



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 29/04/2022

Pronounced on : 09/09/2022

CORAM:

THE HON'BLE MR JUSTICE G.ILANGO VAN

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CrI.OP(MD)Nos.19909, 19912, 19913, 19915 of 2021

and

CrI.OP(MD)No.3610 of 2022

&

CrI.MP(MD)Nos.2655, 3683, 3684, 3685 and 3686 of 2022

(1)CrI.OP(MD)No.19909 of 2021:-

S.Prabakar : Petitioner/A2
Vs.

1.The State through
The Deputy Superintendent of Police,
Vigilance and Anti-Corruption,
Tirunelveli.

2.The Inspector of Police,
Department of Vigilance and Anti-
Corruption,
Tirunelveli. : Respondents/Complainants

Prayer: Criminal Original Petition is filed under Section 482 Cr.P.C., to call for the records in Special CC No.5 of 2021 on the file of the Chief Judicial Magistrate Court. (Special Court for Trial cases), Tirunelveli and quash the same.

For Petitioner : Mr.G.Prabhu Rajadurai

For Respondents : Mr.R.Meenakshisundaram
Additional Public Prosecutor

For Intervenor : Mr.Raja Karthikeyan

(2)CrI.OP(MD)No.19912 of 2021:-

S.Prabakar : Petitioner/A2
Vs.

1.The State through
The Deputy Superintendent of Police,
Vigilance and Anti-Corruption,
Tirunelveli.



2.The Inspector of Police,
Department of Vigilance and Anti-
Corruption,
Tirunelveli.

: Respondents/Complainants

Prayer: Criminal Original Petition is filed under Section 482 Cr.P.C., to call for the records in Special CC No.6 of 2021 on the file of the Chief Judicial Magistrate Court. (Special Court for Trial cases), Tirunelveli and quash the same.

For Petitioner : Mr.G.Prabhu Rajadurai

For Respondents : Mr.R.Meenakshisundaram
Additional Public Prosecutor

For Intervenor : Mr.Raja Karthikeyan

(3)Crl.OP(MD)No.19913 of 2021:-

S.Prabakar : Petitioner/A2

Vs.

1.The State through
The Deputy Superintendent of Police,
Vigilance and Anti-Corruption,
Tirunelveli.

2.The Inspector of Police,
Department of Vigilance and Anti-
Corruption,
Tirunelveli.

: Respondents/Complainants

Prayer: Criminal Original Petition is filed under Section 482 Cr.P.C., to call for the records in Special CC No.7 of 2021 on the file of the Chief Judicial Magistrate Court. (Special Court for Trial cases), Tirunelveli and quash the same.

For Petitioner : Mr.G.Prabhu Rajadurai

For Respondents : Mr.R.Meenakshisundaram
Additional Public Prosecutor

For Intervenor : Mr.Raja Karthikeyan



(4)Crl.OP(MD)No.19915 of 2021:-

S.Prabakar

: Petitioner/A2

Vs.

1.The State through
The Deputy Superintendent of Police,
Vigilance and Anti-Corruption,
Tirunelveli.

2.The Inspector of Police,
Department of Vigilance and Anti-
Corruption,
Tirunelveli.

: Respondents/Complainants

Prayer: Criminal Original Petition is filed under Section 482 Cr.P.C., to call for the records in Special CC No.8 of 2021 on the file of the Chief Judicial Magistrate Court. (Special Court for Trial cases), Tirunelveli and quash the same.

For Petitioner : Mr.G.Prabhu Rajadurai

For Respondents : Mr.R.Meenakshisundaram
Additional Public Prosecutor

For Intervenor : Mr.Raja Karthikeyan

(5)Crl.OP(MD)No.3610 of 2022:-

Dr.P.K.Kalyani

: Petitioner/A1

Vs.

1.The State through
The Deputy Superintendent of Police,
Vigilance and Anti-Corruption,
Tirunelveli.

2.The Inspector of Police,
Department of Vigilance and Anti-
Corruption,
Tirunelveli.

: Respondents/Complainants

Prayer: Criminal Original Petition is filed under Section 482 Cr.P.C., to call for the records in Special CC No.5 of 2021 on the file of the Chief Judicial Magistrate Court. (Special Court for Trial cases), Tirunelveli and quash the same.



For Petitioner : Mr.T.Lajapathy Roy
For Respondents : Mr.R.Meenakshisundaram
Additional Public Prosecutor
For Intervenor : Mr.Raja Karthikeyan

COMMON ORDER

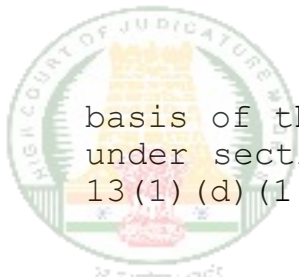
These criminal original petitions are filed seeking quashment of the case in Special CC Nos.5 to 8 of 2021 on the file of the Chief Judicial Magistrate, (Special Court for Trial cases), Tirunelveli.

