



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 10.07.2020

CORAM

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

CrI.O.P(MD)No.3470 of 2020

and

CrI.M.P. (MD)Nos.1861 and 1862 of 2020

WEB COPY

1.V.M.Jafarulla
2.H.Nousadh Ali
3.V.Malayappan
4.Sri Ramkumar Babuji

... Petitioners/ Accused
No.1,2,4 & 5

Vs

The Central Bureau of Investigation,
represented by
Superintendent of Police,
Sasthribavan, Chennai.

... Respondent

Prayer: Petition filed under Section 482 of the Criminal Procedure Code, to call for the records relating to the C.C.No.1300001 of 2015 on the file of the Chief Judicial Magistrate, Madurai and quash the same insofar as the petitioner is concerned.

For Petitioners : Mr.B.Prahalad Ravi

For Respondent : Mr.V.Kathirvelu,
Assistant Solicitor General

ORDER

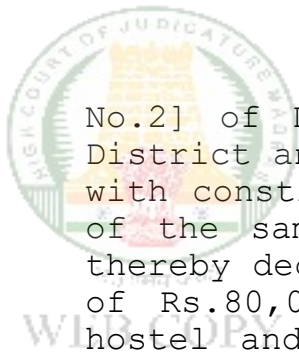
This petition is filed by accused Nos. 1,2,4 and 5 in C.C.No.1300001 of 2015 on the file of the Chief Judicial Magistrate, Madurai to quash the proceedings pending against them.

2.The first respondent Police filed a final report as against the petitioners and another before the trial Court for the offence under Sections 120 (B) r/w 420 IPC, 406 r/w 405 IPC and the same was taken on file in C.C.No.1300001 of 2015 by the learned Chief Judicial Magistrate, Madurai.

3.Aggrieved over the same, the petitioners/accused Nos.1,2,4 and 5 have filed this petition to quash the proceedings pending against them.

4.The sum and substance of the final report filed by the Respondent CBI, is as follows:

(i)The case in FIR No.RCMA 1 2013 10033 was registered by the respondent CBI, on 30.07.2013 based on the reliable information received that during the period 2009 to 2011, V.M.Jafarullah, Secretary [Accused No.1] H.Nousadh Ali, the then Principal [Accused



No.2] of Dr.Zakir Hussain College Society, Ilayangudi, Sivagangai District and others entered into a criminal conspiracy in connection with construction of women's hostel in the college and in pursuance of the same, they falsely submitted a completion certificate and thereby deceived University Grants Commission (UGC) and got sanction of Rs.80,00,000/- and Rs.20,00,000/- for construction of women's hostel and outdoor stadium respectively. However, the information revealed neither the said women's hostel nor the outdoor stadium was constructed in accordance with the guidelines and release orders of UGC and thus the accused had deceived the UGC to part with money to the tune of about Rupees One Crore and obtained corresponding undue pecuniary advantage to themselves, which prima facie discloses the offence punishable under Section 120-B r/w 420 & Section 13(2) r/w 13(1)(d) of PC Act.

(ii) The investigation revealed that V.M.Jafarullah, Secretary entered into a criminal conspiracy with Nosuadh Ali. Pursuant to the criminal conspiracy Dr.Zakir Hussain College Society - Ilanyankudi affiliated by Allagappa University has submitted a proposal dated 27.07.2009 to the UGC with a request to provide financial assistance for construction of a new women's hostel at their college premises in Ilayangudi, Sivagangai District. Accordingly, this college was sanctioned Rupees Eighty Lakh by the UGC Expert Committee. The sanction was limited to Rupees Eighty Lakh out of the total estimate of Rs.94.50 Lakh submitted by the college in its proposal and the same was released by way of three instalments, viz, 1st instalment of Rs.40lakh, 2nd instalment of Rs.32 lakh and last instalment of Rs.8 lakh and the college authorities submitted various completion and utilisation certificates. However, the building meant for the women's hostel was not used as women's hostel, but it was used as class room for self financing courses in the college. Based on the complaint received by the UGC in this regard, an Enquiry Committee was constituted and they had inspected the building and its inspection report dated 03.1.2012 revealed that the construction of the so called women's hostel is in violation of the UGC guidelines and the building does not have necessary basic amenities to function as hostel as the building was not having kitchen, dining hall, servants room, sick room, reading room and other basic amenities meant for a hostel and no girl student was staying in the building and there was no functioning of the women hostel.

(iii) Based on the report of the enquiry committee, the college has made an extension to accommodate the kitchen and hence as on 03.02.2013, the hostel was physically revalued by experts and it was found that the cost of the construction was only Rs.52,02,824/- as against Rs.1,02,55,658/- as claimed by the college, which clearly proves that UGC grant of Rs.80 Lakh was not utilised for the purpose, for which it was sanctioned.

(iv) It is stated that the V.M.Jafarullah [A1], Secretary and Correspondent of the college, had constructed class rooms by misusing the funds allotted by UGC for constructing women's hostel. As per conspiracy, he arranged Ramkumar Babuji [A5] to be the



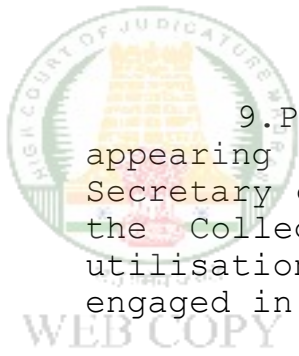
contractor for the said work and all the amounts released to A5 was withdrawn in cash and taken back by A1, which was used for other purposes. It is further stated that A1 directly supervised the work and all the payments to the labourers and procurement of building materials were done by him. V.Malayappan [A4] prepared and submitted various false utilisation certificates and statement of income and expenditures, based on which, UGC had released the funds on instalments. Nousadh Ali, who was the then Principal of the College continued in the post even after his superannuation and signed the cheques to withdraw the UGC funds. As part of the conspiracy, he forwarded all the proposals and request to UGC seeking financial assistance and thus enabled A1 to accomplish his criminal act.

