IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 04.10.2019
Pronounced on : 25.10.2019

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.O.P.No.11483 of 2019
and
Crl.M.P.Nos.5912 & 5914 of 2019

R.Radhakrishnan ... Petitioner

Vs.

State, represented by,
Deputy Superintendent of Police,
Vigilance and Anti Corruption,
Villupuram.
Crime No.3/VAC/VPM/14 ... Respondent

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the records relating to the respondent dated 27.9.17 [charge sheet/final report/ in Special Case No.5 of 2018, on the file of the Special Judge for P.C. Act cases, Villupuram and to quash the same.

For Petitioner : Mr.s.Vijayakumar

For Respondent : Mr.C.Raghavan
Government Advocate [Crl. Side]

ORDER

This Criminal Original Petition is filed to quash the proceedings in Special C.C.No.5 of 2018, pending on the file of the Special Judge for Prevention of Corruption Act Cases, Villupuram.

2.The petitioner/A1 in Special C.C.No.5 of 2018 is facing trial for the offence under Sections 167, 120B, 471, 468, 477A, 420, 409 r/w 201 of IPC and Section 13(2) r/w Section 13 (1)(c) and 13(1)(d) of Prevention of Corruption Act, 1988 along with two other accused.

3.The case of the prosecution is that the petitioner was formerly Junior Assistant, M-4 Section in the office of the District Adi Dravidar Welfare Office, Villupuram as such a public servant. The petitioner and the 2nd accused Subramanian, Junior Assistant M-8 Sections were entrusted with the scrutiny/verification, preparation and processing of the claim applications received from the educational institutions for Post Matric Scholarship awarded to uplift the educational status of the scheduled cast/scheduled tribe students. For the disbursal of the Post Matric Scholarship to SC/ST student for the year 2009-2010, the accused with an intention to misappropriate the scholarship fund had criminally conspired together to have personal gain to each other, having knowledge of the bogus claim application supported with forged documents, dated 05.03.2010 for Rs.2,05,500/- created by Boominathan/A3 for 73 fictitious students for the academic year 2009-2010 as if those students are undergoing education on the respective trade in his institution, when actually those trades were not recognized. Further, the petitioner and the other public servant have wantonly failed to verify the claim of the 3rd accused in respect to the community certificate, income certificate of the students and the recognisation of the trade imparted by the 3rd accused institution, while processing his claim application.

4.Thus the petitioner having knowledge of the same have framed incorrect records vide proceedings in Na.Ka.M4/14735/2010 dated 09.12.2010 and was instrumental in realizing Rs.2,05,500/- and cheating Government Exchequer. Further, in connivance with other accused had caused disappearance of the said proceedings. Hence, the respondent after investigation filed the charge sheet, citing LW1 to LW78 and marking documents LD1 to LD47.

5.The learned counsel for the petitioner submitted that the Director of Vigilance and Anti Corruption submitted a report to the Vigilance Commissioner vide proceedings No.DE7/12/ADW/VPM, dated 19.06.2014 against M.Radhakrishnan, District Adi Dravidar Welfare Officer and four others to register a case under the provision of Prevention of Corruption Act, 1988. The proceedings were initiated to register the regular case against M.Radhakrishnan, District Adi Dravidar Welfare Officer, P.Srinivasan, Assistant Accounts Office, Vijaya, Office Superintendent, R.Radhakrishan, Junior Assistant/petitioner. Based on the same, a case in Crime No.3 of 2014 came to be registered by the respondent.

6.The learned counsel for the petitioner would further submit that the accused Nos.1 to 4 named in F.I.R colluded with each other with common intention of committing misappropriation of government money for their personal gain by falsifying accounts, framed incorrect records and forged documents and the cheques were disbursed for each educational institutions of which a few such educational institutions are non existent as well as non functional. The case came to registered on 25.06.2014. The petitioner was not called for enquiry and he received summons for his appearance only from the lower Court during August 2018. Due to the pendency of the above case, the petitioner is deprived of his legitimate promotion to the post of Deputy Tahsildar from the year 2017. The respondent had filed the charge sheet on 27.09.2017, which was taken on file as Special C.C.No.5 of 2018. On receipt of the summons, the petitioner appeared before the trial Court, received the charge sheet on 20.08.2018. On perusal of the same, the petitioner was surprised and shocked to see that the respondent deleted the higher officials such as District Adi Dravidar and Tribal Welfare Officer, Assistant Accounts Officer and superintendent, who are the competent authorities in sanctioning of the scholarship to the educational institutions in Villupuram and they have been shown as LW3, LW5 and LW6 respectively. No reason have been given for deleting their names in the final report.

7.The learned counsel for the petitioner would further submit that the procedure of sanctioning the scholarship is that the District Adi Dravidar and Tribal Welfare Officer would receive the application for sanctioning of scholarship from various educational institutions in Villupuram. On receipt of the applications, it would be forwarded to the Junior Assistant/petitioner for verification of the particulars with the documents annexed. After verification, the application would be forwarded to the Superintendent and Assistant Accounts Officer for scrutiny. Thereafter, on satisfying the same with the certificate annexed, the authority would forward the same to the District Adi Dravidar and Tribal Welfare Officer for appropriate sanction orders and the competent authority would ultimately examine the same and pass orders sanctioning of scholarship to the institutions. The G.O.Ms.No.753, dated 25.09.1995 clearly envisaged the duties and responsibilities of the financial officer. That being the case, the petitioner cannot be attributed for the offence charged. The petitioner is not responsible for sanctioning of scholarship to the respective institution. Earlier the petitioner has filed a discharge petition before the trial Court in Crl.M.P.No.144 of 2018, on the ground that he is not a competent authority for sanctioning of scholarship, besides other grounds. The discharge petition was dismissed, against which the petitioner filed Crl.R.C.No.278 of 2019 before this Court. Later, the learned counsel withdrawn the revision petition with liberty to raise the points by way of a quash petition. Hence, the present petition.

