

IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDERS RESERVED ON : 25.01.2021
PRONOUNCING ORDERS ON : 29.01.2021

CORAM

THE HONOURABLE JUSTICE MR.N.ANAND VENKATESH

Crl.O.P No.2967 of 2017
and
Crl.MP.Nos.2118 and 2117 of 2017

1.K.Thankaraj
2.J.Suganthi

..Petitioners

.Vs.

State rep.by
The Inspector of Police,
Organized Crime Unit
CBCID, Salem City.
Crime No.30/2008.

..Respondent

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the record and to quash the further proceedings of the final report filed by the respondent before the Judicial Magistrate No.IV, Salem in C.C.No.104 of 2015.

For Petitioners: Mr.Ravi Anantha Padmanaban
For Respondent : Mr.M.Mohamed Riyaz
Additional Public Prosecutor

ORDER

This Criminal Original Petition has been filed to quash the proceedings in C.C.No.104 of 2015, on the file of the Judicial Magistrate No.IV, Salem.

2.The brief facts of the case as projected by the prosecution is that the 2nd petitioner, who is the daughter of the 1st petitioner applied for the post of Sub-Inspector and got selected to the said post under the Ward's quota by producing a false Service Certificate as if, it was issued by the Inspector of Police of Karumalaikudal Police Station. According to the prosecution, the 2nd petitioner participated under the MBC category and the cutoff marks for selection under this category was 64 marks for open candidates (Women) and 62 marks for open candidates (Women) claiming under the Ward's quota. The 2nd petitioner who obtained only 62 marks secured the selection

under the Ward's quota only by virtue of the forged and fabricated certificate that was produced at the time of interview. It is alleged that the 1st petitioner, who is the father has conspired with the 2nd petitioner in bringing forth the forged certificate.

3.Initially, the investigation was conducted by the District Crime Branch, Salem and a Final Report was filed before the Court below against four accused persons under Sections 120-B 468, 471 and Section 420 r/w 120(B) of IPC. The Final Report was taken on file in C.C.No.170 of 2012. Thereafter, an application was filed seeking permission to conduct further investigation under Section 173(8) of Cr.P.C. At this stage, the Director General of Police (DGP), Chennai by proceedings dt. 24.12.2012, transferred the investigation to the file of CBCID and this specialized Agency took up the investigation and a further report was filed as against the petitioners after dropping the names of A3 and A4 and they have been made as witnesses in this case. The Court below has taken cognizance of the Final Report in C.C.No.104 of 2015, against the petitioners for an offense under Sections 420, 468, 471 r/w 120-B of IPC.

4.The learned counsel for the petitioners submitted that the entire complaint is attended with malafides and it was given by a candidate, who failed to get an appointment in the very same selection. The learned counsel further submitted that the 2nd petitioner never applied under the Ward's quota and she had participated in the selection only under the General category and therefore there was no requirement for the 2nd petitioner to produce the forged certificate. The learned counsel further submitted that the father of the 2nd petitioner is working as a Head Constable and therefore the 2nd petitioner had indicated in the application that she is the daughter of the 1st petitioner who is already working in the Police Department. However, the 2nd petitioner did not submit any certificate along with the application Form and the same is very clear from the application Form which is relied upon by the prosecution. The learned counsel further submitted that the forged certificate relied upon by the prosecution was fabricated by the unsuccessful candidate and it is unbelievable that this certificate was acted upon, more particularly since the certificate was not even printed in a letter head. This certificate does not even contain a date and such a certificate given at the time of interview will never be accepted by the Department. For the purpose of substantiating the said submission, the learned counsel relied upon the memo issued by the DGP and also Section 161 statement recorded from the DGP.

5.The learned counsel for the petitioners also relied upon the information received under the RTI Act, which stated that the cutoff marks for an open candidate belonging to MBC is only 62 marks and not 64 marks as claimed by the prosecution. The learned counsel also brought to the notice of this Court the marks statement of the selected candidates and submitted that the 2nd petitioner's name is found in Sl.No.641 was selected only under the General turn and not under the Ward's quota. The learned counsel therefore submitted that the criminal proceedings against the petitioners is an abuse of process of Court and the same is liable to be interfered by this Court.