5.The learned Counsel for the petitioners submitted that the charges levelled against the petitioners are not maintainable, since the complaint itself is false and based on the anonymous complaint. He further submitted that the respondent CBI has not conducted proper investigation as contemplated under law. He further submitted that the petitioners have been roped in unnecessarily in this case and the college actually has constructed the women's hostel with the contribution of the UGC's grant and also contributed its own fund, which was also ratified by the Enquiry committee constituted by the UGC. Therefore, it is evident, that there is no any offence committed as alleged by the prosecution.

6.According to the learned counsel for the petitioners, when the complaint was not lodged by the UGC, which provided grant to the college, the respondent CBI ought not to have proceeded with investigation.

7.In support of this petition, the learned Counsel for the petitioners has also submitted that the case was registered based on a letter and there is no complaint from UGC. The allegation itself is of misappropriation of the amount, on construction of building on the ground that the building has been construction under the UGC grant.

8.In the absence of any complaint from the sponsoring authority, UGC, the complaint itself is not maintainable. Moreover, the case was registered as against one Srinivasan, Joint Secretary of UGC and one Gurumurthy , Dean of College Development Council, Alagappa University, Karaikudi, but they have been omitted in the final report without any valid reason. Accused No.1 is the Secretary of the college and Accused No.2 is the Principal of the college and they have been unnecessarily roped in this case without any valid documents. He also submitted that the National Commission For Minority Educational Institutions, by its order dated 28.10.2016 has observed that the entire funds so far sanctioned by the UGC was utilised by the petitioner's college and directed the UGC to release grants to the petitioner's college. Therefore, the learned Counsel



9.Per contra, the learned Assistant Solicitor General appearing for the CBI would submit that the first accused is the Secretary of the College and the second accused is the Principal of the College and accused No.4 had prepared false bills and utilisation certificates and accused No.5 is the Contractor, who was engaged in construction of building.

10.The respondent CBI also filed a counter affidavit stating that the case was registered based on the reliable source information, which was also verified well before registration of the case and the inspection report of the Enquiry Committee dated 03.12.2012 revealed that guidelines have been violated and there was lack of basic amenities in the building.

11.The counter further states that the Inspection Team, on 03.01.2012 noticed there were only class rooms, but, not women's hostel that too without basic amenities, whereas, the college has submitted the completion certificate and utilisation certificate as on 22.12.2010. Further in the proceedings before the National Commission for Minority and the Delhi High Court, CBI was not at all a party and further, there was no observation pointing out any deficiency in the investigation and the final report of the CBI.

12.The learned Assistant Solicitor General in addition to the counter submitted that the very object of the grant of UGC is to develop the infrastructure for the women folks and as such, the UGC has provided grant to the petitioners' college. But the petitioners/accused taking advantage of the same has converted the existing building into class rooms and projected that the said building has been constructed under the scheme and thus, had swindled the amount granted by the UGC. He would further submit that accused No.5 is the worker of the college itself, whereas on impersonation, he has been shown as a Contractor and grant was provided in his name and he in turn, gave the said amount to the first accused. The second accused Principal retired from service a long back, but even though without any authority, he continued as Principal and also signed in the cheque books. This case was registered in the year 2012 and the charge sheet was laid in the year 2015. PW1 was examined in the year 2018.

13.The learned Assistant Solicitor General further submitted that apart from the above, the investigation revealed that all the charges against the petitioners herein are sufficiently proved by both documentary evidence as well as statement of witnesses. It is a settled position of law that when prima facie case is made out disclosing the ingredients, the criminal proceedings cannot be quashed and therefore, prayed for dismissal of this petition.

14.Heard Mr.B.Prahalad Ravi, learned Counsel for the petitioners and Mr.V.Kathirvelu, learned Assistant Solicitor General



15.This case revolves around the construction of the women's hostel in the petitioners' college by getting grant from UGC. Admittedly, the UGC has also granted Rupees Eighty Lakh in three instalments. According to the prosecution, the building which is claimed by the petitioner's college as women's hostel, is not constructed in accordance with the guidelines issued by the UGC and it lacks basic amenities and by way of ratification, the building which was originally constructed as class rooms, was converted into women's hostel and by way of extension, the amenities were also provided according to the guidelines.

16.The petitioners have raised very many grounds that the complaint itself is anonymous and there are no ingredients to attract the charges levelled against them. This Court, under Section 482 Cr.P.C cannot conduct a roving enquiry, as to the grounds raised in this petition. The grounds raised by the petitioners are a matter for trial, by adducing evidence before the trial Court and it cannot be appreciated before this Court at this stage. Therefore, granting liberty to the petitioners to raise all these grounds before the trial Court, the criminal original petition is dismissed. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar ()

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Sub Assistant Registrar(CS)

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NOTE: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

- 1.The Chief Judicial Magistrate,
Madurai.
- 2.The Superintendent of Police,
The Central Bureau of Investigation,
Sasthiribavan, Chennai.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Cr1.O.P(MD)No.3470 of 2020

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