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Crl.O.P.No.17532 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.11.2023

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

Crl.O.P.No.17532 of 2021
and Crl.M.P.Nos.9628 & 9629 of 2021

1. P.Chinnasamy
2. K.Gunasekaran

...Petitioners

Vs.

1. The State Rep. by
The Additional Deputy Commissioner of Police-I,
Central Crime Branch,
Vepery, Chennai – 600 007.

2. D.Uma
Member Secretary,
Teachers' Recruitment Board,
College Road,
Chennai – 600 006.

... Respondents

Prayer: Criminal Original petition filed under Section 482 of Code of Criminal Procedure, to call for the records relating to the proceedings in C.C.No.4358 of 2021 on the file of the learned Chief Metropolitan Magistrate, Egmore, Chennai, quash the same.

For Petitioner : Mr.A.L.Ganthimathi, Senior Counsel
For Mr.C.Santhosh Kumar

For Respondents

For R1 : Mr.Mr.A.Gopinath
Government Advocate (Crl. Sdide)
For R2 : Mr.C.Kathiravan, Standing Counsel



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ORDER

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This petition has been filed to quash the proceedings in C.C.No.4358 of 2021 on the file of the learned Chief Metropolitan Magistrate, Egmore, Chennai, thereby taken cognizance for the offences under Sections 465, 468, 471, 420, 120B, 201 of IPC r/w. 66 & 43(i) of the Information Technology (Amendment) Act,2008 as against the petitioners.

2. The case of the prosecution is that the Commissioner of Technical Education, Teachers Recruitment Board (hereinafter referred to as “TRB”), Chennai, has decided to conduct a written examination for the direct recruitment of 1058 posts of Lecturers in Government Polytechnic Colleges. In order to conduct examination, it was assigned in consultation with Electronics Corporation of Tamil Nadu Limited (hereinafter referred to as “ELCOT”), the nodal agency for IT enabled task, M/s. Datatec Methodex Private Limited (herein after called as “Datatec”) was selected and entered into tri-party agreement. Accordingly, Datatec was permitted to continue all the works pertaining to direct recruitment to the post of Lecturers.



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3. The TRB endorsed the works starting from online applications to final result publication by the firm and notification No. 04/2017 was published in the website www.trb.in.nic.in on 16.06.2017, but it had to be withdrawn as per the direction of this Court, and fresh notification vide 05/17 dated 28.07.2017 was issued, and online applications received from 29.07.17 to 11.08.2017, in which 1,70,568 candidates applied, of which 1,33,568 candidates appeared for the exam on 16.09.2017. On 17.09.2017, the used Optical Mark Recognition (hereinafter referred to as “OMR”) answer sheets in sealed trunk boxes and sealed keys were kept in the strong room under armed police escort with CCTV coverage.

4. As per orders issued in 6171/A6/17 of Chairman, TRB dated 18.09.2017, scanning of used OMR answer sheets was done from 19.09.2017 to 23.09.2017, by Sheik Dawood Nasser of M/s Datatec. As per norms, the sealed trunk boxes, sealed keys and sealed OMR answer sheets in the special covers were opened after having tallied with the attendance register. A total of 1,33,568 OMR sheets were scanned and the sealed hard disc containing the scanned OMR images and data was given per the instructions of Chairman.



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5. On 06.10.2017, the tentative key answers for all the 15 subjects were uploaded in TRB website, through Datatec. In the meantime, Sheik Dawood Nasser of Datatec had done the data validation with the raw materials available with them and reported some mistakes made by some candidates in marking/shading the question paper serial code. The final key answer and orders were given to Datatec for further process on 31.10.2017. Datatec, prepared the general merit list for certificate verification in 1:2 ratio, and the same was verified by the Board, and with the approval of Chairman, the Board issued orders to Datatec, on 07.11.2017, inter alia to release the result of all candidates by individual query and to release of candidates called for certificate verification.

6. After the release of this list, one Vijayanand, sent petitions to the Prime Minister & Chief Minister cell, with allegations that the candidates who scored less mark in TNEB exam, scored ranks in TRB exam and also a petition received on RTI from Navin Sam, sought information on the above recruitment. To verify the genuineness of the petition, Sheik Dawood Nasser of Datatec, was instructed to furnish the OMR scanned images of the candidates referred to in the complaint, and



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the OMR images furnished by him were compared with the OMR scanned images in the Hard Disc kept by the TRB found variations in the case of 19 candidates, as alleged in the petition, and some questions carrying 02 marks were found to be not shaded in the hard disc furnished by TRB and the same answers were found to be shaded in the processing data OMR copies received from Datatec, and it was reported to Chairman on 17.11.2017. Further to this, to ensure total transparency, TRB called for the re-evaluation of the OMR images of the candidates called for certificate verification from the Hard Disc., which was kept after the scanning on 23.09.2017. Saiyekrishna, System Manager, Datatec, New Delhi was called for and on re-evaluation, it was found discrepancies in the entries of 109 candidates called for certificate verification.

