



CrI.O.P.No.21846 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 14.10.2022
PRONOUNCED ON : 21.11.2022

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

CrI.O.P.No.21846 of 2021 and
CrI.M.P.No.11858 of 2021

Dr.A.Ganapathi

... Petitioner

Vs.

State,
Rep.by Deputy Superintendent of Police,
Vigilance and Anti-Corruption,
Tiruppur.

... Respondent

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the records in Cr.No.16/2021/AC/CB, dated 04th August 2021 on the file of the Deputy Superintendent of Police, Vigilance and Anti-Corruption, Tiruppur and quash the same against petitioner.

For Petitioner : Mr.A.Ramesh, Senior Counsel for
Mr.R.Ashwin

For Respondent : Mr.S.Udhayakumar,
Government Advocate (CrI. Side)

ORDER

This Criminal Original Petition has been filed to quash the FIR in
Crime No.16/2021/AC/CB, dated 04.08.2021, on the file of the



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respondent Police.

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2.Gist of the case, in a nutshell, are as follows:-

(i)The petitioner was the Vice Chancellor of Bharathiar University from 03.03.2016 to 06.02.2018. During the period between June 2016 and November 2016, he initiated steps to recruit Professors, Associate Professors and Assistant Professors in Regular, UGC-XII plan and constitutional collages. It is revealed that the petitioner along with other accused intensely committed irregularities and malpractices by violating the UGC norms with the assistance of Scrutiny Committee Members and allowed maximum number of ineligible candidates for appearing interview to extract maximum bribe from the candidates. Some of the candidates had not even guided doctoral candidates and also did not have either enough teaching or research experience and did not have minimum 'Academic Performance Indicator' as stipulated in the UGC norms.

(ii)The petitioner with intention to extract the maximum bribe from the applicants during the interview, maximum marks were awarded to the bribe givers and suppressed the actual marks of the eligible/efficient



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applicants in the evaluation sheet with the assistance of 'Selection Committee Members' and 'Members of Confidential Work' with sole intention to select the bribe givers to grade them first in the selection list. This was done without conducting test for 'Domain Knowledge' and 'Teaching Skill' and has awarded maximum marks in the head to bribe givers and suppressed the marks of the efficient scholars. When some of the applicants met the petitioner and other members and asked about the selection, the petitioner demanded Rs.25 lakhs from Dr.N.Ponpandian directly; demanded Rs.15 lakhs from Dr.R.Prabhakaran through A2-Dr.N.Dharmaraj; demanded Rs.40 lakhs from Dr.T.Vinoth through A3-Dr.S.Girija; demanded Rs.60 lakhs directly from Dr.R.Ravi; demanded Rs.40 lakhs directly from Dr.Tha.Thayumanavan; demanded Rs.35 lakhs from Dr.M.Vijayakumar through A4-Dr.R.Mathivanan; demanded Rs.25 lakhs from Dr.S.Arun through A5-Dr.P.Anbalagan; demanded Rs.35 lakhs from Dr.C.Nilavumuthan through A6-Dr.V.Ramasubramanian and demanded Rs.25 lakhs from Dr.N.Sri Lakshmi Prabha through A7-Dr.Gnanasekaran.



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(iii) On coming to know about the commission of irregularities, malpractices, demand of bribe in the selection, the Government instructed the petitioner not to conduct the syndicate meeting which was proposed to be held on 19.11.2016 for approving the tainted selection list and also instructed the petitioner not to convene syndicate meeting for selection subject without approval of the Government. Not considering the same, the petitioner deliberately violating the Government direction, convened the syndicate meeting on 22.11.2016 with sole intention to give appointment for the bribe givers and approved the improper selection list on the same day and 75% of the selected candidates joined the duty on the same day.

(iv) Thus, the petitioner conspired with the other members of the Scrutiny Committee Members, Members of Confidential Work and Selection Committee Members, committed the offence as alleged by the prosecution. Hence, an FIR in Crime No.16/2021/AC/CB, dated 04.08.2021 was registered, for offence under Sections 120(B) & 109 of IPC and Sections 7 & 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988 (Hereinafter referred to as 'Act') against seven persons.



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Challenging the FIR, A1 is before this Court by way of above Criminal Original Petition.

3.Learned Senior Counsel appearing for the petitioner submitted that on the basis of the source information, enquiry conducted and without obtaining prior permission from the Government as contemplated under the amended provision, the case under Prevention of Corruption Act, 1988 has been registered against the petitioner. He further submitted that the complaint and the FIR does not disclose any proper information about when and where and how the bribe was demanded and how it was handed over to the petitioner. Similarly, there is no such averment either for the appointed faculties or the aspired faculties paid any illegal gratification to anyone. This case is registered after lapse of five years without mentioning the basic facts which are essential for making out an offence. Learned Senior Counsel further submitted that none of the other members of the syndicate questioned for the recommendations in appointment of faculties. No complaint from any individual received in this case. The case registered with a delay of five years, for which, no reason given. Delay caused deprives the



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fundamental right as guaranteed under the Constitution of India under Article 21.

