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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON	:	19.11.2021
DELIVERED ON	:	10.12.2021

CORAM:

THE HON'BLE MR. JUSTICE P.N. PRAKASH
and
THE HON'BLE MRS. JUSTICE R. HEMALATHA

Suo Motu Crl. Contempt Petition No. 613 of 2019 & Sub Appln. No.455 of 2019
and
Crl.O.P. No.19007 of 2019 & Crl.M.P. No.9683 of 2019

***Suo Motu* Crl. Contempt Petition No.613 of 2019:**

High Court of Madras
Chennai 600 104

: Petitioner

vs.

- 1 The Member Secretary
Tamil Nadu Uniformed Services Recruitment Board
Old Commissioner of Police Campus
Pantheon Road
Egmore, Chennai 600 008 : R1/Alleged contemnor No.1
- 2 Mr. N.K.Senthamarai Kannan, I.P.S.
Tamil Nadu Uniformed Services Recruitment Board
Old Commissioner of Police Campus
Pantheon Road
Egmore, Chennai 600 008 : R2/Alleged contemnor No.2
- 3 G. Vijayakumar @ G.V. Kumar : Respondent No.3

(R1 *suo motu* impleaded vide order dated 16.07.2021)
(R2 initially arrayed as R1 *vide* order dated 05.04.2019 and
subsequently arrayed as R2 *vide* order dated 16.07.2021)
(R3 impleaded *vide* order dated 10.12.2021 passed in Sub
Application No.455 of 2019) (in para No.11)



Suo Motu criminal contempt proceedings initiated against the alleged contemnors as per order dated 02.04.2019 made in ROC No.3390/2019/OS.

CrI.O.P. No.19007 of 2019:

D. Murthi

:Petitioner

VS.

1 The State represented by the Inspector of Police
Central Crime Branch
Vepery, Chennai 600 007

2 Tamil Nadu Uniformed Services Recruitment Board
G.R. Arasu, Deputy Superintendent of Police
Old Commissioner of Police Campus
Pantheon Road
Egmore, Chennai 600 008

: Respondents

Criminal Original Petition filed under Section 482 Cr.P.C. seeking to call for the records and to quash the FIR in Cr. No.117 of 2019 dated 30.03.2019 pending on the file of the Central Crime Branch - 1, Chennai.

For petitioner/
High Court of Madras

Mr. B. Vijay
Standing Counsel

For R1/TNUSRB
in *suo motu* cont. petn.
& R2 in
CrI.O.P.No.19007/2019

Mr. P. Kumaresan
Addl. Adv. General –VII
assisted by Mr. S. John J. Raja Singh
Addl. Govt. Pleader

For R2 in
Suo motu cont. petn.

Mr.S.Prabakaran, Sr. Counsel
for M/s. MA. Gouthaman &
AGD. Balakumar

For impleaded
respondent in
Suo motu cont. petn.

Mr.A.E. Chelliah, Sr. Counsel
for Mr. Ganapathy Suresh

For petitioner in

Mr.N.L. Rajah, Sr. Counsel

CrI.O.P. No.19007/2019 for Mrs. Rohini Ravikumar



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For R1 in
CrI.O.P. No.19007/2019

Mr. R. Muniyapparaj
Addl. Public Prosecutor

COMMON ORDER

P.N. PRAKASH, J.

In view of inter-connectivity of the issues involved, the *suo motu* criminal contempt petition and the criminal original petition are considered and decided by this common order.

2 For the sake of convenience and clarity, the parties in the instant cases will be referred to by their respective names.

3 From the maze of facts placed by the contesting parties, this Court distills and culls out the relevant facts as under:

3.1 The Tamil Nadu Uniformed Services Recruitment Board (for brevity “the Board”) is a body corporate having been constituted by the Government of Tamil Nadu under G.O.Ms.No.1806, Home (Ser.F) Department dated 29.11.1991, for making recruitments to various posts in the Police Department.

3.2 The Board has a Chairman in the rank of a Director General of Police and a Member Secretary in the rank of an Inspector General of Police. The Board also has on its rolls, officials in the rank of Superintendents of Police, Additional Superintendents of Police and Inspectors of Police, apart from clerical staff, for



conducting various examinations and interviews for the purpose of selection of personnel for the Police Department, as aforesaid.

3.3 The issue at hand relates to the year 2018 when Mr. J.K. Tripathy, I.P.S. was the Chairman and Mr.N. Senthamarai Kannan, I.P.S. was the Member Secretary of the Board.

3.4 The Board issued a notification in Advertisement No.2/2018 on 29.08.2018 for recruitment to the post of Sub Inspector of Police (Finger Print), for which, it requisitioned the services of four persons, viz., Dr. G. Vijayakumar @ G.V. Kumar (for brevity “Vijayakumar”), Arpudhenesan Dominic, Senthil Kumar and Manikandan, for preparation of a question bank for conducting the examinations for the said post. Concededly, Vijayakumar holds a doctorate degree in Psychology from the Avadh University, Faizabad. Records placed before this Court by the police show that from 2011 onwards, Vijayakumar has been lending his services to the Board in preparing question banks for various examinations related to Psychology and its allied subjects.

3.5 Accordingly, as stated above, for recruitment to the post of Sub Inspector of Police (Finger Print), Vijayakumar’s services were requisitioned by the Board for preparation of question banks and he was paid an honorarium of Rs.750/- per branch, as could be seen from the receipts placed before this Court.

3.6 It is common knowledge that recruitment agencies prepare several question banks, from which, a particular official from the top brass would



randomly choose questions which would not be known to anyone. In fact, nobody would ever even know as to whose services were used by the recruitment agency for even preparing the question bank.

3.7 In the instant case, the written examination for recruitment to the post of Sub Inspector of Police (Finger Print) was conducted on 22.12.2018 and the paper which is the subject matter of dispute, is Psychology, 'B' series. The said paper is of 'Objective Type' and not 'Descriptive Type'.

3.8 After the examination was conducted, the Board published the preliminary key answer list for all the questions, including Question No.145 of "B" series question paper in Psychology, around which, the present lis revolves, on its website on 24.12.2018, inviting objections, if any, from the candidates. For Question No.145, four options, viz., 'a', 'b', 'c' and 'd', were given in the question paper and as per the preliminary key answer list, the correct answer for Question No.145 is option 'a'. Pursuant thereto, various candidates sent in their objections in respect of some of the questions.

3.9 At this stage, the Board once again requisitioned the services of Vijayakumar, who introduced his student D. Murthi to the Board, for analyzing the objections raised by the candidates and to offer opinion with regard to the correctness or otherwise of the preliminary key answer list published by the Board on its website.



3.10 Accordingly, Vijayakumar and Murthi analysed Question No.145 and gave their opinion to the effect that the preliminary key answer for Question No.145, viz., option 'a' published by the Board was not the correct answer and that the correct answer for the said question was option 'b'.

3.11 After collating the opinions of the experts, the Board published the final key answer list on 05.01.2019 *inter alia* announcing that the correct answer for Question No.145 in "B" series of Psychology paper is option 'b'.

3.12 While so, one Arunachalam, one of the participants in the said examination, addressed a representation dated 16.02.2019 to the Board, contending that the correct answer for Question No.145 is only option 'a', as was originally announced by the Board in the preliminary key answer list and not option 'b' that was announced by the Board in the final key answer list and followed it up by filing a writ petition being W.P. No.5542 of 2019 seeking a direction to the Board to consider his representation dated 16.02.2019 and permit inclusion of his name in the list of provisionally selected candidates.

