



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05.01.2018

CORAM:

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

WEB COPY

Cr1.R.C.(MD)No.934 of 2017
and
Cr1.M.P.(MD)No.11414 of 2017

A.Palanisamy

: Petitioner

Vs.

State Inspector of Police,
Vigilance and Anti Corruption Force,
Thanjavur,
Crime No.4/2015.

: Respondent

PRAYER: Criminal Revision Case is filed under Sections 397 and 401 of the Criminal Procedure Code praying to call for the records of the impugned order dated 16.08.2017 passed by the learned Special Judge -cum- Chief Judicial Magistrate, Thanjavur at Kumbakonam in Cr1.M.P.No.1636 of 2017 in Spl.C.No.6 of 2016 and set aside the same and discharge the petitioner by allowing the revision.

For Petitioner

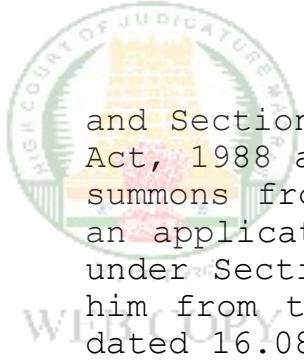
: Mr.C.Arul Vadivel Alias Sekar

For Respondent

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

ORDER

One John Peter gave a complaint on 30.04.2013 to the Deputy Superintendent of Police, Vigilance and Anti-Corruption Wing, alleging that Palanisamy (A-1), Executive Officer, Vallam Town Panchayat, M.Parimala (A-2), Chairman, Vallam Town Panchayat, Purushothaman (A-3), 14th Ward Councillor, Vallam Town Panchayat and others have made illegal appointments to the posts of Electrician Grade-II, Motor Operator and Watchman, after obtaining illegal gratification from incompetent persons. Since no action was taken on the complaint, John Peter filed Cr1.O.P.(MD)No.14348 of 2013, in which, a learned Single Judge of this Court, by order dated 12.09.2013, directed the Vigilance and Anti-Corruption Wing to take appropriate action on the said complaint. Pursuant to the directions, the Deputy Superintendent of Police, Vigilance and Anti-Corruption Wing registered a First Information Report in Crime No.4 of 2015 on 21.04.2015 under Sections 120-B, 466, 468, 471 of the Indian Penal Code and Section 13(1)(d) r/w 13(2) of the Prevention of Corruption Act, 1988 and after completing the investigation, has filed a final report in Spl.Case No.6 of 2016 before the learned Chief Judicial Magistrate -cum- Special Judge for Prevention of Corruption Act Cases, Thanjavur at Kumbakonam for the offences under Sections 120-B, 466, 468, 471, 177 r/w 109 of the Indian Penal Code



and Section 13(1)(d)(ii), (iii) r/w 13(2) of Prevention of Corruption Act, 1988 against Palanisamy (A-1) and five others. After receipt of summons from the Trial Court, Palanisamy (A-1) appeared and filed an application in Crl.M.P.No.1636 of 2017 in Spl.Case No.6 of 2016 under Section 227 of the Code of Criminal Procedure for discharging him from the prosecution. The Trial Court, by the impugned order dated 16.08.2017, has dismissed the discharge application, aggrieved by which, Palanisamy(A-1) has preferred the present Criminal Revision Case.

2. Heard Mr.C.Arul Vadivel @ Sekar, learned counsel for Palanisamy (A-1) and Mr.C.Mayil Vahana Rajendran, learned Additional Public Prosecutor appearing for the respondent.

3. The learned counsel for the petitioner submitted that for the incident that is said to have taken place in the year 2000 to 2002, the First Information Report has been registered only on 21.04.2015 and the final report has been filed only in the year 2016 and the same is barred by limitation.

4. In the considered opinion of this Court, the provisions of Section 468 of the Code of Criminal Procedure will not apply, since the punishment that is prescribed for the offence under Section 13 (2) of the Prevention of Corruption Act, 1988 is upto 7 years. That apart, this case itself came to light only when John Peter filed the petition in Crl.O.P.(MD)No.14348 of 2013 and thereafter, on the directions of this Court, the First Information Report was registered. The Hon'ble Supreme Court in Ranjan Dwivedi v. C.B.I., Through the Director General [AIR 2012 SC 3217] has held that delay per se cannot be a reason for quashing the prosecution. Thus, in the facts and circumstances of the case, the delay in prosecuting the accused cannot be a reason to discharge him.

