was further contended that allowing prosecution to proceed further on the charges impugned in those petitions shall only be a wastage of precious time of

the trial Court and abuse of process of Court. Therefore, according to the petitioners, in order to secure the ends of justice, the proceedings were to be quashed.

2.15. But the C.B.I. raised very serious objections to those petitions. According to the C.B.I., since in the earlier round of litigation, the plea of the petitioners for discharge was negatived by the High Court as well as the Hon'ble Supreme Court, it was not open for the petitioners again to approach this Court in a different form by way of petitions under Section 482 Cr.P.C. seeking to quash the charges.

2.16. The said objection was met with by the petitioners' counsel by submitting that the scope of the petitions for discharge, which were earlier disposed of was totally different from the scope of the issues involved in these subsequent criminal original petitions. It was further contended by the learned senior counsel for the petitioners' that while considering a petition under Section 227 of Cr.P.C. for discharge, the Special Judge is not empowered to analyse the documents, which are produced by the accused, whereas, while considering a petition under Section 482 Cr.P.C., the High Court is fully empowered to look into the documents produced by the accused and the final report filed by the police, so as to ensure that at last the ends of justice is secured. He further submitted that there is no bar for this Court to entertain the criminal original petitions and quash the charges framed against the petitioners. He also raised many other points including the misjoinder of charges and the accused.

2.17. Having considered the rival submission, this Court by a common order dated 06.04.2011, allowed all those criminal original petitions on the sole ground that there were misjoinder of accused and the charges and remanded the matter back to the trial Court for re-considering the issue for framing of charges.

2.18. This Court found that the leakage of question paper for the examination held on 27.03.2005 and the leakage of question paper for the examination held on 01.06.2005 constitute two different occurrences making out two different offences involving two different set of accused, though some of them were common in both the cases. This Court found that the occurrence relating to the leakage of question paper for the examination dated 27.03.2005, had nothing to do with the subsequent occurrence relating to the leakage of question paper for the examination dated 01.06.2005. Thus, this Court found that it was not legal to try the accused against whom there were allegations only in respect of the leakage of question papers relating to the examination dated 27.03.2005, who have got nothing to do with the alleged offence relating to the leakage of question paper dated 01.06.2005. Similarly, the accused

against whom allegations have been made in respect of the leakage of question paper relating to the examination dated 01.06.2005, had nothing to do with the leakage of question paper for the examination dated 27.03.2005. Therefore, these persons cannot be tried in respect of the offence relating to the leakage of question paper for the examination dated 27.03.2005.

2.19. In nut shell, it was found by this Court that since these two occurrences were totally different having no connection whatsoever, the trial Court was not right in framing common charges against them all and in trying all of them jointly in one trial. It was found that there were charges of conspiracy framed against all the accused commonly as though there was single conspiracy, out of which, both the occurrences relating to the examinations dated 27.03.2005 and 01.06.2005 were committed. It was on these grounds, in order to achieve the ends of justice, this Court quashed the charges and directed the trial Court to split up the cases into two i.e. exclusively one relating to the offences committed relating to the leakage of question paper for the examination dated 27.03.2005 and the other relating to the offences exclusively in respect of the leakage of question paper for the examination held on 01.06.2005.

2.20. Above all, the common order passed by this Court was not challenged by the C.B.I. or anybody before the Hon'ble Supreme Court. Thus, the said order of this Court dated 06.04.2011, had become final.

2.21. Subsequent to the above direction, the case was split up into two. One was numbered as C.C.No.10 of 2009 relating to the leakage of question paper for the examination dated 27.03.2005 and other was numbered as C.C.No.33 of 2011 relating to the leakage of question paper for the examination dated 01.06.2005.

3. The petitioner in Crl.R.C.No.197 of 2014 is the first accused, the petitioner in Crl.R.C.No.198 of 2014 is the second accused, the petitioner in Crl.R.C.No.199 of 2014 is the sixth accused, the petitioner in Crl.R.C.No.200 of 2014 is the ninth accused, the petitioner in Crl.R.C.No.201 of 2014 is the eleventh accused in C.C.No.10 of 2009.

4. After the split up, since there was no mixture of materials collected in respect of both the occurrence, petitioners filed individual petitions afresh under Sections 227 of Cr.P.C. seeking discharge. The trial Court by means of impugned orders dated 04.02.2014, dismissed all those petitions, that is how they have come up with these petitions.