2.The petitioner S.Prabakar concerning in CC No.5 of 2021, (*) in CC No.6 of 2021, (*) and in CC No.7 of 2021, so also in CC No.8 of 2021. So S.Prabakar is the accused in Special CC Nos.5, 6, 7 and 8 of 2021. In so far as P.K.Kalyani is concerned, she is the accused in Special CC No.5 of 2021. **(*)Now the above said Calender Cases have been transferred to the file of the Special Court for the Trial of cases under the Prevention of Corruption Act, Tirunelveli, and renumbered as Special Case Nos.5 to 8 of 2021.**

3.In all the cases Crime No.7 of 2017 on the file of the respondent, different final report has been filed. The origin is the single FIR in Crime No.7 of 2017.

4.One Periadurai, S/o.Muthiah Pandian sent a complaint stating that malpractices were done in the admission of the students in Post Graduate degree courses M.A(English) and M.Phil (English) by Dr.Kalyani, who is the Head of the Department (English), Manonmaniam Sundaranar University, Tirunelveli.

5.As per the order of the Director, Vigilance & Anti-Corruption, Chennai, enquiry was undertaken and S.Prabakar was the Head of the Department of English, now Controller of Examination, Manonmaniam Sundaranar University, Tirunelveli; Both of them entered into criminal conspiracy to do the illegal act and in pursuance of the conspiracy, by misusing the official position have issued admission in the Post Graduate degree in the University for ineligible candidates, who secured lessor mark than the eligible mark prescribed; They refused admission for eligible candidates for the Academic year 2011-2012, 2012-2013, 2013-2014 and 2014-2015. They also framed incorrect records, used the same as genuine and they have violated the instructions issued by the Government of Tamil Nadu in G.O.(1D) High Education (G1) Department, dated 31/05/2013 and G.O(1D) No.75 Higher Education Department, dated 10/05/2008, by which, communal rotation has been prescribed. They also prepared incorrect admission list in admitting ineligible candidates and refused to admit the eligible candidates. On the

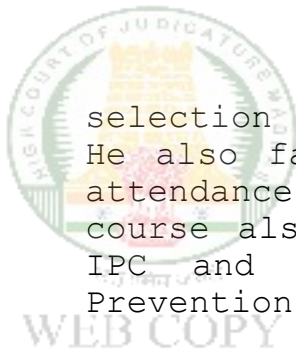


basis of the above said enquiry, FIR was registered for the as under sections 120(B), 167, 465, 468, 471 IPC and section 13(2) r/w 13(1)(d)(1 & 2) of the Prevention of Corruption Act, 1988.

6. Investigation was undertaken and after completing the formalities of investigation, final report was filed in the form of four final reports, charging both the accused persons for different kinds of offences in respect of separate occurrences.

7. Charge sheet No.1 reads that Tamil Nadu State Council for Higher Education Act, 1992 applies to all the Universities, Colleges and Institutions of Higher Education. So as per the above said Act, Government Order is published by the Higher Education Department and that should be followed by all the Universities. If any violation is noticed, then the Vice Chancellor and the Registrar will be responsible. The Department of English, M.S University, Tirunelveli issued notification for the Academic Years 2011-2012 and 2012-2013 stating that the selection of the candidates for admission to PG/M.Phil/P.G Diploma would be passed on Tamil Nadu Government Higher Education Department norms. But the Convenor of the Committee by name Dr.R.T.Sabapathy Mohan, now retired, issued a subsequent contradictory order/Circular asking the H.O.Ds of all the Departments to consider norms. That circular, negatived, superseded and violated the norms published by the University in the above said notification. The mark prescribed is contradictory to the above said norms fixed in the notification. The Selection Committee headed by the above said S.Prabakar devised illegal means. Similarly the Selection Committee headed by S.Prabakar selected candidates for admission during 2013-2014 and 2014-2015 considering 50% entrance examination mark and 50% academic marks. They ignored their own admission guidelines. The Selection Committee must prepare a merit list in descending order of marks. Then a Note Order was prepared by the H.O.D and sent to the University Department Sections for verification. In turn, it was sent to Registrar. The Registrar must approve it and sent the same to the Vice Chancellor. After approval by the Vice Chancellor/Convenor, the list will be sent back to the H.O.D for commencement of the admission process.