3.13 W.P. No.5542 of 2019 came up for admission before a learned single Judge (S.M. Subramaniam, J.) on 27.02.2019. The learned single Judge, after hearing the counsel for Arunachalam, issued an interim direction to the Board not to issue appointment order to anyone and adjourned the matter for further hearing to 04.03.2019.



3.14 Seemingly, during the course of hearing, the learned single Judge is said to have orally instructed Mr. V. Kadhirvelu, learned Special Government Pleader for the Board, to verify the correctness of the answer to Question No.145 that was disputed by Arunachalam.

3.15 Accordingly, the learned Special Government Pleader, addressed a communication on the same day, *i.e.*, 27.02.2019, to the Board conveying the Hon'ble Judge's aforesaid oral direction, pursuant to which, the Board met and resolved to get an opinion from the same group of experts who had previously furnished their opinion and further resolved to send their opinion to the Maths Department of Anna University for remarks and thereafter, submit the same to the Court. Although such a resolution was on record, what the Board effectively did was to once again seek the help of Vijayakumar and Murthi to have a relook into the answer for Question No.145.

3.16 It may be pertinent to state here that the learned single Judge had not passed any order directing the Board to relook into the allegation of Arunachalam, but, had orally observed, as aforesaid, and of course, had granted an order of interim direction to the Board not to make any appointment for the post in question.

3.17 At this juncture, it is worth pointing out that there is a serious dispute amongst the parties as to how Murthi came into the picture, about which, this



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3.18 Be that as it may, upon being approached by the Board, Murthi once again, analysed Question No.145 and gave an opinion dated 01.03.2019 reiterating that the correct answer for Question No.145 is option ‘b’. This opinion is the axle pin of the present *suo motu* criminal contempt proceedings, for, the said opinion bears the date and signature of Murthi, beneath which, the following is found typed.

“(Dr.D. Murthi, M.Sc., Ph.D.)
Professor, Dept. of Maths
IIT Madras”

3.19 The aforesaid opinion of Murthi was given in a sealed cover by the Board to the Special Government Pleader, who, in turn, handed over the same to the learned single Judge in the open Court on 13.03.2019. The learned single Judge extracted the said opinion offered by Murthi, *ad verbum*, in his order dated 13.03.2019 and dismissed the writ petition. Thus, the learned single Judge had given in his order, the particulars, *viz.*, (Dr. D. Murthi, M.Sc., Ph.D.), Professor, Department of Maths, IIT Madras.”

3.20 Arunachalam was not satisfied with the learned single Judge dismissing the writ petition by placing reliance upon the opinion dated 01.03.2019 given by Murthi. Therefore, he made an application under the Right to Information



regular/guest/visiting Professor on their rolls by name Dr. D. Murthi in the Department of Maths.

3.21 Armed with the said reply, the counsel for Arunachalam made a special mention before the learned single Judge on 28.03.2019 and requested for review of the order dated 13.03.2019 dismissing the writ petition.

3.22 The learned single Judge, in turn, *vide* order dated 28.03.2019, called Mrs. Narmadha Sampath, the then learned Additional Advocate General – V and directed her to get instructions from the Board with regard to the assertions made by Arunachalam.

3.23 Mrs. Narmadha Sampath, in turn, addressed a communication on the same day, *i.e.*, 28.03.2019, to the Board seeking instructions *qua* the authenticity of the expert opinion.

3.24 The officers of the Board panicked. According to them, they made enquiries with Vijayakumar and Murthi and learnt that Murthi was a retired Maths teacher from Kendriya Vidyalaya, IIT Campus with educational qualifications B.Sc. (Maths), B.Ed. and M.Sc. (Psychology) and was neither a doctorate degree holder in Psychology nor a Professor in the Department of Maths, IIT Madras.

3.25 Therefore, the Board asked for an opinion from the Maths Department of IIT Madras on 28.03.2019 as to the correct answer for Question No.145 and on 29.03.2019, the Maths Department of IIT Madras gave an opinion that Question



solution and therefore, they are not in a position to give the correct answer. Thus, in effect, seemingly, Question No.145 itself was framed improperly and therefore, there could be no proper answer for it.

3.26 The learned single Judge had posted the writ petition for hearing on 01.04.2019. So, on 29.03.2019, one G.R. Arasu, Dy. Superintendent of Police of the Board, gave a written complaint to the Commissioner of Police, Chennai, alleging that on 28.02.2019 Vijayakumar brought Murthi to the Office of the Board and introduced him as a Professor in the Department of Maths in IIT Madras, for monetary gain, based on which, the Board asked Murthi to examine Question No.145; Murthi examined the said question and gave the opinion which was handed over to the writ Court and that later, the Board came to know that Murthi was not a Professor in the Department of Maths, IIT Madras.

3.27 On the aforesaid complaint, the Central Crime Branch-I, Chennai (for brevity “the CCB Police”) registered an FIR in CCB Cr.No.117 of 2019 on 30.03.2019 for the offences under Sections 465,468,471,419, 420 and 120-B IPC against Vijayakumar and Murthi and swinging into action, arrested Vijayakumar on 01.04.2019 and produced him before the Metropolitan Magistrate, Chennai, dealing with CCB and CB-CID cases at 5.20 p.m. on 02.04.2019, who remanded him in judicial custody. Vijayakumar was again taken in police custody for two days.



3.28 Thus, the sum and substance of the allegations of the Board in the FIR is that Vijayakumar brought Murthi to the Board office on 28.02.2019 and introduced him as a Professor in the Department of Maths in the IIT Madras and thus, both of them cheated the Board. Fortunately, the police were not able to secure Murthi.

3.29 It is obvious to this Court that these blitzkrieg acts of registering an FIR against Vijayakumar and Murthi and arresting Vijayakumar, were all done as W.P. No.5542 of 2019 was coming up for hearing before the learned single Judge on 01.04.2019.

3.30 When the writ petition was taken up for hearing on 01.04.2019, the then learned Additional Advocate General-V represented that the Board was taken for a ride by Vijayakumar and Murthi and that the Board had given a complaint against the said duo to the Commissioner of Police and that a case has been registered against them by the CCB Police in CCB Cr.No.117 of 2019.

3.31 The learned single Judge recorded the submissions made by the then learned Additional Advocate General-V, but, was not happy with the same and hence, by order dated 01.04.2019, directed the Member Secretary of the Board to file an additional affidavit with regard to the various queries raised and adjourned the writ petition to the next day.

3.32 On 02.04.2019, when the writ petition was taken up for hearing by the learned single Judge, Murthi filed an affidavit stating that he was a Maths teacher



in the Kendriya Vidyalaya, IIT Campus, Chennai and had retired from service on 28.02.2013; at the request of Vijayakumar, he went to the office of the Board, met one Lalitha, P.A. to the Member Secretary of the Board, who requested him to solve a Maths problem; he solved the said problem in an A4 sheet. It is his specific contention that he had merely signed in that A4 sheet and not claimed himself to be a Professor in the Maths Department in IIT Madras and that he was not even aware of the fact that he was required to solve the problem that was given to him for the purpose of submitting it to the Court. In other words, his stand is that he was not aware of the case in W.P. No.5542 of 2019 at all at that point of time.

3.33 Getting irked, the learned single Judge initiated the instant *suo motu* criminal contempt proceedings against the Chairman of the Board on 02.04.2019 and posted the matter for hearing on 05.04.2019.

3.34 On 05.04.2019, the Board reported to the learned single Judge that they have obtained an opinion from the Maths Department of IIT Madras to the effect that Question No.145 itself was not properly framed and therefore, the Board has resolved to award half a mark to all the candidates who had attended the said question. Accordingly, Arunachalam, the petitioner in W.P. No.5542 of 2019 was also awarded half a mark and his name was included in the provisional selection list.