4.Learned Senior Counsel further submitted that prerequisite for conducting any enquiry or inquiry or investigation where the alleged offence is relatable to any recommendation made or decision taken by such public servant in discharge of his official function. Section 17A of Act, contemplates the procedure that prior approval is mandatory for conducting an enquiry/inquiry or investigation. In this case, no such prior approval obtained from the competent authority. The letter from the Principle Secretary to Government, Higher Education (H2) Department, Secretariat, Chennai, dated 28.12.2020 in No.12361/H2/2020-2 to the Registrar, Bharathiar University, Coimbatore reveals that after completion of enquiry, such request has been placed for permission to register a case. He further submitted that in the case of “***Ramanbhai Ambelal Patel (Jani) and others Versus State of Gujarat and others reported in 2019 SCC OnLine Guj 6353***” it had held that Section 17A of the Prevention of Corruption Act, 1988 has been inserted which would create an absolute bar against conducting any inquiry or investigation, unless there is a



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previous approval.

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5.Learned Senior Counsel further submitted that with regard to the non-compliance of the circular, it is to be seen that the petitioner received the reply under RTI wherein, it is seen that the “if faculty position is created by the Finance Committee (Syndicate Sub-Committee of Bharathiar University) it is not mandatory to get clearance of faculty appointment from the Government of Tamil Nadu”. Since the appointment was collectively done by the syndicate after its approval and it is not an activity committed by the petitioner in individual capacity. The appointments have been given to the eligible candidates after due scrutiny by the entire syndicate and not otherwise. He further submitted that no appointments were given directly by the petitioner abusing the procedure and appointments given to eligible candidates after subjecting the candidates to close scrutiny based on the recommendations of the syndicate on the recommendation of the selection committee. He placed reliance on the decision in the case of “*N.Magesh Versus State of Tamil Nadu and Ors., reported in MANU/TN/5075/2019*” and submitted that negligence or carelessness or even facilitation cannot be termed to be



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abetment and abetment is not a matter of mere suspicion or surmises.

6.He further submitted that the syndicate by its meeting on 31.08.2016 gave recommendations for the written test and also approved the same for Assistant Professors. The syndicate, by its resolution, modified the examination to be conducted only for recruitment of Professor. The proforma for selection of Professor, Associate Professor and Assistant Professor produced shows that the entire selection was conducted in a transparent manner. On 19.11.2016, the Members of the Syndicate gave representation to the petitioner objecting for the postponement of the syndicate meeting without any reason and requested the petitioner to desist from such practise, which might disturb the image of the syndicate. Hence, on the compulsion of the syndicate members, the subsequent meeting was held on 22.11.2016 and syndicate unanimously expressed their solidarity in selection process and further resolved not to give much importance to the newspaper reports and the same to be ignored, further, the syndicate considered the letter of the Joint Secretary, Higher Education Department, Government of Tamil Nadu and approved the selection process to be published.



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7.Learned Senior Counsel further submitted that on the complaint given by one S.Arun Meena, a case in Crime No.349 of 2017, for offence under Sections 3(1)(za)(E), 3(1)(r), 3(2)(va) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2015 was registered against the petitioner. Aggrieved over the same, the petitioner filed Crl.O.P.No.24410 of 2017 before this Court and this Court, by order, dated 30.01.2019 dealt in detail on the allegation made against the petitioner including recruitment process and quashed the FIR finding that a motivated complaint lodged by unsuccessful candidate. He further submitted that the Principal Secretary to Government, Higher Education (H2) Department, Secretariat, Chennai sent a letter, dated 28.12.2020 in No.12361/H2/2020-2 to the Registrar, Bharathiar University, Coimbatore to grant permission for registering a regular case against the petitioner under the provisions of the Prevention of Corruption Act, 1988, which is approved by the syndicate meeting No.327. He further submitted that the persons, who were not selected had motive to make false allegation against the petitioner and other committee members. The Professors, Associate Professors and Assistant Professors were selected in the year 2016, all of them have joined duty and functioning in their respective



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post. From then on, none of them have been disqualified or restrained in any manner. Hence, the allegation in the complaint are bald and vague. Earlier, a preliminary/detailed enquiry conducted and now seeking permission under Section 17A of the Act, 1988 is only an eye wash to cover up the misdeeds. The enquiry/inquiry or investigation conducted so far, is to be considered as non-est in law in view of no prior approval obtained under Section 17A of the Prevention of Corruption Act, 1988.

8. In support of his submissions, the learned Senior Counsel relied on the following decisions:-

(i) ***“Patricia Mukhim Versus State of Meghalaya and Others reported in 2012 SCC OnLine SC 258”***, for the principle that where the allegation made in the FIR or the complaint, even if they are taken on their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused, the FIR is liable to be quashed.

