



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 19.01.2018

DELIVERED ON: 25.01.2018

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THE HON'BLE MR. JUSTICE P.N. PRAKASH

Crl.O.P. (MD) No. 3312 of 2016 & Crl.M.P. (MD) No.1680 of 2016

K. Somasundaram

Petitioner/Accused No.1

Vs.

State represented by
the Superintendent of Police
C.B.I./ACB/Chennai
(F.I.R. No.RC MA1 2015 A 0034)

Respondent/Complainant.

Criminal Original Petition filed under Section 482 Cr.P.C. seeking to call for the records in F.I.R. No. RC MA1 2015 A 0034 on the file of the C.B.I./A.C.B/Chennai and quash the same insofar as it relates to the petitioner.

For petitioner	Mr. T.K. Gopalan
For respondent	Mr. N. Ashok Kumar Gowtham Special Public Prosecutor for CBI

ORDER

This Criminal Original Petition has been preferred seeking to call for the records in F.I.R. No. RC MA1 2015 A 0034 on the file of the C.B.I./A.C.B/Chennai and quash the same insofar as it relates to the petitioner.

2 Based on source information, the Central Bureau of Investigation registered a First Information Report in F.I.R. No. RC MA1 2015 A 0034 on 30.07.2015 under Section 120-B read with Sections 420, 468 and 471 IPC and Sections 7, 13(2) read with 13(1)(d) of the Prevention of Corruption Act, 1988 (for brevity "the P.C. Act") against two persons, viz., K. Somasundaram (A1) and M.Ganesan (A2), for quashing which, K. Somasundaram (A1) is before this Court.

3 Heard Mr. T.K. Gopalan, learned counsel for the petitioner/accused and Mr. N. Ashok Kumar Gowtham, learned counsel for the respondent.

4 Since the F.I.R. is very short, it may be apposite to extract the same verbatim for better appreciation of the case of the petitioner



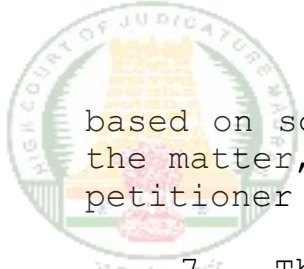
"A reliable information has been received in this office to the following effect that during the period from 2010 to 2012, the process of absorption of temporary Messengers / Sweepers were carried out by IOB on all India basis with the condition that those who are working as temporary Messenger/Sweeper, they must fulfil the eligibility criteria viz., qualification and experience. As far as absorption of Messenger, the qualification was fixed minimum 8th standard and maximum 10+2 fail. For Sweeper, 5th std. pass and 8th std. fail. But, for both the posts, one should complete 240 days as on 15.11.2010.

Information revealed that Shri M. Ganesan, Messenger, IOB in collusion with Shri. K. Somasundaram submitted a forged and false educational certificate purported to have been issued by Headmaster, Govt. Hr. Sec. School, T. Kallupatti, Madurai District, to the bank to fulfil the eligibility criteria for his absorption as Messenger. For that, Shri. K. Somasundaram, Clerk had demanded and accepted illegal gratification of Rs.1 lakh from Shri Ganesan for himself and for other office bearers of the union. Subsequently, Shri. Ganesan was absorbed as Messenger in IOB and posted at IOB, Valayapatti Branch, Madurai on 17.08.2011.

The above information prima facie discloses that accused persons Shri. K. Somasundaram, Clerk/Shroff, IOB, Aringar Anna Nagar Branch and Assistant General Secretary of AIOBEU and Shri.M.Ganesan, Messenger, IOB, Valayapatti Branch, Madurai, committed offences with other unknown public servants of Indian Overseas Bank in collusion with the Branch Managers of Madurai Region and officials of PAD, IOB, Central Office, Chennai are punishable under Sections 120-B r/w 420, 468, 471 IPC and u/s 7 and 13(2) r/w 13(1) (d) PC Act, 1988. Hence, this F.I.R.."

5 Mr. T.K. Gopalan, learned counsel for the petitioner/accused submitted that the C.B.I. cannot register an F.I.R. based on source information or pseudonymous or anonymous petitions and in support of this contention, he placed strong reliance on the Circular letter dated 07.03.2016 issued by the Central Vigilance Commission relating to action on pseudonymous / anonymous complaints.

6 In the opinion of this Court, the aforesaid Circular relates to taking departmental action against Government officials based on pseudonymous or anonymous complaints and this can, in no way, fetter the power of the respondent to register an F.I.R. based on source information. Further, in State by Inspector of Police, Chennai vs. N.S. Ganeswaran [(2013) 3 SCC 594], the Supreme Court has held in unequivocal terms that the registration of an F.I.R.