3.35 In the meanwhile, Vijayakumar who was lodged in the Central Prison, Puzhal, Chennai, swore to an affidavit dated 04.04.2019 in the presence of the Jailor, stating that at the request of Lalitha, P.A. to the Member Secretary of the Board, he referred the name of Murthi, who is said to have received the problem by WhatsApp and had later met Lalitha in the Board Office and submitted his opinion. Vijayakumar has categorically averred in his affidavit that he knew that Murthi was a Maths teacher in Kendriya Vidyalaya, IIT Campus and that he had not introduced Murthi as a Professor in the Maths Department of IIT Madras.

3.36 It will not be out of place to point out here that the lawyers for Vijayakumar have done a yeoman service by meeting him in the prison, getting his instructions, preparing the affidavit and getting the same signed by him in the presence of the Jailor and filing it before the learned single Judge when the writ petition came up for hearing on 05.04.2019 along with an impleading application. Likewise, Murthi who was not arrested, engaged a counsel and filed an impleading application in W.P. No.5542 of 2019.

3.37 On 05.04.2019, the learned single Judge recorded the various representations that were made on behalf of the Board by the then learned Additional Advocate General-V, recalled the order dated 13.03.2019 dismissing W.P.No.5542 of 2019, allowed the impleading applications of Vijayakumar and Murthi and adjourned the case for further hearing to 22.04.2019.



3.38 On the same day, i.e., 05.04.2019, the learned single Judge took up the instant *suo motu* criminal contempt petition, exercising powers under Article 215 of the Constitution of India against Mr. J.K. Tripathy, I.P.S., Chairman of the Board. However, Mr. Tripathy, I.P.S. filed an affidavit stating that being the Chairman of the Board, he was not in the know of things which were happening in his office and prayed for exoneration.

3.39 Accepting his explanation, the learned single Judge exonerated him from the *suo motu* contempt proceedings and substituted Mr. N.K.Senthamarai Kannan, I.P.S., Member Secretary of the Board, in his place and issued notice. In the same order, the learned single Judge directed the CCB Police, Chennai, not to arrest Murthi in Cr.No.117 of 2019, but, directed Murthi to appear before the CCB Police, Chennai and cooperate in the investigation.

3.40 Vijayakumar, who was in the prison, filed another affidavit dated 20.04.2019 attested by the Jailor, wherein, he has stated that he was not in Chennai on 27.02.2019 and that he was in Ooty delivering a lecture in Anna Institute of Management. To buttress this stand, he placed overwhelming records like bus ticket, attendance certificate, honorarium certificate, *etc.* to show that he was conducting a class on Communication Skills on 27.02.2019 in Anna Institute of Management at Ooty. He also placed the call detail records of his BSNL mobile phone containing the tower locations to show that he was in Ooty on 27.02.2019.



The learned single Judge went into all these aspects and by order dated 22.04.2019

in the instant *suo motu* criminal contempt petition, recorded as under:

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“2. The learned Senior Counsel appearing on behalf of Mr.Vijaya Kumar alias G.V. Kumar made a submission that the documents submitted before this Court are yet to be examined by the Investigating Officials. Certain documents were created by the police officials of the Tamil Nadu Uniformed Service Recruitment Board by obtaining signatures in blank papers from Mr.G.V. Kumar. The signatures were obtained by force in the blank papers, when Mr.G.V. Kumar was in the office of the Tamil Nadu Uniformed Service Recruitment Board. It is contended that, by obtaining the signatures in the blank papers, the officials of the police department put anti-date and filled the blank papers to suit their convenience. In fact, Mr.G.V. Kumar was not at all in Chennai on that particular day and he had attended a program at Udagamandalam, Nilgiris district. He produced documents to establish that, he was taking classes in Udagamandalam and the documents are to be verified and properly investigated by the Commissioner of Police, Greater Chennai City. In this regard, the Higher Officials including the Inspector General of Police are to be interrogated with reference to the documents filed by Mr.G.V.Kumar.”

3.41 Later, in paragraphs 8 and 9, the learned single Judge issued the following directions to the Commissioner of Police, Greater Chennai City:

“8. Under these circumstances, the Commissioner of Police, Greater Chennai City is directed to proceed with the investigation, based on the materials produced by all the parties concerned and secured by the Investigating Officials including the documents today filed by Mr.G.V.Kumar before this Court, which is now handed over to the learned Special Government Pleader, who in turn transmitted the copies to the Investigating Officials, who all are present before this Court at the time of hearing of this contempt petition.

9. The learned Senior Counsel on behalf of Mr.G.V. Kumar contended that the daughter of Mr.G.V. Kumar had already filed applications under the Right to Information Act seeking certain informations and documents from the concerned authorities. On receipt of those documents she may be permitted to furnish the same before the Investigating Officials. In this regard, the parties concerned including the daughter of Mr.G.V. Kumar is permitted to submit all the documents and informations to the Investigating Officials, who in turn is directed to receive the same and scrutinize those documents, investigate the same in order to ascertain the truth. The parties concerned are permitted to file those documents before this Court also.”

3.42 A reading of the above paragraphs shows that while Vijayakumar was



show that her father has been falsely implicated and the materials so collected were placed before the learned single Judge, who, in turn, had directed the Commissioner of Police, Chennai, to conduct a thorough investigation into all aspects of the matter, including the contention of Vijayakumar that he was in Ooty on 27.02.2019. Accordingly, Mr.A.K. Viswanathan, I.P.S., who was the then Commissioner of Police, Chennai, took up investigation of the case, as directed by the learned single Judge.

3.43 On 22.04.2019, the learned Single Judge adjourned the case to 06.09.2019 stating that he would monitor the investigation of the case. On the same day, i.e., 22.04.2019, the learned single Judge formally closed all further proceedings in W.P. No.5542 of 2019 as the grievance of Arunachalam, the petitioner therein stood redressed.

3.44 While that being so, Mr. N.K. Senthamarai Kannan, I.P.S., filed two letters patent appeals in L.P.A. Nos.2 and 3 of 2019 against the orders dated 05.04.2019 and 22.04.2019 passed by the learned single Judge in this *suo motu* criminal contempt petition, contending that under Section 15 of the Contempt of Courts Act, such proceedings have to be taken up only by a Division Bench and not by a Single Bench. On their applications, Vijayakumar and Murthi were impleaded in L.P.A Nos.2 and 3 of 2019 as respondents 2 and 3, *vide* orders dated 05.09.2019 and 20.09.2019, respectively.



3.45 Albeit the learned single Judge had not stated anywhere in the contempt proceedings that he was taking action for criminal contempt, it was contended by Mr. N.K. Senthamarai Kannan, I.P.S. before the Division Bench dealing with the letters patent appeals that the facts that are being enquired into by the learned single Judge in the contempt proceedings, would not amount to civil contempt, but, if at all, only a criminal contempt, inasmuch as there was no alleged disobedience of any order of the Court and that the allegations border only on interfering with the administration of justice, which have to be dealt with only by a Division Bench.

3.46 The Division Bench which heard the letters patent appeals, by order dated 27.09.2019, accepted the stand taken by Mr. N.K. Senthamarai Kannan, I.P.S. and directed that the instant *suo motu* criminal contempt petition has to be dealt with by a Division Bench in which the learned single Judge is a member or any other Division Bench to be constituted by the Hon'ble Acting Chief Justice.

3.47 Thus, this *suo motu* criminal contempt petition was successfully taken out of the board of the learned single Judge and after it travelled through several Division Benches, had come before this Division Bench which presently holds the contempt portfolio.