(ii) ***“Anand Kumar Mohatta and another reported in State (NCT of Delhi), Department of Home and another reported in (2019) 11 SCC 706”*** for the principle that even if charge sheet had been filed, Court



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could still examine whether the offences, alleged were prima facie made out from the complainant's FIR, charge sheet, documents etc.

(iii)“*State of Andhra Pradesh Versus P.V.Pavithran reported in (1990) 2 SCC 340*”, for the principle that it is imperative that if investigation of a criminal proceeding staggers on with tardy pace due to the indolence or inefficiency of the investigating agency causing unreasonable and substantial delay resulting in grave prejudice or disadvantage to the accused, the Court as the protector of the right and personal liberty of the citizen will step in and resort to the drastic remedy of quashing further proceedings in such investigation.

(iv)“*Amala Niruba and Ors., Versus State and Ors., reported in 2018 (2) MLJ (Crl.) 313*”, for the principle that the Hon'ble Supreme Court of India, as well as various High Courts, has time and again drawn the attention to the growing tendency of the complainants attempting to give the cloak of a criminal offence to matters which are essentially and purely civil in nature. These attempts are obviously either to apply pressure on the accused or out of enmity towards the accused, or to give



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life to a civil case barred by limitation or to subject the accused to harassment. The present complaint may fall under atleast two of the above categories.

(v)“*Ramanbhai Ambelal Patel and Ors., Versus State of Gujarat and others reported in 2019 SCC OnLine Guj 6353*”, for the principle that no reason to grant such a relief and there is also another obstacle in the form of amendment in the PC Act, which has come into being force in the year 2018, whereby, Section 17A has been inserted after Section 17 of the Act. The provision would create an absolute bar against conducting any inquiry or investigation, unless there is a previous approval.

(iv)“*Dr.Ketan Desai Versus State through Central Bureau of Investigation, CGO Complex, New Delhi-110 003 reported in 2015 SCC OnLine All 4755*”, the relevant portion of the judgment is extracted hereunder:-

“*In A. Subair Vs. State of Kerala, (2009) 6 SCC 587, the Apex court after considering the aforesaid two cases of*



C.K. Damodaran Nair and Subhash Parbat Sonvane (Supra) has held that to establish a charge under Section 13(1)(d) of PC Act it would be necessary to establish that the person charged obtained for himself or for any other person any valuable thing or pecuniary advantage. In case, where the evidence of obtainment is absent, merely for the reason that the public servant has abused his position as a public servant to give advantage to others will not constitute the offence as defined under Section 13(1)(d) of PC Act. Similar view has been taken by the Apex Court in a recent judgement in C.K. Jaffer Sharief Vs. State, (2013) 1 SCC 205. The relevant paras 16, 17 and 18 of C.K. Jaffer Sharief's case (Supra) are reproduced as under:

"16. A fundamental principle of criminal jurisprudence with regard to the liability of an accused which may have application to the present case is to be found in the work Criminal Law by K.D. Gaur. The relevant passage from the above work may be extracted below:

"Criminal guilt would attach to a man for violations of criminal law. However, the rule is not absolute and is subject to limitations indicated in the Latin maxim, actus non facit reum, nisi mens sit rea. It signifies that there can be no crime without a guilty mind. To make a person criminally accountable, it must be proved that an act,



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which is forbidden by law, has been caused by his conduct, and that the conduct was accompanied by a legally blameworthy attitude of mind. Thus, there are two components of every crime, a physical element and a mental element, usually called actus reus and mens rea respectively.”

(vii) ***“Kanwarjit Singh Kakkar Versus State of Punjab and another reported in (2011) 13 SCC 158”***, the relevant portion is extracted hereunder:-

“Thus, the appellants even as per the FIR as it stands, can be held to have violated only the government instructions which itself has not termed private practice as ‘corruption’ under the Prevention of Corruption Act merely on account of charging fee as the same in any event was a professional fee which could not have been charged since the same was contrary to the government instructions.”

(viii) ***“N.Magesh Versus State of Tamil Nadu and another reported in 2019 SCC OnLine Mad 38922”***, the relevant portion is extracted hereunder:-

“19.Even to rope in the petitioner under Section 109 of IPC, the prosecution must establish the element of



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mens rea and a positive act on the part of the petitioner. Negligence or carelessness or even facilitation cannot be termed to be abetment and abetment is not a matter of mere suspicion or surmises. Therefore, even if the entire materials are taken as it is, along with the allegations made in the Final Report, this Court does not find even an iota of evidence against the petitioner to rope him for the offence of abetment.”

9.Learned Senior Counsel relied on the following decisions for the principle that Section 17A of the Act, has to be considered retrospectively.

