

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:30.04.2019

CORAM:

THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA

Crl.OP.No.10900 of 2019

C.N.Pratheeba

..Petitioner/A7

- Vs -

The Inspector of Police
Vigilance and Anti Corruption
City Special Unit-I, Chennai-16

..Respondent

Prayer:- This Criminal Original Petition is filed to permit the Petitioner/A7 to pursue her Ph.D in Chalmer's University, Sweden, for the academic year May 2019 to December 2023.

For Petitioner : Mr.G.Thyagarajan

For Respondent : Mr.K.Prabakar, APP

ORDER

1.This Criminal Original Petition is filed to permit the Petitioner/A7 to pursue her Ph.D Studies in the Chalmer's University, Sweden, for the academic years May 2019 to December 2023.

2.The facts leading to filing of this Criminal Original Petition are as follows:-

- a) The Petitioner/A7 has completed B.Tech (Chemical Engineering) in the year 2000 and also completed M.Tech (Chemical Engineering) in IIT, Kanpur, in the year 2002 and thereafter, she pursued her Ph.D in IIT, Madras, however, due to her employment, she discontinued the same. She has been appointed as an Assistant Professor, Chemical Engineering Department in the Anna University, by letter dated, 26.11.2014 and she joined duty on 05.12.2014.
- b) While so, based on a complaint, a First Information Report, dated 31.07.2018, vide No.09/AC/2018/CCI, was registered against her, arraying her as A7, for the offence under Sections 120B, 167, 201, 420, 468, 471 of IPC and Section 13(2) read with 13(1)(d) of the Prevention of Corruption Act, 1988, alleging that the Petitioner/A7 along with

others, being Public Servant have committed the offences of criminal conspiracy, framing an incorrect documents with intent to cause injury, causing disappearance of evidence, cheating, forgery for the purpose of cheating, using as genuine a forged document and criminal misconduct.

- c) In the mean while, the Petitioner/A7 has got an opportunity to study Ph.D in the Chalmers University, Sweden, vide letters dated, 06.02.2019 and 13.02.2019. Subsequently, the Petitioner/A7 has made a representation, dated 21.02.2019, to the Registrar, Anna University, seeking extraordinary leave (2 years + 2 years for higher education), as per the Rules and Regulations of the University, to pursue her Ph.D Studies at abroad. The Chalmers University, Sweden has granted three months time to the Petitioner/A7 to join the University on or before 06.05.2019.
- d) In the above circumstances, the Petitioner/A7 has filed CrI.OP.No.8138 of 2019 to quash the First Information Report and the said CrI.OP.No.8138 of 2019 was dismissed, as withdrawn, with a liberty to file a fresh petition, seeking appropriate relief. Thereafter, the Petitioner/A7 has made a further representation, dated 16.04.2019 to the Respondent, seeking permission to pursue her Ph.D at abroad. Since there is no response so far, this Criminal Original Petition has been filed, seeking the relief, as stated above.
3. The learned counsel for the Petitioner/A7 would submit that the case is at the stage of First Information Report and that she has nothing to do with the alleged offence and that she was never called for enquiry by the Respondent and that no show cause notice was issued to her. He would further submit that the Petitioner/A7 was not placed under suspension and was not warned or censured and that she was not called for any departmental enquiry and that due to the First Information Report, falsely implicating her, she could not proceed with her further education at abroad. He would further submit that the freedom of movement is a highly cherished right guaranteed under the Constitution of India essential for everyone citizen's own future and for the growth and development of human personality and that the right to travel abroad cannot be curtailed by the respondent at the stage of pendency of the First Information Report, unless the power conferred under Section 10(3) of the Passport Act is invoked by the appropriate Authority, in accordance with law, by following proper procedure and that the Petitioner/A7 is ready to abide by any conditions to be imposed by this Court and seek permission of this Court to her to pursue her Ph.D Studies in the Chalmer's University, Sweden for the academic years May 2019 to December 2023.

4. The learned counsel for the Petitioner/A7 would further submit that though the Respondent has not filed the final report and at this stage when cognizance of the offence having not been taken by the Court concerned, the Petitioner/A7, in order to protect the interest of the Respondent, is prepared to cooperate with the Respondent in his investigation through email or in the event of the Respondent being felt it necessary, to appear before the Respondent for enquiry/investigation, on a date to be fixed by him and to bind herself, by appearing before the Court concerned, where the First Information Report is pending and is also prepared to furnish sureties and furnish details with regard to her studies, stay at abroad and her contact details at abroad, so as to ensure her presence on summons being served on her in the event of final report being filed by the Respondent and cognizance of the offence being taken by the Court concerned.
5. On the above said contentions of the learned counsel for the Petitioner/A7, this Court heard the learned Additional Public Prosecutor for the Respondent, who opposed to grant the relief as sought for by the Petitioner/A7. The learned Additional Public Prosecutor would further submit that the Petitioner/A7 had entered into a criminal conspiracy with the main accused and committed the offence of forgery and that there are prima facie materials available against the Petitioner/A7 for having committed the grave crime of forgery and fabrication of records in entering into a criminal conspiracy and having actively assisted and aided the other accused. He would further submit that once the investigation is completed and proper sanction is obtained, cognizance of the alleged offences against the Petitioner/A7 will be taken by the concerned Court and that in such circumstances, the relief as prayed for by the Petitioner/A7 cannot be granted.
6. This court heard the learned counsel on either side and considered their submissions and also perused the materials placed on record.
7. The Petitioner/A7 herein is an Engineering Post Graduate in Chemical Engineering. She is working as an Assistant Professor, Chemical Engineering Department in the Anna University. By the First Information Report, dated 31.07.2018, she was charged with the offences of criminal conspiracy, framing an incorrect documents with intent to cause injury, causing disappearance of evidence, cheating, forgery for the purpose of cheating, using as genuine a forged document and criminal misconduct. While so, she has got an opportunity to study Ph.D at Chalmers University, Sweden, vide letters dated, 06.02.2019 and 13.02.2019. She has made representations to the University,

seeking extraordinary leave to pursue her Ph.D Studies at abroad.

