BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21.09.2017

CORAM

THE HON'BLE MR.JUSTICE V.BHARATHIDASAN

Crl.R.C(MD)Nos.466 to 470 of 2016

1.P.Nallaperumal
2.C.Sivagaminathan
3.P.Vittal ... Petitioners in all the Revision Cases.

Vs.

State by
The Deputy Superintendent of Police,
Vigilance and Anti Corruption Wing,
Madurai
Crime No.1 of 1997. ... Respondent in all the Revision Cases.

Prayer : Criminal Revision Cases filed under Section 397 read with 401 Cr.P.C. to call for the records relating to the orders passed in Crl.M.P.Nos.13, 16, 21, 24 and 28 of 2011 in Spl.Case Nos.33, 35, 36, 37 and 38 of 2011 by the Special Judge for trial of Cases under the Prevention of Corruption Act, Madurai dated 29.02.2016 and set aside the orders and consequently discharge the petitioners from the charges.

For Petitioners : Mr.N.Ananthapadmanabhan
For Respondent : Mr.C.Mayilvahana Rajendran
(In all the Revision Cases)

COMMON ORDER

The petitioners in these Criminal Revision Cases are arrayed as A1 to A3 in all Special Criminal Cases. All of them were working as District Backward Classes and Minorities Welfare Officers at Madurai. A1 was working from 1989-1990, A2 was working from 1990-1991 and A3 was working from 1991-1992. All the three accused stood charged for the offence under Sections 120-B and 109 IPC read with Sections 467, 167, 471 and 409 IPC and also under Sections 13(1)(c) and (d) read with 13(2) of the Prevention of Corruption Act, 1988. The main allegation against the petitioners/A1 to A3, is that five approved typewriting institutes, at Theni and Bodinayakanur, prepared bogus claim applications and sent the same to the petitioners/A1 to A3 claiming scholarships for the students alleged to have studying in their institutes. The petitioners who were working as District Backward Classes and Minorities Welfare Officers, without properly scrutinizing the same and conducting any random check and scrutiny, approved the same and thereby sanctioned scholarship for the bogus claim and thereby they have committed the above said offence. A complaint has been given against the petitioners and other officials, working in the department and the Institute Heads. After investigation, five separate final reports have been filed in respect of five institutes and the matter was also taken cognizance, thereafter, the petitioners/A1 to A3, filed petitions to discharge them from the charges. The Court below dismissed the same. Now, challenging the dismissal orders, the present Criminal Revision Cases have been filed.

2.Heard Mr.N.Ananthapadmanabhan, learned counsel appearing for the petitioners and Mr.C.Mayilvahana Rajendran, learned Additional Public Prosecutor appearing for the respondent.

3.The learned counsel appearing for the petitioners would contend that the petitioners are the District Backward Classes and Minorities Welfare Officers, and as per the Government Order, relating to sanctioning of scholarships, after receipt of the applications from the institutes, the District Backward Classes and Minorities Welfare Officers should forward the applications to the staff working under them for scrutiny and verification and thereafter, they are only supposed to conduct a random check and scrutiny and approve the applications. After approving the same, Assistant Accounts Officer/Junior Accounts Officer will prepare the bill with the assistance of concerned Assistants. Then, cheques will be issued by the Assistant Accounts Officer and it will be sent to the concerned institutions and the concerned institutions will disburse the scholarship amount to the students. It is not the duty of the petitioners to scrutinize every application and find out whether the applications are genuine or bogus. In this case, the petitioners, after receipt of the applications, sent the same for scrutiny and A7 in this case was directed to scrutinize the applications and after scrutinizing the papers were placed before the petitioners, the petitioners after random check, found the papers are in order and then only, they approved the same. Absolutely it is not the duty of the petitioners to verify whether the claims are genuine or bogus. If at all any offence is committed, it is only the institutions which sent the bogus applications and the persons who scrutinized the applications and for that, the petitioners cannot be found fault with. Apart from that, there is no material available on record to show that the petitioners were received any monetary benefit out of the above transaction. Even as per the statements of various officials, it could be seen that only after scrutinizing the applications and after conducting random check, the petitioners have put their signatures, approving the applications and thereafter, they sent the applications to the concerned officials, and cheques were prepared and sent it to the concerned institutes, ultimately, the institutes said to have misappropriated the funds.