8. A2-Prabakaran did not communicate the circular, dated 02/06/2011. So the preparation of the selection list by A1 and A2 constitute the offences punishable under section 167 IPC and section 13(2) r/w 13(1)(d)(i)(iii) of the Prevention of Corruption Act, 1988. They failed to follow the reservation policy in the process of selection and they failed to receive the condonation fee for student having less attendance, etc. They rejected SC candidate, who secured higher marks and selected the students, who scored lower marks. They created incorrect waiting list and also extended the last date without approval. So by this process, they created opportunity for un-deserving candidates by violating the circular. A1-P.K.Kalyani and A2-S.Prabakar formed the guidelines, the Selection Committee in violation of the guidelines. So from the merit list and



selection list, without giving reservation for special cases. He also failed to collect fee from the candidates for their late attendance. The same illegality was followed in M.Phil English course also. So they have committed the offence under section 167 IPC and under section 13(2) r/w 13(1)(d)(i)(ii)(iii) of the Prevention of Corruption Act, 1988.

9.The second charge is with reference to the Academic year 2012-2013. Third charge is with reference to the Academic year 2013-2014. Forth charge is with reference to the Academic year 2014-2015.

10.All the above said cases have been taken cognizance. Now the trial is going to commence by framing charges.

11.Now seeking quashment of all the final reports, the above said P.K.Kalyani, who is the Head of Department and S.Prabakar, former Professor filed these separate quash petitions.

12.Heard both sides. Intervenor is also present and he was also permitted to argue the matter.

13.In all the matters, a simple point arises for consideration is whether the selection process, which was undertaken by the accused persons during the above said period 2011 to 2014 is illegal and if it is so illegal, whether it attracts the criminal liability.

14.In short, the question, which arises for consideration in simple terms is, whether the alleged misconduct with reference to the violation of the circular, that was issued by Tamil Nadu Government and violating the procedure contemplated under the provision of the Tamil Nadu State Council for Higher Education Act, 1992, amount to criminal misconduct as defined under section 13 (1) of the Prevention of Corruption Act.

15.Section 13(1)(d) reads as follows:-

(d) if he,-

(i) by corrupt or illegal means, obtains for himself or for any other person any valuable thing or pecuniary advantage; or

(ii) by abusing his position as a public servant, obtains for himself or for any other person any valuable thing or pecuniary advantage; or

(iii) while holding office as a public servant, obtains for any person any valuable thing or pecuniary advantage without any public interest; or



16.Now the prosecution wants to fix the above said violation of circular under section 13(1)(d) of the Prevention of Corruption Act.

17.The petitioners are the public servants as defined under section 11(C) of the Act.

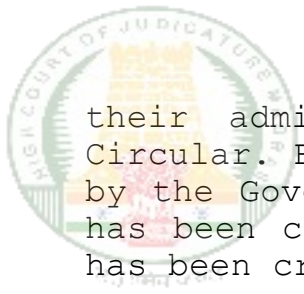
18.Now A1-P.K.Kalyani was working as HOD from 31/12/2012 to 30/06/2017 and A2-S.Prabhakar was working from 31/12/2019 to 31/12/2021. S.Prabhakar is the successor of P.K.Kalyani of M.S. University. Now P.K.Kalyani retired and S.Prabhakar still in service. According to S.Prabhakar, the University is guided by its Act called 'M.S. University Act'. Being the HOD, the accused persons are bound by the resolution passed by the Selection Committee. Selection process is being undertaken through the Registrar. The Registrar will issue notification and the Committee will be formed for selecting the candidates. Normally the H.O.D, Senior and another member from SC/ST community will be the Selection Committee. The University, by circular, dated 28/05/2010 directed the H.O.D to fix the eligible for Post Graduate courses by 75% of the under graduation marks and 25% of the Higher Secondary mark for M.Phil English course also that was admitted. Based upon on the above said, notification was issued. The above said circular was uploaded by the Vice Chancellor and Registrar and Dean of the University. So according to S.Prabhakar, what was undertaken by him as one of the members of the Selection Committee was adopting and following the resolution passed by the syndicate, he is bound by syndicate resolution and he cannot violate the same. He would further submit that during the relevant period for M.A(English) the post graduate M.Phil English course were not much significance. For the past four years, no seats were filled up and so there is no question of gaining pecuniary advantage.

19.Now the case of the first accused/P.K.Kalyani in addition to the ground that has been made by S.Prabhakar, she would state that the case of the prosecution squarely cover under clause (g) of the judgment of the Hon'ble Supreme Court in **Bajanlal** case.

20.Now with these background, let us proceed further.

21.Now the learned counsel appearing for the intervenor as well as the Additional Public Prosecutor would submit that FIR has been registered only based upon the direction issued by the Division Bench of this court in a writ petition filed by the complainant in the capacity of a public as Public Interest Litigation.