7. As such, it was decided to re-evaluate all the OMR sheets - 1,33,568 (including one in the court case) which was scanned by Sheik Dawood Nasser from 19.09.2017 to 23.09.2017, and kept in the strong room, with the system manger Saiyekrishna, and revised merit list was prepared on 30.11.2017. There were discrepancies found in the marks of 225 candidates from the certificate verification list already published at the time of result and the current mark list after re-evaluation, 03 marks



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in respect of 29 candidates, which is normally occurred due to self mistake by the students, and 25 to 104 marks in respect of 196 candidates. As such, marks of 196 candidates after the written competitive examination were found to be fraudulently altered and hence the result published on 07.11.2017 was withdrawn on 11.12.2017, and the scanned images of OMR answer sheets and the marks awarded as per the final key answers were published in the website from 11.12.2017 for the benefit of the candidates.

8. Though, TRB issued a show cause notice to Datatec, no reply was received. The complainant stated that the processing company Datatec exclusively nominated Sheik Dawood Nasser to evaluate OMR answer sheet Data, preparing merit list, certificate verification list and final selection list, who completed the above work. On suspicion, when he was enquired, he admitted that he had manipulated some scanned OMR answer sheet images and data in order to award higher marks to some candidates by getting money from one Ganesan. Hence, the defacto complainant lodged complaint. On receipt of the above complaint, case was registered in Crime No.468 of 2017 for the offences under Sections 465, 468, 471, 417, 120(b) of IPC r/w. 66 & 43(i) of the Information



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Technology Amendment Act, 2008. After completion of investigation, the first respondent filed final report and the same has been taken cognizance by the trial Court in C.C.No.4358 of 2021.

9. The learned Senior Counsel appearing for the petitioners submitted that the petitioners are arrayed as A8 and A19. The first petitioner was working as Head Master of the Middle School, Dindigul and the second petitioner was working as District Elementary Education Officer. Though the petitioners are charged for the offences under Sections 465, 468, 471, 417, 120(b) of IPC, no offence is made out as against the petitioners. Except the confession statement of the fourth accused, no one even whispered about the overt act of the petitioners. No recovery was made from the petitioners and they are no way connected with the other accused persons to constitute the offence under Section 120(b) of IPC. There is absolutely no material evidence to show that the petitioner conspired with other accused persons in order to commit offence. Some of the witnesses have spoken that though the rooms were book in the name of the petitioners, the ledger does not say so. Therefore, no witness has spoken about the petitioners and the entire proceeding is liable to be quashed.



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WEB COPY 10. Heard the learned counsel appearing on either side and perused the materials placed before this Court.

11. On perusal of records revealed that there are totally 231 accused in which the petitioners are arrayed as A8 and A19. Subsequently, 66 accused are also added and in total, there are 297 accused. The third accused hatched conspiracy with the first accused, who was working as Marketing Manager of Detatec and the third and fourth accused to commit malpractice in the process of selecting Lecturer post conducted by the Teachers Recruitment Board. The fourth accused along with other accused, who had acted as agents, had collected money from the candidates, on promise of securing Lecturer post in Government Polytechnic Colleges.

12. In continuous of their conspiracy, the first accused got design of OMR Sheet from Noida and had sent the to one Universal Print Systems, Andhra Pradesh for printing necessary number of OMR sheets required for the examination to be conducted on 16.09.2017. While placing the order, he also placed the order for printing of extra 385 OMR



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sheets by obtaining a list from the third and fourth accused. The OMR sheets were printed with the name of the candidate, photo of the candidate, serial number and space for the signature of the candidate and invigilator which a distinguished barcode for each candidate. Hence, the accused required specific OMR sheets for the candidates to whom they wanted to increase the mark.

13. After receipt of the extra 385 OMR sheets from the first accused, the fourth accused and his agents had gathered the applicants from whom money was collected at various centers viz., Trichy, Vayalur, Coonoor, Ooty, Chennai, Koyambedu, Saligramam etc., and got the signature of the candidates in the said OMR sheets on various dates before the examination. After collecting the OMR sheets, the fourth accused prepared a key for the question asked and filed the same in the OMR sheets which were already kept by him. They also forged the signature of the invigilators and scanned those data along with OMR sheets. The scanned data was copied into a pendrive and was handed over to the third accused, who in turn handed over the same to the first accused.