5. Initially these matters were listed before me when I was holding Revision portfolio. The matter was argued at length by

the learned senior counsel appearing for the petitioners and the learned Special Public Prosecutor for C.B.I. After change of portfolio, since the matter remains part heard, the Hon'ble The Chief Justice has directed the Registry to list these matters before me and that is they have been listed before me as specially ordered case.

6. In these revisions, it is contended by the learned senior counsel for the petitioners that a perusal of all the materials placed by the C.B.I. such as the statement of the witnesses and documents would go to show that absolutely there is no material against them at all to frame charges. He would further submit that the trial Court has framed charges based on the statements given by these accused to Mr.P.Thamaraikannan, I.P.S. during the enquiry. According to the learned senior counsel, these statements which are in the nature of confessions are irrelevant as per Section 25 of the Evidence Act, as they were given to the police officer. If all these statements of the petitioners are eschewed from consideration, according to the learned senior counsel, absolutely there is no material against any of these petitioners.

7. The learned special public prosecutor for C.B.I. has filed a counter, wherein, he has culled out the materials available against the accused. A perusal of the counter would go to show that except the signed statements of these accused to the enquiry officer viz., Mr.P.Thamaraikannan, I.P.S. there were no other materials worth considering barring a few others, which, I will discuss latter.

8. When the matter was further heard on 24.02.2015, the learned Special Public Prosecutor for C.B.I. cases would submit that the Deputy Superintendent of Police, CBI/ACP, Chennai had given a letter to him, wherein, he had inter alia, stated as follows:

"I hereby confirm that no other incriminating materials are found against the revision petitioners other than the materials shown in the counter and that in the chart. In the counter and the charge what is stated against many of the accused is only the statements made by them to a police officers during enquiry."

This Court recorded the said letter of the Deputy Superintendent of Police, CBI/ACP, Chennai.

9. The learned Special Public Prosecutor further submitted that he would file an affidavit of the Deputy Superintendent of Police in this regard on the next hearing date. Accordingly, the matter was adjourned.

10. As submitted before this Court, Mr.K.Pradeep Kumar, Deputy Superintendent of Police, CBI/ACB, Chennai filed an affidavit dated 11.03.2015, wherein, he has stated as follows:

"I, K.Pradeep Kumar, S/o Shri P.K.Swamy, aged about 45 years, residing at D-27, CBI Quarters, Kamarajar Salai, Chennai - 78 do hereby solemnly affirm and sincerely state as follows:

1. I submit that, I am presently working as Deputy Superintendent of Police, CBI/ACB, Chennai. Now I am holding I.O. of CC 10 of 2009 and CC 33 of 2011, pending on the file of Hon'ble XIII Addl. Special Judge for CBI Cases, Chennai and as such I am competent to file this affidavit.

2. I respectfully submit that, the above 2 cases namely CC 10 of 2009 and CC 33 of 2011 are investigated by Shri.V.K.Regghukumar and filed the final report. Shri R.Ravi, Inspector of Police, CBI was associated with the I.O. during investigation. Shri V.K.Regghukumar retired from service on 11.09.2013 and Shri Ravi, Inspector of Police, CBI who was associated with the I.O. has been posted to CBI, Special Crime Branch, Chennai.

3. I respectfully submit that, on the basis of the details regarding the incriminating materials as against each revision petitioners called for by this Hon'ble Court. I availed the services of Shri R.Ravi, Inspector of Police to find out the incriminating materials. The respondent Police have already filed counters in each of the revisions and also filed a common chart showing the incriminating materials available against each of the revision petitioners.

4. I respectfully submit that on going through the entire records with the help of Shri.R.Ravi, Inspector of Police, it is stated that other than the incriminating material are mentioned in the counters as well as the chart filed by the respondent, there are no other incriminating materials against the revision petitioners."

11. A detailed chart has also been filed by the Deputy Superintendent of Police, wherein, he has culled out the materials upon which the prosecution relies on.