3.48 Vijayakumar has filed a sub application in Sub Application No.455 of 2019 for impleading him as a respondent in the *suo motu* criminal contempt petition. Mr. A.E. Chelliah, learned Senior Counsel, submitted that Vijayakumar



has filed another sub application seeking compensation for his illegal arrest and detention, which is still unnumbered, inasmuch as, technically, it can be numbered only when the sub application seeking impleadment is allowed.

3.49 For his part, Murthi has filed a petition in Crl.O.P. No.19007 of 2019 invoking Section 482 Cr.P.C. for quashing the FIR registered against him in CCB Cr. No.117 of 2019.

3.50 All these matters were directed to be listed before one of us (PNPJ) and R. Pongiappan, J. who were holding the present portfolio earlier and subsequently, on change of roster, were heard by one of us (PNPJ) and R.N.Manjula, J. and presently, by us. Accordingly, these matters were heard by us on various dates.

4 We perused the records and during the course of one of the hearings, we found that only Mr. N.K. Senthamarai Kannan, I.P.S. has been arrayed as a respondent/alleged contemnor in the *suo motu* criminal contempt petition and not the Board. Therefore, by order dated 16.07.2021, we *suo motu* impleaded the Board as the first respondent and Mr. N.K. Senthamarai Kannan, I.P.S. as the second respondent in this contempt petition and issued statutory notice.

5 On receipt of statutory notice, Mr. G. Karthikeyan, I.P.S., Member Secretary of the Board and Mr. N.K. Senthamarai Kannan, I.P.S., former Member Secretary of the Board, appeared before us on 24.08.2021, on which date, the



“That, you, (1) TNUSRB represented by the Member Secretary and (2) N.K.Senthamarai Kannan, I.P.S., who was the Member Secretary of TNUSRB at the relevant time, submitted a report dated 01.03.2019, purported to have been issued by an expert by name Dr.D.Moorthy, M.Sc., Ph.D., Professor, Department of Mathematics, IIT, Madras, who later on was found not to be a Professor in the IIT, Madras, justifying the mark that was awarded to the said Arunachalam for Question Number 145, based on which, W.P.No.5542 of 2019 was dismissed by this Court on 13.03.2019 and thereby, you are charged for the above said act, which is punishable under Section 2(c)(ii) read with Section 12 of the Contempt of Courts Act, 1971, for prejudicing the due course of the judicial proceeding in W.P.No.5542 of 2019 and also under Section 2(c)(iii) read with Section 12, *ibid.*, for interfering with the administration of justice.”

6 When questioned, Mr. G. Karthikeyan, I.P.S., Member Secretary of the Board and Mr. Senthamarai Kannan, I.P.S., former Member Secretary of the Board, pleaded ‘not guilty’.

7 Mr. A.E. Chelliah, learned Senior Counsel appearing for Vijayakumar strenuously submitted that on the directions of the learned single Judge, Mr.A.K.Viswanathan, I.P.S. has submitted a report in a sealed cover and that the same requires to be opened and perused by this Court.

8 Accordingly, we called for the sealed cover from the Registry, opened it and perused the report and also furnished copies of the same to all the parties concerned and granted time to the Board and Mr. Senthamarai Kannan, to file their affidavits in the *suo motu* criminal contempt petition and adjourned the case to 21.09.2021.

9 On 21.09.2021, the Board filed its affidavit through its Member Secretary Mr. G. Karthikeyan, I.P.S. and Mr.N.K.Senthamarai Kannan also filed his affidavit. On various dates, this Court heard Mr. P. Kumaresan, learned



Additional Advocate General for the Board, Mr. S. Prabakaran, learned Senior Counsel for Mr.N.K.Senthamarai Kannan, I.P.S., Mr. A.E. Chelliah, learned Senior Counsel for Vijayakumar, Mr.N.L. Rajah, learned Senior Counsel for Murthi in Crl.O.P.No.19007 of 2019 and Mr. R. Muniyapparaj, learned Additional Public Prosecutor appearing for the State in Crl.O.P. No.19007 of 2019 and requested Mr. B. Vijay, one of the Standing Counsel for High Court, to prepare a consolidated typed set of papers containing all the previous orders and documents relied upon by various parties, which task he did commendably and placed before this Court.

10 While this contempt proceedings was in progress, during the hearing on 09.11.2021, the learned Additional Public Prosecutor represented that the CCB Police have completed the investigation in CCB Cr. No.117 of 2019 and filed a final report against Vijayakumar and Murthi on 09.11.2021 for the offences under Sections 465, 468, 471, 419, 420 and 120-B IPC before the Metropolitan Magistrate dealing with CCB and CBCID cases, but, the same has not been taken on file.

11 After hearing the parties at length, we are of the opinion that Vijayakumar, though not an alleged contemnor, is a necessary party in this contempt proceedings, as the alleged contemnors were completely shifting the blame on him and Murthi. That apart, Vijayakumar and Murthi were impleaded as



Division Bench in L.P.A. Nos.2 and 3 of 2019. Hence, Sub Application No.455 of 2019 filed by Vijayakumar seeking his impleadment as a respondent in the contempt petition stands allowed and accordingly, he is impleaded as the third respondent in this contempt petition.

12 Mr. P. Kumaresan, learned Additional Advocate General appearing for the Board and Mr. S. Prabakaran, learned Senior Counsel appearing for Mr.N.K.Senthamarai Kannan, I.P.S. were on the same page, inasmuch as, they both submitted that their clients did not have any wilful intention to mislead the learned single Judge, but, they themselves were misled by Vijayakumar and Murthi.

13 In support of their contention, they placed strong reliance on the report of Mr.A.K. Viswanathan, I.P.S., Commissioner of Police and also the result of the police investigation in CCB Cr. No.117 of 2019. They submitted that forensic evidence shows that Murthi has signed in the report dated 01.03.2019 only after the words “Dr. D. Murthi, M.Sc., Ph.D., Professor, Department of Maths, IIT Madras” were typed and not before that, as alleged by him. They placed further reliance on the letter dated 27.02.2019 addressed by Mr.N.K. Senthamarai Kannan, I.P.S. to Vijayakumar requesting him to nominate an expert to give opinion for the disputed question and the reply letter dated 28.02.2019 given by Vijayakumar to the Member Secretary of the Board nominating Murthi for giving



opinion for the disputed question and further stating therein that he is known to him as a Professor in the Maths Department in IIT Madras.

14 It is the submission of Mr. A.E. Chelliah, learned Senior Counsel appearing for Vijayakumar that Vijayakumar, as an academician, has an excellent track record, which is as under:

I Educational qualification:

1	B.A. Degree in Psychology, Presidency College	1981
2	M.A. Degree in Psychology, Presidency College	1983
3	Ph.D. Degree in Psychology, Avadh University	1992
4	M.B.A. Hospital Administration/Lab Welfare, Annamalai University	2002
5	M.S. in Counselling & Psychotherapy, Behaviour and Management Studies	2005

II Testimonials:

1	Officer's Training Centre - OTA	1986
2	Central Board for Workers Education, Govt. of India, Chennai	1998
3	Board of Study Member, Presidency College	2001
4	Member Secretary, Tamil Nadu State Council for Science and Technology	2006
5	Testimonial from CTI, Chennai	2007
6	Testimonial from Tamil Nadu Institute of Labour Studies, Chennai	2009
7	Testimonial from Ordnance Factories Institute of Learning	2011
8	Board of Studies, Member, Avinashilingam University, Coimbatore	2012
9	TWAD Board Training, Chennai	2012
1	Testimonial from Dr. V. Iraianbu, I.A.S., Personnel and Administrative Reforms (TRG-II) Department, Secretariat	2012
1	Corporation Interview Expert	2013
1	Testimonial from ESI, Chennai	2014
1	ATI, Guindy, Chennai	2014
1	Director, Anna Institute of Management, Testimonial	2014