(i)“***Yashwant Sinha and Ors., Versus Central Bureau of Investigation and Ors., reported in (2020) 2 SCC 338***”, the relevant portion is extracted hereunder:-

“In terms of Section 17A, no Police Officer is permitted to conduct any enquiry or inquiry or conduct investigation into any offence done by a public servant where the offence alleged is relatable to any recommendation made or decision taken by the public servant in discharge of his public functions without previous approval, inter alia, of the authority competent



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to remove the public servant from his Office at the time when the offence was alleged to have been committed. In respect of the public servant, who is involved in this case, it is clause (c), which is applicable. Unless, therefore, there is previous approval, there could be neither inquiry or enquiry or investigation. It is in this context apposite to notice that the complaint, which has been filed by the petitioners in Writ Petition (Criminal) No. 298 of 2018, moved before the first respondent-CBI, is done after Section 17A was inserted.”

(ii) “Chennai Financial Markets & Accountability Versus UOI & another in W.P.No.35893 of 2019”, for the point that validity of Section 17A of Act, not yet attained finality.

(iii) “Prakash Rai Versus Bihar School Examination Board and Ors., reported in MANU/BH/0878/2022”, the relevant portion is extracted hereunder:-

“18. Moreover, the reliefs sought for by the petitioner cannot be granted, as the allegations of misconduct and defalcation made against Mr. Anand



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Kishore, the Chairman, BSEB would attract the ingredients of the offences under the Prevention of Corruption Act, 1988 and, in view of Section 17A of the aforesaid Act, which came into force on 26th July, 2018 there cannot be any enquiry or inquiry or investigation into any offence alleged to have been committed by the aforesaid Chairman, BSEB without the prior approval of the appropriate Government. It is not the case of the petitioner that he has obtained sanction from the concerned Government against the public servant concerned for initiating investigation against him.”

(iv)“**Himanshu Yadav Versus State of Rajasthan and Ors., reported in MANU/RH/0121/2022**”, the relevant portion is extracted hereunder:-

“26. According to this Court both enquiry and investigation are proscribed sans prior approval of the competent authority. The embargo under section 17A operates wherever the alleged offence is claimed to have been committed in connection with the discharge of official duties. The allegation of demand of bribe definitely has a nexus with the work the petitioner was supposed to do as a public servant, hence the provision of section 17A of the



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Act of 1988 would create a road block in the way of the investigating officer to proceed further.”

(v)“Ashok Chaturvedi Versus State of Chattisgarh and Ors., reported in MANU/CG/0246/2021”, the relevant portion is extracted hereunder:-

“In the considered opinion of this Court, since the first writ petition {W.P.(Cr.) No. 17/2020} filed by the petitioner herein questioning the preliminary enquiry has been entertained in order to examine the preliminary enquiry whether it is violation of Section 17A of the PC Act and protective order has been passed on 22-1-2020 and further, the two instant writ petitions filed against the registration of FIRs against the petitioner on 25-4-2020 and 5-5-2020 have also been entertained to examine the same issue as to whether it is in violation of Section 17A of the PC Act and their Lordships of the Supreme Court have been pleased to confirm the interim order of this Court and further, pleadings of the parties in the writ petitions are complete but the matter could not be heard finally on account of default said to have been made by the



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petitioner in not complying the order dated 11-8-2020 in its letter and spirit, therefore, it would be expedient to hear the matter for final disposal at motion stage on 3-5-2021 subject to complying the order dated 11-8-2020 regarding filing of paper book, list of dates and events, list of citations, etc., on or before 30-4-2021. It is ordered accordingly.”

10.Learned Government Advocate (Crl. Side) appearing on behalf of the respondent filed counter, typed set and made his submissions that in this case, the petitioner holding position of Vice Chancellor in Bharathiar University, indulged in corrupt and illegal activities with the assistance of Selection Committee Members and Members of Confidential Work in selection of Professors, Associate Professors and Assistant Professors. Since several complaints and news received about malpractices adopted in selection process, the Government instructed the petitioner not to convene the syndicate meeting and not to proceed with the selection process. Despite the same, the petitioner convened the syndicate meeting on 21.11.2016 as though the syndicate members forced the petitioner to convene the cancelled syndicate meeting dated 19.11.2016. On 21.11.2016, all the selection process completed and



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approved. Almost 75% of the selected candidates joined their duty on the same day though they hail from different parts of the State. He further submitted that the instruction was given by the Government well in advance to the petitioner not to conduct further syndicate meeting without approval of the Government. Despite the same, the petitioner purposefully conducted the meeting within the short span of time, thereby, appointed bribe givers and approved the improper selection list. There were several complaint by the unsuccessful candidates, who were deprived of their selection by giving frivolous reason. The selection has been made only for the persons, who gave highest amount. The Scrutiny Committee Members, Members of Confidential Work and Selection Committee Members have all joined together and collected lakhs and lakhs of rupees for selecting the inefficient candidates.

