



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on	Pronounced on
02.02.2018	14.02.2018

CORAM:

THE HONOURABLE MR. JUSTICE P.N.PRAKASH

Crl.O.P.(MD)Nos.1583 and 1584 of 2018

G.Ethirajulu : Petitioner in both Criminal Original Petitions

Vs.

State, through
Deputy Superintendent of Police,
Vigilance and Anti Corruption,
Madurai, Crime No.1 of 1997.

: Respondent in both Criminal Original Petitions

PRAYER: Criminal Original Petitions are filed under Section 482 of the Code of Criminal Procedure praying to call for records and quash the proceedings in Special Case Nos.35 and 36 of 2011, pending on the file of the Special Judge, Vigilance and Anti Corruption Court, Madurai, as against the petitioner.

For Petitioner : Mr.N.Karthik Kanna

For Respondent : Mr.C.Mayil Vahana Rajendran
Additional Public Prosecutor

COMMON ORDER

The petitioner has been arrayed as A-6 in Special Case Nos.35 and 36 of 2011, pending on the file of the learned Special Judge for Prevention of Corruption Act Cases, Madurai, for the offences under Sections 120(B), 167, 467, 468, 471, 409, 420 and 109 I.P.C. and Section 13(1)(c) & (d) r/w 13(2) of the Prevention of Corruption Act, 1988.

2. It is the case of the prosecution that the Government of Tamil Nadu announced Scholarship for deserving individuals belonging to Backward Communities, who are undertaking Typewriting and Shorthand Courses, vide G.O.(Ms).No.1788, Social Welfare Department, dated 15.07.1982. According to the prosecution, one Venus Institute of Commerce, run by the petitioner herein, submitted scholarship applications for the period 1989 - 1992 in respect of 660 applicants on the premise that the applicants belong to Backward Communities and also that they have the necessary minimum qualifications as prescribed by G.O.(Ms).No.1788, dated 15.07.1982. As per the said Government Order, the application of each individual has to be accompanied by a photocopy of the Community Certificate, Income Certificate and also Educational Qualification Certificates duly attested by a Gazetted Officer. On the strength of the applications, scholarship to the extent of Rs.79,883/- was granted by the



Government and the amount was also disbursed. Thereafter, it came to the knowledge of the Backward Classes Department that 660 individuals were bogus individuals. Hence, a case in Crime No.1 of 1997 was registered and after completion of investigation, charge sheet has been filed against 17 accused for the aforesaid offences.

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3. Challenging the prosecution, the petitioner/Accused No.6 has come up with these Criminal Original Petitions under Section 482 of the Code of Criminal Procedure.

4. Heard Mr.N.Karthik Kanna, learned counsel appearing for petitioner and Mr.C.Mayil Vahana Rajendran, learned Additional Public Prosecutor appearing for the respondents.

5. The learned counsel appearing for the petitioner submitted that the scholarship per person would come only to Rs.100/- and for this paltry amount, the petitioner was required to prepare documents, which would cost more than the scholarship amount and therefore, the petitioner did not derive any pecuniary advantage in the alleged transaction.

6. The learned counsel appearing for the petitioner placed strong reliance on the following Judgments:-

- Moti Lal Saraf Vs. State of Jammu and Kashmir [2006 CRL J 4765];
- K.Krishnasingh Vs. State, [2007 (1) MLJ (Crl) 523];
- B.Krishnan Vs. The Deputy Superintendent of Police, [unreported Judgment - Crl.OP.Nos.7587 of 2013, etc batch, dated 26.02.2015] ;
- Dr.B.T.Manickavel Vs. The Superintendent of Police, [unreported Judgment - Crl.RC.(MD).No.730 of 2013, dated 06.06.2015]

and submitted that for the allegation relating to the year 1989-1992, the First Information Report was registered in the year 1997 and the charge sheet was filed in the year 2011 and till date, there has not been any progress in the trial and therefore, the right of the accused guaranteed under Article 21 of the Constitution of India has been infringed and thus, the prosecution should be quashed.

7. Per contra, Mr.C.Mayil Vahana Rajendran, learned Additional Public Prosecutor, submitted that there was a big scam relating to the aforesaid scheme, in which several typewriting institutes were involved and therefore, the police had to conduct a detailed investigation and ultimately, five charge sheets have been filed against public servants and private typewriting institutes for misappropriation of Government funds. He also submitted that some of the accused filed quash applications and some of the accused had filed discharge applications and that the matter had gone up to the Supreme Court and thus, for the above act of the accused in causing much delay, the prosecution cannot be faulted.



8. Per contra, the learned counsel for the petitioner submitted that the petitioner had not filed any application and he cannot be faulted for the dilatory tactics adopted by the co-accused in this case.

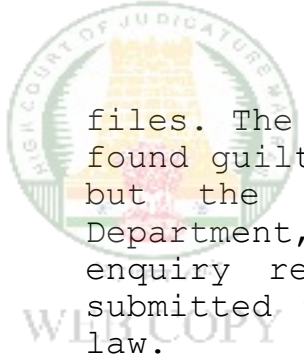
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9. This Court gave its anxious consideration to the above submissions made by the learned counsel on either side.

