

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated :21.04.2017

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THE HONOURABLE MR.JUSTICE T.MATHIVANAN

CRL.O.P.No.5082 of 2017 and
Crl.M.P.No.3777 of 2017

P.Subramani

... Petitioner

Vs.

State represented by
Inspector of Police,
Vigilance and Anti-Corruption Wing,
Vellore District.
(Cr.No.21 of 2013)

... Respondent

Prayer : Criminal Original Petition is filed under Section 482 of Cr.P.C. to call for the entire records connected with the Special Case No.13 of 2016 on the file of the learned Chief Judicial Magistrate (Special Judge), Vigilance & Anti-Corruption Special Court, Vellore and quash the same.

For Petitioner : Mr.S.Sathia Chandran

For Respondent : Mr.E.Raja
Additional Public Prosecutor

ORDER

This petition is filed under Section 482 Cr.P.C., to quash the criminal proceedings against the petitioner

herein who is the 2nd accused in the Special Case No.13 of 2016 on the file of the learned Special Judge(V&A.C.), Vellore.

2. Heard Mr.S.Sathia Chandran, learned counsel for the petitioner and Mr.E.Raja learned Additional Public Prosecutor for the respondent/Police and perused the grounds of this petition.

3. The petitioner being the 2nd accused has been facing the charges under Section 120-B of I.P.C. and Sections 7, 12 & 13(2) r/w. 13(1)(d) of Prevention of Corruption Act, 1988. The 1st accused in the above said case has been facing the charges under Sections 120 B of I.P.C., r/w. Section 7 and Sections 13(2) r/w. 13(1)(d) of Prevention of Corruption Act, 1988.

4. The case of the prosecution is that the complainant Bhuvana, a P.G.Assistant working as Assistant Headmistress at the Government Higher Secondary School, Nellorepet in Gudiyatham, Vellore District, was transferred to the Government Higher Secondary School, Veppanapalli in Krishnagiri District, on administrative grounds. When she had approached the petitioner seeking to recall the

transfer order, it is alleged, that he had directed her to meet the 1st accused Kalaiarasan who is working as a Physical Education Director in the Government Higher Secondary School, Pallalakuppam near Gudiyatham, who would help her to get her transfer order, revoked.

5. When she had contacted the 1st accused Kalaiarasan, he had told her that it would cost Rs.3,00,000/-. Since she was unwilling to pay the bribe to get the transfer order revoked, she had preferred a complaint before the respondent police and based on her complaint, the respondent police had registered a case in Crime No.21 of 2013 on 27.12.2013.

6. Soon after the registration of the case, the respondent police had arranged for a draft proceedings and directed the complainant, Bhuvana, to pay a sum of Rs.1,00,000/- to the 1st accused Kalaiarasan. It is also alleged that the currency notes were smeared with phenolphthalein. When the 1st accused Kalaiarasan came and received the cash at the residence of the complainant, Bhuvana, he was caught red handed. On interrogation, she had roped the name of the petitioner into the criminality and accordingly, the petitioner herein was arrayed as

accused No.2 in this case.

7. The specific charge levelled against the petitioner (A2) is that he being the Chief Educational Officer of Vellore District had entered into criminal conspiracy with the 1st accused Mr.Kalaiarasan, who is working as a Physical Education Teacher in Government Boys Higher Secondary School, Pallalakuppam, Gudiyatham Taluk, to collect Rs.3,00,000/-, being illegal gratification, other than the legal remuneration from the complainant, Bhuvana for cancelling her transfer order as she was transferred to Government Girls Higher Secondary School, Veppanapalli in Krishnagiri District from Government Boys Higher Secondary School, Nellorepet, Gudiyatham in the afternoon of 20.12.2013.

8. That on 20.12.2013, when the complainant Tmt.Bhuvana had met the petitioner (A2) at his office at Vellore, he had instructed Al Kalaiarasan, to assist the complainant Tmt.Bhuvana, in getting her transfer order cancelled and retain her in Government Higher Secondary School, Nellorepet, Gudiyatham, Vellore District. It is also alleged that during the course of the same transaction, that on 27.12.2013, between 8 p.m., and 8.10 p.m., the 1st accused Kalaiarasan, as instructed by this

petitioner (A2), came to the house of the complainant Tmt.Bhuvana at Door No.51, Blossom Villa, Vellore Road, Pallikonda and demanded and accepted a sum of Rs.1,00,000/- being the advance amount to influence the competent officials, to get the transfer order cancelled and retain her in Government Higher Secondary School, Nellorepet, Gudiyatham, Vellore District.