11.Learned Government Advocate produced the details with regard to the demand made by the accused person from the candidates and the same is as follows:-

ALLEGED DEMAND OF ILLEGAL GRATIFICATION



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S. No.	To whom the illegal gratification was demanded	Name of the person who demanded illegal gratification	Demanded amount	Post for which the illegal gratification was demanded
1	Dr.N.Ponpandian	Ganapathi (A1), Vice Chancellor	Rs.25 Lakhs	Professor in the Department of Nanoscience and Technology
2	Dr.R.Prabhakaran	A1 through Dr.N.Dharmaraj (A2), Professor in the Department of Chemistry	Rs.15 lakhs	Associate Professor in the Department of Chemistry
3	Dr.T.Vinoth Kumar	A1 through Dr.S.Girija (A3), Assistant Professor in the Department of Bio-Technology	Rs.40 lakhs	Associate Professor in the Department of Biotechnology and Microbial Bio-Technology
4	Dr.R.Ravi	Ganapathi (A1), Vice Chancellor	Rs.60 lakhs	Associate Professor in the Department of Extension and Carrier Guidance and Education
5	Dr.Tha.Thayumana van	Ganapathi (A1), Vice Chancellor	Rs.40 lakhs	Assistant Professor in the Environmental Sciences
6	Dr.M.Vijayakumar	A1 through Dr.R.Mathivanan (A4), Director, Human Resource Development Centre	Rs.35 lakhs	Assistant Professor, Sociology
7	Dr.S.Arun Meena	A1 through	Rs.25 lakhs	Assistant



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S. No.	To whom the illegal gratification was demanded	Name of the person who demanded illegal gratification	Demanded amount	Post for which the illegal gratification was demanded
		Dr.P.Anbalagan (A5), Associate Professor, Physical Education		Professor, Bio-Informatics
8.	Dr.Nilavamuthan	A1 through Dr.V.Ramasubramanian (A6), Assistant Professor Department of Zoology	Rs.35 lakhs	Assistant Professor, Bio-Informatics
9	Dr.N.Sri Lakshmi Prabha	A1 through Dr.Gnanasekaran (A7), Professor and Head Department of Tamil	Rs.25 lakhs	Assistant Professor, Biotechnology

12.He also produced the eligible qualification details of the persons appointed and the same is as follows:-

S. No .	Alleging Candidate who applied for the post	Actual Appointed Candidate	Reasoning/Qualifications of Selected candidate
1	Dr.Thayumanavan	Rajkumar	1.Ramalingasamy Reentry fellow in Central University, Thiruvallur. 2.2 nd Top World Ranking Scientist in Environmental Sciences conducted by Stanford University, USA.



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S. No .	<i>Alleging Candidate who applied for the post</i>	<i>Actual Appointed Candidate</i>	<i>Reasoning/Qualifications of Selected candidate</i>
			3.Recipient of “Think of Ecology” Awards (Rs.25,000/-)
2.	Dr.Vijayakumar	Selected Candidate	1.Ph.D along with NET exam clearance. 2.Belongs to SC(A)-1 community which is also an eligible community.
		Another candidate	1.From a GT community on physical disability quota
3	Dr.T.Vinothkumr (16 research papers, API Score of 845)	Dr.Thirunavukkarasu	1.37 Research publications, 4 US patents, API Score 974. 2.7 of his research papers published in Journals with more than 10 Impact Factors. 3.Recipients of Ramalingasamy Reentry fellowship 4.Publication in prestigious Scientific Journal “Proceedings of National Academy of Sciences”
4.	Dr.Nilavamuthan	Ms.Usha	1.UGC Kothari Post-Doctoral Fellowship. 2.More Publications in



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S. No	<i>Alleging Candidate who applied for the post</i>	<i>Actual Appointed Candidate</i>	<i>Reasoning/Qualifications of Selected candidate</i>
			International Journals. 3.Better Qualifications.

13.It is further submitted that the investigation is in progress and so far eight witnesses examined, who confirms the demand made by the petitioner as well as the other accused, transfer of money to the bank account of the accused person through intermediaries and directly. In this case, the petitioner's primary contention is that the approval under Section 17A of the Act, has been sought by the Principal Secretary to Government, Higher Education (H2) Department, Secretariat, Chennai, vide his letter, dated 28.12.2020 in No.12361/H2/2020-2 to the Registrar, Bharathiar University, Coimbatore, which would prove that already detailed/preliminary enquiry has been conducted, which is against the provisions under the Prevention of Corruption Act, 1988. This ground may not be available to the petitioner. On the demeanour, if it is taken as a valid ground, then to there is nothing mentioned in the letter about the petitioner. The petitioner already out of service, no requirement under



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17A of the Act required. Further, from the selection process, it is seen that two of the qualification test namely Assessment of Domain Knowledge and Teaching Skill tailored, made to facilitate to add up the marks to the interested candidates of the selection committee and the Vice Chancellor.

