



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on	Pronounced on
30.01.2018	06.02.2018

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CORAM:

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

Crl.O.P. (MD) No.15401 of 2017

S.Athigaman,
Formerly Assistant District Programme Co-Ordinator,
Rastriya Madyamic Sikshaabiyan [RMSA],
Virudhunagar District.

: Petitioner

Vs.

The State,
Through the Inspector of Police,
Vigilance and Anti Corruption,
Virudhunagar, Virudhunagar District.

: Respondent

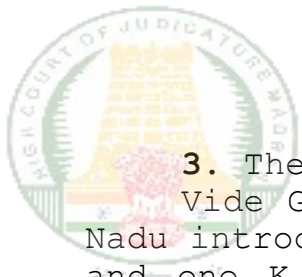
PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure praying to quash the case of Special C.C.No.5 of 2017, on the file of the Chief Judicial Magistrate, Srivilliputhur, in connection with Crime No.8 of 2013, on the file of the first respondent herein, the Inspector of Police, Vigilance and Anti-Corruption Virudhunagar.

For Petitioner : Mrs.G.Dhanalakshmi
For Respondent : Mr.C.Mayil Vahana Rajendran
Additional Public Prosecutor

O R D E R

The Inspector of Police, Vigilance and Anti-Corruption registered a *suo motu* First Information Report in Crime No.8 of 2013, on 30.08.2013 against one K.Sasikala, [A-1] and S.Athigaman [A-2] and after completing the investigation, has filed the charge sheet in C.C.No.5 of 2017, before the learned Chief Judicial Magistrate, Srivilliputhur, against S.Athigaman [A-1] and N.Selvakumar [A-2] for the offences under Sections 120-B, 409, 420, 465, 468, 471 and 477(A) IPC and Section 13(2) r/w 13(1)(c) and (d) of the Prevention of Corruption Act, 1988, for quashing which, S.Athigaman is before this Court.

2. Heard Mrs.G.Dhanalakshmi, learned counsel appearing for S.Athigaman and Mr.C.Mayil Vahana Rajendran, learned Additional Public Prosecutor appearing for the State.



3. The case of the prosecution is as under:-

Vide G.O.(1D).No.210, dated 08.07.2010, the Government of Tamil Nadu introduced a scheme, known as, "Madhyamik Siksha Abiyan [RMSA]" and one K.Sasikala was posted as District Programme Co-ordinator. The Central Government and the State Government re-allocated the funds at the rate of 75% : 25% respectively to achieve universalization of secondary education, especially, IX and X standards and also to contain the drop out students, after elementary education. Under the scheme, a five days residential training programme for physical education teachers was conducted from 31.01.2012 to 04.02.2012 at Kalasaingam University, Krishnankovil for 194 participants. The university provided accommodation, food and the other facilities for the participants. However, it is alleged that S.Athigaman [A-1], the Assistant District Programme Co-ordinator and one N.Selvarajkumar [A-2] conspired to obtain bogus bills from a Hotel, namely, Hum Night and prepared bogus authorization letter and misappropriated around Rs.1,67,350/-. Hence, the First Information Report and the Charge sheet.

4. Mrs.G.Dhanalakshmi, learned counsel appearing for S.Athigaman raised the following contentions:-

- There is no *de facto* complainant in the case and only a *suo motu* First Information Report has been registered, which is illegal.
- There is a delay of one year and seven months in registration of the First Information Report.
- K.Sasikala was shown as the first accused in the First Information Report and the petitioner was shown as the second accused in the First Information Report, but, in the charge sheet, the name of K.Sasikala was excluded and has been made as witness and the petitioner has been made as the first accused.
- There is no proper sanction for prosecution, inasmuch as the police had submitted the records to the Sanctioning Authority on 25.01.2016 and the sanction was granted immediately, on 29.01.2016.
- Rule 23 of the Criminal Rules of Practice have not been followed and the District Collector had not been informed.
- There is no direct evidence against the petitioner.
- No departmental enquiry was conducted at that time and only now, the departmental enquiry was initiated.
- The alleged misappropriated amount is not accurate and there is no audit report for the same.
- K.Sasikala is the main accused, as she has the cheque signing authority.