9. In this connection, Mr.Sathiachandran, learned counsel for the petitioner had contended that the petitioner had no powers either to transfer or revoke such transfer order in respect of the complainant, Bhuvana, who is a P.G.Assistant. According to Mr.S.Sathiachandran, the Joint Director of School Education Department (Higher Secondary) alone had got powers to transfer or revoke the transfer order of the complainant and as such, the petitioner had got no role to play.

10. This Court has also perused the 161(3) Cr.P.C., statement of the witnesses which were recorded by the investigating officer, during the course of investigation. At page No.21 of the typed set of papers, this Court is able to find the statement of one K.M.Jotheswaran Pillai, aged about 47 years. He is the Personal Assistant of Chief

Educational Officer and in his capacity as P.A., to Chief Educational Officer, he has stated before the Investigating Officer that the Chief Educational Officer, did not have powers to pass the order of transfer in respect of Teachers. He has also stated that the Chief Educational Officer is having powers to sign at the time of counselling in respect of B.T.Assistant Teachers, after following due procedure.

11. This Court has also perused the averments of First Information Report. The complainant Bhuvana has stated in her 161(3) statement that the 1st accused Kalairasan is already known to her and that she came to know through the petitioner (A2) that the said Kalaiarasan has been doing the job with regard to transfer of Teachers and only thereafter, she came into contact with Mr.Kalaiarasan with regard to her transfer. As aforestated, the petitioner (A2) has been facing the charges under Section 120-B of I.P.C and Section 7, 12 r/w. 13(2) r/w. 13(1)(d) of Prevention of Corruption Act, 1988.

12. Section 12 of Prevention of Corruption Act, 1988 contemplates ***Punishment for abetment of offences defined in section 7 or 11.-*** It enacts as under:

''Whoever abets any offence punishable under section 7 or section 11 whether or not that offence is committed in consequence of that abetment, shall be punishable with imprisonment for a term which shall be not less than six months but which may extend to five years and shall also be liable to fine.''

13. Section 7 reads as under:

''7. Public servant taking gratification other than legal remuneration in respect of an official act.- Whoever, being, or expecting to be a public servant, accepts or obtains or agrees to accept or attempts to obtain from any person, for himself or for any other person, any gratification whatever, other than legal remuneration, as a motive or reward for doing or forbearing to do any official act or for showing or forbearing to show, in the exercise of his official functions, favour or disfavour to any person or for rendering or attempting to render any service or disservice to any person, with the Central Government or any

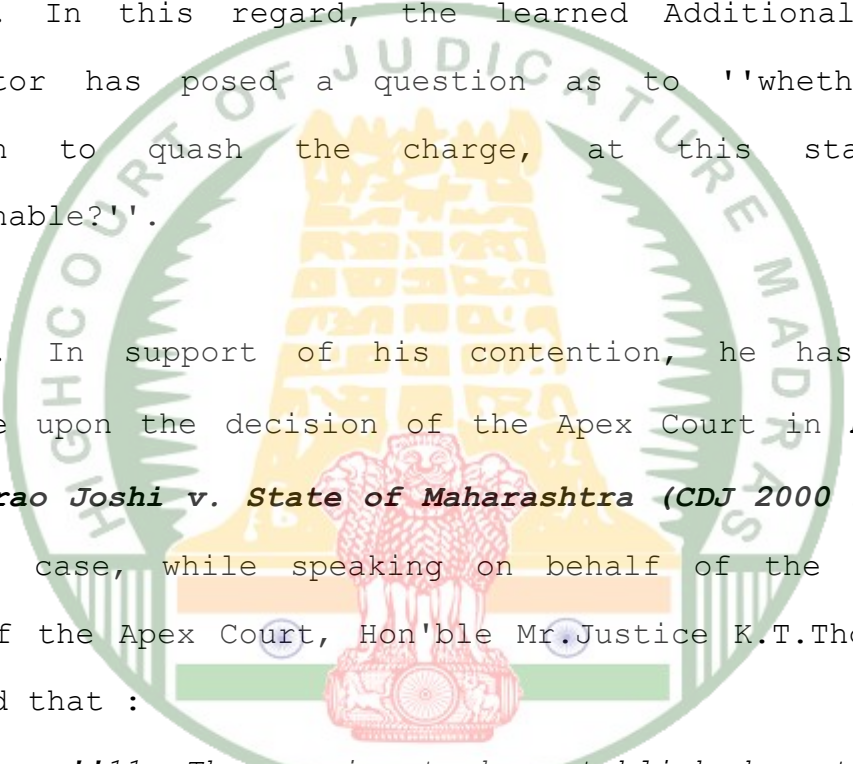
State Government or Parliament or the Legislature of any State or with any local authority, corporation or Government company referred to in clause (c) of section 2, or with any public servant, whether named or otherwise, shall be punishable with imprisonment which shall be not less than six months but which may extend to five years and shall also be liable to fine.''

