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CRL.O.P.(MD)NO.8419 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 28.08.2019

PRONOUNCED ON : 02.01.2020

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Crl.O.P.(MD)Nos.8419 & 8420 of 2019 and

CRL.M.P.(MD)No.5270 & 5271 of 2019

Dr.R.T.Sababathy Mohan

... Petitioner/Accused No.1
in both petitions

Vs.

Deputy Superintendent of Police,
Vigilance & Anti Corruption,
Tirunelveli.
Crime No.6 of 2012/
Special Case No.8 & 9 of 2015

... Respondent
in both petitions

Common Prayer: Criminal Original petitions are filed under Section 482 of Cr.P.C, to call for the records filed under Section 173 of Cr.P.C. final reports in the Special Case Nos.8 and 9 of 2015 on the file of the Special Court for trial of cases under P&C Act, Tirunelveli and quash the same as illegal, as no sufficient grounds and abuse of process of law as against the petitioner.

(in both Crl.O.Ps.)

For Petitioner : Dr.A.Thiyagarajan,
Senior Counsel for
Mr.S.Karunakar.

For Respondent : Mr.K.K.Ramakrishnan,
Additional Public Prosecutor.

C O M M O N O R D E R

The petitioner in both these criminal original petitions is one and the same. He is shown as the first accused in Special Case No.8 of 2015 and Special Case No.9 of 2015 on the file of the Special Court for trial cases under the Prevention of Corruption Act, Tirunelveli.



2. The petitioner was a Vice-Chancellor of Manonmaniam Sundaranar University, Tirunelveli, for a period of three years from 23.04.2008 to 22.04.2011. The case of the prosecution is that during the academic year 2010-2011 and 2011-2012, excess number of students were admitted over and above the sanctioned strength in B.Ed. course under the distance education mode. The second accused is one Tmt.Dr.S.P.Denizha, formerly Associate Professor, B.Ed. Wing, DD&CE of the university. It is alleged that the petitioner conspired with the second accused and admitted students who were not eligible for admission to the said course. In this regard, Crime No.6 of 2012 was registered on the file of the Deputy Superintendent of Police, Vigilance and Anti-Corruption, Tirunelveli. Since two academic years are involved, two separate final reports were filed and cognizance of the offences under Sections 120(B), 167, 465, 468, 471 and 477(A) of I.P.C. and Section 13(2) r/w. 13(1)(d) of the Prevention of Corruption Act 1988 was taken by the learned Special Judge.

3. According to the prosecution, malpractices were committed during the admission process. Even though the Selection Committee had stipulated certain norms for selection of the candidates for admission to B.Ed. Course, those norms were not followed by the Selection Committee itself. Candidates who did not attend the interview got admitted. Candidates who got first rank in the interview were not selected. The selection of the candidates was not based on their performance. Records were also falsified. Sanction was obtained for prosecution against accused No.2 Dr.S.P.Denizia. Seeking to quash both these proceedings as far as he is concerned, these criminal original petitions have been filed by the first accused.

4. Heard the learned senior counsel appearing for the petitioner and the learned Additional Public Prosecutor appearing for the respondents.

5. The learned senior counsel reiterated the contentions set out in the memorandum of grounds. Written submissions and notes of arguments together with the compilation of case laws were also submitted. It is not in dispute that the petitioner would fall within the expression "public servant" under Section 21 of the Indian Penal Code. In as much as the petitioner ceased to be the Vice Chancellor, when the Special Court took cognizance of the offences against the petitioner, the question of obtaining sanction under Section 19 of Prevention of Corruption Act 1988 did not arise. Section 19 of the Prevention of Corruption Act 1988 underwent a drastic amendment in the year 2018. The expression "public servant" includes such a person who ceased to hold the office as soon as the offence is alleged to have been committed.



But the case against the petitioner was taken on file prior to the amendment. The legal position that then obtained was that if the accused had ceased to hold the office during which the offence is alleged to have been committed, there was no need to obtain prior sanction from the competent authority. The petitioner, therefore, cannot take advantage of the amendment made to Section 19 vide Amendment Act No.16 of 2018. The petitioner would claim that the syndicate which is having the authority had ratified the admission of the excess candidates. He would point out that the selection process was in respect of various departments which conducted interviews under the respective Heads of Department. Though a number of persons were examined and their statements were recorded under Section 161 of Cr.P.C. by the investigation officer, only a handful of witnesses had stated that they signed the final merit list as requested by the petitioner. Thus, even on the petitioner's own showing, there are some materials which *prima facie* implicate him and attract the charges for which cognizance was taken by the Court below. Of course the petitioner's senior counsel would claim that this Court should reject the said statements by invoking Section 92 of the Indian Evidence Act. He would point out that these statements were made a full four years after the preparation of the records in question. He would also seriously impeach their credibility. The persons who have signed the merit list with their eyes wide open cannot later be heard to claim that they merely signed on the dotted lines based on the instructions of the Vice Chancellor. He would also challenge the prosecution for placing reliance on the statement made by the co-accused under Section 164 of Cr.P.C. Even though the petitioner's senior counsel argued elaborately on these aspects, I am afraid that I cannot go into them. This is because of the very nature of the jurisdiction exercised under Section 482 of Cr.P.C.