6.Per contra Mr.M.Mohamed Riyaz, learned Additional Public Prosecutor appearing on behalf of the respondent Police submitted that this Court cannot enter into factual disputes while considering a petition under Section 482 of Cr.P.C. The Additional Public Prosecutor further submitted that the 2nd petitioner was appointed as Sub Inspector only under the Ward's quota. To substantiate this submission, the learned Additional Public Prosecutor circulated the CD file and produced the particulars of the 2nd petitioner which shows that the 2nd petitioner was selected under Executive Ward's quota. The learned Additional Public Prosecutor further submitted that LW-24 (Mr.T.Shanmugam), who is the Administrative Officer of the Recruitment and Training Selection has categorically given a statement to the effect that the cutoff marks for the General turn was 64 marks and for the Ward's quota under MBC category it is 62 marks. The 2nd petitioner got appointment only under the Ward's quota by virtue of the forged certificate. The learned Additional Public Prosecutor also brought to the notice of this Court the communication from the Administrative Officer of TNUSRB, which clearly states that the cutoff marks for open category under MBC community is 64 marks and the cutoff marks for candidate coming under the Ward's quota was 62 marks. The learned Additional Public Prosecutor also brought to the notice of this Court, the statement of LW-3, who is the Inspector of Police, who is said to have given the certificate and he has clearly denied the signature in the certificate. The learned Additional Public Prosecutor also brought to the notice of this Court the statement of LW-9 and LW-14, who have spoken about the certificate produced by the 2nd petitioner at the time of interview. The learned Additional Public Prosecutor therefore submitted that the petitioners will have to necessarily prove their innocence only in a course of trial and they cannot ask this Court to conduct a mini trial and give a finding on the factual issues.

7.This Court has carefully considered the submissions made on either side and the materials available on record and this Court also had the opportunity to go through the entire CD file.

8.The prosecution has come up with a categoric case that the cutoff marks for a candidate falling under MBC category and competing under the open quota is 64 marks. It is the further case of the prosecution that only for those candidates in MBC community, who claims under the Ward's quota, the cutoff marks was fixed as 62 marks. Admittedly in this case, the 2nd petitioner has obtained only 62 marks. The 2nd petitioner is said to have introduced a forged service certificate at the time of interview and this is spoken by LW-9 and LW-14. Whether such a service certificate can be acted upon and whether it goes against the instructions issued by the DGP, are all matters which cannot be gone into by this Court exercising its jurisdiction under Section 482 of Cr.P.C.

9.The petitioners are relying upon the reply received by them under the RTI Act, to the effect that the cutoff marks for open candidate is only 62 marks. The stand taken by the prosecution is that this reply is factually wrong and certain documents are relied upon to prima facie show that the cutoff marks for open candidate is 64 marks. This has also been spoken by LW-24, who is the Administrative Officer of the Recruitment and Training Selection. This is again a factual issue which cannot be gone into by this Court in exercise of its jurisdiction under Section 482 of Cr.P.C.

10.In order to substantiate the fact that the service certificate is a forged document, the prosecution is relying upon the statement of LW-3, who denies his signature and categorically states that he never issued any such certificate. That apart, the prosecution also relies upon the report given by the Forensic Department. This is again a factual dispute and this Court cannot render any finding with regard to the same.

11.It is true that LW-14 and LW-9 were initially added as accused persons (A-3 and A-4). Their names have been dropped and subsequently they have been shown as witness. They speak about the fact of the forged certificate being produced by the 2nd petitioner at the time of interview. Whether the 2nd petitioner has really produced this certificate at the time of interview is again a factual dispute into which this Court cannot go into.

12.The final submission that the complaint itself is attended with malafides and was given by an unsuccessful candidate, cannot be assessed in this petition since the malafides requires to be determined only based on the facts that unfolds during the course of trial.

13.In view of the above discussion, this Court is not inclined to interfere with the criminal proceedings. The petitioners will have to necessarily undergo the trial and prove their innocence. It is always left open to the petitioners to raise all the grounds before the trial Court and the same will be considered on its own merits and in accordance with law and the trial Court will not be influenced by the order passed by this Court in the present criminal original petition.

14.In the result, this criminal original petition is dismissed and there shall be a direction to the Judicial Magistrate No.IV, Salem, to complete the proceedings in C.C.No.104 of 2015, within a period of three months from the date of receipt of copy of this order. The trial shall be conducted on a day to day basis in accordance with the guidelines given by the Hon'ble Supreme Court in Vinod Kumar v. State of Punjab reported in [2015(1) MLJ (Cr1) 288]. Consequently, connected miscellaneous petitions are closed.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

KP

To

1.The Inspector of Police,
Organized Crime Unit
CBCID, Salem City.

2. Judicial Magistrate No.IV,
Salem.

3. The Public Prosecutor,
High Court, Madras.

+1 CC to Mr.K. Ravi Anantha Padmanaban, advocate sr 4915.

Cr1.OP No.2967 of 2017

PPA(CO)
SP(12/02/2021)