14. On coming to the provisions of Section 12, it envisages that Whoever abets any offence punishable under section 7 or section 11, whether or not, that offence is committed in consequence of that abetment, shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to five years and shall also be liable to fine.

15. In this connection, Mr.S.Sathia Chandran, learned counsel for the petitioner has submitted that since Section 12 is the penal provision for the offence under Section 7, the provision of Section 12 would not attract in this case.

16. On the other hand, the learned Additional Public

Prosecutor (V & A.C.) has submitted that adequate evidences are available to proceed against the petitioner and that insofar as this case is concerned, charges have already been framed and the case stands posted for trial.

17. In this regard, the learned Additional Public Prosecutor has posed a question as to 'whether this petition to quash the charge, at this stage, is maintainable?'.


18. In support of his contention, he has placed reliance upon the decision of the Apex Court in **Madhukar Bhaskarrao Joshi v. State of Maharashtra (CDJ 2000 SC 519)**. In this case, while speaking on behalf of the Division Bench of the Apex Court, Hon'ble Mr. Justice K.T. Thomas has observed that :

'11. The premise to be established on the facts for drawing the presumption is that there was payment or acceptance of gratification. Once the said premise is established the inference to be drawn is that the said gratification was accepted 'as motive or reward' for doing or forbearing to do any official act. So the word 'gratification' need not be stretched to mean reward because reward is the outcome of the presumption which the

Court has to draw on the factual premise that there was payment of gratification. This will again be fortified by looking at the collocation of two expressions adjacent to each other like 'gratification or any valuable thing.' If acceptance of any valuable thing can help to draw the presumption that it was accepted as motive or reward for doing or forbearing to do an official act, the word 'gratification' must be treated in the context to mean any payment for giving satisfaction to the public servant who received it.'

19. After having given due consideration to the above cited decision of the Apex Court, this Court is of view that the ratio laid down in the above cited decision, cannot be made applicable to the instant case on hand, because it is an admitted fact that the petitioner (A2) is not having powers to effect transfer in respect of Graduate Teachers and only the Joint Director of School Education Department alone is having powers to effect transfer. This fact has been admitted by one K.M.Jotheswaran Pillai in his 161(3) statement before the Investigating Officer.

20. When such being the case, no presumption can be drawn as against the petitioner as no adequate grounds are available to proceed against him. Even if the criminal case

as against the petitioner is allowed to go ahead, the chance of conviction would definitely be bleak and therefore, in order to save the precious time of the court and to avoid the petitioner from facing the ordeal trial, this Court is of view that in the interest of justice, the charges levelled as against the petitioner may be quashed.

21. Accordingly, this Criminal Original Petition is allowed and the criminal proceedings as against the petitioner pending on the file of the learned Special Judge (Chief Judicial Magistrate) in Special Case No.13 of 2016 are quashed. Consequently connected Miscellaneous Petition is closed.

21.04.2017

Index: Yes
Internet : Yes
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To

1. The Chief Judicial Magistrate,
(Special Judge), Vigilance & Anti-Corruption,
Special Court, Vellore.

2. Inspector of Police,
Vigilance and Anti-Corruption Wing,
Vellore District.

3. The Public Prosecutor,
High Court, Madras.

T.MATHIVANAN, J. ,

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