

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 Petition Nos.202 and 203 of 2014

A.Karuppasamy .. Petitioner in
Crl.R.C.No.202/2014

N.Ravichandran .. Petitioner in
Crl.R.C.No.203/2014

- Vs -

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

Prayer in Crl.R.C.No.202 of 2014:- Petition is filed under Sections 397 and 401 of the Code of Criminal Procedure against the order dated 04.02.2014, passed in Crl.M.P.No.567 of 2011 in C.C.No.33 of 2011 by the learned XIII Additional Special Judge for CBI Cases, Chennai - 104, dismissing the petition filed for discharge of the petitioner.

Prayer in Crl.R.C.No.203 of 2014:- Petition is filed under Sections 397 and 401 of the Code of Criminal Procedure against the order dated 04.02.2014, passed in Crl.M.P.No.569 of 2011 in C.C.No.33 of 2011 by the learned XIII Additional Special Judge for CBI Cases, Chennai - 104, dismissing the petition filed for discharge of the petitioner.

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

For respondent : Mr.K.Srinivasan
in both the 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.202 and 203 of 2014 are the

accused 10 and 11 in C.C.No.33 of 2011 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, one Mr.R.Anbalagan filed a Special Leave Petition before the Hon'ble Supreme Court and the same was dismissed on 08.07.2010.

2.13. Thereafter, one Mr.R.Anbalagan, 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, Criminal Original Petitions were filed in CrI.O.P.Nos.23479, 21794, 21793, 22062, 22562 and 21651 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 Mr.A.Karupasamy, in CrI.R.C.No.202 of 2014 is the tenth accused in C.C.No.33 of 2011 and the petitioner Mr.N.Ravichandran in CrI.R.C.No.203 of 2014 is the eleventh accused in C.C.No.33 of 2011.

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 remained 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 cases.

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 statements 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 made 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 to frame charges.

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 submitted 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 in CrI.R.C.No.202 of 2014 Mr.A.Karrupasamy, is the 10th accused in C.C.No.33 of 2011. 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 for the re-exam held on 01.06.2005, in furtherance of the criminal conspiracy with A9 Mr.Devanath, the accused /petitioner fraudulently obtained the question paper from A9 and passed on the same to Kaleeswaran (W11).

13. The prosecution relies on the following materials against Mr.A.Karuppasamy 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)."

14. Here, 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 secure a police job. It is further alleged that before the examination, on one day, he dictated few questions to him. The said statement is so vague. Even if the said statement on its face value is accepted, that would not make out any offence against the accused. Thus, there is no material against this petitioner / tenth accused at all. Therefore, he is entitled for discharge.

15. The petitioner in CrI.R.C.No.203 of 2014 Mr.N.Ravichandran the eleventh accused in C.C.No.33 of 2011. He was working at the computer wing of Chennai City Police during the relevant period. The allegation against him is that for the re-exam held on 01.06.2005, in furtherance of the criminal conspiracy with A9 Mr.Devanath, the accused / petitioner fraudulently obtained the question paper from A9 and passed on the same to Kaleeswaran (W11), Mohan (W67), Alamelu (W65) and

Sivaraj (W68).

16. 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) Confession statements of the candidates viz., Mohan (W67), Sivaraj (W68) and Alamelu (W65), before the judicial authorities vide confession statements (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.

(vii) Recovery of hand written question paperr (D99) along with photo copy of letter (D98) written by N.Ravichandran (A4) to accused Nagamani (A11)

(viii) Opinion of TNFSL (D142, D143) that the seized question paper is in the hand writing of Mr.Nagamani (A-11), who had also accepted his guilt and gave a signed statement (D62) before the enquiry officer."

17. As I have already stated, the statement made by the petitioner / 11th accused to the police is not admissible in evidence. Mr.S.Mohan witness No.67 who has turned as an approver has stated that on 31.05.2005, he went to the house of Mr.Sivaraj and took him to the house of the accused Mr.Ravichandran. Mr.Ravichandran later came in the night and handed over xerox copy containing questions and answer of general knowledge. He noted down the questions and answer and later he and Sivaraj returned home on 01.06.2005. He wrote the examination. In that examination, almost all the questions given by the accused Mr.Ravichandran had appeared.

18. The learned senior counsel appearing for the petitioners would submit that the said question papers have not been recovered. He would further submit that Mr.Radhakrishnan, through whom the question paper was leaked out from 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.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 the above statement of the approver is taken at its face value as true, that would not make out a case against the accused at all, for the reasons I have discussed thus far.

19. A perusal of the records reveals that for the reasons not stated, though there were very strong allegations made against Mr.Radhakrishnan, I.P.S. and others and there are materials available against them, 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.

20. The learned Special Public Prosecutor for C.B.I. cases, on instructions from the C.B.I. would submit 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 submissions, I am not inclined to order for further investigation.

21. 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.

+4cc to Mr.K.Ramanujam, Advocate Sr.23766 & 23767

+1cc to Mr.K.Srinivasan, Special Public Prosecutor Sr.23632

PRE DELIVERY COMMON ORDER
in CrI.R.C.Nos.202 and 203 of 2014

bvr[col]
srg 26/04/2016



WEB COPY