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CrI.O.P.No.27277 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 03.08.2023

CORAM :

THE HONOURABLE Dr. JUSTICE **G.JAYACHANDRAN**

CrI.O.P.No.27277 of 2022

A.Jeyamani

.. Petitioner

Vs.

The State represented by

Additional Superintendent of Police CBI,

ACB, Chennai.

..Respondent

PRAYER : Criminal Original Petition has been filed under section 482 of Criminal Procedure Code to call for the charge sheet in C.C. No.10 of 2009, on the file of the XIII Special Judge, CBI Cases, Chennai and quash the same.

For Petitioner : Mr.M.L.Ramesh

For Respondent : Mr.K.Srinivasan,
Special Public Prosecutor
(CBI cases)



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ORDER

This Criminal Original Petition has been filed to quash the charge sheet in C.C. No.10 of 2009, on the file of the XIII Special Judge, CBI Cases, Chennai.

2. The case has been investigated by the CBI in connection with alleged leakage of question paper for recruitment of Grade II Constable by the Tamil Nadu Uniform Service Recruitment Board, before examination was conducted on 27.03.2005. Initially, this case was filed by the State Police and later, the same was handed over to CBI.

3. According to the prosecution, through the printing press, a copy of the question paper was stealthily removed by one Duraimunuswamy Head Constable who was arrayed as A1 and one day prior to the examination, he handed over the question paper to one Gopalakrishnan (A14) at Madurai, who in turn, took photo copy of the question paper and distributed the same to one Muthukumarasamy (A29) and Jeyamani (A7). Further the case of the prosecution is that Jeyamani (A7) collected the copy of the question paper from A.Gopalakrishnan (A14), at request of one Ravichandran, Head Constable at Pallavaram (A4) and after



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collecting the copy of the question paper, he left Madurai and gave a copy to one Maruthupandian, the relative of Ravichandran and another copy to Muthukumarasamy. The said Muthukumarasamy had given the same to one Raju, father of perspective candidate from whose possession, a copy was recovered long after the examination.

4. The learned counsel appearing for the petitioner prays for quashing the final report pending in C.C. No.10 of 2009 on the ground that there is no incriminating material against him to prosecute moreso, in the light of the fact that this Court had quashed the complaint against Mr.Duraimunusamy (A1) and four others in Crl.R.C. Nos.197 of 201 of 2014 vide order dated 15.04.2016 for want of material evidence.

5. Learned counsel for the petitioner further submitted that according to the prosecution the question paper was fraudulently obtained by A1, who in turn distributed the same to others and ultimately found in the hands of one Raju from where, photo copy was recovered. The chain of passing through of the said question paper had commenced from Duraimunusamy (A1) as per the prosecution but this Court had quashed the complaint against A1 and therefore, the link in the chain had got



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severed and therefore, the prosecution cannot sustain their case. As far as this petitioner is concerned, since the alleged question paper was not recovered from his custody nor the witnesses from the prosecution had said nothing incriminating against him, the case in C.C. No.10 of 2009 has to be quashed.

6. The learned Special Public Prosecutor representing CBI submitted that as per the final report, this petitioner fraudulently obtained question paper in advance from Gopalakrishnan (A14) and had conspired along with R.Muthukumarasamy (A29) and in furtherance of Criminal conspiracy passed on the question paper to the candidate Murugesan S/o.Raju for a consideration of Rs.9,000/-. The said question paper was recovered from the residence of Raju during the search conducted by the CBI.

7. In response, the learned counsel appearing for the petitioner submitted that the prosecution had not recorded the statements of the accused persons who were police personnels and not relied upon the statements given by them in the departmental enquiry and hardly based on the statements, the final report been filed and those statments been



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held as not admissible in evidence by this Court in a batch of Revision Petitions filed by the other co-accused. De hors of the findings of the Court in the connected matter as far as evidence of the petitioner is concerned, it is the case of the prosecution that the question paper was recieved by the petitioner from Gopalakrishnan (A14). The only incriminating statement in the entire prosecution case is that the statment of Raju, he had referred the name of the petitioner Jeyamani, he has further stated that when said Raju demanded the money back from Muthukumarasamy, he had told that the money given to Jeyamani and after collecting money from him, he will repay it. That apart, Murugesan who is a son of Raju has also referred the petitioner's name and has repeated as what his father told in the course of investigation. However, the said Muthukumarasamy is the person according to the prosecution who handed over the question paper to Raju for his son Murugesan to write the examination using the question paper. The statement of these two witnesses not admissible in evidence since, it is the statement of the Police and even only hearsay evidence what they have heard from Muthukumarasamy. The said Muthukumaraswamy statement not been



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corroborated by the prosecution and in the absence of any corroborated statement by Muthukumarasamy and such statement falls within the ambit of Section 30 of the Evidence Act, it is highly impossible for the prosecution even to frame the charge against the petitioner.

8. The learned Special Public Prosecutor submitted that the CBI has challenged the order passed by this Court in Crl.RC. Nos.197 to 201 of 2014 dated 15.04.2016 in SLP Nos.4050 to 4056 of 2017 and the matter is pending before the Hon'ble Supreme Court.

9. From the submissions made by the respective counsel and the order passed by this Court in the batch of Revision Petitions are pending scrutiny by the Hon'ble Supreme Court and as pointed out by the learned counsel for the petitioner that the link between the alleged prime accused Duraimunuswamy (A1) who had carried the question paper illegally and distributed the same to the others got severed, there is no incriminating material to make out prima facie case against the petitioner. However it all depends upon the outcome of the SLP pending before the Hon'ble Supreme Court.



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10. With the above observations, Criminal Original Petition No. 27277 of 2022 is hereby dismissed. However, the petitioner's appearance before the trial Court is dispensed with till the disposal of the SLP and if the SLP is dismissed the benefit of the discharge will also automatically be extended to the petitioner otherwise, he has to face the trial.

03.08.2023

Internet : Yes/No

Index: Yes/No

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To

1. The XIII Special Judge, CBI Cases, Chennai.
2. The Additional Superintendent of Police CBI,
ACB, Chennai.
3. The Public Prosecutor,
High Court of Madras,
Chennai.



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Dr.G.JAYACHANDRAN, J.

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