12. So far as the petitioner Mr.J.Duraimunusamy, the petitioner in CrI.R.C.No.197 of 2014 is concerned, the allegation is that during the year 2005, he was working with the TNUSRB, Chennai on deputation. It is alleged that he entered into a criminal conspiracy with A2 Mr.Chinnathambi to cheat TNUSRB in the matter of fraudulently obtaining the question paper for the PC exam in advance and in furtherance of the criminal conspiracy, fraudulently obtained the question paper in advance for the PC exam held on 27.03.2005 and gave the same to his relative Ms.Meena (A8), who was appearing from the Madurai Centre. Further, he had also distributed the PC exam question paper in advance to his friend Mr.A.Gopalakrishnan (14) at Madurai whose fiancée Ms.G.Thirumuthu Vallideivanai (A12) was appearing for the exam from Madurai in addition, the accused J.Duraimunusamy (A1) also parted with a copy of the question paper to his friend Mr.Anbu @ S.Anbalagan (A3) at Chennai.

13. In order to make grounds for framing charges on these allegations, the C.B.I. relies on the signed statements of the petitioner/accused Mr.J.Duraimunusamy to Mr.P.Thamaraikannan I.P.S., and the signed statements of A8, A14, A12 and A3.

14. The learned Special Public Prosecutor is not in a position to dispute the legal position that these statements of the accused made to the police officer are not admissible in evidence and therefore they cannot be the foundation for the charges. Apart from the same, there is no other material has been placed on record. No other witness has implicated this accused and no other document is also available to implicate this accused. Thus, there are no materials against the first accused Mr.J.Duraimunusamy at all. As per the chart the following are the materials upon which the prosecution makes reliance viz.,

"(i) The signed statements of Duraimunusamy admitting his guilt before the enquiry officer D38, 48.

(ii) The signed statements of Ms.Meena (D122), Mr.M.Suryanarayana (D123), Mr.Chinnathambi (D58) Mr.Gopalakrishnan (D14) and Mr.Anbalagan (D63).

(iii) The evidence of enquiry officer Mr.P.Thamaraikannan, I.P.S.(W135).

(iv) The call contacts between the accused persons on the eve of the exams proved by D81 and D83 through W64.

(v) Further investigation has proved that accused J.Duraimunusamy (A1) is a relative of Ms.Meena (A8) and this fact is also proved by the report of Revenue Inspector (D156).

(vi) The scoring pattern of the candidate Meena (a8) proved through comparative chart (D31)."

15. A reading of the above chart would make it easier to understand the nature of the materials upon which the prosecution makes reliance. As I have already pointed out, only upon the signed statements of the accused which are in the nature of confession, the prosecution wants charges to be framed. Since, these confessions are irrelevant as per Section 25 of the Evidence Act, they cannot be the foundation for charges. There is no other material against him. Therefore, the first accused Mr.J.Duraimunusamy in C.C.No.10 of 2009 is entitled for discharge. The trial Court had not considered the said issue and instead the trial Court has stated that these issues are to be raised only at the stage of trial and not now. Therefore, the impugned order is liable to be set aside.

16. The petitioner in CrI.R.C.No.198 of 2014, Mr.S.Chinnathambi is the second accused in Crime No.10 of 2009. He was working with the Armed Reserve, Dharmapuri and was on deputation with TNUSRB, Chennai during 2005. The allegation against him is that he entered into a criminal conspiracy with A-1 Duraimunusamy to cheat TNUSRB in the matter of fraudulently obtaining the question paper for the PC exam in advance and in furtherance of the criminal conspiracy fraudulently obtained the question paper in advance for the PC exam held on 27.03.2005 and gave the same to his relative Ms.Elamathi (A9), who was appearing from the Madurai Centre.

17. The prosecution relies on the following materials against this accused for framing the charges :

"(i) The signed statements of Chinnathambi (A2) admitting his guilt before the enquiry officer D58, D61.

(ii) The signed statement of Ms.Elamathy (D155).

(iii) Evidence of enquiry officer Mr.P.Thamaraikannan, I.P.S. (W135).

(iv) Further the scoring pattern of the candidate Elamathy (A9) proved through

comparative chart (D31)

(v) A2's relationship with A9 proved by VAO (D151) through W72."