14.He further submitted that despite clear instructions from the Government not to convene the syndicate meeting and not to approve the selection or appointment of Professors, since several complaints received and also news items published in the newspaper about the malpractices in the selection process. On 22.11.2016, for other consideration, the syndicate meeting was convened and the selection made as desired and approved by the petitioner, Selection Committee Members and the Members of Confidential Work and thereby, eligible and qualified candidates were deprived of employment. On the other hand, ineligible candidates were given employment by receiving bribe amount. The selection of ineligible candidates are challenged before this Court, which is pending in Writ Proceedings. As regards this petitioner is concerned,



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he was caught red handed while receiving bribe amount and a separate case registered against him by the Vigilance and Anti-Corruption, Coimbatore in Crime No.02/2018/AC/CB. Before registration of the above said case, the petitioner attempted to get illegal gratification from the candidate Dr.S.Gowri, and attempt failed. In the above case, Dr.S.Gowri confirmed in her statement about the demand made by the petitioner and hence, she was cited as LW-42 in the above case. When the petitioner was caught red handed in the above said case, he attempted to screen the offence by causing disappearance of evidence with the help of his wife in order to save himself from the legal punishment. The above said trap case was taken on file by the learned Special Judge, Special Court for trial cases under the Prevention of Corruption Act, 1988, Coimbatore and assigned the Special C.C.No.01 of 2021, wherein A2 and A4 in the instant case are arrayed as A2 and A3 respectively and they are also facing the trail along with the petitioner/Accused. The offences committed by the accused in the instant case in Crime No.02 of 2018, which relates to Department of Higher Education. Hence, the act of the accused would certainly ruin the knowledge and the quality of deserving students. This is only a tip of iceberg. During investigation more



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materials collected and further materials are forthcoming. Hence, he prayed for dismissal of this Criminal Original Petition.

15.Further, the learned Government Advocate (Crl. Side) submitted that quashing of FIR can be entertained only in rarest of rare cases and referred to the following decisions:-

(i)“*Neeharika Infrastructure Private Limited Versus State of Maharashtra and Other reported in 2021 SCC OnLine SC 315*” and the relevant portion is extracted hereunder:-

“*56. In the recent decision of this Court in the case of Skoda Auto Volkswagen India Private Limited v. State of Uttar Pradesh, 2020 SCC OnLine SC 958, it is observed in paragraph 41 as under:*

“*41. It is needless to point out that ever since the decision of the Privy Council in King Emperor v. Khwaja Nazir Ahmed AIR 1945 PC 18, the law is well settled that Courts would not thwart any investigation. It is only in cases where no cognizable offence or offence of any kind is disclosed in the first information report that the Court will not permit an investigation to go on. As cautioned by this Court in State of Haryana v. Bhajan Lal 1992 Supp (1) SCC 335,*



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the power of quashing should be exercised very sparingly and with circumspection and that too in the rarest of rare cases. While examining a complaint, the quashing of which is sought, the Court cannot embark upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or in the complaint. In S.M. Datta v. State of Gujarat (2001) 7 SCC 659 this Court again cautioned that criminal proceedings ought not to be scuttled at the initial stage. Quashing of a complaint should rather be an exception and a rarity than an ordinary rule. In S.M. Datta (supra), this Court held that if a perusal of the first information report leads to disclosure of an offence even broadly, law courts are barred from usurping the jurisdiction of the police, since the two organs of the State operate in two specific spheres of activities and one ought not to tread over the other sphere.”

57. From the aforesaid decisions of this Court, right from the decision of the Privy Council in the case of Khawaja Nazir Ahmad (supra), the following principles of law emerge:

- i) Police has the statutory right and duty under the relevant provisions of the Code of Criminal Procedure contained in Chapter XIV of the Code to investigate into cognizable offences;*
- ii) Courts would not thwart any investigation into the cognizable offences;*



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iii) *However, in cases where no cognizable offence or offence of any kind is disclosed in the first information report the Court will not permit an investigation to go on;*

iv) *The power of quashing should be exercised sparingly with circumspection, in the 'rarest of rare cases'. (The rarest of rare cases standard in its application for quashing under Section 482 Cr.P.C. is not to be confused with the norm which has been formulated in the context of the death penalty, as explained previously by this Court);*

v) *While examining an FIR/complaint, quashing of which is sought, the court cannot embark upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR/complaint;*

vi) *Criminal proceedings ought not to be scuttled at the initial stage;*

vii) *Quashing of a complaint/FIR should be an exception and a rarity than an ordinary rule;*

viii) *Ordinarily, the courts are barred from usurping the jurisdiction of the police, since the two organs of the State operate in two specific spheres of activities. The inherent power of the court is, however, recognised to secure the ends of justice or prevent the abuse of the process by Section 482 Cr.P.C.*

ix) *The functions of the judiciary and the police are complementary, not overlapping;*

x) *Save in exceptional cases where non-interference would result in miscarriage of justice, the Court and the judicial process should not interfere at the stage of investigation of offences;*

xi) *Extraordinary and inherent powers of the Court do not confer an arbitrary jurisdiction on the Court to act according to its whims or caprice;*



