

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 31.03.2021

CORAM:

THE HONOURABLE Mr.JUSTICE A.D.JAGADISH CHANDIRA
Crl.R.C.No.61 of 2021
and
Crl.M.P.No.1086 of 2021

K.Aroumougame,
S/o.Karuppan

... Petitioner/A4

Vs.

State Rep. by,
The Addl. Superintendent of Police,
SPE, CBI/Anti-Corruption Branch,
Haddows Road, Chennai.
(RC MA1 2008-A-0065)
(CBI/ACB/Chennai)
through Special Public Prosecutor

... Respondent/Complainant

PRAYER: Criminal Revision Case filed, under Section 397 read with 401 Cr.P.C., to allow the present Criminal Revision and set aside the order dated 28.10.2020 in Crl.M.P.No.2240 of 2019 in Spl.C.C.No.8 of 2010, on the file of the learned Special Judge for CBI Cases, Puducherry.

For Petitioner : Mr.M.Palanivel

For Respondent : Mr.Sudev Kumar,
Special Public Prosecutor (CBI)

सत्यमेव जयते
O R D E R

This Criminal Revision Case has been filed by the Revision Petitioner/A5 seeking to call for the records and set aside the order dated 28.10.2020 in Crl.M.P.No.2210 of 2019 in Spl.C.C.No.8 of 2010, on the file of the learned Special Judge for CBI Cases, Puducherry.

2.The facts of the case is that the respondent had registered a case in RC-MA1/2008/(A)/0065 dated 31.12.2008 against 1. P.Kanniappan, Section Officer, Pondicherry University 2. G.Haridassane, Section Officer, Examination Wing (Engineering), Pondicherry University 3. V.DJairamane, Computer Data Entry Operator 4. Manikandan, Employee of Rajiv Gandhi Engineering College, Puducherry and unknown others. The case was registered on 31.12.2008 and on completion of investigation, the respondent filed five final reports (Charge sheet) under Section 173 (2) Cr.P.C., before the Special Judge

for CBI Cases, Puducherry on 29.09.2010. Out of the 5 final reports, 2 final reports were transferred to the file of the learned District and Sessions Judge-cum-Special Judge for CBI Cases, Karaikal on the ground of jurisdiction and remaining 3 cases were taken cognizance by the learned Special Judge for CBI Cases, Puducherry vide Spl.C.C.Nos.8, 9 & 10 of 2010. The petitioner was arrayed as A4 in C.C.No.8 of 2010 for offence under Sections 120 B r/w 420, 468 r/w 471 IPC and under Sections 13(2) r/w 13(1) (d) of the Prevention of corruption Act, 1988. Along with the petitioner one Thiru. Karumari Subbarayudu/A1, Professor in Pondicherry Engineering College, Thiru. Balasubramanian/A2, Assistant Professor in the said College and A.Parthasarathy/A3, the son of the petitioner who is a student of Pondicherry Engineering College were arrayed as accused in Spl.C.C.No.8 of 2010.

3.The allegation against the petitioner who is arrayed as A4 in this case is that he is the father of A3/Parthasarathy who is a student in Pondicherry Engineering College, under the control of Puducherry University. The son of the petitioner who is A3 in this case, had written university examinations and the further allegation is that the petitioner/A4 along with his son/A3 colluded and conspired with one Thiru. Karumari Subbarayudu and Thiru. Balasubramanian, who are A1 and A2 and Professors in Pondicherry Engineering College, Puducherry, inflated the marks of A3 in the examinations and thereby, cheated Puducherry University. The investigation in the case was conducted by the Investigating Officer one C.S.Moni in RC-MA1/2008(A)/0065 and in the final report, the respondent had cited 24 witnesses. The petitioner was implicated based on the statement recorded by the Investigating Officer from L.W.5 one Thiru.N.Rathinam, Lecturer, Department of Mechanical Engineering in which, he had stated that the petitioner/A4 along with his son/A3, had met A1 and A2 on several occasions. The trial Court took cognizance of the case and framed charges against the petitioner and other accused for offence under Sections 120 B r/w 420, 468 r/w 471 IPC and under Sections 13 (2) r/w 13(1) (d) of the Prevention of corruption Act, 1988. After framing charges, while the trial commenced, the respondent police having received certain informations that certain inconsistencies and discrepancies were found in the final report, had filed an application for further investigation and that the trial Court had granted permission to the respondent to conduct further investigation. During further investigation, the subsequent Investigating Officer had recorded a statement from L.W.5/N.Rathinam and in the subsequent statement, L.W.5/N.Rathinam had rescinded and deviated from his earlier statement and he had stated that he had not made any statement to the earlier Investigating officer that the petitioner /A4 along with his son/A3 had met A1 and A2. Thereafter, the subsequent Investigating Officer had taken L.W.5 before the Magistrate and had recorded his statement under Section 164 Cr.P.C. Even in the statement