6. The Hon'ble Supreme Court in the decision reported in CDJ (2019) SC 855 (Chilakamarthi Venkateswarlu and others V. State of Andhra Pradesh and others) held as follows:-

"12. The plenary inherent jurisdiction of the Court under Section 482 of Code of Criminal Procedure may be exercised to give effect to an order under the Code; to prevent abuse of the process of the Court; and to otherwise secure the ends of justice.

13. The inherent jurisdiction, though wide and expansive, has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the Section itself, that is, to make orders as may be necessary to give effect to any order under the Code, to prevent the abuse of the process of any Court or



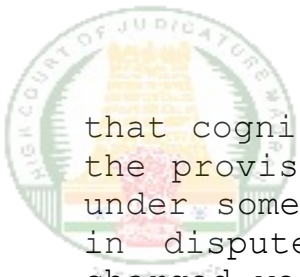
14. For interference under Section 482, three conditions are to be fulfilled. The injustice which comes to light should be of a grave, and not of a trivial character; it should be palpable and clear and not doubtful and there should exist no other provision of law by which the party aggrieved could have sought relief.

15. In exercising jurisdiction under Section 482, it is not permissible for the Court to act as if it were a trial Court. The Court is only to be prima facie satisfied about existence of sufficient ground for proceeding against the accused. For that limited purpose, the Court can evaluate materials and documents on record, but it cannot appreciate the evidence to conclude whether the materials produced are sufficient or not for convicting the accused.

16. The High Court should not, in exercise of jurisdiction under Section 482, embark upon an enquiry into whether the evidence is reliable or not, or whether on a reasonable appreciation of the evidence the allegations are not sustainable, for this is the function of the trial Judge. This proposition finds support from the Judgment of this Court in Zandu Pharmaceutical Works Ltd., and Ors. V. Mohd. Sharful Haque and Anr. MANU/SC/0932/2004: (2005) 1 SCC 122.

17. The High Court may have an obligation to intervene under Section 482 of the Code in cases where manifest error has been committed by the Magistrate in issuing process despite the fact that the alleged acts did not at all constitute offences. Reference may be made to S.W.Palanitkar and Ors. V. State of Bihar and Anr. MANU/SC/0672/2001: (2002) 1 SCC 241. However, it is important to remember that while exercising powers under this Section, the High Court does not function as a Court of appeal or revision."

7. Respectfully following the ratio laid down above, I have to necessarily hold that all these contentions urged by the petitioner's senior counsel will have to be rather canvassed only in a regular trial. They are not good enough for invoking the inherent powers of this Court to quash the impugned proceedings. Probably realising the slippery ground on which most of the contentions set forth in the original petitions rest, the learned senior counsel tried his guns respect to the lack of sanction under Section 197 of Cr.P.C. The learned senior counsel states

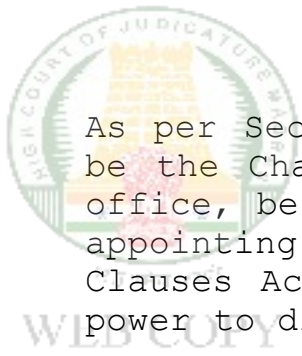


that cognizance was not only taken in respect of the offence under the provisions of the Prevention of Corruption Act 1988, but also under some of the provisions of the Indian Penal Code. It is not in dispute that the acts with which the petitioner has been charged were committed by him while acting in the discharge of his official duties as Vice-Chancellor. Since he is a public servant, the Special Court could not have taken any cognizance of the offences levelled against the petitioner under the Penal Code except that the previous sanction of the State Government. He wanted this Court to quash the impugned proceedings at least in respect of the offences under the Penal Code. The learned senior counsel placed reliance on the following decisions:-

- (i) R.Balakrishna Pillai V. State of Kerala ((1996) 1 SCC @ 478),
- (ii) Abdul Wahab Ansari V. State of Bihar ((2000) 8 SCC 500),
- (iii) State of Madhya Pradesh V. Sheetla Sahai and others ((2009) 8 SCC 617,
- (iv) State of Punjab V. Labh Singh ((2014) 16 SCC 807.

8. The learned senior counsel pointed out that the "Balakrishna Pillai" case, involved a Cabinet Minister of the Government of Kerala. The Hon'ble Supreme Court held that since he was paid from public exchequer, he was a public servant. He is appointed or dismissed by the Governor. Under Section 3(60) of the General Clauses Act 1897, the State Government will only mean the Governor. Therefore, the expression "public servant" not removable from his office save by or with the sanction of the Government will be attracted and the Minister was held entitled to the protection of Section 197(1) of Cr.P.C. The learned senior counsel's core argument is that the Governor being the Chancellor of Manonmaniam Sundaranar University was the authority who appointed the petitioner herein. He alone had the power to remove him. Hence, he is also entitled to protection under Section 197 of Cr.P.C.