Even assuming that the petitioners committed any illegality, it only amounts to dereliction of duty, for which, no criminal liability can be fixed against them. The learned counsel appearing for the petitioners further submitted that the occurrence has taken place in the year 1989 and the petitioners have retired in the year 1994 and now they are all aged more than 80 years and undergone severe mental agony and they were unnecessarily penalised for no fault on them.

4.Per contra, the learned Additional Public Prosecutor appearing for the respondent would contend that the petitioners being the District Backward Classes and Minorities Welfare Officers, it is their primary duty to verify whether the applications sent by the institutions are genuine or not. In this case, five institutions have sent bogus claim. In some of the cases, even without applications, the institutes sent list of students but the petitioners without verifying the same, mechanically approved and sanctioned scholarship, enabling the institutes to misappropriate the fund. The learned Additional Public Prosecutor further contended that it is the petitioners, conspired with other officials and institutes, have made bogus claim and thereby caused pecuniary loss to the Government. Hence, the petitioners are also liable for the said offence and there is prima facie case is made out against the petitioners. The trial Court after considering the entire materials available on record, has rightly dismissed the applications and there is no illegality in the orders passed by the Court below.

5.I have considered the rival submissions made on either side and perused the records carefully.

6.Admittedly, the petitioners were working as District Backward Classes and Minorities Welfare Officers at Madurai, during the relevant period. The main allegation against the petitioners is that five approved typewriting institutes applied for grant of scholarship to the students. But, according to the prosecution, the claim made by the institutes are bogus claim and the petitioners, being the head of the department, ought to have verified all those particulars before sanctioning the scholarship amount. I have gone through the entire records. In some of the institutes, the applications were sent along with certificates, but according to the prosecution, those applications are bogus applications and no student was studying in those institutes. In one or two institutes as claimed by the Additional Public Prosecutor, there was no application at all for some of the students, but they have sent a list of students. Subsequently, scholarship has also been sanctioned for the entire claim made by the institutes for all the students as claimed by the institutes and the amount has also been disbursed to them.

7.Now the question is whether the petitioners have committed any criminal act. Even as per the final report filed by the respondent, it could be seen that in the cases awarding scholarship to the institute, they should receive applications from the students with necessary certificates and sent the same to the District Backward Classes and Minorities Welfare Officers with remarks, and after receipt of those applications, the District Backward Classes and Minorities Welfare Officers should forward those applications to the staffs working in the office for scrutiny and verification, after scrutiny and verification by the staff in the office, the District Backward Classes and Minorities Welfare Officers would conduct a random check and scrutiny and thereafter, they should approve the same. After approval, the applications should be sent to the Assistant Accounts Officer and he will prepare bills and thereafter cheques will be issued by the Assistant Accounts Officer and the cheques will be sent to the concerned institutes and the institutes alone will withdraw the amount and disburse the same to the concerned students. The learned counsel appearing for the petitioners relied upon the Government Order in G.O.No.1788, Social Welfare Department, dated 15.07.1982 which deals with powers of the District Backward Classes and Minorities Welfare Officers, which reads as follows:

> *"6.The Director of Adi Dravidar and Tribal Welfare/Director of Backward Classes in the case of Madras City the Adi Dravidar Welfare Officers and the District Backward Classes Welfare Officers, in the case of other district will do a compulsory minimum of 10 per cent test check of all such scholarships sanctioned regarding the community and eligibility. Whenever it is considered necessary to verify the eligibility of the candidates for the scholarship, the District of Adi-Dravidar and Tribal Welfare/Director of Backward Classes and their staff or the concerned District Welfare Officer or his staff shall enquire into this matter. If on enquiry it is found that a particular candidates is not eligible for the scholarship, then the head of Educational Institution shall render all possible assistance to the concerned Welfare Officer in condoning the enquiry."*