recorded under Section 164 Cr.P.C., L.W.5 had stated that he had not made any statement to the earlier Investigating Officer that the petitioner along with his son had met A1 and A2. Based on the subsequent statements recorded from L.W.5 under Sections 161 Cr.P.C. and 164 Cr.P.C., a supplementary charge sheet was filed by the respondent Investigating Agency on 27.07.2019. In the supplementary charge sheet, the respondent Investigating Agency had cited 23 witnesses and 33 documents and finding no incriminating material against the petitioner, had deleted the petitioner from the case and cited him as L.W.19.

4. Finding that no other incriminating material oral or documentary was found against the petitioner/A4 in the supplementary charge sheet, the petitioner had filed a petition under Section 239 Cr.P.C. seeking to discharge him from the case stating that the charge against him was groundless. It was also urged by the petitioner that no other material oral or documentary was available to prosecute the petitioner and that in the subsequent statements recorded, L.W.5, had not implicated the petitioner and his earlier statement was found to be false.

5. The respondent had filed a counter. In the counter, they have admitted the fact of further investigation and had stated that the petitioner was not arrayed as an accused in the supplementary final report (charge sheet) dated 27.07.2019 since no evidence both oral as well as document was found against the petitioner to substantiate the charge of conspiracy under Section 120B IPC with the other accused in this case and the respondent had submitted that appropriate orders deemed fit may be passed in this case.

6. The trial Court after finding that in the case on hand, the main charge sheet had already been filed and charges were framed and that some of the witnesses were also examined, had dismissed the petition for discharge. Against the dismissal, the present revision has been filed.

7. Learned counsel for the petitioner would submit that the petitioner is an innocent and he has been falsely implicated in this case based on a fudged and fabricated statement recorded by the earlier Investigating Officer Thiru.C.S.Moni. The allegation in the main charge sheet against the petitioner/A4 is that he along with his son/A3 conspired with A1 and A2 for inflating the marks in the university examination written by A3. The petitioner was implicated based on an alleged statement recorded from L.W.5/N.Rathinam that he had seen the petitioner/A4 and his son/A3 meeting A1 and A2 on several occasions. He would submit that other than the alleged statement of L.W.5, there was no other material relied on by the prosecution to implicate the petitioner in the offence. He would submit that only at the behest of the Investigating Agency, a further investigation

was conducted and L.W.5 was enquired again and he had rescinded from his earlier statement and had stated that he had not stated anything during the earlier enquiry with regard to the petitioner and his son meeting A1 and A2. If the subsequent statement of L.W.5 is taken into account, there is no other material to frame charge against the petitioner and that the subsequent statement was also fortified by the statement recorded from L.W.5 under Section 164 Cr.P.C. before a Judicial Magistrate. Further, the trial Court had also accepted the supplementary charge sheet where in the respondent police have deleted the name of the petitioner. He would further submit that in this case, the said Rathinam who was earlier shown as L.W.5 in the main charge sheet had not been examined and even the witnesses who have been examined so far during trial, have not spoken anything against the petitioner. He would submit that Section 239 Cr.P.C. makes it clear that upon considering the police report and the document sent with it under Section 173 Cr.P.C. and on making such examination, if the Magistrate thinks necessary and after giving the prosecution and the accused an opportunity of being heard, considers the charge against the accused is groundless, he shall discharge the accused. He would submit that in this case as stated above, it is the Investigating Agency which had opted for further investigation and after recording the statement of L.W.5, filed supplementary charge sheet deleting the name of the petitioner since there was absolutely no material against him. Whereas, the trial Court had erroneously dismissed the petition stating that the supplementary charge has been filed after framing of charges and after examination of some witnesses and that no charges have been framed based on supplementary charge sheet. The learned Counsel would submit that when there is absolutely no material and no ground to frame charge against the petitioner, it will be a wasteful exercise to compel the petitioner to face trial. The Investigating Officer having found that no offence is made out against the petitioner had deleted the name of the petitioner in the supplementary charge sheet. When the Investigating Officer had found that no ground is made out to prosecute the petitioner, the trial Court cannot sit on appeal over the Judgment of the Investigating Officer. In support of his contention, the learned Counsel would rely on the Judgment of the Hon'ble Apex Court in K.Ramakrishna Vs. State of Bihar reported in 2000 (8) SCC 547. He would submit that as on today, there is absolutely no materials or ground to proceed against the accused and it has also been accepted by the prosecution. Hence, he would pray to set aside the order dated 28.10.2020 passed by the learned Special Judge for CBI Cases, Puducherry in in CrI.M.P.No.2240 of 2019 in Spl.C.C.No.8 of 2010 and discharge the petitioner.