8. The Anna University, by letter dated 27.04.2019, has given no objection for the Petitioner/A7 to pursue her Ph.D at Chalmers University of Technology, Sweden, by availing leave subject to the approval of the Syndicate and clearance from the DVAC.
9. Now, the question is whether, at the stage of First Information Report, the Petitioner/A7 can be permitted to go abroad to pursue her studies or not?
10. In order to protect the interest of the Respondent, the Petitioner/A7 has filed an affidavit of undertaking, dated 29.04.2019, undertaking that she will comply with any conditions to be put forth by this Court for permitting her to pursue her Ph.D Studies at abroad and that after pursuing her Ph.D, she will come back to rejoin her duties in the Anna University and that she will cooperate with the investigation as and when necessary by the Respondent.
11. Unless the concerned Court takes cognizance of the offence, on filing of the charge sheet, on completing the investigation against the accused, it cannot be construed that the proceedings are pending before the Court. Such a proposition was laid down in the decisions reported in 2016 1 CWC 656 (B.Ranganathan Vs. The Regional Passport Officer, Government of India) and 2014 2 CWC 684 (W.Jaihar William Vs.State of Tamil Nadu).
12. In 2014 2 CWC 684 (W.Jaihar William Vs.State of Tamil Nadu), it was held as follows:-

"8.....It is well settled legal principle that mere pendency of FIR cannot be construed as pendency of Criminal proceedings in respect of the offences alleged to have been committed by the Applicant before the Criminal Court. Only after the Court takes cognizance of the offence alleged to have been committed by the Appellant, as stipulated under Section 190 of Cr.PC., it can be construed as "proceedings pending before the Court".
13. In the case on hand, the case is at the FIR stage. The Petitioner/A7 was never called for any enquiry by the respondent and no explanation was sought from the Petitioner/A7, by issuing show cause notice. The Petitioner/A7 was also not placed under suspension by the University, by initiating departmental enquiry against her. Further, as stated above, the University, from whom, the Petitioner/A7 has sought for extraordinary leave to pursue her Ph.D Studies at

abroad, has also given no objection to the Petitioner/A7 to pursue her higher studies at abroad, by their letter dated, 27.04.2019. The Petitioner/A7 has also filed an undertaking, dated 29.04.2019, to abide by any conditions to be imposed by this Court.

14. Taking into consideration the peculiar facts and circumstances of this case, the plight and future of a research scholar, who has come up in her life and also considering the undertaking of the Petitioner/A7, this Court is inclined to allow the prayer as sought for by the Petitioner/A7. Accordingly, recording the affidavit of undertaking, dated 29.04.2019, filed by the Petitioner/A7, this Criminal Original Petition is allowed, as prayed for, and the Petitioner/A7 is permitted to pursue her Ph.D Studies in the Chalmer's University, Sweden, for the academic years May 2019 to December 2023, however, subject to the following conditions:-

- i. The Petitioner/A7 shall appear before the Special Court at Chennai, for the cases under the Prevention of Corruption Act, within a period of one week from the date of receipt of a copy of this order and execute a bond for a sum of Rs.25,000/- (Rupees Twenty Five Thousand only) with two sureties, each for a like sum to the satisfaction of the Trial Court.
- ii. The Petitioner/A7 shall furnish her email address and her local contact details and also contact details at abroad, so as to enable the Trial Court to serve summons on her through the email.
- iii. The Petitioner/A7 shall file an undertaking before the concerned Court that her authorized representative shall receive the summons on her behalf.
- iv. The petitioner/A7 shall cooperate with the Respondent in his entire investigation, by answering the queries either through phone or email and if the respondent insists for the presence of the Petitioner/A7, she shall appear before the respondent on the date to be fixed by the respondent for enquiry/investigation.
- v. The Petitioner/A7 shall strictly abide by the undertaking, dated 29.04.2019, given by her before this Court, regarding the progress of trial and in the event of her failure to abide by the undertaking given in the affidavit, the respondent shall take appropriate steps in accordance with law, for securing her presence.

vi.This order is passed only taking into consideration the peculiar circumstances of this case and it cannot be used for reliance in any other case.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To:

1. The Special Judge,
Prevention of Corruption of Act Cases,
Chennai.
- 2.The Inspector of Police,
Vigilance and Anti Corruption,
City Special Unit-I,
Chennai-16
- 3.The Public Prosecutor,
High Court, Madras

+1cc to Mr. G.Thyagarajan, Advocate SR.No. 9121

Cr1.OP.No.10900 of 2019

Kak (03/05/2019)



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