9. The Manonmaniam Sundaranar University Act 1990 provided for an establishment and incorporation of Manonmaniam Sundaranar University at Tirunelveli. Section 11 of the said Act states that every appointment of the Vice-Chancellor shall be made by the Chancellor from out of a panel of three names recommended by the Committee referred to in sub-section(2). The proviso states that if the Chancellor does not approve any of the persons in the panel so recommended by the Committee, he may take steps to constitute another committee, to give a fresh panel of three different names and shall appoint one of the persons named in the fresh panel as Vice-Chancellor. The Minister of Education in the Government of Tamil Nadu shall be the Pro-Chancellor of the university.



As per Section 9(1) of the Act, the Governor of Tamil Nadu shall be the Chancellor of the university. He shall, by virtue of his office, be the head of the university. Since the Chancellor is the appointing authority, by virtue of Section 21 of the General Clauses Act 1897, one can come to the conclusion that he has the power to dismiss or remove the Vice-Chancellor.

10. The learned senior counsel would contend that as per the Constitutional scheme, the Governor has to act only as per the aid and advice of the council of Ministers. His action is that of the State Government. Therefore, the conclusion can only be that the Vice-Chancellor cannot be removed from his office save by or with the sanction of the State Government. The learned senior counsel called upon the Court to follow the ratio laid down in Balakrishna Pillai case and allow the original petitions and quash the impugned proceedings in so far as the offences under the Penal Code are concerned.

11. I am unable to accept the aforesaid contentions.

12. In fact the issue is no longer *res-integra*. The Hon'ble Supreme Court in the decision reported in (2013) 3 SCC 1 (State of Gujarat Vs. R.A.Mehta) held that where the Governor acts as the Head of the State, except in relation to areas which are earmarked under the Constitution as giving discretion to the Governor, the exercise of power by him, must only be upon the aid and advice of the Council of Ministers. The Governor, being the custodian of all executive and other powers under various provisions of the Constitution, is required to exercise his formal Constitutional powers, only upon, and in accordance with the aid and advice of his Council of Ministers. He is, therefore, bound to act under the Rules of Business framed under Article 166(3) of the Constitution. (Vide: Pu Myllai Hlychho and Ors. v. State of Mizoram and Ors. MANU/SC/0027/2005 : AIR 2005 SC 1537). However, the Hon'ble Supreme Court added that a different situation altogether may arise where the Governor becomes the statutory authority under some statute. Where a statute makes clear cut distinction between two distinct authorities, namely, Chancellor and the State Government, it must be held that while dealing with the case of Vice Chancellor, the Governor being the Chancellor of the university acts only in his personal capacity and therefore, the powers and duties performed by him under the statute related to university as a Chancellor have absolutely no relation to the exercise and performance of the powers and duties performed by him while he holds office as Governor of the State. To the same effect is the decision reported in (1997) 2 SCC 745 (Bhuri Nath V. State of J & K). Therefore, the Governor of Tamil Nadu who is the Chancellor of Manonmaniam Sundaranar University, while dealing with the case of Vice Chancellor acts in his personal capacity under the



Tamil Nadu Act 3 of 1990. Therefore, the contentions urged by the petitioner's senior counsel invoking the constitutional scheme have to be necessarily rejected.

13. I find no ground to grant relief to the petitioner. Both the criminal original petitions stands dismissed.

14. It is made clear that I have not gone into the merits of the matter. Except the contention regarding sanction both under the provisions of Prevention of Corruption Act as well as under Section 197 of Cr.P.C., all the other contentions of the petitioner are left open.

15. Considering the petitioner's age and other aspects, the personal appearance of the petitioner before the Court below is also dispensed with. The learned trial Magistrate shall insist on the personal appearance of the petitioner only when it is absolutely necessary and imperative. The petitioner shall be called upon to appear in person before the trial Court at the time of answering the charges and at the time of examination under Section 313 of Cr.P.C., and at the time of pronouncement of Judgment. On all other occasions, the petitioner can be represented through his counsel. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CO)

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/ /2020

Sub Assistant Registrar(CS)

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To:

1. The Deputy Superintendent of Police,
Vigilance & Anti Corruption,
Tirunelveli.
Crime No.6 of 2012/
Special Case Nos.8 & 9 of 2015.
2. The Special Judge,
The Special Court for trial of cases under P&C Act,
Tirunelveli.



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

+1 CC to M/s.S.KARUNAKAR, Advocate (SR-230[F] dated 03/01/2020)

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PRE-DELIVERY ORDER MADE IN
Crl.O.P.(MD)Nos.8419 & 8420 of 2019 and
CRL.M.P.(MD)No.5270 & 5271 of 2019
02.01.2020

sgs (CO)

TR(11.03.2020) 8P 5C