4		
1	Director, Anna Institute of Management, Testimonial	2014
5		
1	Director, Anna Institute of Management, Testimonial	2014
6		
1	All India Civil Services Coaching Centre, Chennai	2014
7		
1	Water Supply and Sewage Board	2014
8		
1	Trainer - National Skill Training Institute	2019
9		
2	Chennai Metropolitan Water Supply and Sewage Board	2019
0		

15 Likewise, Mr. N.L. Rajah, learned Senior Counsel appearing for Murthi also placed the track record of Murthi, which is as under:

Period	Place of posting	Designation
July 1977 to July 1981	KV Pulgaon Camp, Maharashtra	Primary teacher
July 1981 to July 1983	KV IIT Campus, Mumbai (Bombay)	Trained Graduate Teacher (Maths)
July 1983 to September 1993	KV Heavy Vehicles Factory (HVF Estate), Avadi Camp, Chennai	Trained Graduate Teacher (Maths)
September 1993 to July 1996	KV, Meenambakkam, Chennai	Trained Graduate Teacher (Maths)
July 1996 to July 2007	KV IIT Campus, Chennai	Trained Graduate Teacher (Maths)
July 2007 to October 2010	KV No.2, Tambaram Air Force Station, Chennai	Trained Graduate Teacher (Maths)
October 2010 to February 2013	KV IIT Campus, Chennai	Trained Graduate Teacher (Maths) and retired

16 From a perusal of the records submitted to this Court, it is seen that Murthi has also completed M.Sc. in Psychology and that at no point of time, he claimed himself as a Professor working in the Maths Department of IIT Madras.



17 Mr. A.E. Chellaih further submitted that Vijayakumar was not at all in Chennai on 27.02.2019 and that after his arrest, police made him sign in several papers and thereafter, manufactured the letters dated 27.02.2019 and 28.02.2019. It is his further submission that on 27.02.2019, Vijayakumar was in Ooty, to substantiate which, he placed around 20 documents, both before the learned single Judge as well before Mr. A.K. Viswanathan, I.P.S., but, none of the documents was considered by the latter, though the learned single Judge had specifically directed him to look into them. Likewise, the Investigating Officer of the CCB Police had also not done any investigation on this aspect in CCB Cr.No.117 of 2019.

18 We gave our anxious consideration to the rival submissions.

19 When we posed a straight question to Mr. A.E. Chelliah and Mr.N.L.Rajah as to whether their clients have had direct interactions with Mr.N.K.Senthamarai Kannan, I.P.S., they both candidly submitted that they did not have any direct interaction with him at the relevant point of time and that they were dealing only with his subordinates. The same is the case of Mr. Prabakaran, learned Senior Counsel also, who stated that though Mr. N.K. Senthamarai Kannan, I.P.S. was the Member Secretary of the Board at the relevant point of time, the work of obtaining question banks, requisitioning the services of experts, *etc.* were done only by his subordinate officers and at no point of time, had Murthi



ever met him and introduced himself as a Professor of Maths Department in IIT Madras.

20 To be noted, the question before us is not about the competency of Vijayakumar and Murthi in assisting the Board in preparing the question bank or verifying the correctness of the preliminary key answers published by the Board. In fact, the Board does not have a set of rules stipulating what educational qualification an expert should possess for preparing question banks or for verifying the correctness of the preliminary key answers. Unimpeachable records of sterling quality produced by the Board show that from 2011 onwards, Vijayakumar has been helping the Board in preparing question banks for which he has been paid a paltry sum of Rs.750/- per branch as honorarium.

21 It is the case of the Board that after the learned single Judge orally directed the Board on 27.02.2019 to verify the correctness of the allegations leveled by Arunachalam in W.P. No.5542 of 2019 about the answer to Question No.145, the Member Secretary of the Board gave a letter on the same day, *i.e.*, 27.02.2019, to Vijayakumar, which reads as follows:

“Sir,

Sub: Request to nominate an expert to give opinion - Regarding.

You are requested to nominate an expert to give opinion on one question pertaining to Psychology which is disputed by the candidate.”



It is the case of the Board that to the aforesaid letter, Vijayakumar gave a reply letter dated 28.02.2019 which reads as follows:

“I am happy to nominate Mr. Murthy known to me as IIT Professor in the Department of Mathematics (also done post graduate degree in Psychology) to give opinion on a disputed question in Numerical ability section of Psychology paper of TNUSRB exam held in 2019.”

22 Thus, according to the Board, Murthi was introduced to the Board by Vijayakumar *via* letter dated 28.02.2019, whereas, it is the specific case of Vijayakumar that these two letters were concocted by the CCB Police and the Board after his arrest on 01.04.2019 in order to satisfy the learned single Judge on 02.04.2019 that they were misled by Vijayakumar, who introduced Murthi to the Board as a Professor of Maths Department in IIT Madras. To establish this assertion of his, Vijayakumar placed satisfactory materials even while he was in the prison, before the learned single Judge as well before Mr. A.K. Viswanathan, I.P.S. stating that on 27.02.2019, he was not at all in Chennai and that he was delivering a lecture in Anna Institute of Management, Ooty, on Communication Skills.

23 We carefully perused the report of Mr. A.K. Viswanathan, I.P.S. and found that he has not enquired into the assertion of Vijayakumar that on 27.02.2019, he was in Ooty delivering a lecture in Anna Institute of Management on Communication Skills and he was not at all in Chennai. Perhaps, the conscience of Mr. A.K. Viswanathan, I.P.S. did not command him to whitewash



this assertion of Vijayakumar. That is why, he has feigned silence and has not refuted the assertion of Vijayakumar that he was in Ooty on 27.02.2019.

24 Superadded, even the final report that has been filed in CCB Cr.No.117 of 2019 is stoically silent on the plea of alibi that was being consistently taken by Vijayakumar right from the very beginning. In fact, the complaint which formed the basis of the registration of the FIR in CCB Cr.No.117 of 2019 states that on 28.02.2019, Vijayakumar brought Murthi to the Board and introduced him as a Professor in the Maths Department of IIT Madras. If Vijayakumar had really brought Murthi physically to the office of the Board on 28.02.2019, where is the question of Vijayakumar giving the letter dated 28.02.2019 to the Board nominating and introducing Murthi to the Board?

25 According to the Board, the services of the experts for preparing questions banks and for checking the preliminary key answers are requisitioned only orally and not in writing, in order to maintain confidentiality and that is how, all along, Vijayakumar has been obliging the Board since 2011. One cannot find fault with this methodology adopted by the Board, because, as stated above, a recruitment agency should not send communications in writing asking a person to prepare question bank and check preliminary key answer list, as that would invariably lead to leakage of information. When the procedure is thus, what shocks us is, the Board has given a letter dated 27.02.2019 on a plain white paper



28.02.2019, nominated Murthi for the job. It is Mr. A.E. Chelliah's specific contention that the signatures of Vijayakumar in the letters dated 27.02.2019 and 28.02.2019 were obtained while he was in police custody.

26 In the police complaint given by the Board, there is absolutely no reference to the letter dated 27.02.2019 that was allegedly given by the Board to Vijayakumar asking him to nominate an expert. That apart, the other communications from the office of the Member Secretary of the Board, which have been placed before this Court, are in the letter head of the Board with the Government of Tamil Nadu emblem, whereas, the letter dated 27.02.2019 alleged to have been addressed by the Board to Vijayakumar, is on a plain white paper. We are sure that, who had fabricated the two letters dated 27.02.2019 and 28.02.2019 would come to light if any one of the officers of the Board involved in this process, is taken into police custody and interrogated. Even if we order transfer of this case to the CBI, we cannot issue a direction to the CBI to arrest a person of the Board, take him into custody and interrogate, as that would be nothing but a clear judicial overreach.