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xii) *The first information report is not an encyclopaedia which must disclose all facts and details relating to the offence reported. Therefore, when the investigation by the police is in progress, the court should not go into the merits of the allegations in the FIR. Police must be permitted to complete the investigation. It would be premature to pronounce the conclusion based on hazy facts that the complaint/FIR does not deserve to be investigated or that it amounts to abuse of process of law. During or after investigation, if the investigating officer finds that there is no substance in the application made by the complainant, the investigating officer may file an appropriate report/summary before the learned Magistrate which may be considered by the learned Magistrate in accordance with the known procedure;*

xiii) *The power under Section 482 Cr.P.C. is very wide, but conferment of wide power requires the court to be cautious. It casts an onerous and more diligent duty on the court;*

xiv) *However, at the same time, the court, if it thinks fit, regard being had to the parameters of quashing and the self-restraint imposed by law, more particularly the parameters laid down by this Court in the cases of R.P. Kapur (supra) and Bhajan Lal (supra), has the jurisdiction to quash the FIR/complaint; and xv) When a prayer for quashing the FIR is made by the alleged accused, the court when it exercises the power under Section 482 Cr.P.C., only has to consider whether or not the allegations in the FIR disclose the commission of a cognizable offence and is not required to consider on merits whether the allegations make out a cognizable offence or not and the court has to permit the investigating agency/police to investigate the allegations in the FIR.”*



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(ii) For the point of prior approval under Section 17A of the Prevention of Corruption Act, 1988, he relied on the decision in the cases of “***Shankara Bhat Versus State of Kerala reported in 2021 SCC OnLine Ker 3427***”, the relevant portion is extracted hereunder:-

“26. The reasonable conclusion that can be arrived at regarding the scope of section 17A is that prior approval under section 17A for conducting any enquiry, inquiry or investigation is required only when the offence alleged is relatable to a decision taken or recommendation made by the public authority and it involves a debatable or suspicious or doubtful recommendation made or decision taken by the authority. Acts, which are ex facie criminal or constitute an offence do not require approval under section 17A of P.C. Act. This legal proposition, seems to be clear from the statute and is in consonance with the spirit of the Prevention of Corruption Act and also in consonance with the legal principles laid down in relation to section 197 Cr.P.C.”

(iii) The Hon'ble Apex Court in the case of “***State of Rajasthan Versus Tejmal Choudhary reported in 2022 LiveLaw (SC) 158***” following the decision ***Shankara Bhat*** (cited supra), held 17A provision



is prospective. The relevant portion is extracted hereunder:-

“8. In T.N. Bettaswamaiah vs. State of Karnataka being W.P. No.29176/2019 (GM-RES), decided on 20.12.2019, which is reported reported in MANU/KA/9503/2019, the Karnataka High Court referred to the judgment of this Court in Hitendra Vishnu Thakur vs. State of Maharashtra & Ors. reported in (1994) 4 SCC 602, and rightly held:-

“21. ... But in Hitendra Vishnu Thakur & Ors. vs. State of Maharashtra and Others (1994) 4 SCC 602 it is held that a statute which not only changes the procedure but also creates new rights and liabilities shall be construed to be prospective in operation unless otherwise provided either expressly or by necessary implication. A careful reading of both Section 17A as also Section 19 do not contain any express provision to show that they are retrospective in nature nor it is so discernable by implication.

22. In Dr. Subramanian Swamy vs. Dr. Manmohan Singh and Another (2012) 3 SCC 64 it is held that any anti-corruption law has to be interpreted n such a fashion as to strengthen fight against corruption and where two constructions are eminently reasonable, the Court has to accept the one that seeks to eradicate corruption than the one which seeks to perpetuate it.””



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16.Thus, the points raised by the petitioner are not sustainable to quash the FIR against him and he sought for dismissal of this Quash Petition.

17.This Court considered the rival submissions and perused the materials available on record.

18.Considering the submissions and on perusal of the materials, the contention of the petitioner is on short compass.

(i)Whether the letter issued by the Principle Secretary to Government, Higher Education (H2) Department, Secretariat, Chennai, dated 28.12.2020 in No.12361/H2/2020-2 to the Registrar, Bharathiar University, Coimbatore requiring permission for registering a regular case, is proper.



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(ii) Whether Section 17A is prospective or retrospective.