8. The learned Special Public Prosecutor appearing for the respondent would submit that in this case initially L.W.5 had stated that he had seen the petitioner along with his son/A3 meeting A1 and A2. Subsequently, finding

inconsistencies in the final report, the respondent Investigating Agency had sought for further investigation and during the course of further investigation, L.W.5 had rescinded from the earlier statement and he had not supported the case of the prosecution. Further he had denied having told the earlier Investigating Officer that he had seen the petitioner and his son met A1 and A2. In the main charge sheet, the only statement available against the petitioner was that the statement of L.W.5. However, based on the subsequent statements recorded from L.W.5, the supplementary charge sheet has been filed deleting the name of the petitioner. However, the trial Court finding that the charges were already framed against the petitioner based on the earlier statement in the main charge sheet, had dismissed the discharge application.

9. Heard the counsels, perused the materials placed on record.

10. The petitioner was originally arrayed as A4 in this case. The allegation against the petitioner is that he along with his son/A3 and A1 and A2 who are the Professors in Pondicherry Engineering College, colluded and conspired to inflate the marks in the examination written by his son/A3 and thereby, cheated the Puducherry University. The petitioner was implicated based on the statement of L.W.5 one Thiru.N.Rathinam. The trial Court had taken cognizance of the case and framed charges against the petitioner and other accused. Subsequently, on a petition filed by the respondent Investigating Agency for further investigation, the trial Court allowed conducting further investigation. During further investigation, L.W.5/ Rathinam had given a further statement rescinding from the earlier statement. Further he had denied having stated to the earlier Investigating Officer that the petitioner and his son had met the other accused. The subsequent statement was also strengthened by a statement recorded from L.W.5/Rathinam under Section 164 Cr.P.C. In both the statements, he had denied having given a statement to the earlier Investigating Officer that the petitioner and his son had met A1 and A2. On finding that there is no other material to implicate the petitioner, the respondent have filed supplementary charge sheet deleting the name of the petitioner. Based on the supplementary charge sheet and finding that there is no other material or ground to prosecute him, the petitioner had filed an application for discharge under Section 239 Cr.P.C. Whereas, the trial Court finding that charges have already been framed based on the main charge sheet and that some of the witnesses have been examined, had dismissed the petition. It is the admitted case of the respondent that other than the earlier statement of L.W.5 / Rathinam, no other material or ground was available to prosecute the petitioner. It is appropriate to refer to the relevant portion of the supplementary charge sheet;

"Role of Shri Aroumogame (A-4)

Shri N.Rathinam, the then lecturer of PEC, who was named in the Final Report (Charge Sheet) dt.29.09.2010 submitted in the Hon'ble Court as the one who evaluated Answer Script bearing D.No.1730 of "Design of Machine Elements - I" subject, was found false during the further investigation. Further, Shri N.Rathinam was not examined but his personal details were collected during investigation of the case. Therefore, the evidence of Shri N.Rathinam witnessing the visit of Shri Aroumogame (A-4) to PEC almost every day and met Dr.Karumari Subbarayudu (A-1) and Shri N.Balasubramaniam (A-2) frequently at the College and elsewhere are found false.

30. During further investigation, efforts were taken to find out the evidences both oral and document to substantiate the meeting of mind / association / involvement of Shri Aroumogame (A-4) with Dr.Karumari Subbarayudu (A-1) and Shri N.Balasubramaniam (A-2) at College and elsewhere in inflating /correction of marks in the Answer Scripts bearing D.No.1730 of Shri Parthasarathy (A-3). No evidence had come forth during the further investigation.

