



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 01.11.2021	Pronounced on: 18.11.2021
-----------------------------	------------------------------

CORAM:

THE HONOURABLE Ms.JUSTICE R.N.MANJULA

CrI.OP.No.11556 of 2019
and
CrI.MP.No.5931 of 2019

1. Tmt.N.Mangaiarkarasi
W/o V.Natarajan,
Correspondent,
Paavai College of Engineering,
Paavai Nagar, NH-17, Pachal,
Namakkal-637 018.

... Petitioner /Accused 1

2. Mr.V.Natarajan,
Chairman and Managing Trustee,
Paavai College of Engineering,
Paavai Nagar, NH-17, Pachal,
Namakkal-637 018.

... Petitioner /Accused 2

Vs.

1. The State
Represented by its Sub Inspector of Police,
Puduchatram Police Station, Namakkal

.. Respondents/Complainant

2. The Principal Secretary and Commissioner
Directorate of Technical Education,
Guindy, Chennai -600 025.

.. 2nd Respondents/ De facto Complainant

PRAYER: This Criminal Original Petition is filed under Section 482 of Cr.P.C, to call for the records and quash the proceeding in F.I.R.No.579 of 2009 on the file of Puduchatram Police Station, Namakkal under Sections 3, 4 (2) (1) (3) r/w 7 of the Tamil Nadu Educational Institution (Prohibition of Collection of Capitation) Fee, Act, 1992 and 467 and 506(ii) of Indian Penal Code.



WEB COPY

For Petitioners : Mr.N.Chandrasekaran
For Respondents : G.V.Kasthuri,
Additional Public Prosecutor
for R1
: No appearance for R2

ORDER

(Heard through video conferencing)

This Criminal Original Petition filed under section 482 of Criminal Procedure Code to call for the records and quash the proceeding in F.I.R.No.579 of 2009 on the file of Puduchatram Police Station, Namakkal under Sections 3, 4 (2) (1) (3) r/w 7 of the Tamil Nadu Educational Institution (Prohibition of Collection of Capitation) Fee, Act, 1992 and 467 and 506 (ii) of Indian Penal Code.

2. The petitioners are the 1st and 2nd accused in this case. The 1st petitioner/accused is the correspondent of Pavai College of Engineering, Pavai Nagar, Namakkal and the 2nd petitioner is the Chairman and Managing Trustee, Paavai College of Engineering, Namakkal.

3. On the allegation that the petitioners are collecting excess fees in violation of the Tamil Nadu Educational Institution (Prohibition of Collection of Capitation) Fee, Act, 1992, an F.I.R has been registered in Crime No.579/2009 for the offences under Sections 3, 4 (2) (1) (3) r/w 7 of the Tamil Nadu Educational Institution (Prohibition of Collection of Capitation) Fee, Act, 1992 and 467 and 506(ii) of Indian Penal Code. Pending investigation the petitioners have filed this petition to quash the proceedings.

4. According to G.O.Ms.No.366, Higher Education (J2) Department, dated 13.10.2009, the Principal Secretary and Commissioner of Technical Education has been given with the powers to grant sanction for the prosecution. It is submitted by the learned counsel for the petitioners that the sanctioning authority himself was the complainant and hence the sanction would be a biased one and hence the proceedings should be quashed.



5. In support of his contention he relied on the following judgment reported in 1993 SCC 284 (N.K. Ogle vs Sanwaldas @ Sanwalmal Ahuja). In the said judgment it is held as under:

WEB COPY

"8.....This Court, however, came to hold that such a complaint cannot be entertained without a sanction of the Competent Authority as provided under Section 197 Cr.P.C. This Court had observed that before coming to a conclusion whether the provisions of Section 197 of the Code of Criminal Procedure will apply, the Court must come to a conclusion that there is a reasonable connection between the act complained of and the discharge of official duty; the act must bear such relation to the duty that the accused could lay a reasonable claim that he did it in the course of the performance of his duty. Applying the aforesaid ratio to the case in hand the conclusion is inescapable that the act of the Tahsildar in seizing the scooter of the respondent was in discharge of his official duty which he was required to do on the basis of the order issued by the Collector for getting the lease money from the respondent and the said act cannot be said to be a pretended or fanciful claim on the part of the Tahsildar. The High Court, in our view committed error at that stage in examining the flaw or legality of the order of attachment issued by the Tahsildar. "

6. But the sanction required under the Tamil Nadu Educational Institution (Prohibition of Collection of Capitation) Fee, Act, 1992 is not in relation to discharge of official duties, but for violation of the mandates prescribed under the Special Act. As per sec.11 of the Tamil Nadu Educational Institution (Prohibition of Collection of Capitation) Fee, Act, 1992, no Court shall take cognizance of any offence except with the sanction of the Government or such Officer as the government may authorize on its behalf. Sec.11 reads as under:

"11. No court shall take cognizance of any offence under this Act except with the sanction of the Government or such officer as the government may authorize in this behalf"

7. The object of the above legislation is to curb the



practice of collecting the capitation fee from students by Educational Institutions and thereby commercializing the education. Since the District Collector, Namakkal has been getting numerous complaints against Pavaai Engineering College, Namakkal that they were collecting exorbitant fees by threatening the students, the District Collector has sent a letter dated 11.04.2008 to the Government to enquire and initiate appropriate action against the management of the said college.

8. The Principal Secretary cum Commissioner of Technical Education has also received complaints from affected persons by names Mr.A.Subramanian, Mr.T.Kuppusamy and Mr.V.Udayakumar. In pursuance of that Dr.S.Annadurai, Principal Government College of Technology, Coimbatore was appointed as an Enquiry Officer for conducting a fact finding enquiry and to submit a report.