8.In this case, from the perusal of the records, it could be seen that after receipt of the applications, the petitioners have sent it for scrutiny by A7 in this case and after scrutiny of the applications, they were again placed before the petitioners and they have sanctioned the amount and the amount has also been disbursed to the concerned institutes, and the institutes according to the prosecution has misappropriated the fund. Absolutely there is no material to show that the petitioners received any monetary benefit out of it.

9.Now, according to prosecution, the petitioner did not conduct compulsory check and scrutiny before sanctioning scholarship amount. Even assuming that they failed to conduct random check, act of the petitioners will only fall under dereliction of duty for the breach of procedure contemplated in the Government Order and it would not amount to abetment.

10.So far as the offence under Section 107 IPC, there must be some material to show that the petitioners have intentionally aided the other accused for the commission of the crime. Mere giving of an aid will not make the act of abetment, unless it is shown that the petitioners have knowledge or have reason to believe that the act which they are aiding or supporting, facilitate the other accused to commit the crime, they can not be charged with for an offence under Section 109 IPC. In the above circumstances, there is no material available to show that the petitioners have abetted the accused intentionally for committing the crime.

11.In similar circumstances, the Hon'ble Supreme Court in *State of M.P. Vs.Mukesh and others* reported in *(2007) 2 SCC (Cri) 680* has held as follows:-

> *"18.A person, it is trite, abets by aiding, when by any act done either prior to, or at the time of, the commission of an act, he intends to facilitate and does in fact facilitate, the commission thereof would attract the third clause of Section 107 of the Penal Code. Doing something for the offender is not abetment. Doing something with knowledge so as to facilitate him to commit the crime or otherwise would constitute abetment."*.

12.Following the above judgment, this Court in *P.Thangaraju Vs.State* reported in *(2010) 3 MLJ (Crl) 21* has held as follows:

> *"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."*

13.In the said circumstances, even assuming that the petitioners have committed breach of procedure, it will not amount to any offence, for which, they were all charged. Apart from that, even for the offence under Section 120-B IPC, absolutely there is no material to show that the petitioners have also conspired together along with other accused, and have committed the offence under Sections 467, 167, 471 and 409 IPC.

14.So far as the charge under Section 13(1)(c) and (d) read with 13(2) of the Prevention of the Corruption Act, as already held that because of the petitioners committed the procedure violation, and due to the same, the State has suffered financial loss, that itself will not establish the commission of offence under the above said Act. In the above circumstances, considering the entire materials available on record, I am of the considered view that the there is no *prima facie* case made out against the petitioners to proceed with. Apart from that the occurrence has taken place in the year 1990 and all the petitioners have retired from service in the year 1993-1994. Now all of them are more than 80 years old and the criminal cases are pending from 1997 and they have also suffered mental agony for more than 20 years.

15.In the above circumstances, as there is no *prima facie* case made out to proceed with the criminal case against the petitioners, I am inclined to discharge the petitioners from the charges.

16.In the result, these Criminal Revision Cases are allowed and the petitioners are discharged from all the charges. Since the matter is pending from the year 2011, the trial Court is directed to proceed with the trial in respect of other accused and dispose of the same within a period of six months from the date of receipt of a copy of this order.

Sd/-
Assistant Registrar(CS-II)

/True Copy/

Sub-Assistant Registrar

To

1.The Deputy Superintendent of Police,
Vigilance and Anti Corruption Wing,
Madurai.

2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

3.The Special Judge for the trial of Cases
under the Prevention of Corruption Act, Madurai.

+One cc to Mr.N.Ananthapadmanabhan, Advocate, RS.No.80404
mj
RL/5C/6P/JC/SAR1/13/10/2017