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14. Insofar as the petitioners are concerned, they were implicated as accused on the confession statement of A1 to A4. On the strength of the confession statements, five sets of educational certificated obtained from the candidates were seized from the first petitioner. The second petitioner collected money from the candidates by using his bank accounts to transact the money collected from the candidates who appeared in the exam. He is one of the associates of the third accused and he canvassed nine candidates and collected money from them.

15. After arrest, the confession statement of the petitioners were recorded and based on their confession statements, original educational certificate of the applicants were seized in the presence of witnesses. The confession statement of the second petitioner was recorded and based on which five educational certificates were seized from him. Further other witnesses have spoken that the rooms were booked in the name of the petitioners, though the ledger does not reflected the name of the petitioners. However, the rooms were booked in order to meet the candidates, who appeared for examination.



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16. Therefore, there are materials to constitute the offence as alleged by the prosecution. That apart, all the accused persons have committed very serious and grave offence as against the society. Therefore, the proceedings cannot be quashed on the ground raised by the learned Senior Counsel appearing for the petitioners. In this regard, it is relevant to rely upon the judgment of the Hon'ble Supreme Court of India passed in ***Crl.A.No.579 of 2019*** dated ***02.04.2019*** in the case of ***Devendra Prasad Singh Vs. State of Bihar & Anr.***, wherein it is held as follows:-

" 12.So far as the second ground is concerned, we are of the view that the High Court while hearing the application under Section 482 of the Cr.P.C. had no jurisdiction to appreciate the statement of the witnesses and record a finding that there were inconsistencies in their statements and, therefore, there was no prima facie case made out against respondent No.2. In our view, this could be done only in the trial while deciding the issues on the merits or/and by the Appellate Court while deciding the appeal arising out of the final order passed by the Trial Court but not in Section 482 Cr.P.C. proceedings.

13.In view of the foregoing discussion, we allow the appeal, set aside the impugned order and restore the



aforementioned complaint case to its original file for being proceeded with on merits in accordance with law.

17. The Hon'ble Supreme Court of India dealing in respect of the very same issue in ***Crl.A.No.1572 of 2019*** dated 17.10.2019 in the case of ***Central Bureau of Investigation Vs. Arvind Khanna***, held as follows:

“19. After perusing the impugned order and on hearing the submissions made by the learned senior counsels on both sides, we are of the view that the impugned order passed by the High Court is not sustainable. In a petition filed under Section 482 of Cr.P.C., the High Court has recorded findings on several disputed facts and allowed the petition. Defence of the accused is to be tested after appreciating the evidence during trial. The very fact that the High Court, in this case, went into the most minute details, on the allegations made by the appellant-C.B.I., and the defence put-forth by the respondent, led us to a conclusion that the High Court has exceeded its power, while exercising its inherent jurisdiction under Section 482 Cr.P.C.

20. In our view, the assessment made by the High Court at this stage, when the matter has been taken



cognizance by the Competent Court, is completely incorrect and uncalled for.”

18. Further the Hon'ble Supreme Court of India also held in the order dated **02.12.2019** passed in **Crl.A.No.1817 of 2019** in the case of **M.Jayanthi Vs. K.R.Meenakshi & anr**, as follows:

"9. It is too late in the day to seek reference to any authority for the proposition that while invoking the power under Section 482 Cr.P.C for quashing a complaint or a charge, the Court should not embark upon an enquiry into the validity of the evidence available. All that the Court should see is as to whether there are allegations in the complaint which form the basis for the ingredients that constitute certain offences complained of. The Court may also be entitled to see (i) whether the preconditions requisite for taking cognizance have been complied with or not; and (ii) whether the allegations contained in the complaint, even if accepted in entirety, would not constitute the offence alleged.

.....

13. A look at the complaint filed by the appellant would show that the appellant had incorporated the ingredients necessary for prosecuting the respondents for the offences alleged. The question whether the appellant will be able to prove the allegations in a manner known to



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law would arise only at a later stage....."

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19. In view of the above discussions, this Court is not inclined to quash the criminal proceedings. Accordingly, the Criminal Original Petition stands dismissed. Consequently, connected miscellaneous petitions are closed.

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Internet: Yes

Index : Yes/No

Speaking/Non Speaking order

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To

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Egmore, Chennai.
2. The Additional Deputy Commissioner of Police-I,
Central Crime Branch,
Vepery, Chennai – 600 007.
3. The Member Secretary,
Teachers' Recruitment Board,
College Road,
Chennai – 600 006.
4. The Public Prosecutor,
Madras High Court,
Chennai.



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G.K.ILANTHIRAIYAN. J.

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Crl.O.P.No.17532 of 2021 and
Crl.M.P.Nos.9628 & 9629 of 2021

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