18. A careful perusal of all the records including the statements of the witnesses would go to show that as it has been stated in the chart filed by Deputy Superintendent of Police, CBI/ACB, Chennai, except the signed statements of the accused, Mr.Chinnathambi to the enquiry officer admitting his guilt, there is no other material. Absolutely, there is no evidence collected as against him. As I have already stated, the statement made by him to the police officer admitting his guilt is inadmissible in view of the bar contained in Section 25 of the Evidence Act. The trial Court has failed to consider this legal issue. Since there is no other material available against him for framing charges, he is also entitled for discharge and the order of the trial Court is liable to be set aside.

19. The petitioner in CrI.R.C.No.199 of 2014, Mr.S.Anabalagan, is the sixth accused in Crime No.10 of 2009, he was working in the Armed Reserve Constabulary of Chennai City Police and was a batch mate and friend of A1. The allegation against him is that he obtained the question paper for the exam dated 27.03.2005 from A1 by paying Rs.50,000/- and distributed the same to his friend Mr.N.Ravichandran (A4). The prosecution relies on the following materials against the accused for framing the charges viz.,

"(i) The signed statements of W67 Mohan, W68 Sivaraj and W65 Alamelu before the enquiry officer.

(ii) Documents relied of D63, 120, 121 and 154 being the signed statements of the above witnesses given before the enquiry officer.

(iii) Call details of the accused including this petitioner will show that the accused persons were in contact with each other constantly during the relevant period. Call details are (D81 to D83)."

20. A perusal of the records and the chart filed by the C.B.I. would go to show that the C.B.I. relies on the statement of the witnesses No.67 Mohan, Sivaraj (W-68) and Alamelu (W-65) made before the enquiry officer.

21. I have gone through these statements of the witnesses Mohan (W67), Sivaraj (W68) and Alamelu (W65). Mr.Mohan was originally arrayed as an accused. He gave the confession to the XVII Metropolitan Magistrate, Saidapet. A perusal of these statements would go to show that these three witnesses have only stated about one Mr.Ravichandran (A9) and they have not stated anything about the petitioner Mr.S.Anbalagan at all.

22. The statement of the first accused made to Mr.P.Thamaraikannan, I.P.S., of course implicate the petitioner, but that has no relevance in the eye of law. Thus, so far as the petitioner Mr.S.Anbalagan is concerned, there is no material against him at all to frame charges, therefore, he is also entitled for discharge.

23. The petitioner in CrI.R.C.No.200 of 2014 Mr.N.Ravichandran the ninth accused in C.C.No.10 of 2009. He was working at the computer Wing of Chennai City Police during the relevant period. The allegation against him is that during the year 2005, he entered into a criminal conspiracy with A6 Mr.S.Anbalagan PC 20178 to cheat TNUSRB in the matter of fraudulently obtaining the question paper for the PC exam in advance and in furtherance of the criminal conspiracy, fraudulently obtained the question paper in advance for the PC exam held on 27.03.2005 from the said S.Anbalagan (A6) and dictated the question paper to approver / candidates Mohan (W67), Alamelu (W65), Sivaraj (W68) and received a sum of Rs.50,000/- as consideration.

24. The prosecution relies on the following materials against the accused for framing the charges viz.,

"(i) Admission of guilt by the accused before the enquiry officer.

(ii) Statements of the candidates viz., Mohan (W67), Sivaraj (W68) and Alamelu (W65), before the judicial authorities vide (D-133, D-134 & D-135)

(iii) W-32, father of candidate Alamelu had also given statement (D132) before the judicial authorities that N.Ravichandran (A4) had collected Rs.20,000/- from him and parted with the questions for the PC exam in advance.

(iv) Further, Velayutham (W-82), brother of S.Mohan had also given statement (D131) before the judicial authorities, confirming that Mr.N.Ravichandran (A4) had collected money from him and parted with the question papers for the PC exam in advance.

(v) The signed statements of S.Anbalagan (A3), N.Ravichandran (A4) admitting their guilt before the enquiry officer D63, D120, D121 and D154.

(vi) Further the telephone contacts amongst the accused on the crucial days on the eve of exam proved by the evidence of D80 to D83, through the evidence of W64."

25. As I have already stated, the statement made by the petitioner / 6th accused are not admissible in evidence. So far as the statement of the approver Mr.Mohan (W67) is concerned, he has stated that the 6th accused / petitioner gave the question paper to him on 26.03.2005. Mr.Sivaraj (W68) in his confession has stated that on 26.03.2005, he gave the question paper to him. Ms.Alamelu (W65) has stated that on 26.03.2005, the accused gave the question paper.

