

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.12.2017

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Crl.O.P.No.28150 of 2017

in

Crl.M.P.No.16001 of 2017

G.Dravin

.... Petitioner/Accused No.3

Vs.

The State Rep.by
The Deputy Superintendent of Police,
Vigilance & Anti-Corruption,
Namakkal,
Namakkal District. Respondent/Complainant

Prayer: Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to call for the records in Spl.C.C.No.17 of 2016 on the file of the Chief Judicial Magistrate, Namakkal and quash the same.

For Petitioner : A.Ramesh, Senior Counsel
for Mr.M.Guruprasad

For Respondent : Mr.P.Govindarajan
Additional Public Prosecutor

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सत्यमेव जयते

O R D E R

Petition to quash the case against the petitioner herein is arrayed as third accused.

2. The brief facts of the case is that,

The Government of Tamil Nadu is implementing the pre-matric scholarship scheme of the Government of India to the children of those engaged in unclean occupation i.e. Scavenging, tanning and flaying through the Adi-Dravidar Welfare Department of Tamilnadu. As per circular issued to all the District Adi-Dravidar & Tribal Welfare Officers, scholarship to the children of those who engaged in unclean occupation to be sanctioned at

the rate of Rs.110/- per month and an Adhoc amount of Rs.750/- per annum totalling to Rs.1,850/- to the day-scholars for an academic year i.e. 10 months; from 1st standard to 10th standard subject to the following conditions:

1. For claiming pre-matric scholarship to the children of unclean occupation, no caste or creed and no income limit is fixed.
2. Either one of the parents must be engaged in unclean occupation.
3. The scholarship applications should be obtained only from the Office of the District Adi-Dravidar and Tribal Welfare Office.
4. The application praying for the scholarship should bear the signature of the student and his/her parents.
5. Regarding the unclean occupation of the parents, a certificate to the effect should be obtained from the V.A.Os concerned in rural areas and that of the Health Inspectors from the Municipal area in the application form itself.
6. The filled up application forms should be scrutinized and sent to the District Adi-Dravidar and Tribal Welfare Officer through proper channel. The officials concerned in the District Adi-dravidar and Tribal Welfare Office must verify the application forms in person.
7. Pre-matric scholarship amount of Rs.110/- per month for ten months + adhoc amount of Rs.750/- per annum (Totalling to Rs.1850/- be paid to the eligible day scholars. In respect of the hostlers studying in Class III to X to be paid scholarship of Rs.700/- per month for 10 months + adhoc amount of Rs.1,000/- per annum per student.
8. After satisfying the genuineness of the application forms, the District AdiDravidar and Tribal welfare Officer will issue cheque to the concerned Head Masters and if the amount exceeds Rs.25,000/- the cheque must be crossed.
9. The scholarship amount be disbursed to the students in the presence of their parents and obtain the signatures of the parents, and the acquaintance roll be sent to the D.A.W. Office.
10. The District Adi-Dravidar and Tribal Welfare Officer must check the disbursed amount at least 10%, the Special Tahsildar must check at least 25% in this regard, and the Revenue Inspector must check 100% of the total amount disbursed.

3. During the enquiry conducted by the inspection team regarding certain mal practice in disbursing pre-matric scholarship for the children of those engaged in unclean occupation, in respect of day scholars, it has been found that against the budget sanction, around Rs.51 lakhs has been disbursed in anticipation of revised allocation. Based on fabricated records, cheques have been issued to certain schools

in connivance with the Head Master of the school as well as officials in the Adi-Dravidar and Tribal Welfare Officers. Subsequent to the investigation by the team dated 04.08.2012, the respondent has registered a case under Section 120, 409, 485, 471 IPC r/w Section 13(2) 13 (1) (c) Prevention of Corruption Act, 1988 against 9 persons. After investigation, final report has been filed. The trial Court has also taken cognizance of the same and now assigned Special C.C.No.17/2016 on the file of Chief Judicial Magistrate, Namakkal.

4. The learned counsel for the petitioner submits that there is no material to take cognizance against the petitioner. The factual matrix projected by the prosecution through the witnesses and the material evidence in the course of investigation do not bring home any of the offences alleged in the official report, particularly, the learned Senior Counsel referring the final report, the offence for which the present petitioner is implicated and the statement of the witnesses who have spoken about the role of the petitioner herein as D1 seat Assistant submitted that the endorsement in the loan application shows that he had sent it to the higher official for his perusal and it does not disclose any mens rea. In the absence of any evidence to show that he along with Head Master or the other officials conspired to cheat the Government, he cannot be prosecuted. In respect of his submission, the counsel also referred the judgment of the Hon'ble High Court R.Thangaraju Vs. State reported in 2010 SCC online Mad 3218 : 2011 Criminal Law Journal 1044

36. In this regard the learned senior counsel appearing for the petitioner relies on a judgment of the Hon'ble Supreme Court in C.Chenga Reddy v. State of A.P., 1996 SCC (Cri) 1205: ((1996) 10 SCC 193 : AIR 1996 SC 3390) wherein the Hon'ble Supreme Court in para 22 held thus:-

"That because of the actions of the appellants in breach of codal provisions, instructions and procedural safeguards, the State may have suffered financially, particularly by allotment of work on nomination basis without inviting tenders, but those acts of omission and commission by themselves do not establish the commission of criminal offences alleged against them."

