

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.11.2018

CORAM:

THE HON'BLE MR.JUSTICE M.DHANDAPANI

Crl.R.C.No.1390 of 2018

And

Crl.M.P.No.16152 of 2018

Dr.S.Murugesan

..Petitioner/Accused 1

Vs.

Deputy Superintendent of Police

CBI, ACB,

Chennai.

... Respondent/Complainant

Prayer:

Revision petition filed under Section 397 r/w 401 of Cr.P.C. seeking to call for the records in C.C.No.15 of 2014 on the file of the learned XII Additional Sessions Judge for CBI cases, Chennai and set aside the order framing charges against the petitioner dated 19.09.2018.

For Petitioner : Mr.N.R.Elango,

Senior Counsel

for Ms.Aruna Elango

For Respondent : Mr.K.Srinivasan

Special Public Prosecutor for CBI cases

O R D E R

The petitioner has filed this criminal revision seeking to call for the records in C.C.No.15 of 2014 on the file of the learned XII Additional Sessions Judge for CBI cases, Chennai and to set aside the order of framing charges against the petitioner dated 19.09.2018.

2.The petitioner is A1, was implicated under the offence of criminal conspiracy punishable under Section 120B r/w 420 IPC and Section 7, 12, & 13(2) r/w 13(1)(d) of Prevention of Corruption Act, 1988 in C.C.No.15 of 2014 on the file of the learned XII Additional Sessions Judge for CBI Cases, Chennai.

3.The sum and substance of the petitioner's case is as follows: M/s.Adhiparasakthi Dental College and Hospital, Melmaruvathur, is an entity established and administered by Adhiparasakthi Charitable Medical Education and Cultural Trust, namely Smt.V.Lakshmi i.e.A13 wife of Shri.G.Bangaru is the Chief Executive Manager of M/s.Adhiparasakthi Dental College and Hospital, Melmaruvathur.

4.The Government of Tamil Nadu in the year 2004 issued Essentiality Certificate to M/s.Adhiparasakthi Charitable Medical Educational and Cultural Trust for starting a BDS Dental College. Based on the Essentiality Certificate issued by the State Government, Dental Council of India issued permission on 23.06.2005 to start the college with intake of 100 students. Hence, the institute got recognised

to conduct BDS Degree. Later, the Trust sought permission to start MDS Course. The Tamil Nadu Dr.M.G.R.Medical University to which the said college is affiliated directed the trust to obtain essentiality certificate from the Government of Tamil Nadu.

5.Accordingly, the college obtained the Essentiality Certificate from the Department of Health and Family welfare, Government of Tamil Nadu, on 26.04.2012 for conducting Courses like (i) Oral Pathology & Microbiology with 3 seats, (ii) Prosthodontics and crown 4 Bridge with 3 estate. (iii) Conservative Dentistry and Endontics with 3 seats (iv) Periodontology with 3 seats (v) Orthodontics and Dentofacial orthopaedics with 3 seats and (vi) oral & maxillofacial surgery with 3 seats.

6.M/s.Adhiparasakthi Charitable Medical Educational and Cultural Trust through its Chief Executive Officer Smt.V.Lakshmi (A-13) conspired with other accused to get affiliation for the MDS Degree Course in connivance with Dr.Mayilvahanan Natarajan, Vice Chancellor of Tamil Nadu Dr.M.G.R. Medical University to get letter of consent for affiliation to start MDS Degree course without the mandatory requirements, so as to enable the Trust to apply to Dental Council of India for permission without complying the mandatory requirement to start MDS Courses.

7.Pursuant to the said conspiracy, Dr.Mayilvahanan Natarajan, Vice Chancellor of Tamil Nadu Dr.M.G.R.Medical University, issued letter of consent for affiliation knowing fully well that M/s.Adhiparasakthi Dental College and Hospital, Melmaruvathur, does not have the mandatory requirement to start MDS degree courses. Dr.Mayilvahanan Natarajan, Vice Chancellor of Tamil Nadu Dr.M.G.R.Medical University, despite adverse report by the inspection team on 06.06.2012, ordered re-inspection by constituting two new inspection team on 07.06.2012 and issued letter of consent of affiliation from the Tamil Nadu Dr.M.G.R. Medical University, Madras in respect of six specialities without complying the mandatory requirement, the Chief Executive Officer viz.A13 applied to the Ministry of Health and Family welfare, Government of India, for permission to start MDS Degree Course in six specialities for the

approval from Dental Council of India which is the governing body to accord permission to start Dental course.