27 Now, the Board wants this Court to believe that only after the learned single Judge raised the question on 27.02.2019, was Murthi introduced to the Board for the first time by Vijayakumar on 28.02.2019. This is a stark lie, inasmuch as, materials produced by the Board themselves show that the services of



for considering the objections raised by the candidates after the preliminary key answer list was published by the Board on its website. In other words, Vijayakumar was a part of the team that prepared the question bank. From the question bank, some questions were randomly chosen by the authorities of the Board and examination was conducted on 22.12.2018 and the Board published the preliminary key answer list on 24.12.2018, in which, for Question No.145, the key answer was given as option 'a' and when the candidates raised objections, the services of Vijayakumar and Murthi were availed by the Board for considering the candidates' objections and preparing the final key answer list, out of which, for Question No.145, they gave the key answer as option 'b' and the final key answers were also hosted on the Board's website. The police completely forgot about this to the advantage of Vijayakumar and Murthi and went about projecting as if Murthi was introduced for the first time by Vijayakumar only on 28.02.2019 after the learned single Judge asked the Board to verify the assertions of Arunachalam.

28 Be it noted, truth requires no memory at all and only a lie requires a sharp memory. The Board was lying continuously in order to save itself from the wrath of the Single Bench, but, unfortunately, it has now got itself exposed before this Division Bench. At this juncture, this Court is reminded of the sagely words of Lincoln "You can fool all the people some of the time and some of the people all the time, but you cannot fool all the people all the time".



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29 Mr. Kumaresan and Mr.Prabakaran submitted that even in the sheets relating to verification of the preliminary key answers, beneath the name of Murthi, Vijayakumar has written the words “IIT Madras”. In support of this submission, they placed reliance on the report of the handwriting expert. In other words, they want this Court to believe that Murthi affixed his signature alone and beneath the signatures of Murthi in the verification sheets, Vijayakumar had written the words “Maths Department, IIT Madras”. This sounds ludicrous and is opposed to basic common sense. Contrarily, Mr. A.E. Chelliah’s version that after the arrest of Vijayakumar on 01.04.2019, all these documents were concocted by the CCB Police in collusion with the Board, which comprises none other than the senior police officers and not civil servants, sounds plausible.

30 We asked the following straight question to Mr. Kumaresan, learned Additional Advocate General appearing for the Board. When the services of Vijayakumar and Murthi were used by the Board to check the preliminary key answer list in the light of the objections raised by various candidates, what made the Board call them again for verification of the correctness of answer to Question No.145 on 01.03.2019? There was no satisfactory reply from the learned Additional Advocate General for this straight question posed by us. To make it more explicit, for Question No.145, Arunachalam has ticked option ‘a’ as the



website stated that the correct answer for Question No.145 was option 'a'. When other candidates raised objections, Vijayakumar and Murthi were called to examine the objections and offer their opinion. Accordingly, with regard to Question No.145, they gave their opinion that the correct answer is option 'b'. Based on that, the final key answer list was published on the Board's website, pursuant to which, Arunachalam lost half a mark and therefore, he filed W.P.No.5542 of 2019, in which, on 27.02.2019, the learned single Judge asked the Board to verify his assertions. When the Board had passed a resolution on 27.02.2019 to refer the matter to Anna University, it is beyond the ken of this Court as to what made the officers of the Board once again get an opinion from Murthi who had earlier given the answer for Question No.145 as option 'b'. Upon being approached by the Board, Murthi once again gave the answer for Question No.145 as option 'b' in his report dated 01.03.2019. What else could one have expected Murthi to give when, according to him, the answer for Question No.145 was option 'b'. Instead, the Board should have entrusted this work to Anna University as resolved by it on 27.02.2019 and which body was not involved in the matter earlier. The issue got blown out of proportion because the report dated 01.03.2019 of Murthi that was submitted in a sealed cover to the learned single Judge contained the words "Dr.D.Murthi, M.Sc., Ph.D., Professor, Department of Maths, IIT Madras." Had these words not been typed in the report, the writ petition

would have attained its finality and the order passed in the writ petition would not



have been recalled by the learned single Judge. In such an event, Arunachalam would have lost in the race. By filing the report dated 01.03.2019, the Board had clandestinely stage-managed the dismissal of Arunachalam's writ petition on 13.03.2019 by obtaining the very same answer from the very same person who had given the answer to Question No.145 earlier. In our considered opinion, the aforesaid acts of the Board undoubtedly constitute criminal contempt under Section 2(c)(ii) of the Contempt of Courts Act, 1971, as it amounts to a calculated and deliberate interference in the administration of justice by the High Court.

31 As regards the alleged second contemnor, Mr.N.K. Senthamarai Kannan, I.P.S., we have already noticed that even according to Vijayakumar and Murthi, they had never interacted with Mr. N.K. Senthamarai Kannan, I.P.S. and that they were all along interacting only with Lalitha and other officers of the Board. In the given set of facts, we find that the role played by him is not entirely free from doubt. We are, therefore, inclined to give the benefit of doubt to Mr.N.K.Senthamarai Kannan, I.P.S. Accordingly, we discharge the notice against him and exonerate him from these proceedings.

32 However, the alleged first contemnor is the Board, a statutory Corporation. It requires no reiteration that the offence of criminal contempt does



not require any *mens rea*. In **D.C. Saxena (Dr.) vs. The Chief Justice of India**¹,

the Supreme Court has observed thus:

“41. It is true that in an indictable offence generally *mens rea* is an essential ingredient and requires to be proved for convicting the offender but for a criminal contempt as defined in Section 2(c) any enumerated or any other act apart, to create disaffection, disbelief in the efficacy of judicial dispensation or tendency to obstruct administration of justice or tendency to lower the authority or majesty of law by any act of the parties, constitutes criminal contempt. Thereby it excludes the proof of *mens rea*. What is relevant is that the offending or affront act produces interference with or tendency to interfere with the course of justice....”

That a Corporation can also be sentenced for contempt of Court is no longer *res integra*. We notice the following passage from Henry W. Ballantine’s Manual of Corporation Law and Practice, Chicago, Callaghan and Company:

“Because of the fact that a corporation is impersonal, and cannot be attached, - that is, personally seized or taken, - it was at one time considered that a corporation could not be punished for contempt of Court in disobeying or violating an injunction or other order or decree. But Courts now freely punish Corporations for contempt in disobeying their orders or interfering with their proceedings. To punish one for contempt of Court, attachment or seizure of the person is not necessary. The punishment may be by imposition of a fine. It is now well settled in most jurisdictions, therefore, that a corporation may be guilty of a contempt of Court, to the same extent and under the same circumstances as a natural person, and may be punished therefore by a fine, and the remedy is not, as was formerly thought, against its officers only.

The liability of a corporation for contempt of Court is not limited to civil contempt to assist an injured suitor. It may be punished for a criminal contempt to vindicate the authority of the Court, as for publishing an article in a newspaper, which is circulated in the place where a trial is pending, which is calculated to prejudice the jury and prevent a fair trial.”

We are in complete agreement with the aforesaid statement of the law.

33 An offence of criminal contempt is punishable under Section 12 of the

Contempt of Courts Act, 1971, with simple imprisonment for a term which may



extend to six months, or with fine which may extend to Rs.2,000/- or with both.

