



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 19.01.2018

CORAM:

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

CrI.O.P. (MD) No.13173 of 2017

Dr.P.K.Kalyani

: Petitioner/Accused Officer-1

-Vs-

The Inspector of Police,
Vigilance and Anti Corruption,
Tirunelveli Detachment,
Tirunelveli.

: Respondent/Complainant

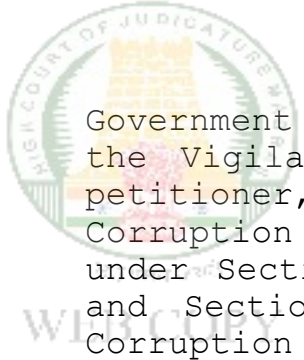
PRAYER: Petition is filed under Section 482 of the Criminal Procedure Code praying to call for the records in Crime No.7 of 2017 on the file of the Inspector of Police, Vigilance and Anti Corruption, Tirunelveli Detachment, Tirunelveli and quash the FIR in Crime No.7 of 2017 on the file of the Inspector of Police, Vigilance and Anti Corruption, Tirunelveli Detachment, Tirunelveli.

For Petitioner : Mrs.J.Maria Roseline

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

O R D E R

The petitioner(A-1) was working as the Head of the Department of English in Manonmaniam Sundaranar University and one Dr.S.Prabahar (A-2) was working as Controller of Examination, Manonmaniam Sundaranar University. It came to the notice of the Directorate of Vigilance and Anti-Corruption that the petitioner (A-1) and Dr.S.Prabahar (A-2) had indiscriminately admitted ineligible students to the Post Graduate Degree Courses in M.A. (English) and M.Phil (English) in the University and, therefore, a preliminary enquiry was conducted by the Vigilance Department. While so, one Mr.Periyadurai gave a complaint dated 14.03.2016 to the Vigilance and Anti-Corruption Department about the activities of the petitioner and prayed for registration of a regular FIR against her. After giving his representation, he filed CrI.O.P.(MD)No.15875 of 2016, in which, this Court directed the police to conduct enquiry on the complaint given by the petitioner therein. A detailed enquiry in D.E.No.72/2016/EDN/TI was registered on 24.11.2016 and enquiry was taken up and an enquiry report was submitted to the State Government. The enquiry report was considered by the State



Government and the Government, by order dated 11.05.2017, directed the Vigilance Department to register a regular case against the petitioner, pursuant to which, the Department of Vigilance and Anti-Corruption has registered a case in Crime No.7 of 2017 on 22.05.2017 under Sections 120-B, 167, 465, 468, 471 of the Indian Penal Code and Section 13(2) r/w 13(1) and (d)(1&2) of the Prevention of Corruption Act, 1988, against Dr.P.K.Kalyani (A-1) and Dr.S.Prabahar (A-2), for quashing which, Dr.P.K.Kalyani (A-1) has filed the present quash application.

2. Heard Mrs.J.Maria Roseline, learned counsel for the petitioner and Mr.C.Mayil Vahana Rajendran, learned Additional Public Prosecutor for the respondent.

3. Mrs.J.Maria Roseline, learned counsel for the petitioner submitted that there are no *prima facie* materials in the First Information Report warranting investigation by the police; that the complainant Periyadurai has been set up by one Jenitha and Ramesh, who were juniors of the petitioner in the University; that the petitioner had not violated any norms of the University in the matter of admission; that the Syndicate has passed the resolution stating that there has not been any violation in the admission process; that the Syndicate, being the appointing authority, has exonerated the petitioner and hence, for the above said reasons, the First Information Report deserves to be quashed.

4. Per contra, the learned Additional Public Prosecutor submitted that after registration of the First Information Report, much water has flown under the bridge, inasmuch as, the police have gathered sufficient materials to implicate the petitioner in the offence.

5. This Court gave its anxious consideration to the rival submissions.

6. Before advertng to the submissions, it may be necessary to state that the First Information Report was not merely registered on the complaint of Periyadurai, but, a detailed enquiry was conducted by the Vigilance and Anti-Corruption Department before registration of the First Information Report and after being satisfied with the materials collected against the petitioner, the matter was placed before the State Government and on the directions of the State Government, the First Information Report has been registered.

7. As regards the allegation that Periyadurai has a personal axe to grind, this Court is of the view that malice cannot be decided in an application under Section 482 of the Code of Criminal Procedure. That apart, malice cannot be a ground for quashing the First Information Report at the threshold, when the First Information Report discloses the commission of a cognizable offence. In this case, it is seen that the petitioner and the co-accused had diluted the norms for admission to the P.G. and M.Phil., Courses



unilaterally, without any Syndicate resolution and admitted the students.