Judgment of Gujarat High Court Javekakhtar Mohmed Mirza Vs. State of Gujarat and Ors. reported in MANU/GJ/1838/2017

4.4 In order to constitute an offence of criminal breach of trust and so as to establish the commission of this offence, the dishonest intention is a basic thread running across the provision. In absence of such dishonest intention, the offence cannot be said to have been committed. The act of

entrustment would not suffice, the dishonesty must accompany and must be shown in the appropriation or use of the property. Gist of the offence is dishonest intention.

4.5 It is the dishonesty alone and not negligence which will be required to be shown. A negligent conduct or a conduct amounting to dereliction of duty will not make out the offence of criminal breach of trust.

Judgment of Hon'ble Supreme Court Anil Kumar Bose Vs. State of Bihar reported in (1974) 4 SCC 616

12. On the above evidence at the highest it was a failure on the part of the Accountant to perform his duties or to observe the rules of procedure laid down in the Duty Chart in a proper manner and may, therefore, be an administrative lapse on his part about which we are not required to pronounce any opinion in this case. Without, however, any thing more we do not think it will be correct to impute to this appellant a guilty intention which is one of the essential ingredients of the offence of cheating under Section 420 I.P.C. Apart from this, the High Court is not correct and indeed had no material to hold that "the Accountant did not purposely sign on these forged bills with a view to get himself absolved of the responsibility". The evidence of the Superintendent, which is extracted above, runs counter to that conclusion.

15. Even on the finding of the High Court, there was nothing in the Duty Chart that the duty of the Cashier was to see that the payment was made to the correct or right person. There is further no evidence that these three Doctors were known to the Cashier. On the other hand, the High Court has not absolutely repelled the argument advanced on his behalf that it was not possible for him to know all the Housemen. The High Court has come to an adverse conclusion against him on account of his not properly "ascertaining who was the real recipient" of the money before he disbursed the same. The material before the High Court together with the significant observation against the Superintendent and the Deputy Superintendent do make out a case for giving benefit of reasonable doubt to the Cashier as well. On the evidence which the High Court has relied upon against him, it is not possible to hold that the requisite mens rea has been established against this accuse. As observed in the case of the Accountant, it may be at the highest a case of an error of judgment or breach of performance of

duty which, per..se, cannot be equated with dishonest intention to establish the charge under Section 420 I.P.C. In the result, the appeals are allowed. The judgment of the High Court so far as these two appellants are concerned is set aside. The two appellants herein are acquitted of the charge and shall be discharged from their bail bonds.

5. Per contra, the learned Additional Public Prosecutor submits that the case of the prosecution is that while disbursing the scholarship for the children, whose parents are engaged in unskilled avocation, the State Government has provided funds which has been disbursed in the manner mentioned in the scheme. Particularly, the beneficiary should be children of parents who are engaged in unskilled occupation and they should apply in the prescribed format issued by the District Adi-dravidar & Tribal Welfare Office, wherein, the students as well as parents have to fix their signature and application has to be accompanied with the certificate of the V.A.Os of the concerned area or Health Inspector from the Municipal area and the filled up application should be scrutinised and sent to District Adi-dravidar & Tribal Welfare Office through proper channel and same has to be verified at the office of the District Adi-Dravidar and Tribal Welfare and thereafter, scholarship of Rs.1,850/- per year has to be given to each eligible student. If they are days scholars and hostlers studying in class III to X, an additional scholarship of around Rs.8,000/- per annum has to be paid. While disbursing the scholarship to the respective schools by way of cheques, after satisfying the genuineness, if the amount exceeds Rs.25,000/- the cheque must be crossed. The petitioner herein who is in charge of D1 seat assistant for the year 2011 and 2012 had fixed his initial and forwarded the scholarship papers to the higher official, despite the fact that applications did not satisfy the above conditions. Firstly, the VAO certificate not been enclosed by the applicants and in some of the applications, even the signature of the students or parents were not found and the other defects were found in the application. Therefore, the act of the petitioner could be attributed to serious deviation of the duty in connivance with the other persons to cheat the Government and to make unlawful gain. Since there is enough material against the petitioner to be tried in the case he cannot be acquitted as prayed in this petition.