Where an offence, the punishment of which is imprisonment coupled with fine, has been committed by a juristic entity, the law is well settled that the Court can ignore the sentence of imprisonment and proceed to impose the sentence of fine on the entity. In **Standard Chartered Bank vs. Directorate of Enforcement**², a Constitution Bench of the Supreme Court has held as follows:

“31. As the company cannot be sentenced to imprisonment, the court cannot impose that punishment, but when imprisonment and fine is the prescribed punishment the court can impose the punishment of fine which could be enforced against the company. Such a discretion is to be read into the section so far as the juristic person is concerned. Of course, the court cannot exercise the same discretion as regards a natural person. Then the court would not be passing the sentence in accordance with law. As regards company, the court can always impose a sentence of fine and the sentence of imprisonment can be ignored as it is impossible to be carried out in respect of a company. This appears to be the intention of the legislature and we find no difficulty in construing the statute in such a way. We do not think that there is a blanket immunity for any company from any prosecution for serious offences merely because the prosecution would ultimately entail a sentence of mandatory imprisonment. The corporate bodies, such as a firm or company undertake a series of activities that affect the life, liberty and property of the citizens. Large-scale financial irregularities are done by various corporations. The corporate vehicle now occupies such a large portion of the industrial, commercial and sociological sectors that amenability of the corporation to a criminal law is essential to have a peaceful society with stable economy.”

34 Section 12 of the Contempt of Courts Act, 1971, leaves it to the discretion of the Court to impose (i) a sentence of simple imprisonment for a term which may extend to six months or (ii) a fine which may extend to Rs.2000/- or (iii) impose both (i) and (ii) above. Thus, under the Contempt of Courts Act, 1971, a sentence of imprisonment is not mandatory. Where a juristic entity is found



guilty of contempt, it is open to the Court, in an appropriate case, to impose a sentence of fine.

35 In view of the above, we convict the Board for criminal contempt under Sections 2(c)(ii) and 12 of the Contempt of Courts Act, 1971 and sentence the Board/first contemnor to pay a fine of Rs.2,000/- into the Registry of this Court within a period of four weeks from today. As stated *supra*, the notice issued against the alleged second contemnor, Mr. N.K. Senthamarai Kannan, I.P.S. stands discharged and he is exonerated from these proceedings. **The suo motu criminal contempt petition stands disposed of on the aforesaid terms.**

36 Coming to the quash application in Crl.O.P. No. 19007 of 2019, we find that while the contempt petition and the quash application challenging the FIR are pending, the CCB Police have hurriedly completed the investigation and have filed a final report on 09.11.2021 thinking that by doing so, this Court will be preempted technically from quashing the FIR which had culminated to a final report, miserably failing to realize that the arm of this Constitutional Court is long enough to exercise the powers under Article 226 of the Constitution of India and Section 482 Cr.P.C., in moulding the relief to subserve the interests of justice. We pored over the final report and the accompanying statements and documents.



37 We are fortified in holding so in view of the decision of the Supreme

Court in **Anand Kumar Mohatta vs. State (NCT of Delhi)**³, wherein, it was held

as under:

“14. First, we would like to deal with the submission of the learned Senior Counsel for Respondent 2 that once the charge-sheet is filed, petition for quashing of FIR is untenable. We do not see any merit in this submission, keeping in mind the position of this Court in *Joseph Salvaraj A. v. State of Gujarat* [*Joseph Salvaraj A. v. State of Gujarat*, (2011) 7 SCC 59 : (2011) 3 SCC (Cri) 23]. In *Joseph Salvaraj A.* [*Joseph Salvaraj A. v. State of Gujarat*, (2011) 7 SCC 59 : (2011) 3 SCC (Cri) 23], this Court while deciding the question whether the High Court could entertain the Section 482 petition for quashing of FIR, when the charge-sheet was filed by the police during the pendency of the Section 482 petition, observed: (SCC p. 63, para 16)

“16. Thus, from the general conspectus of the various sections under which the appellant is being charged and is to be prosecuted would show that the same are not made out even prima facie from the complainant's FIR. Even if the charge-sheet had been filed, the learned Single Judge [*Joseph Saivaraj A. v. State of Gujarat*, 2007 SCC OnLine Guj 365] could have still examined whether the offences alleged to have been committed by the appellant were prima facie made out from the complainant's FIR, charge-sheet, documents, etc. or not.”

16. There is nothing in the words of this section which restricts the exercise of the power of the Court to prevent the abuse of process of court or miscarriage of justice only to the stage of the FIR. It is settled principle of law that the High Court can exercise jurisdiction under Section 482 CrPC even when the discharge application is pending with the trial court [*G. Sagar Suri v. State of U.P.*, (2000) 2 SCC 636, para 7 : 2000 SCC (Cri) 513. *Umesh Kumar v. State of A.P.*, (2013) 10 SCC 591, para 20 : (2014) 1 SCC (Cri) 338 : (2014) 2 SCC (L&S) 237]. Indeed, it would be a travesty to hold that proceedings initiated against a person can be interfered with at the stage of FIR but not if it has advanced and the allegations have materialised into a charge-sheet. On the contrary it could be said that the abuse of process caused by FIR stands aggravated if the FIR has taken the form of a charge-sheet after investigation. The power is undoubtedly conferred to prevent abuse of process of power of any court.”



38 Why should these two academicians cheat the Board? Some people

would want to include such assignments in their *curriculum vitae* and for that, they may exaggerate their educational qualification and paint a rosy picture of themselves, as such projection would add to their prestige. That is not the case here, even according to the Board and the CCB Police. The Board and these two academicians knew full well that they should maintain strict confidentiality and not disclose to anyone that their services are being used by the Board for examination purposes. Moreover, concededly, these two persons are neither in their teens nor are they middle-aged, seeking employment, but, are senior citizens. Therefore, the question of this duo exaggerating their educational qualifications stands ruled out. According to the police investigation, they did this for monetary gain. What is the monetary consideration that was paid to these two academicians? A princely sum of Rs.750/-? Only our police can let their imaginations run amuck. Further, preparing a question bank for a competitive examination is not a cakewalk and enormous time and labour have to be invested towards that end. Moreover, it is not the case of the Board or the CCB Police that the help of these two academicians was requisitioned for the specific purpose of solving Question No.145 for the purpose of submission to the learned single Judge in W.P. No.5542 of 2019. Lalitha, P.A. to the Member Secretary of the Board appears to have sent the disputed question by WhatsApp to Murthy and the latter seems to have solved and given it in a white sheet. In our opinion, it is actually the Board which had pulled



the wool over the eyes of the learned single Judge by requisitioning the services of Murthi whose services were already used by the Board for checking the correctness of the preliminary key answer list in the teeth of the objections raised by some candidates, notwithstanding the Board's resolution to obtain an opinion from Anna University. Much reliance was placed upon the opinion of the handwriting expert to incriminate the two academicians. One can find no fault with the report of an expert as long as the materials collected and sent to the expert for giving opinion had sprung from a pure source. In this case, materials manufactured by the Board and the CCB Police were sent to the expert for examination. An expert opinion founded on manufactured materials has no relevance.

39 On a conspectus of the facts obtaining in this case, we find that two teachers with brilliant academic track record who were all along helping the Board for peanuts, have become *persona non grata* overnight and had to suffer so much of ignominy. Vijayakumar was arrested on 01.04.2019 and was released on bail only on 23.04.2019. From inside the prison, he was crying hoarse and filing affidavit after affidavit before the learned single Judge. When the learned single Judge directed Mr. A.K. Viswanathan, I.P.S., to enquire into Vijayakumar's claim of being in Ooty on 27.02.2019 and not having introduced Murthi as a Professor of Maths Department in IIT Madras on 28.02.2019, the report of



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40 To recapitulate the facts, in the FIR in CCB Cr. No.117 of 2019, it is stated that Vijayakumar brought Murthi to the Board office on 28.02.2019 and introduced him as a Professor in the Maths Department in IIT Madras. But, there is no whisper about the letter dated 27.02.2019 in the FIR. The FIR was registered on 30.03.2019 and on 01.04.2019, Vijayakumar was arrested. Only after arrest, as discussed above, the letters dated 27.02.2019 and 28.02.2019 had come into being.

