



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 25.01.2018

CORAM:

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

Crl.R.C.(MD) No.57 of 2018

S.Palanivel

... Petitioner/A13

vs.

State rep.by
The Deputy Superintendent of Police
Vigilance and Anti Corruption Wing
Madurai
(Cr.No.1 of 1997)

... Respondent/Complainant

PRAYER: Criminal revision filed, under Section 397 r/w 401 Cr.P.C., to call for the records relating to the order passed in Crl.M.P.No.17 of 2011 dated 29.02.2016 in Spl.Case No.35 of 2011, on the file of the learned Special Judge for PC Act Cases, Madurai and set aside the same.

For Petitioner : Mr.R.Venkateswaran
For Respondent : Mr.C.Mayilvahana Rajendran
Additional Public Prosecutor

O R D E R

The petitioner has been arrayed as A13 in Special Case No.35 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 India announced Scholarship to deserving individuals belonging to Backward Community, who are undertaking Typewriting and Shorthand Courses vide G.O.No.1788, Social Welfare Department, dated 15.07.1982. According to the prosecution, one Venus Typewriting Institute run by Sankar submitted scholarship applications for the period 1989 - 1990 in respect of 144 applicants on the premise that the applicants belong to Backward Community and also that they have the necessary minimum qualifications as prescribed by G.O.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. It



is the specific allegation of the prosecution that this petitioner, being a Group-B Gazetted Officer, has attested 144 Community Certificates, Income Certificates and Educational Qualification Certificates, which were submitted by Venus Typewriting Institute, represented by Sankar (A12) to the Backward Classes and Minorities Welfare Department for obtaining scholarship. On the strength of the applications, scholarship to the extent of 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 the 144 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 16 accused for the aforesaid offences.

3. The petitioner filed a discharge application in CrI.M.P.No.17 of 2011 in Special Case No.35 of 2011, under Section 239 Cr.P.C., which came to be dismissed by the Trial Court, by order dated 29.02.2016. Challenging the dismissal of the discharge petition, the present revision has been filed with a delay of 580 days.

4. This Court condoned the delay by order dated 25.01.2018 in CrI.M.P.(MD) No.398 of 2018 in CrI.R.C.(MD) No.SR174 of 2018 and took up the main revision itself for final disposal.

5. The learned counsel for the petitioner submitted that this Court has discharged Nallaperumal (A1), Sivagaminathan (A2) and Vittal (A3), by a common order, dated 21.09.2017, in CrI.R.C.(MD) Nos.466 to 470 of 2016. Further, the learned counsel submitted that the petitioner did not belong to Backward Classes and Minorities Welfare Department and he belongs to Agriculture Department and he had nothing to do with the sanctioning of the scholarships, which are in the exclusive domain of the Backward Classes and Minorities Welfare Department.

6. The learned counsel for the petitioner further submitted that when A1, A2 and A3, who were the Officers in the Backward Classes and Minorities Welfare Department and who had sanctioned the scholarships, had been discharged, the prosecution initiated against the petitioner is an abuse of process of law. Further, the learned counsel for the petitioner submitted that the petitioner had not obtained any pecuniary advantage in the transaction and that it is merely a dereliction of duty.

7. Per contra, the learned Additional Public Prosecutor refuted the contentions of the learned counsel for the petitioner and submitted that, had the petitioner not attested 144 Community Certificates, Income Tax Certificates and Educational Qualification Certificates, the Government would not have disbursed the scholarship at all to the bogus persons.

8. This Court gave its anxious consideration to the rival



submissions.

9. It is true that Nallaperumal (A1), Sivagaminathan (A2) and Vittal (A3) have been discharged from the prosecution initiated against them by this Court vide order, dated 21.09.2017. On a reading of the order, dated 21.09.2017, it is seen that this Court has held that those three Officers were Superior Officers in the Backward Classes and Minorities Welfare Department and they had no occasion to conduct physical verification of all the applications that were submitted for scholarship and that they had only to rely upon the notes of enquiry made by their subordinates, especially A7. In such view of the matter, this Court discharged A1, A2 and A3 from the prosecution initiated against them. But, in the case of the petitioner, the facts are very different. Admittedly, the petitioner herein did not belong to Backward Classes and Minorities Welfare Department. But however, he is a public servant within the meaning of Section 2(c) of the Prevention of Corruption Act. The contention of the learned counsel for the petitioner is that the petitioner did not obtain any pecuniary advantage for attesting 144 Community Certificates, Income Certificates and Educational Qualification Certificates and therefore, he should be discharged from the prosecution initiated against him cannot hold water in view of the definition of "Criminal Misconduct by a Public Servant" defined under Section 13(1)(d)(i) of the Prevention of Corruption Act, which reads as follows:

"(i) by corrupt or illegal means, obtains for himself or for any other person any valuable thing or pecuniary advantage; or"

10. Under Section 13(1)(d)(i) of the Prevention of Corruption Act, it is not necessary that the public servant must have obtained valuable thing or pecuniary advantage for himself and it would suffice if by the act of the public servant, someone else obtains valuable thing or pecuniary advantage. In this case, A12, Proprietor of Venus Typewriting Institute, has produced 144 photocopies of Community Certificates, Educational Qualification Certificates and Income Certificates before the petitioner and it is alleged that without verifying the original of the same, the petitioner has attested those photocopies. Even if the petitioner had not derived any pecuniary advantage, his act of attestation has resulted in pecuniary advantage to A12. In such view of the matter, whether the petitioner had the necessary *mens rea* or not is a question of fact, which cannot be determined in a discharge application, where the parameters are very circumscribed. The fact remains that the sanction under Section 19 of the Prevention of Corruption Act, 1988 has been obtained from the Appointing Authority for prosecuting the petitioner. In such view of the matter, this Court is of the view that this is not a fit case, where the petitioner can be discharged from the prosecution initiated against him.

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11. In the result,



- (i) The criminal revision is devoid of merits and it is dismissed.
- (ii) It is needless to state that whatever observed above is only for deciding the discharge application and the Trial Court shall proceed with the trial without in any manner being influenced by what has been stated above by this Court.
- (iii) Further, the Trial Court is directed to dispose of the case expeditiously, provided the accused co-operate by cross-examining the witnesses on the date of their examination in chief as held by the Honourable Supreme Court in **Vinod Kumar vs. State of Punjab**, reported in **2015 (1) Scale 542**.
- (iv) In the event of the accused adopting dilatory tactics, they can be remanded to custody, under Section 309 Cr.P.C., as laid down by the Honourable Supreme Court in **State of U.P. vs. Shambu Nath Singh**, reported in **2001 (4) SCC 667**.
- (v) If any of the accused absconds, a fresh F.I.R., can be registered against them under Section 229-A I.P.C., and they can be remanded to custody.

Sd/-

Assistant Registrar (W)

/True Copy/

Sub Assistant Registrar

To:

1. The Special Judge for PC Act Cases, Madurai.
2. The Deputy Superintendent of Police, Vigilance and Anti Corruption Wing, Madurai.
3. The Additional Public Prosecutor, Madurai Bench of Madras High Court, Madurai.

KRK

TE/KK/SAR-2 : 12/02/2018 : 4P/4C

Cr1.R.C.(MD) No.57 of 2018
25.01.2018