5. The learned counsel for the petitioner submitted that there has not been any recovery of money from any of the accused and that none of the witnesses has spoken about the ingredients of Section 13 (1)(d) of the Prevention Corruption Act, 1988 for the purpose of framing a charge. To appreciate this argument, it may be necessary to narrate the allegations against the petitioner in the charge sheet, which read thus:

"The Accused Tr.X.Leo Baskar (A4), S/o.F.Xavier was working as a Motor Operator as daily wages from July 1998 in Vallam Town Panchayat. In order to appoint X.Leo Baskar as Motor Operator on consolidate pay as per the conditions of Director of Town Panchayat, Chennai, A1 fraudulently made false entry in the Service Register of Leo Baskar as if he worked as daily wages from 01.08.1996. Based on the false entry A1 to A3 criminally conspired and intentionally passed the resolution No.4 on 21.11.2000 and appointed Leo Baskar as Motor Operator on consolidated pay, though he is not qualified for appointment of Motor



Operator and A1 issued the appointment order to Leo Baskar in proceedings No.95/2000/A, dt.21.11.2000 in contravention to the conditions issued by the Director of Town Panchayat, Chennai.

Further, Xavier (now died), father of Leo Baskar studied only 5th STD at St.Xavier Middle School, Vallam and his actual date of birth was 15.06.1941. He attended the interview for Motor Operator, at that time of interview, he produced bogus school certificate for 8th STD and mentioned his date of birth as 15.02.1964. A1 wantonly not verified the genuineness of the school certificate and actual date of birth, as very well know he has studied 5th STD, and his date of birth is 15.06.1941 because he is the father of Leo Baskar (A4). A1 to A3 intentionally suppressed the fact of his educational qualification and age, they wantonly appointed Xavier as Motor Operator, who is not eligible candidate for that post by passing the resolution on 21.11.2000. His retirement date is 30.06.2001.

Based on the letter, lists containing 5 candidates in Scheduled Caste category, 2 candidates in Backward Community category for appointing sweepers were sent by the Assistant Director, Employment Office, Thanjavur vide letter No.A3/X2/36/2001, dated 07.03.2001 and letter No.A3/X2/37/2001, dated 07.03.2001. Then the selection committee members of Vallam Town Panchayat, the accused (1) Tr.A.Palanisamy, formerly Executive Officer, (2) Tmt.Parimala, formerly President and (3) Tr.S.Purusothaman, formerly Panchayat Member of Vallam Town Panchayat sent call letters to the above 7 individuals for Motor Operator post from the list of sweepers and conducted interview on 28.5.2001. After the interview the accused Nos.1 to 3, selected one P.Dhanapal (A5), S/o.S.Purusothaman from Scheduled Caste list and one M.Satheeskumar (A6) from Backward Community list and passed resolution No.7 on 28.05.2001 and posted them as Motor Operators and posting orders were issued on the same day vide proceeding No.95/2001/A, dt.28.05.2001 against the proceedings of Director of Town Panchayat, Chennai.

And further, in the same way M.Satheeskumar (A6) studied ISC (Industrial School Certificate) and registered in the Employment office at Thanjavur on 19.01.1993 in Reg.No.1993M00250. In order to appoint him as Motor Operator, A1 to A3 criminally conspired and instructed Satheeskumar (A6) to register in the employment office at Thanjavur that he belongs to Backward Community and illiterate, suppressing the fact that he studied Industrial School Certificate, Tr.Satheeskumar (A6) gave false information to the Employment officer and got registered in the Employment office, Thanjavur on 29.01.2001 Register No.2001M00307 as Backward Community and illiterate. Based on the false employment



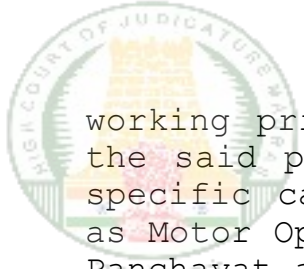
registration, A1 to A3 intentionally appointed A5 & A6 as Motor Operators instead of Sweepers in contravention to the proceedings of the Director of Town Panchayat, Chennai."