9. In respect of the other complaints received from the District Collector Dr.S.Annadurai, Principal of Government Engineering College and professor Mr.S.R.Damodarasamy, Principal of Government College, Salem, were appointed as enquiry officers. After conducting the enquiry, the enquiry officers submitted their reports by stating that Pavaai College of Engineering in Namakkal District is collecting exorbitant fee from the students against the fee prescribed by the Government. After receiving the said report, the Principal Secretary cum Commissioner of Directorate of Technical Education has requested permission to take action against the management of the said college under the relevant provisions of the Tamil Nadu Educational Institution (Prohibition of Collection of Capitation) Fee, Act, 1992 .

10. In pursuance of the said letter sent by the Principal Secretary cum Commissioner of Technical Education, a Government Order in G.O.Ms.No.366, Higher Education (J2) Department, dated 13.10.2009 has been passed. In the said order, the Principal Secretary cum Commissioner of Technical Education has been designated as the Authority to grant sanction for prosecution.

11. Subsequent to the receipt of the said Government Order dated 13.10.2009, a letter purported to have been written by the Principal Secretary cum Commissioner of Technical Education has been sent to the Superintendent of Police, Namakkal and it is dated 02.12.2009. In the said letter it is requested to the police to thoroughly investigate the matter and find out the feasibility for filing a Criminal case, after seeking necessary



sanction from the Commissioner of Technical Education. Police treated the very communication dated 02.12.2009 itself as the complaint and registered the FIR.

WEB COPY

12. The above letter dated 02.12.2009 was enclosed with the Petitions, Enquiry Reports, G.O.(Ms) No. 366, dated 13.10.2009, Government Fee norms and The Act 57 of 1992. Hence the letter dated 02.12.2009 is a kind of a Government cover letter sent from the office of the Directorate of Technical Education along with the original complaints and fact finding reports. And the said letter has been signed by some officer 'for Principal Secretary & Technical Education', and police was requested to furnish materials for getting sanction from the Commissioner of Technical Education. It is to be noted that the Principal Secretary is the Commissioner of Technical Education also. Hence, the above letter obviously ought to have been sent on the order of the Principal Secretary for getting materials from police. And it is signed by some other officer. If the letter had the "By Order" endorsement along with the name and designation of the signing Officer, it would have thrown much clarity that the signing Officer is not the Commissioner of Technical Education and it is some other officer attached to the office of the Technical Education.

13. The content of the letter dated 02.12.2009 would show its object is clear, though its format caused some confusion. It reads as under:

"The matter was reported to Government and Government have issued the G.O.Ms.No.366, dated 13.10.2009. The G.O. states that under section 11 of the Tamil Nadu Educational Institutions (Prohibition of Collection of Capitation Fee Act, 1992, the Governor of Tamilnadu authorizes the Principal Secretary and Commissioner of Technical Education to consider the sanction for prosecution of the Management of Paavai Engineering College, Namakkal District for the offences under the said Act.

Therefore, you are, requested to make a thorough investigation into the complaints regarding excess fee collection and find out the feasibility of filing a Criminal case against the Management of the College for the offences contemplated in the TN Educational Institutions (Prohibition of Collection of Capitation Fee) Act, 1992 and seek necessary sanction from the Commissioner of Technical Education before filing a Criminal case in the Court of Law."



14. So, the above contents of the letter will make it clear that a cover letter which ought to have been drafted and signed on 'By Order', had inadvertently mentioned the Official designation of the Principal Secretary cum Commissioner of Technical Education. This had given the appearance on record that the Authority who holds the Sanctioning power himself has given the complaint, but in reality it is not. However, the Investigation Officer can obtain statement from the Officer who signed the cover letter about this and keep it on records.

15. Hence the proceedings cannot be quashed on the alleged ground that the sanctioning authority himself is the complainant. And in the above discussion, it has been already found that such an outlook about the complaint is just an illusion and not real. Even in case the Sanctioning Authority happened to be the complainant, the Government is always at liberty to give a revised order to delegate the powers of sanction to some other Authority for the reasons recorded. As per Sec.11 of the Act, the Government itself has got the power to grant sanction. The words employed in Sec.11 would show that the sanctioning power lies with the Government or with such other officer authorized by the Government.

16. It is seen from the records that the police has completed the investigation and waiting for the sanction from the Government for laying charge sheet against the accused. In the counter filed by the respondent police, it is stated that their investigation revealed that the 1st petitioner /A-1 has got nothing to do with the fixing of fee and it is the 2nd accused, who alone has got the power and authority to fix and collect the fee. The 1st petitioner is the Correspondent of Pavaai Engineering College, Namakkal and the 2nd petitioner is the Chairman and Management trustee. However, the materials available during the investigation are to be placed before the Sanctioning Authority for his appreciation and approval.

17. All that the sanctioning Authority has to do is to consider the materials placed before him and to accord or reject sanction by through application of mind. Since there is no allegation of malice against the Government or any other authorities of the Government, there need not be any apprehension that the sanctioning order if given, it would be tainted with bias. Hence I feel it is not an appropriate case where the inherent jurisdiction of this Court should be invoked to quash the proceedings.



WEB COPY

In the result, this Criminal Original Petition is dismissed. The connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar (CJ Conf.)

//True Copy//

Sub Assistant Registrar

jrs

To

1. The Sub Inspector of Police,
Puduchatram Police Station,
Namakkal.
2. The Section Officer,
V.R.Section,
High Court, Madras.
3. The Additional Public Prosecutor,
High Court of Madras,
Chennai.

+1cc to M/s.N.Chandrasekaran, Advocate, S.R.No.59214

Cr1.OP.No.11556 of 2019
and
Cr1.MP.No.5931 of 2019

SS(CO)
SU(01/12/2021)