

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 08.11.2017

PRONOUNCED ON:13.11.2017

CORAM:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Criminal Original Petition No.23238 of 2017
and CrI.M.P.No.13520 of 2017

1.S.Thiyagarajan
2.P.Vijayakumar
3.A.Suresh Kumar

.. Petitioners/Accused No.5,6 & 7

Versus

The State rep.by
The Inspector of Police,
Vigilance and Anti-Corruption,
Namakkal.

.. Respondent/Complainant

Criminal Original Petition filed under Section 482 of Cr.P.C., to quash the Final Report-1 filed by the respondent in Crime No.3/AC/12 which was taken cognizance as C.C.No.95/2017, on the file of the learned Chief Judicial Magistrate, Namakkal as against the petitioners.

For Petitioner .. Mr.B.Kumar, Sr. Counsel for
Mr.S.Senthil

For Respondent .. Mr.P.Govindarajan,
Addl.Public Prosecutor (CrI.side)

O R D E R

This Criminal Original Petition is filed to quash the Final Report on the ground that the Magistrate while taking cognizance of the offence has not applied his mind and his order taking the Final Report on file is very cryptic and non-speaking whereas the materials relied on by the prosecution does not disclose any offence under Section 167, 477A, 409 IPC or conspiracy between the petitioners and the other accused.

2.The petitioners are the accused (A5, A6 and A7) in Special C.C.No.95 of 2017 and they have been charged for the offences under Section 120(B) r/w 167, 477(A), 420 and 409 IPC

r/w 13(2) r/w 13(1) (c) (d) of Prevention of Corruption Act, 1988 r/w Section 109 IPC. The petitioners herein are the persons managing the affairs of Modern Institute of Catering Technology and Hotel Management, Rasipuram, Namakkal District. Based on the complaint registered by DV & AC, Namakkal, alleging that the funds allotted to disburse the scholarship for Adi-Dravida students studying in Technical Institutes has been impersonated by the petitioners institute and other institutes similar to that of the petitioners institute in connivance with public servant.

3.The specific allegation against the petitioners institute is that the first petitioner Thiyagarajan as Chairman of Modern Institute of Catering Technology and Hotel Management, Rasipuram, has fabricated false documents as if 176 Adi-Dravida students have undergone training in his Institute during the academic year 2008-2009 and had falsely claimed scholarship in the name of 174 students in which a sum of Rs.8,33,280/- as scholarship for 93 students and Rs.7,50,060/- as scholarship for 81 students received by fabricating the records, though only 52 students studied in his Institute during the academic year 2008-2009.

4.The learned Senior Counsel appearing for the petitioners drew the attention of this Court the order passed by the learned Chief Judicial Magistrate on 8.6.2017 to show that the said order is a non-speaking order and without application of mind. Further, the learned counsel also read the statements of witnesses who underwent course in the petitioners' institute who are stated very clearly without any ambiguity that the petitioners' institute has not collected any course fees from them. Further, the statements of witnesses and the records establish the fact that the petitioners' institute was granted permission to conduct four courses with two units each and in each unit they are entitled to admit 22 students. Thus the petitioners' institute is entitled to admit 174 students in different trade during the year 2008-2009. While so, the allegation of the prosecution that only 50 to 60 students studied during that period is total contradiction with the records maintained by the institute as well as the fee remittance made by the institute through Treasury Chals.

5.The learned Additional Public Prosecutor appearing for the State has filed a counter wherein relying upon the statement of L.W.13 Tmt.Revathi who had stated that the petitioners institute had admitted 138 students for the academic year 2008-2009 and out of them only 52 students attended the examination. However, the petitioners/ Accused Nos.5, 6 and 7 have falsely claimed Rs.8,38,280/- for 93 students on 25.7.2008 and sum of Rs.7,50,060/- for 81 students on 25.9.2008. While the evidence collected during the investigation indicates only 50 to 60 students got admitted in the petitioners institute for the

academic year 2008-2009 claiming reimbursement of scholarship for 93 students as first instalment and for 81 students in the second instalment clearly indicates false claim. Hence there are prima facie material to charge the petitioners for the offence under Section 120B, 167, 477A, 420, 409 r/w 109 IPC.

6. Heard the learned Senior Counsel for the petitioners and the learned Additional Public Prosecutor for the respondent.

7. Relying upon the Circular dated 13.6.2012 issued by the Adi-Dravidar Welfare Department, the learned Senior Counsel for the petitioners submitted that the terms of the Circular is very clear that the petitioners institute should admit Adi-Dravida students without insisting for course fees and the Government has promised to reimburse the course fees to the institute. Therefore, the question of payment of scholarship to the students directly does not arise. Therefore, the allegation as found in the Final Report as against the petitioners is fundamentally baseless. Further the learned Senior Counsel for the petitioners also submitted that in so far as the petitioners institute is concerned it is functioning at Rasipuram in the name of "Modern Institute of Catering Technology and Hotel Management". For the academic year 2008-2009 for 176 students, Rs.8,800/- was remitted into the account of Labour and Employment Department for the issuance of Industrial School Leaving Certificate and Rs.1,250/- for inspection charges and Rs.4,525/- for the issuance of ID Card for 176 students. While so, there is no basis to allege that only 50 to 60 students studied during the academic year 2008-2009 in the petitioners' institute and the petitioners' institute had excessively claimed scholarship as if 176 students studied in their institute.

8. Per contra learned Additional Public Prosecutor has brought to the notice of this Court the statements of L.W.17-Tmt.Revathi, who is the Regional Administrative Officer at Zonal Office of Directorate of Technical Education. In addition to that, the statements recorded from the students clearly show that the students for whom scholarship has been claimed did not pursue the course during the academic year 2008-2009 as claimed by the petitioners herein. They are students either joined during the different academic years or never joined the petitioners' institute or joined the petitioners' institute and discontinued. While so, claiming scholarship for all those students based on fabricated documents squarely attracts offence under Section 167A, 420 and 120B IPC since based on the fabricated documents grant has been obtained in connivance of public servant. Mere remittance of fees for 176 students for issuance of Industrial School Leaving Certificate or ID Card is not a proof that 176 students actually studied in the petitioners' institute during the academic year 2008-2009. Hence the case of the petitioners on this score is unsustainable and it is not worthy point for consideration to quash the final report.

9. Though the trial court order taking cognizance does not explicitly stated reason for taking cognizance, the very order to take the case on file indicates application of his mind and satisfaction to cause summons to the accused. Summoning the accused is the manifestation of application of mind. Hence, this court finds no substance in the petition to interfere.

10. Regarding the Government Order of the year 2012 as pointed out by the learned Additional Public Prosecutor, the allegation against the petitioners in the complaint relates to the admission of Adi-Dravida Community students in the academic year 2008-2009. Whereas the Government Order is of the year 2012 wherein the procedure for disbursement of grant has changed. The procedure as prevailing in the academic year 2008-2009 appears to be different from the procedure mentioned in the Government Order of the year 2012. Therefore, this contention is also not sustainable. Hence, this Court finds no merits in the petition to quash the pending prosecution against the petitioners for the reasons stated above.

11. In the result, this Criminal Original Petition is dismissed. Consequently, Crl.M.P.No.13520 of 2017 is closed.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

gr.

Copy to:-

1. The Chief Judicial Magistrate, Namakkal
2. The Public Prosecutor, High Court, Madras.
3. The Inspector of Police, Vigilance and Anti-Corruption, Namakkal.

WEB COPY

ORDER IN
CRL.O.P.NO.23238 of 2017

TR(27/11/2017)