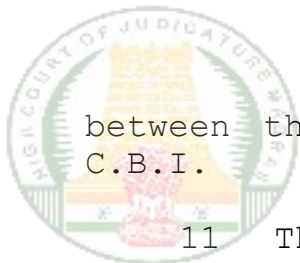
based on source information is valid in law. In such perspective of the matter, the first submission made by the learned counsel for the petitioner has to fall to the ground.

7 The learned counsel for the petitioner/accused further contended that the petitioner/accused was the Assistant General Secretary of AIOBEU and that he has been espousing the cause of the staff and employees of Indian Overseas Bank and in order to cripple him, the present F.I.R. has been registered. To buttress this submission, the learned counsel drew the attention of this Court to the order dated 14.07.2011 passed by a learned Single Judge of this Court in W.P. (MD) No.7820 of 2011 [S. Valaiyapathy vs. The Chairman & Managing Director, Indian Overseas Bank, Central Office, Chennai - 2 and 3 others], wherein, this Court had castigated the petitioner therein for filing a writ petition to block the job opportunities that were made available to SC/ST employees of Indian Overseas Bank via settlement dated 17.02.2011.

8 In the considered opinion of this Court, the remarks made in S. Valaiyapathy (supra) can have no relevance, because, the allegations in this case are that one Ganesan had colluded with this petitioner in submitting forged and false educational certificates for regularisation of his services. On a reading of the F.I.R., one cannot infer that the petitioner has been targeted for being pro-active in the Union. In fact, the F.I.R. discloses the possibility of the involvement of senior officers in the appointment racket. The present F.I.R. is only a tip of an iceberg and further investigation only would reveal the magnitude of the illegal appointments made by taking advantage of the absorption scheme.

9 The next contention of the learned counsel for the petitioner/accused is that in the F.I.R., it is stated that the petitioner had accepted Rs. 1 lakh from Ganesan, whereas, in the counter filed by the C.B.I., it is stated that the petitioner had demanded Rs.10,000/- to Rs.13,000/- from Sweepers and Rs.23,000/- to Rs.50,000/- from Messengers and in view of the conflicting versions in the F.I.R. and counter, the F.I.R. should be quashed.

10 In a case of this nature, the F.I.R. cannot be treated as the encyclopaedia of the prosecution case. Under Section 154 Cr.P.C., when there is credible information about the commission of a cognizable offence, an F.I.R. can be registered. In this case, the C.B.I. had credible information that the petitioner was instrumental in getting absorption in service for Ganesan (A2) by submitting forged and false educational certificates. What is stated in the counter is that the petitioner had received and accepted a sum of Rs.1 lakh from Ganesan and had demanded Rs.10,000/- to Rs.13,000/- from Sweepers and Rs.23,000/- to Rs.50,000/- from Messengers for absorption and the amount so accepted has been handed over to one L. Balasubramaniam. In such view of the matter, this Court does not find any contradiction



between the version in the F.I.R. and the counter filed by the C.B.I.

11 The learned counsel for the petitioner further submitted that the petitioner was arrested by the C.B.I. and was remanded to custody and his bail application before the Trial Court was also opposed, which only shows that the C.B.I. was acting with vengeance. The said submission does not cut much ice with this Court, for, in a case of this nature, when a large number of ineligible persons have been absorbed into service based on fabricated records, the decision of the C.B.I. to arrest the petitioner cannot be construed as mala fide exercise of power.

12 Yet another submission made by the learned counsel for the petitioner/accused was that in the F.I.R., it is stated that the C.B.I. has received reliable information, but, in the counter filed in the bail application, it has been stated that the case has been registered on source information and therefore, the F.I.R. should be quashed. In the opinion of this Court, an F.I.R. cannot be quashed on such flimsy grounds, especially, when it discloses commission of a cognizable offence. The power of the C.B.I. to conduct preliminary enquiry under the C.B.I. Manual and thereafter, register an F.I.R. has been approved by the Supreme Court in *Shashikant vs. C.B.I. and Others* [(2006) AIR SCW 6182]. During the course of such preliminary enquiry or discreet enquiry, if it comes to the light of the police that a cognizable offence has been committed, it is well within their powers to formally register an F.I.R. under Section 154 Cr.P.C. and proceed with the investigation.

13 The parameters for quashing an F.I.R. have been laid down by the Supreme Court in *State of Haryana and others vs. Bhajan Lal and others* [1992 Supp. (1) SCC 335] and the case at hand does not pass muster the law laid down therein.

In view of the foregoing discussion, this Criminal Original Petition fails and is accordingly dismissed. Connected Crl. M.P. (MD) No.1680 of 2016 is closed.

Sd/-

Assistant Registrar(CS-I)

/True Copy/

Sub Assistant Registrar

To

The Superintendent of Police, C.B.I./ACB, Chennai

+1CC to Mr.T.K.Gopalan, Advocate, SR.No. 44161

order in
CrI.O.P. (MD) No. 3312 of 2016
25.01.2018