8.The college administration headed by its Chief Executive Officer Smt.V.Lakshmi(A13), K.Rambadran(A4) and R.Karunanithi(A5) had conspired to influence the petitioner viz. Dr.Murugesan(A1), one of the Dental Council Members to get approval for starting MDS degree course. Pursuant to the said conspiracy, a meeting was arranged between the petitioner(A1) and R.Karunanithi (A5) one of the Trustees of M/s Adhiparasakthi Charitable Medical Education and Cultural Trust, Melmaruvathur, K.Rambadran (A4), Administrative officer and Dr.S.Subramanya Sharma(A7), who was working as Professor and Head of the Department resigned from SRM Dental College and Hospital, Kattankulathur and joined in Melamaruvathur on the recommendation of the petitioner (A1) to be a conduct between the management and members of the Dental Council of India through the petitioner(A1).

9.In furtherance to the said conspiracy, to influence DCI members, R.Karunanithi (A5) Trustee, K.Rambadran Administrative Officer (A4), T.Palani, former member of Legislative Assembly handed over Rs.25 Lakhs to the petitioner i.e. Dr.S.Murugesan(A1) herein on 07.01.2013. On information, the said money was recovered by CBI from the clinic of A1 i.e. M/s.Cranic Facial Clinic, Chennai. Accordingly, all the accused persons were arrested and enlarged on bail. CBI has also filed a charge sheet before the competent court.

10.Thereafter, the petitioner herein had sought discharge from the said offence and discharge application was filed before the XII Additional Sessions Judge, for CBI cases, Chennai in CrI.M.P.No.2581 of 2015 dated 05.02.2018 and the same was dismissed. Against which, the petitioner has filed a criminal revision in CrI.R.C.No.463 of 2016 before this Court. This Court after elaborate discussion, dismissed the revision petition filed in CrI.R.C.No.463 of 2018 on 04.05.2018. Aggrieved by the said dismissal order of this Court, the petitioner preferred S.L.P. before the Hon'ble Supreme Court in S.L.P.(CrI).No.5104 of 2018, which was also dismissed by the Hon'ble Supreme Court. Thereafter, the Trial Court framed charges against the petitioner under Section 219 of Cr.P.C., against which the present revision has been filed.

11.The learned Senior Counsel Mr.N.R.Elango appearing for the petitioner would submit that the conspiracy alleged by the prosecution is of two sets viz., initially A13 and other accused entered into a conspiracy with

Dr.Mayilvahanan Natarajan (A8), Vice Chancellor of Tamil Nadu Dr.M.G.R. Medical University for getting affiliation in order to get approval from the Dental Council of India, they want to influence the petitioner by paying Rs.25 lakhs as bribe and the same was seized by CBI. There are two sets of facts and two different conspiracy theory. The essentiality certificate had already been issued in favour of the Trust on 12.06.2012 itself. A13 and their Board Members entered into another conspiracy on 07.11.2012, thus conspiracy intending like framing charges against all the accused persons, which is unsustainable one and illegal and seriously prejudiced. Accordingly, the petitioner has approached this Court.

12.In support of his contentions, the learned Senior Counsel relied upon the judgment of this Court reported in 2011(2) MNW (Cr.) 47 (J.Duraimunusamy and others v. State by the Additional Superintendent of Police), the relevant paragraph No.28 reads as follows:

"28.Obviously, Section 219 of Cr.P.C. cannot be made applicable to the facts of the present case inasmuch as there are two different set of Accused, except few Accused who are common in respect of both the occurrences. Therefore, as provided in Section 218 of Cr.P.C. The Trial Court ought to have framed separate charges in respect of distinct offences committed in respect of the question papers pertaining to two different examinations held on 27.03.2005 and 01.06.2005 and should have tried them separately. In my considered opinion, Charge No.1 which covers both the occurrences against all the accused is surely illegal. Similarly, in respect of the other charges also though the charges have been distinctly framed, joint trial relating to two different occurrences has been ordered. This is again illegal. If the trial is allowed to be continued based on the above charges, which in my considered opinion, are erroneous, surely, this will result in serious prejudice resulting in injustice to the Accused. At this juncture, I may also refer to Section 464 of the Code of Criminal Procedure which would indicate that if the failure of justice has in fact been occasioned due to irregularity in the charge including the misjoinder of charges, even the appellate Court or revisional Court shall be bound to order for re-trial. In the cases on hand,

as I have already concluded, allowing the trial to be proceeded into the charges as framed in the case, which are erroneous and having a joint trial, will surely result in failure of justice. On this ground by itself the entire charges are liable to be quashed".