6. It is seen that this petitioner in conspiracy with the co-accused have issued appointment letters to Leo Baskar (A-4), Xavier (deceased), father of Leo Baskar, Dhanapal (A-5) and Satheeskumar (A-6) for various posts in the Panchayat in violation of the specific directions issued by the Director of Town Panchayats in the communication dated 14.09.2000. For example, the petitioner has conducted the interview along with Parimala (A-2) and Purusothaman (A-3). In the course of the interview, the son of Purusothaman (A-3) Dhanapal (A-5) appeared and submitted a Certificate as if he belongs to Scheduled Caste. The fact remains that Dhanapal's father Purusothaman, who belongs to Backward Class, was also a member of the Interview Board. Thus, knowing full well that Dhanapal does not belong to Scheduled Caste, Palanisamy (A-1), Parimala (A-2) and Purusothaman (A-3) gave appointment order to Dhanapal (A-5) for the post of Motor Operator under Scheduled Caste Category and passed Resolution No.7 on 28.05.2001, regularising the appointment. Thus, it is obvious that a person sitting in the Interview Board has interviewed his own son, who has produced a fake Community Certificate and has obtained employment.

7. The learned counsel for the petitioner submitted that under Section 114 of the Indian Evidence Act, 1872, there should be a presumption that the Certificate produced by Dhanapal was a genuine one. In the considered opinion of this Court, the presumption under Section 114 is directory in nature, since the expression 'may' is used therein. That apart, it is incredible to believe that the petitioner, who was part of the Interview Committee, did not know that Dhanapal (A-5) is the son of Purusothaman (A-3) and that they do not belong to Scheduled Caste community.

8. The learned counsel for the petitioner submitted that no departmental action was taken against Dhanapal(A-5) till now and he continues to be in service. In the opinion of this Court, failure of the authorities to take departmental action cannot be a reason to stifle the criminal prosecution in the teeth of overwhelming materials available against the accused.

9. The learned counsel for the petitioner took this Court through 161(3) Cr.P.C. statement of V.Mani, the Deputy Director of Panchayats and submitted that a proposal was sent to the Director of Panchayats for necessary permission to fill up the posts of Motor Operator, Electrician Grade-II, etc., and the Director of Panchayats, by his letter dated 14.09.2000, has issued certain guidelines and that this petitioner and the accused had only followed those guidelines in making the appointments. It is true that the Director of Panchayats has issued guidelines dated 14.09.2000, in which, he has clearly stated that persons who were



working prior to 31.12.1996 as temporary hands can be appointed to the said posts, if they are available in the Panchayat. It is the specific case of the prosecution that Leo Baskar (A-4) was working as Motor Operator on daily wages only from July, 1998 in Vallam Town Panchayat and that in order to appoint him, this petitioner had made false entry in the Service Register of Leo Baskar as if he was working on daily wages from 01.08.1996, so that, he comes within the parameters laid down by the Director of Panchayats in the communication dated 14.09.2000. In order to prove this accusation, the police have recorded the statement of one Shanthi, Executive Officer, Vallam Town Panchayat, who had stated that there has been tampering of the Service Register of Leo Baskar to make it look as if he was working on daily wages from 1996 onwards. In such view of the matter, it cannot be stated that there are no prima facie materials to frame charge. In fact, the Supreme Court in CBI v. K.Narayana Rao [2012(9) SCC 512] has stated that even a grave suspicion is sufficient to frame charge against the accused. In fine, this Court does not find any infirmity in the order passed by the Court below warranting interference.

10. In the result, this Criminal Revision Case is devoid of merits and the same is dismissed accordingly. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-II)

/True Copy/

Sub Assistant Registrar

To

1.The Special Judge -cum- Chief Judicial Magistrate,
Thanjavur at Kumbakonam.

2.The Inspector of Police,
Vigilance and Anti Corruption Force,
Thanjavur.

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

+1cc to M/S.C.Arul Vadivel Alias Sekar, Advocate SR.No. 40713

Order made in
Cr1.R.C. (MD) No.934 of 2017
Dated: 05.01.2018