22.According to the intervenor and the learned Additional Public Prosecutor, the main allegation against the petitioners is that they have not followed the Government Circular, which mandate the strict adherence to the reservation formula, they have violated



their admission process and completely violated the Government Circular. Because of the violation of the above said circular issued by the Government from time to time, some sort of social imbalance has been created by them, which means according to him, inequality has been created by the above said selection process.

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23.As noted above, eligibility has been discarded and ineligible candidates have been taken, even for the attendance and collection of continuous fee has done away. So this according to the respondent will amount to clear misconduct as defined under section 13(1) of the Prevention of Corruption Act.

24.In answer to the above said argument, S.Prabhakar and P.K.Kalyani would rely upon the syndicate circular, dated 28/05/2010 for the relevant period, that was issued by the Vice Chancellor. This is in continuation of the earlier circular, dated 25/05/2010. But it has been stated that the reservation policy with the State Government should be followed. But however, marks has been fixed by the syndicate resolution. Periodical circulars have been issued on the basis of the syndicate resolution by the Registrar and the Head of the Departments. So, this circular shows that the reservation policy of the Government was to be strictly adopted. But the norms with regard to the marks only differently fixed from that of the Government Circular.

25.Here, both the petitioners would submit that the circular issued by the Government from time to time to admit can be made applicable only to the colleges namely Government aided, not aided schools and colleges and not to the University, which is governed by its own Act.

26.According to them, as per the M.S University Act the syndicate only has the power to make procedure and norms with regard to the admission of the students to the University or prescribing the examination as to University examination. So according to the petitioners, they by virtue of the above said power conferred upon the syndicate over the above said issue, followed by them. This court need not go into the larger issue, which requires a thorough process of consideration as to the issue whether Government can control the University in the process of admission.

27.So this court need not trouble this judgment by venturing the point whether M.S University is not bound to follow the circular issued by the Government from time to time. Whether the above said issue can be canvassed and decided is foreign to the present issue.

28.Now whatever it may be, syndicate has passed a resolution and that was followed by the Head of Department and the charges for the violation of the circular, which were framed against the petitioners were also dropped as has been received from various communications sent by the petitioners to the Government. The



06/07/2017. It was attended by the Vice Chancellor, the Secretary to Government Higher Education, other members of the syndicate to study the charges against the petitioners, a special committee was appointed. They decided to discharge the petitioners from the charges relating to the admission, for the Academic year 2011 to 2015. That was also approved. The retirement benefit of the P.K.Kalyani was ordered to be disbursed. So the charges were also dropped.

29.As rightly pointed by the petitioners, what they have followed is only the circular issued by the University Registrar, in pursuance of the above syndicate resolution. The persons involved in passing of the resolution, such as the Vice Chancellor and other persons have not been proceeded. But these persons have been singled out, since they happened to be the members of the selection committee. They cannot be prosecuted for what has been done by them, in obedience to the syndicate resolution, absolutely, no criminality is attached. No material has been collected to show that the petitioners gained pecuniary advantage.

30.Further the learned counsel, who is appearing for P.K.Kalyani has went a step further by reading the selection process to state that eligible candidates were selected and only one person was denied admission for valid reason. I am afraid that since it is purely a factual matter, I can consider the same. I am not taking into account the above such argument.

31.So, I am of the considered view that continuation of the proceedings will be an abuse of process of court and law. They have been unnecessarily penalised for having obeyed the syndicates directory, they have not acted on their own. On that ground, all the petitions are liable to be allowed.

32.In the result, all the criminal original petitions are **allowed**. The impugned proceedings are quashed. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CS-I)

(*)Deleted and ()Inserted vide Court order dated 30/11/2022 made in Crl.OP(MD)Nos.19909, 19912, 19913 and 19915 of 2021**

Sd/-

Assistant Registrar (CS-I)

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/01/2023

Sub Assistant Registrar(CS)

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<https://www.mhc.tn.gov.in/judis>



To,

1.The Chief Judicial Magistrate,
(Special Court for Trial cases),
Tirunelveli.

2.The Special Judge,
Special Court for Trial of cases under the Prevention of
Corruption Act,
Tirunelveli.

3.The Deputy Superintendent of Police,
Vigilance and Anti-Corruption,
Tirunelveli.

4.The Inspector of Police,
Department of Vigilance and
Anti-Corruption,
Tirunelveli.

5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Copy to:

The Section officer, Criminal Records,
Madurai Bench Of Madras High Court, Madurai. (2 COPIES)

+1. CC to M/S.T.LAJAPATHI ROY, Advocate SR.No.44554

Crl.OP(MD) Nos.19909, 19912, 19913, 19915 of 2021
and

Crl.OP(MD) No.3610 of 2022
09/09/2022

RD(25/01/2023) 10P 9C