13.The learned Senior Counsel further relied upon the decision of the Hon'ble Apex Court reported in 2018 SCC Online SC 310 (Asian Resurfacing of Road Agency Pvt. Ltd. V. Central Bureau of Investigation) paragraph no.38 of which reads as follows:

"38.Thus, we declare the law to be that order framing charge is not purely an interlocutory order nor a final order. Jurisdiction of the High Court is not barred irrespective of the label of a petition, be it under Sections 397 or 482 Cr.P.C. Or Article 227 of the Constitution. However, the said jurisdiction is to be exercised consistent with the legislative policy to ensure expeditious disposal of a trial without the same being in any manner hampered. Thus, considered, the challenge to an order of charge should be entertained in a rarest of rare case only to correct patent error of jurisdiction and not to re-appreciate the matter. Even where such challenge is entertained and stay is granted, the matter must be decided on day to day basis so that stay does not operate for an unduly long period. Though no mandatory time limit may be fixed, the decision may not exceed two-three months normally. If it remains pending longer, duration of stay should not exceed six months, unless extension is granted by a specific speaking order, as already indicated. Mandate of speedy justice applies to the PC Act cases as well as other cases where at trial stage proceedings are stayed by the higher court i.e. the High Court or a court below the High Court, as the case may be. In all pending matters before the High Courts or other courts relating to PC Act or all other civil or criminal cases, where stay of proceedings in a pending trial is operating, stay will automatically lapse after six months from

today unless extended by a speaking order on above parameters. Same course may also be adopted by civil and criminal appellate / revisional courts under the jurisdiction of the High Courts. The trial courts may, on expiry of above period, resume the proceedings without waiting for any other intimation unless express order extending stay is produced."

14.The learned Senior Counsel would further submit that if the petitioner is allowed for a joint trial along with other accused persons, there would be serious prejudice and Section 10 of the Indian Evidence Act will be used as against the petitioner. Accordingly, he prays for allowing this revision.

15.The learned Special Public Prosecutor (CBI) appearing for the respondent would submit that initially the petitioner filed a revision before this Court and at that time also the very same points were canvassed before this Court in Crl.R.C.No.463 of 2018 in paragraphs 12 and 14. The learned Special Public Prosecutor also further submitted that the challenge to an order of framing charges should be entertained in a rarest of rare case only to correct patent error of jurisdiction and not to re-appreciate the entire facts. The learned Special Public Prosecutor also referred to the above cited decision of the Hon'ble Supreme Court reported in 2018 SCC Online SC 310 (Asian Resurfacing of Road Agency Pvt. Ltd. V. Central Bureau of Investigation) (paragraph No.38) and further referred to Section 215 of Cr.P.C.

16.Heard the submissions made by the learned Senior Counsel appearing for the petitioner as well as the rival submissions made by the learned Special Public Prosecutor for CBI cases.

17.The fact remains that the petitioner is A1. He along with the other accused entered into conspiracy for getting recognition from the Dental Council of India, for which, the petitioner received a sum of Rs.25 lakhs as bribe and the same was seized by CBI from the clinic of the petitioner.

18.The sum and substance of charges framed by the lower Court are as follows: A13 and A2 in early 2012 entered into conspiracy with Dr.Mayilvahanan Natarajan (A8), the then Vice Chancellor of Tamil Nadu Dr.M.G.R. Medical University in the matter of getting letter of consent for affiliation for starting MDS courses without

the mandatory requirements so as to enable A2 to apply to the Dental Council of India for starting MDS courses. In furtherance of the above conspiracy on 30.04.2012, A13 on behalf of A2 applied to Tamil Nadu Dr.M.G.R. Medical University for issuance of letter of consent for affiliation knowing fully well that A2 does not have the mandatory requirements to start MDS courses. A8 being the Vice Chancellor of Tamil Nadu Dr.M.G.R. Medical University appointed 6 inspection teams for conducting inspection of 6 MDS courses and the said teams conducted the inspections on 08.05.2012, 09.05.2012 and 11.05.2012. Based upon the above inspection reports a note sheet was prepared by the affiliation section of Tamil Nadu Dr.M.G.R. Medical University incorporating all the deficiencies reported and recommended by the teams and the same was put up before A8 on 06.06.2012 to rectify the deficiencies pointed out by the inspection team before issuance of letter of consent for affiliation.

19.A8 by abusing the official position colluded with A2 and A13 and intentionally ignored and neglected all the deficiencies and recommendations made by the inspection teams and ordered to issue letter of consent on 06.06.2012 for affiliation of 4 specialities viz. Oral pathology and Micro Biology, Prosthodontics and Crowns and Bridge, Conservative Dentistry and Endodontics and Periodontology, knowing fully well that the College does not have sufficient infrastructure to commence the above said specialities and being a public servant abused the official position by corrupt or illegal means to cause favour to A2 College with an intention to cheat DCI.