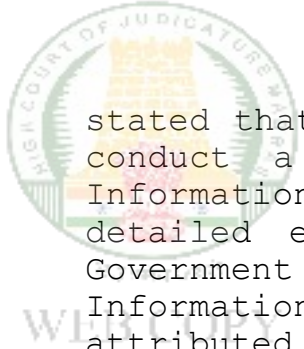
8. It is a trite that criminal law can be set in motion by any person and to say that the First Information Report should be quashed, on the ground of malice, would militate against the law laid down by the Supreme Court in **State of Bihar Vs. P.P.Sharma [1992 SCC (Cr1.) 192]**, wherein in Paragraph No.22, the Supreme Court has held as under:-

"The question of *mala fide* exercise of power assumes significance only when the criminal prosecution is initiated on extraneous considerations and for an unauthorised purpose. There is no material whatsoever in this case to show that on the date when the FIR was lodged by R.K. Singh he was activated by bias or had any reason to act maliciously. The dominant purpose of registering the case against the respondents was to have an investigation done into the allegations contained in the FIR and in the event of there being sufficient material in support of the allegations to present the charge sheet before the court. There is no material to show that the dominant object of registering the case was the character assassination of the respondents or to harass and humiliate them. This Court in *State of Bihar v J.A.C. Saldhana and Ors.*, [1980] 2 SCR 16] has held that when the information is lodged at the police station and an offence is registered, the mala fides of the informant would be of secondary importance. It is the material collected during the investigation which decides the fate of the accused person. This Court in *State of Haryana and Ors. v. Ch. Bhajan Lal and Ors.*, J.T. 1990 (4) S.C. 655 permitted the State Government to hold investigation afresh against Ch. Bhajan Lal in spite of the fact the prosecution was lodged at the instance of Dharam Pal who was enimical towards Bhajan Lal".

9. Mrs.J.Maria Roseline, learned counsel for the petitioner contended that the petitioner has been permitted to retire, in view of the Syndicate resolution, which has exonerated her of all the allegations. This submission cannot hold good, because the Syndicate resolution has been passed on 02.08.2017 and this resolution cannot in anyway dilute the evidence collected by the police in support of the allegations against the petitioner. Further, the First Information Report was registered in this case on 22.05.2017, but, whereas, the Syndicate resolution has been passed only subsequently on 02.08.2017. The Syndicate has no authority to sit in judgment over the allegations in the enquiry report, which formed the basis of the First Information Report.

<https://hcservices.ecourts.gov.in/hcservices/>

10. In **Lalita Kumari v. Government of Uttar Pradesh [2014 (2) SCC 1]**, the Constitution Bench of the Supreme Court has very clearly



stated that in matters relating to corruption cases, the police can conduct a preliminary enquiry before registration of a First Information Report. In this case, the police had conducted a detailed enquiry and had submitted sufficient materials to the Government and on the orders of the Government, the First Information Report has been registered. Hence, no malice can be attributed in this regard.

11. In **State of Haryana v. Bhajan Lal & Others [AIR 1992 SC 604]**, the Supreme Court has laid down the parameters for quashing a First Information Report. Unfortunately, for the petitioner, the facts at hand do not pass muster the parameters laid down in **Bhajan Lal's** case for quashing the present First Information Report.

12. Mrs.J.Maria Roseline, learned counsel for the petitioner submitted that the Sanctioning Authority in this case is the Syndicate and that when the Syndicate has exonerated the petitioner of the allegations, the prospects of the Syndicate granting sanction is bleak and, therefore, the present prosecution will be an exercise in futile.

13. The learned Additional Public Prosecutor submitted that the question of sanction would apply only when the public servant is in service at the time of taking cognizance. In this case, the petitioner has been permitted to retire and, therefore, the question of obtaining sanction under Section 19 of the Prevention of Corruption Act Cases, 1988 will not arise. In any event, one cannot surmise now as to whether the police would file a charge sheet against the petitioner or drop the proceedings against her after the culmination of the investigation and it is too premature now to look into the aspect of sanction.

14. Mrs.J.Maria Roseline, learned counsel for the petitioner submitted that the petitioner had followed the norms laid down by the Syndicate of the University in the communication dated 17.04.2013 in admitting the students, but, whereas, the Enquiry Officer had proceeded on the premise that the petitioner had violated the Government Order passed in G.O.Ms.No.127 of Higher Education (G1) Department.

15. The contention of the petitioner as to whether she was required to follow the communication dated 17.04.2013 or the mandates of the Government Order is a question of fact that cannot be determined while deciding a quash application under Section 482 of the Code of Criminal Procedure. If, during investigation, it is shown that the communication dated 17.04.2013 was only a camouflage to protect the petitioner's action and that the petitioner had willfully violated the Government Orders in the selection process while selecting the candidates for admission, then the petitioner cannot stand exonerated. At the risk of repetition, the Government has gone into the report submitted by the Department of Vigilance and Anti-Corruption, wherein it is stated that the petitioner had



not followed the orders passed by the Government while admitting students and only thereafter, has directed the Department to register a regular case against the petitioner.

16. In such view of the matter, this Court is of the view that this is not a fit case in which the First Information Report can be quashed.

17. In the result, this petition is devoid of merits and the same is dismissed accordingly.

Sd/-

Assistant Registrar (Crl.side)

/True Copy/

Sub Assistant Registrar

To

1. The Inspector of Police,
Vigilance and Anti Corruption,
Tirunelveli Detachment,
Tirunelveli.
2. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+ 1 CC TO M/s.J.MARIA ROSELINE, ADVOCATE IN SR No. 43044

SML

TE/RSK/SAR-1 : 09/02/2018 : 5P/4C

Order made in
CRL.O.P. (MD) No.13173 of 2017
Dated: 19.01.2018