6. This Court heard the counsel and also perused the records. From the statement of Tr.Mani and A.Selvaraj who are the officials of Adi-Dravidar and Tribal Welfare Department, this Court finds that the petitioner as D1 seat Assistant is supposed to receive the scholarship applications and record it in his register and scrutinise the application, compare the name

of the child with that of the name found in the application, signature of the parents as well as VAO's certificate regarding, the occupation of the parents, signature of the Head Master and seal and thereafter, make a note and initial the application and forward it to the assistant accountant. In this case, the witness has spoken that the petitioner herein who was in charge of D1 seat assistant during the year 2011-2012 had officially passed the applications without pointing out the defects found in the application and placed it before the higher official.

7. In this regard, the judgments referred by the learned Senior Counsel is taken for consideration as to whether, it can be applied to the case in hand. The facts of the case cited regarding the role of the P.A. to RDO wherein, the Hon'ble High Court after referring to the judgment of the Supreme Court has held that breach of codal provisions, instructions and procedural safeguards leading to financial loss to the State may not necessarily establish the commission of criminal offences. Referring the Supreme Court judgment, the learned Single Judge has said that the role of the P.A. to RDO, is to place the papers to RDO for his appreciation and any commission or omission on his part attributed will not be criminal liability.

8. Whereas in the present case, the role of the petitioner is very specific as spoken by one of the listed witnesses. The D1 seat assistant has to maintain a register and compare the application with that of the students name furnished by the school, point out the defects if any thereafter, placed it to the higher officials, when a specific responsibility rests upon the petitioner, failure to discharge the same facilitating the school Head Master to draw scholarship and misappropriate the same cannot construed as negligence without any criminal intention. It is for the trial Court to look into and appreciate the evidence placed by the prosecution. Therefore, this Court is not inclined to entertain the petition. Hence, the petition dismissed.

s/d-

Assistant Registrar (CS-V)

True Copy

Sub-Assistant Registrar

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To

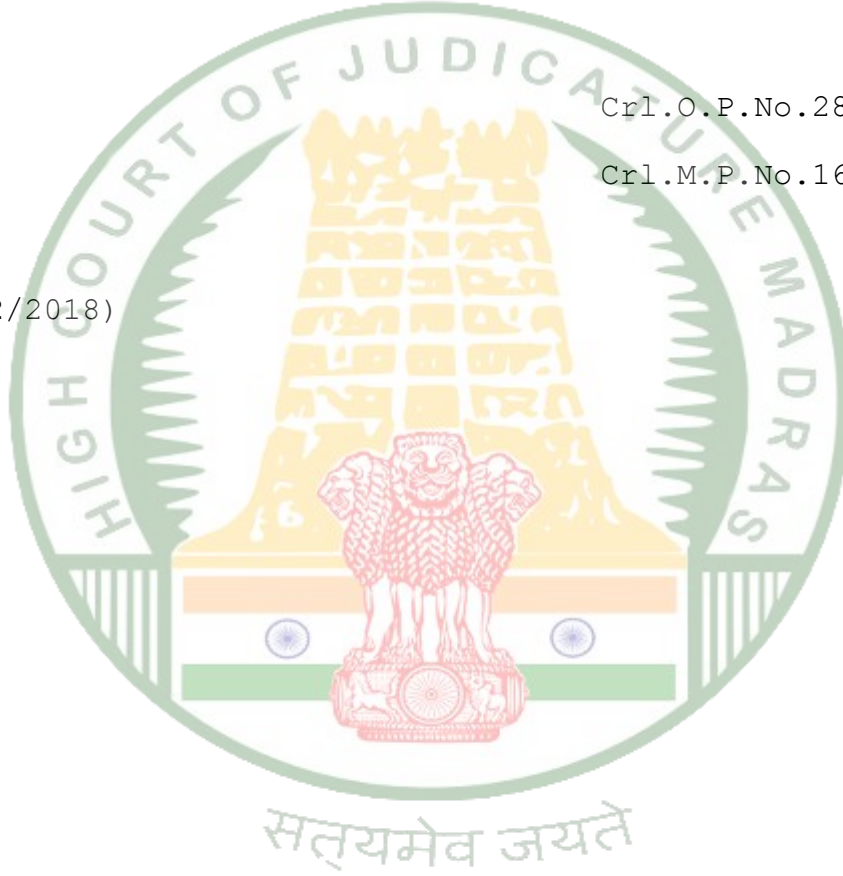
1. The Deputy Superintendent of Police,
Vigilance & Anti-Corruption,
Namakkal,
Namakkal District.

2. The Public Prosecutor,
High Court, Madras.

+1cc to Mr.M.Guruprasad, Advocate, SR No.91091

CrI.O.P.No.28150 of 2017
in
CrI.M.P.No.16001 of 2017

NMI (CO)
rsi (03/02/2018)



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