8.Further, the petitioner was not aware of the file note dated 09.12.2010, which is relied upon in the final report, since he was undergoing foundational training course at Bhavanisagar during the period from 23.10.2010 to 20.12.2010. Further, the two office note one is dated 29.10.2010 and another dated 09.12.2010, which are relied upon in the final report does not contain the signature of the petitioner. As per LD8, the sanction was accorded by the District Adi Dravidar and Tribal Welfare Officer, subject to the production of the original income certificate, attested copy of community certificate and the approved list issued by the Regional Joint Director [Employment and Training] by the respective institution to prove their genuineness of their claims in the said office note file No.M4/14370/2010, dated 13.05.2010. The concern clerk had sent the communication to the respective institution if the originals are not produced on or before 10.10.2010 claims for scholarship rejected summarily. The petitioner was not in the picture when the office was note put up for sanction of scholarship and the date of sanction of scholarship. Further, the reason given by the respondent deleting the other accused in FIR that no document are available against them is not correct. The same documents are now attributed against the petitioner, which is a mischievous act on the part of the respondent to save the said officials to go scot-free.

9.The learned counsel for the petitioner relied upon the following citations:-

> "1)Y.Abudl Rahim Versus The District Collector, Sivagangai District, Collectorate Complex, Sivagangai in Writ Petition No.2857 of 2006, dated 27.07.2006.
>
> 2)V.Saravana Versus the Principal Secretary to Government and others in W.P.No.16280 of 2011."

Both the above two cases pertains to service jurisprudence.

3)"Dipakbhai Jagdishchandra Patel Versus State of Gujarat and another in Criminal Appeal No.714 of 2019" The point herein is distinction between confession and admission. The above cases are not applicable to the present facts and circumstance of the case.

10.The learned Government Advocate [Crl. Side] appearing on behalf of the respondents filed a counter and referred the statement of LW2 Karunanithi, District Adi Dravidar Welfare Officer, Villupuram in which statement the duties and responsibilities are clearly mentioned. The petitioner is to scrutinise the applications and the documents annexed to it and also verify the coding sheets with the documents such as copy of the recognition, community certificate, income certificate and the particulars of the student and also to verify the principal certificate. He has to satisfy about the recognition of the institution to sanction for scholarship be made only to the persons belonging to SC/ST communities. If any scholarship is given to other community person, the concerned clerk and the correspondent of the institution are liable. The proceedings are to be put up by the Junior Assistant and thereafter only orders are to be passed by the officials. LW3, LW4, LW5, LW6, LW7 and LW8 clearly given statement about the role of the petitioner. The Manager of the Indian Bank stated about the issuance of demand draft in favour of Asian Catering Industrial School and the demand draft had been cleared by the State Bank of India. The said demand draft had been encashed by the institutions. The Manager of Indian Bank had examined to prove the fact that the 3rd accused had withdrawn the said scholarship amount. LW14 has clearly spoken about the connivance of the accused with each other. The students have also spoken that they have not received the scholarship amount and about their community certificate and the course in which they studied.

11.The learned Government Advocate [Crl. Side] would further submit that the teachers who were employed in the institution and the building owner have spoken to about malfunctioning of the institution. The petitioner has failed to verify 91 claim application on 05.03.2010 and he was instrumental for the preparation of passing orders with the knowledge that the application with 13 individuals are not of Adi Dravidar community. Whereas, the respondent has received the applications on 05.03.2010 and has failed to verify its enclosures was instrumental to prepare the pass order on 15.03.2010, which were all prior to the petitioner training period and the delivery of cheque to the tune of Rs.2,05,500/- to the 3rd accused by the petitioner on 28.12.2010. It is further submitted that the departmental action contemplated against the erring officials, who retired from service, the sanction for prosecution obtained under Section 19 of the Prevention of Corruption Act, 1988 from the competent authority namely LW1 in this case.

12.The respondent had conducted a thorough investigation, examined witnesses, collected documents and filed the charge sheet in this case. The lower Court on perusal of the same had taken cognizance issued summons, framed the charges and posted the case for examination of witnesses.

13.Considering the rival submissions and on perusal of the materials, the contention of the petitioner is that he was undergoing foundational training course at Bhavanisagar during the period from 23.10.2010 to 20.12.2010. The case is that the petitioner had framed incorrect records by proceedings Na.Ka.M4/14735/2010 dated 09.12.2010 and sanction of scholarship on 09.10.2012. His contention is that on both the dates he was not in the office and he had not prepared the same cannot be countenanced for the reasons that these orders came to be passed on the basis of the records and the note sheet put up by the petitioner much earlier. The petitioner has handed over the demand draft to the 3rd accused on 28.12.2010. On perusal of the statement of witnesses, it is seen that there are materials against the petitioner. Further the sanction authority after perusal and scrutiny of statement of documents have accorded sanctioning. The points raised by the petitioner are disputed.

14.In view of the above, this criminal original petition stands dismissed giving liberty to the petitioner to raise the points before the trial Court during trial. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

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To

1.The Special Judge for P.C. Act cases,
Villupuram.

2.The Deputy Superintendent of Police,
Vigilance and Anti Corruption,
Villupuram.

3.The Public Prosecutor,
High Court Madras.

+1cc to Mr.Vijayakumar, Advocate, S.R.No. 89332

Crl.O.P.No.11483 of 2019

MG(CO)
GN(21/11/2019)