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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on:- 22nd October, 2018

+ CRL. M.C. 4922/2015 & CrI.M.A. 17628/2015

**CHAIRMAN UNION PUBLIC SERVICE
COMMISSION & ANR.**

..... Petitioners

Through: Mr. Naresh Kaushik, Mr.
Ravinder Agarwal & Mr.
Gaurav Ahlawat, Advs.

versus

STATE OF NCT OF DELHI & ORS.

..... Respondents

Through: Mr. K.S. Ahuja, APP for the
State.
Ms. Naomi Chandra, Adv. for
R-4 with R-4 in person.
Mr. Deepak Anand, Adv. for R-
6.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER (ORAL)

1. The second to sixth respondents had joined together to submit an application seeking direction for registration of first information report invoking the jurisdiction of Additional Chief Metropolitan Magistrate (ACMM), New Delhi under Section 156 (3) of the Code of Criminal Procedure, 1973 (Cr.P.C.). The said application presented on 21.01.2013 was made over to Metropolitan Magistrate who registered it as criminal complaint case (CC no. 05/01/2013). She examined the matter arising out of the said application and, by order dated 28.08.2015, directed the station house officer of police station Tilak

Marg to register an FIR and submit a compliance report observing, *inter alia*, that the said respondents (complainants) who were candidates in the examination conducted by Union Public Service Commission (UPSC) had been “*cheated*” by destroying the “*information*” that had been sought by them under the Right to Information Act, 2005 (RTI Act) in terms of directions by various authorities including Central Information Commissioner (CIC) and this Court.

2. Aggrieved by the said direction of the Metropolitan Magistrate, the present petition was filed by the Chairman and Secretary UPSC invoking the inherent power and jurisdiction of this Court under Section 482 Cr.P.C., the prime submissions being that the criminal proceedings which have been taken out are an abuse of the process of law and that even a direction for investigation under Section 156 (3) Cr.P.C. is impermissible in that the persons against whom such investigation is sought are public servants, they being protected by the provision contained in Section 197 Cr.P.C. in terms of the ruling of the Supreme Court in *Anil Kumar vs. M.K. Aiyappa* (2013) 10 SCC 705.

3. The petition is resisted by the private party respondents whose submissions through counsel have been heard and the record has been perused.

4. A perusal of the application under Section 156 (3) Cr.P.C. which was treated as a private complaint on which directions for registration of FIR have been issued by the Metropolitan Magistrate would show that the complainants had been candidates for

appointment to the civil services, they having appeared in the examinations, held annually by UPSC during the period 2006 to 2011. It appears that these complainants were aggrieved by the evaluation of their performance at various stages of the process including preliminary examination, main written examination and viva voce. They had sought certain information under the RTI Act which was denied. They were then constrained to approach the authorities under the RTI Act and also having invoked the writ jurisdiction to seek directions from this Court for release of information including respecting their answer sheets which had been evaluated. It further appears that some directions were given by the writ court, and also in appeals filed in wake of such directions. The sum and substance of the grievance agitated is that the answer sheets were reported to have been weeded and, therefore, not available. Though it does appear that the position of UPSC has been that there is a specific Record Retention Schedule which is in public domain, its copy being available on its website, the crucial question that arises against this backdrop is as to whether the weeding out of the answer sheets which contained the “information” that was sought but rendered not available can be said to be an act committed with the intention to cheat.

5. A perusal of the averments in the application under Section 156 (3) Cr.P.C. brings out that the complainants have tried to make out a criminal case on the basis of mere suspicion or surmises, there being no foundation to the allegations attributing intent to defraud or to cause wrongful loss. Concededly, the complainants did not seek a direction from any of the authorities approached by them under the

RTI Act for preservation of the material against the rules governing the weeding out process. Concededly, there was no inhibition issued by any of the authorities under the RTI Act or by any court against weeding out. There are no allegations of any deliberate act on the part of any specific individual. General allegations levelled against UPSC, an institution created by the Constitution of India, are *per se* preposterous and do not merit any credence. The officers and officials of UPSC dealing with the subject matter are public servants who have the protection of law under Section 197 Cr.P.C. From this perspective as well, the direction by the impugned order could and should not have been issued [*Anil Kumar (supra)*].

6. In the above facts and circumstances, the petition is allowed. The impugned order dated 28.08.2015 passed by the Metropolitan Magistrate on the file of complaint case 05/01/2013 is set aside.

7. The petition and the application filed therewith are disposed of in above terms.

R.K.GAUBA, J.

OCTOBER 22, 2018

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