19. In this case, on 14.07.2016, the Bharathiar University, Coimbatore published Advertisement No.E7/2016/15072-23 inviting eligible candidates for the recruitment of Assistant Professor, Associate Professor and Professor as per UGC norms on regular basis. In the Advertisement in Essential Qualification (column D), it is stated that UGC/AICTE Norms will be followed for Professors, Director/Professor, Assistant Professor recruitments in Management. The other condition (IX) published in the Advertisement is breached. The Dinamalar Paper Publication was published on 16.11.2016 exposing the corruption in selection process in Bharathiar University. Immediately, the Joint Secretary to Government, Higher Education (H2) Department, Secretariat, Chennai sent communication to the Registrar, Bharathiar University by letter No.19766/H2/2016-1, dated 16.11.2016 calling for specific remarks in recruitment of 64 Professors, Associate Professors and Assistant Professors. It is seen that the petitioner/A1, on his own, directed the Registrar, Bharathiar University to fix syndicate meeting on 22.11.2016 at 11.00 a.m. The Registrar, Bharathiyar University



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convened 293rd Special Syndicate Meeting on 22.11.2016 @ 11.00 a.m., violating Government direction. Hence, the Principal Secretary to Government, Higher Education (H2) Department, Secretariat, Chennai, vide letter No.19766/H2/2016, dated 24.04.2017, directed the Directorate of Vigilance and Anti Corruption to conduct a detailed enquiry, finding serious irregularities committed by the Vice Chancellor and Syndicate Members by approving and issuing appointment orders to ineligible candidates for the post of Assistant Professor, Associate Professors and Professors and also finding the manner in which the syndicate meeting convened and appointment orders issued, which tells stories how in a concerted manner all things happened despite specific instructions not to issue appointment orders to the candidates. Following the direction of the Government, dated 24.04.2017, the Directorate of Vigilance and Anti Corruption conducted detailed enquiry much before the Amendment 16 of 2018, which came into effect on 26.07.2018.

20.In this case, the permission sought for register a regular case, is not for the petitioner/A1, who is no more a public servant. The letter from the Principal Secretary to Government, Higher Education (H2)



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Department, Secretariat, Chennai in No.12361/H2/2020-2, dated 28.12.2020 to the Registrar, Bharathiar University, Coimbatore is for A2 to A7. This letter is not required the period of offence is from June 2016 to November 2016. Section 17A of the Act came into statute with effect from 26.07.2018. The letter of the Principal Secretary to Government, Higher Education (H2) Department, Secretariat, Chennai in No.12361/H2/2020-2, dated 28.12.2020 is superfluous. Hence, the contention of the learned Senior Counsel without previous approval, detailed enquiry completed and seeking permission to register a regular case, cannot be countenanced. As regards the other contention that applicability of Section 17A of the Act is retrospective, fails in view of the authoritative pronouncement of the judgment by the Hon'ble Apex Court in the case of “*State of Rajasthan Versus Tejmal Choudhary reported in 2022 LiveLaw (SC) 158*”, wherein the Apex Court on the principle of interpretation held that the legislative intent in the enactment of a statute is to be gathered from the express words used in the statute unless the plain words literally construed give rise to absurd results and 17A of the Act does not have retrospective operation. Further, the Hon'ble Apex Court referring to the case of “*Dr. Subramanian Swamy vs. Dr.*



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Manmohan Singh and Another (2012) 3 SCC 64” held that any anti-corruption law has to be interpreted in such a fashion as to strengthen fight against corruption and where two constructions are eminently reasonable, the Court has to accept the one that seeks to eradicate corruption than the one which seeks to perpetuate it. Section 17A protection is given to the public servant for rightful and justifiable justice. In this case, it is not so.

21. In this case, now the investigation is in progress and so far materials collected by way of statement and documents confirmed the conspiracy between each of the accused in the entire process of selection and appointment of Associate Professors, Assistant Professors and Professors. This is a serious issue. By the act of the perpetrators, they have not only enriched themselves by corrupt or illegal practices, they have also given appointment to the ineligible candidates, correspondingly denied employment to the eligible hardworking deserving candidates. In the process, the people might loose faith in the system of education,



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selection and appointment. The candidates who aspire for appointment in university and colleges who burn midnight oil, are deprived of their rightful opportunity. Their dreams shattered. These acts have to be stopped in the bud, otherwise the University and Educational Institutions would loose its credibility.

22.In the present case, the FIR discloses cognizable offence and the investigation is in progress. At this stage, the FIR cannot be quashed and the investigation cannot be thwarted or stalled. Considering the allegations made in FIR and other materials, this Court is of opinion that this is not a fit case where this Court should exercise its inherent power under Section 482 Cr.P.C., to quash the FIR and to stop the investigation.

23.In view of the discussion made above, this Court finds no merit in the Criminal Original Petition and it accordingly fails and is dismissed. Consequently, the connected Miscellaneous Petition is closed.

21.11.2022

Speaking order/Non-speaking order
Index: Yes/No
Internet: Yes/No



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To

- 1.The Deputy Superintendent of Police,
Vigilance and Anti-Corruption,
Tiruppur.
- 2.The Public Prosecutor,
High Court, Madras.

Note: Issue Order Copy on 21.11.2022.



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M.NIRMAL KUMAR, J.

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PRE-DELIVERY ORDER IN
CrI.O.P.No.21846 of 2021

21.11.2022