10. In Moti Lal Saraf, [supra], the Supreme Court quashed the prosecution, because, no witnesses were examined nearly for 26 years by the Trial Court and in those circumstances, the prosecution was quashed. However, subsequently, in Ranjan Dwivedi Vs. CBI through the Director General, [AIR 2012 SC 3217], the Supreme Court has held that long delay in trial is no ground to quash the prosecution against the accused, that was initiated in the year 1977, even after lapse of nearly 35 years. Similarly, in Niranjan Hemchandra Sashittal Vs. State of Maharashtra, [2013 (4) SCC 642], the Supreme Court has refused to quash the proceedings against the accused. In this case, there are overwhelming materials to show that the scholarship applications were submitted through the Typewriting Institutes run by the petitioners herein and the offences under the Prevention of Corruption Act and Indian Penal Code have been included in the charge sheet.

11. In B.Krishnan, [supra], this Court had quashed the prosecution not only on the ground of delay of 27 years, but also taking into consideration the fact that the accused therein were completely exonerated in the departmental proceedings. Such a situation does not obtain in the present case. In Dr.B.T.Manickavel, [supra], this Court had discharged the accused, after noting that the alleged non-existent persons were, in fact, available and they have also appeared before the Magistrate. The learned counsel for the petitioners submitted that merely on the *ipse dixit* of the Village Administrative Officers that the beneficiaries were bogus, the petitioners cannot be prosecuted. In the opinion of this Court, the evidence of the Village Administrative Officers, who have given certificates that the beneficiaries were bogus, have to be tested in cross-examination. It is too premature, at this stage, to give a finding that the beneficiaries were not bogus persons by rejecting the statements of the Village Administrative Officers.

12. The learned counsel appearing for the petitioner, while concluding his arguments, submitted that this Court had discharged R.Nallaperumal [A-1], C.Sivagaminathan [A-2] and P.Vittal [A-3] from the prosecution and therefore, the prosecution against this petitioner should also be quashed, since his case is also on the same footing as that of R.Nallaperumal [A-1], C.Sivagaminathan [A-2] and P.Vittal [A-3]. The learned counsel contended that the main allegation is only against M.Chelladurai [A-7], who was the Special In-charge in the Office of the District Backward Classes and Minority Welfare Department and it was he, who had processed those



files. The learned counsel further submitted that the petitioner was found guilty in the departmental proceedings by the Enquiry Officer, but the Director of Backward Classes and Minority Welfare Department, by his proceedings dated 23.03.1995, did not accept the enquiry report and only censured the petitioner. Therefore, he submitted that the present prosecution is an abuse of process of law.

13. In State through SPE & CBI, Andhra Pradesh Vs. K.Krishna Mohan and another, [2007 (14) SCC 667 : 2009 (1) SCC (crl) 922], the Supreme Court has stated that just because the delinquent is exonerated in departmental proceedings, it will not automatically mean that the criminal prosecution against him should be quashed. In this case, at the request of the police, the learned Judicial Magistrate No.II, Madurai, has recorded the statement of the witnesses, namely, V.Deivendran, A.Palanivel, Amaravathy, S.Thottayasamy, M.Govindaraj, Sathuragiri Mahalingam, M.Balasubramanian, Dr.Veereshwariah, N.Thiagarajan, V.Jeyakokdi, Ayyavu, S.Ganesan and S.Mani, under Section 164 of the Code of Criminal Procedure. The police have also recorded the statement of S.V.Srinivasan, Formerly District Backward Classes Minorities Welfare Officer, to speak about the procedure for sanction of scholarship to the students of typewriting institutes and other facts, which would show the circumstances under which the offence has been committed by the accused. Taking into consideration the nature of the allegations in the charge sheet and bearing in mind the Judgment of the Supreme Court in Niranjana Hemchandra Sashittal, [supra], this Court is of the view that this is not a fit case to quash the prosecution. Hence, the Criminal Original Petitions are dismissed with the following directions:

- If the petitioner is not on bail, he is directed to appear before the Trial Court and furnish a bond for a sum of Rs.5,000/-, without sureties under Section 88 of the Code of Criminal Procedure.
- This Court further directs the petitioner to appear before the Trial Court for collecting the final report and other papers under Section 207 Cr.P.C., if not already received, for framing of charges and for questioning under Section 313 Cr.P.C. and on the day of judgment.
- For all other dates, if the accused files an application under Section 317 Cr.P.C., undertaking that he will not dispute his identity and that his counsel will cross-examine the prosecution witnesses in his absence, without adopting dilatory tactics, the Trial Court may liberally consider and entertain the same.
- If the petitioner/accused absconds, the Magistrate shall direct the registration of a fresh FIR under Section 229-A IPC.
- The accused shall cross examine the witnesses on the date of their examination in chief and there should not be any adjournment as held by the Hon'ble Supreme Court in the case of Vinod Kumar vs. State of Punjab reported in 2015 (1) Scale 542.



■ If the accused adopts any dilatory tactics, he can be remanded to custody as laid down by the Supreme Court in State of U.P. v. Shambu Nath Singh [2001(4)SCC 667].

/True Copy/

Sd/-

Assistant Registrar(CSIII)

Sub-Assistant Registrar

To

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

2.The Special Judge, Vigilance and Anti Corruption Court,
Madurai.

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

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RL/4C/5P/SKN/RSK/SAR2/22/2/2018

COMMON ORDER MADE IN
Crl.O.P. (MD) Nos.1583 and 1584 of 2018

Dated:-
14.02.2018
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