This is evident from the following facts:

- a. In paragraph 19 of the additional affidavit dated 07.01.2019 filed by Mr.N.K. Senthamarai Kannan, I.P.S. in the contempt petition prior to the framing of the charges by this Court, he has clearly stated that Vijayakumar had come to the Board office on 27.02.2019; he was given the letter dated 27.02.2019 and again, he came to the Board office on 28.02.2019 and gave the letter dated 28.02.2019.
- b. However, when Vijayakumar placed unimpeachable materials to buttress his stand that he was not in Chennai on 27.02.2019, the track changed. In the reply affidavit dated 21.09.2021 filed by Mr. N.K. Senthamarai Kannan, I.P.S. in response to the charges that were framed against him, he has not stated a word about the two letters dated 27.02.2019 and 28.02.2019.



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c. In the charge sheet that has been filed by the CCB Police in CCB Cr.No.117 of 2019, they have not collected any material to controvert the assertion of Vijayakumar that he was in Ooty on 27.02.2019 even though all the materials were submitted to them during investigation by Vijayakumar, as could be seen from the seals. Strangely, in the Section 161(3) Cr.P.C. statements of Mr.N.K.Senthamarai Kannan, I.P.S. and Lalitha, it is not recorded that Vijayakumar came to the Board Office on 27.02.2019 and received the letter dated 27.02.2019 and again, came on 28.02.2019 and gave the letter dated 28.02.2019. On the contrary, it is stated that when Vijayakumar was asked to nominate an expert through a letter, he said that he will come on a subsequent date and receive the letter by pre-dating it. To be more explicit, what they mean is Vijayakumar did not come on 27.02.2019 and receive the letter and instead, he came on a subsequent date and received the letter by pre-dating it as 27.02.2019. Unfortunately, both Mr. N.K. Senthamarai Kannan, I.P.S. and the Investigating Officer of the CCB Police forgot that in paragraph 19 of the affidavit dated 07.01.2019, the former had clearly stated that Vijayakumar came to the Board office on 27.02.2019, which runs clearly contrary to his statement under Section 161(3) Cr.P.C. and the charge sheet in CCB Cr. No.117 of 2019, wherein, the latter also

<https://hcservices.ecourts.gov.in/hcservices/>

has stated that Vijayakumar came on a particular date and received the



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communication by pre-dating it. These officers had to resort to this chicanery, as adverted to above, since they were not able to collect materials to controvert the fact that Vijayakumar was in Ooty on 27.02.2019 and not in Madras. We are unable to take perjury action against Mr.N.K.Senthamarai Kannan, I.P.S., because, a false statement in a police statement recorded under Section 161(3) Cr.P.C. cannot form the basis of perjury action, unlike a statement recorded by a Magistrate under Section 164 Cr.P.C.

- d. Thus, the registration of the FIR in CCB Cr.No.117 of 2019 and the charge sheet predicated on such an FIR, reinforcing the lies that have been contrived to sustain the charge sheet, are clearly an abuse of process of law amounting to a malicious prosecution which deserves to be quashed lock, stock and barrel.

41 Having examined the materials on record, we are of the considered view that the continuation of criminal proceedings against Vijayakumar and Murthy is clearly an abuse of process of law. Accordingly, in exercise of our powers under Article 226 of the Constitution of India and Section 482 Cr.P.C., we quash the final report in CCB Cr.No.117 of 2019, pending on the file of the Metropolitan Magistrate, Chennai, dealing with CCB and CBCID Cases. **As a sequel, the criminal original petition stands allowed. Connected**



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42 We are also of the considered opinion that Vijayakumar deserves to be monetarily compensated for the humiliation and suffering undergone by him at the hands of the Board and the CCB Police. He was reduced to a pawn in the larger plot by the Board to deceive the learned single Judge. The machinery of the police was then set upon to terrorize and silence him. Vijayakumar is a senior citizen and has undergone the humiliation of languishing in prison for 22 days. Constitutional Courts cannot turn a Nelson's eye to a brazenly orchestrated violation of the dignity and self-respect of the individual by the Board and the police. We are of the considered view that Vijayakumar deserves to be compensated in public law for his sufferings. We draw inspiration from the following passage in the judgment of the Supreme Court in **S. Nambi Narayanan vs. Siby Mathews**⁴:

“38. Reputation of an individual is an insegregable facet of his right to life with dignity. In a different context, a two-Judge Bench of this Court in *Vishwanath Agrawal v. Sarla Vishwanath Agrawal* [*Vishwanath Agrawal v. Sarla Vishwanath Agrawal*, (2012) 7 SCC 288 : (2012) 4 SCC (Civ) 224 : (2012) 3 SCC (Cri) 347] has observed: (SCC pp. 307, para 55)

“55. ... reputation which is not only the salt of life, but also the purest treasure and the most precious perfume of life. It is extremely delicate and a cherished value this side of the grave. It is a revenue generator for the present as well as for the posterity.”

40. If the obtaining factual matrix is adjudged on the aforesaid principles and parameters, there can be no scintilla of doubt that the appellant, a successful scientist having national reputation, has been compelled to undergo immense humiliation. The lackadaisical attitude of the State Police to arrest anyone and put him in police custody has made the appellant to suffer the ignominy. The dignity of a person gets shocked when psycho-pathological



treatment is meted out to him. A human being cries for justice when he feels that the insensible act has crucified his self-respect. That warrants grant of compensation under the public law remedy. We are absolutely conscious that a civil suit has been filed for grant of compensation. That will not debar the constitutional court to grant compensation taking recourse to public law. The Court cannot lose sight of the wrongful imprisonment, malicious prosecution, the humiliation and the defamation faced by the appellant.”

43 Accordingly, in exercise of our powers under Article 226 of the Constitution of India, we award a compensation of Rs.10 lakhs and direct the State Government to pay the same to Vijayakumar within a period of three months from the date of receipt of a copy of this order.

44 What is the moral of the story? Two millennia ago, the Tamil sage Tiruvalluvar has stated in the following couplet as to how a person should maintain relationship with his king.

அகலாது அணுகாது தீக்காய்வார் போல்க

இகல்வேந்தர்ச் சேர்ந்தொழுகு வார்

அதிகாரம் 70, குறள் 1

Meaning:

Like people who warm themselves at the bonfire, those who are with the king, should neither be far away nor be closer to him, but keep a distance.

Now, in democracy, in the place of king, we can safely substitute people who wield power which includes the police.



45 Before parting, we place on record our deep appreciation to

Mr.B.Vijay, learned Standing Counsel for Madras High Court, for having maintained absolute neutrality during the proceedings by placing before us all the materials threadbare, without which, it would have been very difficult for us to adjudicate this matter.

To sum up, *Suo Motu* CrI. Contempt Petition No.613 of 2019 stands disposed of, and CrI.O.P.No.19007 of 2019 stands allowed, on the aforesaid terms.

SD/-

ASSISTANT REGISTRAR(COMM.CASES)

cad

//Certified to be true copy//

Dated at Madras this the day of 2022.

COURT OFFICER(O.S.)

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4 The Chairman
Tamil Nadu Uniformed Services Recruitment Board
Old Commissioner of Police Campus
Pantheon Road, Egmore, Chennai 600 008

5 The Special Metropolitan Magistrate
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