31. Thus, further investigation found that no evidence, both oral as well as document, is available to substantiate the charge of conspiracy U/s 120-B of IPC by Shri Aroumogame (A-4) with the other accused of this case. Therefore, Shri Aroumogame (A-4) was not arraigned as accused in this case.

32. The Final Report (Charge Sheet) U/s 173(2) Cr.P.C. along with documents and statements of witnesses submitted on 29.09.2010 in the Hon'ble Court vide CC No.08 of 2010 form part and parcel of the Supplementary final Report except to the following aspects;-

(i) Answer Script bearing D.No.1730 of "Design of Machine Elements-I" subject was evaluated by Shri.N.Rathinam, the then Lecturer, PEC, Pondicherry.

(ii) Dr.Karumari Subbarayudu (A-1) inflated the marks in the Answer Script bearing D.No.1730 of "Electrical and Electronic Engineering" subject.

(iii) Shri Aroumogame (A-4) met Dr.Karumari Subbarayudu (A-1) and Shri N.Balasubramaniam (A-2) at PEC and hatched a conspiracy to cheat Pondicherry University in the matter of inflating marks of Shri Parthasarathy (A-3)."

Bihar reported in 2000 (8) SCC 547 : 2001 SCC (Cri) 27 has held that "when there are no material and where it has been admitted by the prosecution that the charge are groundless, the accused can be discharged" and the relevant paragraphs is extracted as follows;

4. The trial court under Section 239 and the High Court under Section 482 of the Code of Criminal Procedure is not called upon to embark upon an inquiry as to whether evidence in question is reliable or not or evidence relied upon is sufficient to proceed further or not. However, if upon the admitted facts and the documents relied upon by the complainant or the prosecution and without weighing or sifting of evidence, no case is made out, the criminal proceedings instituted against the accused are required to be dropped or quashed. As observed by this Court in *Rajesh Bajaj v. State NCT of Delhi* [(1999) 3 SCC 259 : 1999 SCC (Cri) 401] the High Court or the Magistrate are also not supposed to adopt a strict hypertechnical approach to sieve the complaint through a colander of finest gauzes for testing the ingredients of offence with which the accused is charged. Such an endeavour may be justified during trial but not during the initial stage.

5. In view of the legal position, as noticed above, it has to be seen whether the FIR or the documents accompanying the final report under Section 173 of the Criminal Procedure Code including the statements recorded by the prosecution under Section 161 of the Code of Criminal Procedure, discloses the commission of any offence against the appellants. The charge-sheet (Annexure B) filed does not refer to any witness or circumstance which the prosecution intends to use against the appellants.

6. On a perusal of FIR, the final report under Section 173 of the Code of Criminal Procedure and all other documents accompanying it, we are satisfied that no case is made out against any of the appellants and the pendency of the proceedings against them before the Magistrate is an abuse of the process of court. The appeal is allowed and the order of the High Court dated 8-4-1997 and Magistrate dated 6-7-1996 are quashed and the appellants

discharged in terms of Section 239 of the Code of Criminal Procedure.

12 . Taking into consideration the peculiar circumstances in the facts of the case, this Court is of the opinion that when there is absolutely no material either oral or documentary against the petitioner / accused, the trial Court ought to have allowed the petition and discharged the petitioner.

13. In view of the above, this Criminal Revision Case stands allowed. Consequently, the connected miscellaneous petition is closed. The petition filed by the petitioner/accused under Section 239 Cr.P.C. stands allowed and the petitioner stands discharged in Spl.C.C.No.8 of 2010 pending on the file of the Special Judge for CBI Cases, Puducherry.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

ssi/ksa-2
To

1. The Special Judge for CBI Cases, Puducherry.
2. The Addl. Superintendent of Police,
SPE, CBI/Anti-Corruption Branch,
Haddows Road, Chennai.
(RC MA1 2008-A-0065)
(CBI/ACB/Chennai)
3. The Public Prosecutor,
High Court of Madras, Spl for CBI
Chennai.

Copy to:

The Section Officer,
Criminal Section,
High Court, Madras

+1cc to Mr.K.Srinivasan, SPL for CBI SR.No. 21364

Cr1.R.C.No.61 of 2021

(CO)
A.SK(07.07.2021)