20.A9, A10, A11 and A12 entered into criminal conspiracy with A8 and in furtherance of the same, they were nominated as the inspection team members by A8 to inspect the two specialities of Adhiparasakthi College, i.e., Oral and Maxillofacial Speciality and Orthodontics and Dentofacial Orthopedics. A9 to A12 also conspired with A8 in order to give a favourable report and conducted inspection of A2 and after the inspection submitted a favourable report stating that there was no deficiency of any kind in the College for starting MDS courses in the above said two specialities knowing fully well that the deficiencies pointed out by the earlier inspection teams did exist and were not rectified and that it cannot be rectified within a short span of time.

21.The petitioner herein/ A1 being a public servant as a member of Dental Faculty in Raja Muthaiah Dental College and Hospital and member representing Annamalai University in the Dental Council of India entered into criminal conspiracy during May, 2012 with A3, A4, A5, A6 and A13 and

in pursuance of the same, A3 to A6 and A13 decided to contact A1 requesting to influence by corrupt and illegal means the Dental Council of India for getting approval for starting MDS courses at A2 College knowing fully well that the Dental College was not having the minimum requirement prescribed by the Dental Council of India for starting Post Graduate Course, for which, A1 received a sum of Rs.25 Lakhs as bribe and the same was seized by the respondent CBI from the clinic of the petitioner. The other accused were involved in getting letter of consent from A8 and getting affiliation from the Dental Council of India with the help of the petitioner/ A1.

22.The petitioner had approached this Court on the very same ground of two sets of conspiracies i.e. the 1st conspiracy held in the month of June 2012, for getting affiliation from the Dr.M.G.R.Medical University. Another conspiracy was entered while getting permission from the Dental Council of India. The petitioner is none other than the member of the Dental Council of India. The very same issue had already been considered by this Court in in Crl.R.C.No.463 of 2018, which was rejected and dismissed by this Court on 04.05.2018. The same was challenged by way of S.L.P. before the Hon'ble Supreme Court of India and the said S.L.P. was also dismissed. As rightly pointed out by the learned Senior Counsel, the error can be cured at any point of time. Hence, this Court has not expressed any opinion about the framing of charges against the petitioner and the same cannot be interfered.

23.On perusal of decision of this Court relied upon by the learned Senior Counsel appearing for the petitioner reported in 2011(2) MNW (Cr.) 47 (J.Duraimunusamy and others v. State by the Additional Superintendent of Police), the issue in that case relates to leakage of examination question paper for Tamil Nadu Uniformed Services Recruitment Board. The leakage of question papers were identified and the leaked question paper was cancelled. Thereafter, second time also question paper was leaked and second time investigation was carried out. This Court considered both leakage of question paper different time for which this Court interfered with the charges framed by the lower Court. However, the facts of the present case are completely different from the above. The present case is as to whether, the petitioner and A8 shown undue favour in favour of A2 College.

24.The next decision of the Hon'ble Apex Court relied upon by the learned Senior Counsel appearing for the petitioner reported in 2018 SCC Online SC 310 (Asian Resurfacing of Road Agency Pvt. Ltd. V. Central Bureau of

Investigation) also is not applicable to the present case on hand. In the said decision it is held that order framing charge is not purely an interlocutory order nor a final order. The jurisdiction of the High Court is not barred. However, the said jurisdiction is to be exercised to ensure expeditious disposal of the trial and challenging order of charge should be entertained only to correct patent error of jurisdiction and not to re-appreciate the matter. In the present case, already the issue raised before this Court is appreciated in the earlier occasion in CrI.R.C.No.463 of 2018 and the same was confirmed in the Hon'ble Apex Court. Hence, another litigation challenging the very same issue in the form of the present revision is not sustainable.

25.It is relevant to state here that as per Section 215 of Cr.P.C., no error in stating either the offence or the particulars required to be stated in the charge, and no omission to state the offence or those particulars, shall be regarded at any stage of the case as material, unless the accused was in fact misled by such error or omission, and it has occasioned a failure of justice.

26.Hence, I am not inclined to interfere with the order passed by the learned XII Additional Sessions Judge for CBI cases, Chennai, in C.C.No.15 of 2014 dated 19.09.2018.

27.It is made clear that this Court has not expressed any opinion on the merits of the case. The above discussions were made only for the disposal of the revision. The learned XII Additional Sessions Judge for CBI cases, Chennai, shall proceed with the case, without being influenced by any of the observations made in this order and shall decide the matter independently, in accordance with law.

28.Accordingly, this revision stands dismissed. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS iv)

//True Copy//

Sub Assistant Registrar

To

1.The XII Additional Sessions Judge, CBI cases, Chennai

2.The Deputy Superintendent of Police

CBI, ACB, Chennai.

+1cc to Mr.Ms.Aruna Elango , Advocate SR.No. 27471

CrI.R.C.No.1390 of 2018 And

CrI.M.P.No.16152 of 2018

ASK(04/01/2019)