For all the above reasons, according to the learned counsel, the entire prosecution should be quashed.

5. Per contra, Mr.C.Mayil Vahana Rajendran, learned Additional Public Prosecutor, refuted the said contentions.



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

7. As regards the first two contentions, the power of the police to register *suo motu* First Information Report has been recognized by the Supreme Court in **State, Rep by Inspector of Police Vs. V.Jayapaul**, [2004 (5) SCC 223 : AIR 2004 SC 2684] and in **State by Inspector of Police, Chennai vs. N.S. Gnaneswaran** [(2013) 3 SCC 594].

8. As regards the delay in registration of the First Information Report, this is not a murder case, where the First Information Report has to be registered immediately. The Inspector of Police, Vigilance and Anti-Corruption, conducted the preliminary enquiry as required under the Vigilance Manual and thereafter, has registered the First Information Report, which cannot be stated to be illegal.

9. As regards the contention that K.Sasikala was shown as the first accused in the First Information Report and thereafter, her name was deleted in the charge sheet, it is a trite law that a person, whose name has been included in the First Information Report, can be deleted in the charge sheet, if it is found during investigation that such person was not involved in the offence. The investigation conducted by the police shows that it was this petitioner and A-2, who had created bogus bills and had placed the same before K.Sasikala for signature. Believing the petitioner, she had signed the bills and issued the cheques. Therefore, the Investigating Officer has rightly deleted the name of K.Sasikala from the array of accused and has excluded her name in the memo of evidence.

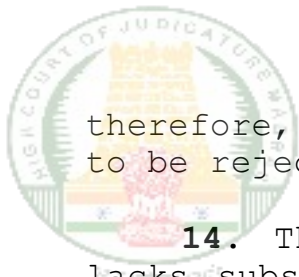
10. As regards the sanction, Dr.S.Kannappan, the Director of School Education has issued sanction, after considering the police records and the other materials, as required under Section 19 of the Prevention of Corruption Act, 1988. The validity of the sanction cannot be challenged in a quash proceedings on the ground that the Sanctioning Authority had taken very less time or that he has not applied his mind to the materials on record. The disputed questions of fact cannot be gone into in a quash application.

11. As regards Rule 23 of the Criminal Rules of Practice, the same will not apply to the case at hand, inasmuch as the sanction under Section 19 of the Prevention of Corruption Act, 1988, has been obtained and only thereafter, the charge sheet has been filed.

12. As regards the contention that there is no direct evidence, in a case of this nature, records will only speak. It is not a murder case for the witnesses to see the event. Cases of this nature are established via documentary and circumstantial evidences.

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

13. The contention that there was no departmental enquiry and



therefore, no charge sheet can be filed deserves to be stated only to be rejected.

14. The contention that the audit report has not been filed lacks substance, because, this is a case of fabricating the bills and claiming money, without actual expenditure. Such acts of misappropriation will be committed in secrecy in order to avoid detection in audit. The police have gathered sufficient materials to show that the accused has fabricated the bills and claimed huge amounts. The facts of the case do not pass muster the law, as laid down by the Supreme Court in **State of Haryana Vs. Bhajan Lal and others**, reported in **AIR 1992 SC 604**.

15. In the result, the Criminal Original Petition is devoid of merits and accordingly, it is dismissed.

Sd/-

Assistant Registrar (T&P)

/True Copy/

Sub Assistant Registrar

To

1. The Chief Judicial Magistrate,
Srivilliputhur.
2. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+ 1 CC TO Mrs.G.DHANALAKSHMI, ADVOCATE IN SR No. 46511

NB

TE/SV-MMS/SAR-4 : 14/02/2018 : 4P/4C

ORDER MADE IN
Cr1.O.P.(MD)No.15401 of 2017
Dated:-06.02.2018