26. The learned senior counsel appearing for the petitioners would submit that the said question paper have not been recovered. He would further submit that Mr.T.Radhakrishnan, through whom the question paper was leaked out from the TNUSRB office has been let off and thus there is not even remote chance to infer conspiracy. I find force in the said argument. In the absence of the prosecution of Mr.T.Radhakrishnan, who is stated to have leaked out the question paper to various persons, there is no scope to frame charge for conspiracy. Above all, according to the final report, this accused did not give any question paper to Mr.Mohan, Mr.Sivaraj and Ms.Alamelu. According to the investigation, he only dictated the questions to them, whereas, according to the confession of these three witnesses, the question papers were given to them. Assuming that these allegations are true, even then, there is no scope to frame charge against him. Therefore, he is also entitled for discharge.

27. The petitioner in CrI.R.C.No.201 of 2014 Mr.A.Karrupasamy the eleventh accused in C.C.No.10 of 2009. He was working as a driver with Tamil Nadu Commando Force and was attached to Mr.A.X.Alexander, I.P.S. while he was Additional Director General of Police / Special Officer, Mandapam during the relevant period. The allegation against him is that during 2005, he entered into a criminal conspiracy with A4 Mr.N.Ravichandran and A6 Mr.Devanath to cheat TNUSRB in the matter of fraudulently obtaining the question paper for the PC exam in advance and in furtherance of the criminal conspiracy, fraudulently obtained the question paper in advance for the PC exam held on 27.03.2005 from N.Ravichandran (A-4) and dictated the question paper to approver / candidate Kaleeswaran (W11) and received a sum of Rs.50,000/- as consideration.

28. The prosecution relies on the following materials against the accused for framing the charges viz.,

"(i) Admission of guilt by the accused before the enquiry officer.

(ii) The other accused A-4 N.Ravichandran and A-6 S.Devanath also confessed their guilt of having received the question paper from A-5 and gave signed statements (D120, D121) to

this effect to the enquiry officer.

(iii) Confession statement (D137) of approver/candidate Shri.Kaleeswaran (W11)."

29. Here again, the only material available against the accused is the statement of the accused to Mr.P.Thamaraikannan, I.P.S. As I have already stated, these statements are not admissible in evidence. Apart from that, the C.B.I. relies on the confession of one Mr.Kaleeswaran (W11) who has been taken as approver. I have gone through the said confession. According to the statement, on one occasion, Mr.Kaleeswaran asked the petitioner Mr.A.Karrupasamy as to whether he could help him to secure a police job. It is further alleged that before the examination, on one day, he dictated few questions to him. The statement is so vague. Even if the said statement on its face value is accepted as true, that would not make out any offence against the accused. Thus, there is no material against this petitioner / eleventh accused also. Therefore, he is entitled for discharge.

30. A perusal of the records reveal that for the reasons not stated, though there were very strong allegations made against Mr.Radhakrishnan, I.P.S. and others are available, they have been left out from the prosecution. For want of materials, these petitioners are also discharged now. Therefore, this Court wanted the C.B.I. to express their stand as to whether they intend to further investigate the matter so as to collect further materials and prosecute all the people who are responsible for the above episode, which are very serious crimes.

31. The learned Special Public Prosecutor for C.B.I. cases, on instructions from the C.B.I. submitted that at this length of time, it would not be possible to collect any further materials and doing further investigation in this matter would be only a wasteful exercise. Having regard to the said submission, I am not inclined to order for further investigation.

32. In the result, the revision petitions are allowed and the impugned orders are set aside and the charges framed against the petitioners are set aside and they are discharged.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

To

1. The XIII Additional Special Judge for CBI Cases,
Chennai - 104.
2. The Additional Superintendent of Police,
CBI:SPE:ACB,
Chennai - 6.
3. The Special Public Prosecutor (CBI Cases),
High Court, Madras.

+10 ccs to Mr.K.Ramanujam, Advocate Sr.23768 to 23772
+1cc to Mr.K.Srinivasan, Special Government Pleader Sr.23632

in Crl.R.C.Nos.197 to 201 of 2014

bvr (CO)
srg (26/04/2016)



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