IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 01.12.2023

PRONOUNCED ON: 20.12.2023

CORAM :

THE HONOURABLE MR. JUSTICE A.D.JAGADISH CHANDIRA

Crl.O.P.No.23646 of 2023 and Crl.M.P.No.16465 and 16466 of 2023

Anish Kumar ... Petitioner

Vs.

State, represented by
The Inspector of Police,
CBI SCB, Chennai. ... Respondent

PRAYER : Criminal Original Petition is filed under Section 482 Cr.P.C., to call for the records in C.C.No.3383 of 2016 in which charges framed against the petitioner based on the supplementary charge sheet filed on 27.06.2023 and quash the same.

For Petitioner : Ms.Mamta Pandey

For Respondent : Mr.K.Srinivasan,
Special Public Prosecutor for CBI

ORDER

The Criminal Original Petition has been filed seeking to call for the records in C.C.No.3383 of 2016, in which, charges framed against the petitioner based on the supplementary charge sheet filed on 27.06.2023 and quash the same.

2. The case of the prosecution in brief:

2.1. A complaint was made by the Additional Commissioner of Income Tax, (Headquarters) (Admin-cum-Vig.), Chennai, on 21.09.2015 against one Devendra Kumar S/o Rajendra Pasad of Bihar, who had joined as Multi Tasking Staff (MTS) through Staff Selection Commission in the office of the Income Tax Department in a fraudulent manner by indulging in impersonation, forgery and cheating. The further allegation is that Multi Tasking Staff Part-I examination was held on 16.02.2014 and Part-II examination was held on 17.08.2014 and Devendra Kumar was selected and nominated by the Staff Selection Commission, Southern Region for the post of Multi Tasking Staff (hereinafter referred to as "MTS").

2.2. The complainant had issued proceedings dated 27.01.2015 directing the said Devendra Kumar to report for duty in the Income Tax Department on or before 09.02.2015. Accordingly, the said Devendra Kumar joined duty on that day itself i.e.,27.01.2015 and as per procedure, while joining service, the left thumb impression of Devendra Kumar was obtained by the Additional Commissioner of Income Tax, (Headquarters) (Admin-cum-Vig.), Chennai, in the presence of the Deputy Commissioner of Income Tax (Headquarters) (Admin.) on 11.08.2015 and the same was sent to the State Crime Records Bureau, Chennai-600 028 for comparison along with the original left Thumb Impression already obtained in the Admission Certificate of Staff Selection Commission while appearing for the written examination.

2.3. During comparison, the expert opined that the finger print impressions obtained from Devendra Kumar did not match with the Admission Certificate, thereby, inferring that the exams for Part-I and Part-II were attended and written by two different persons. However, during investigation, the persons, who had appeared for examination could not be traced and thereby, charge sheet was filed against the said Devendra Kumar(A1) alone before the Additional Chief Metropolitan Magistrate, Chennai on 28.12.2015. At the time of filing Final Report, the respondent had informed that a Supplementary Charge Sheet under Section 173(8) of Cr.P.C., would be filed after unearthing the other facts relating to the case and tracing the person, who had appeared for the examination on behalf of A1-Devendra Kumar.

2.4. Later, during further investigation, it was found that A2-Anish Kumar was the person impersonated as A1-Devendra Kumar and unlawfully wrote MTS Part-II examination held on 17.08.2014 at Presidency Girls Higher Secondary School, Egmore, Chennai-8. In the Admission Certificate, A2-Anish Kumar had written his Mobile No.9155399417 as his contact number. Customer Agreement Form (CAF) details of the said mobile number was obtained from Uninor/Telenor Bihar Circle on 18.12.2015 and it disclosed the name of the subscriber as “Surati Devi, mother of A2-Anish Kumar. Further, during the course of investigation, specimen finger impressions including Left Thumb of A2-

Anish Kumar were obtained voluntarily in the presence of independent witnesses at Hilsa, Bihar and the same were sent through the Additional Chief Metropolitan Magistrate Court at Chennai to the Superintendent of Police(FB), Finger Print Bureau, Chennai for comparison and expert opinion vide letter D.N.1148/2022 dated 06.07.2022 and the Expert vide Opinion/Report/Certificate No.32/FPB/Crime/2022 dated 26.07.2022, had given positive opinion that "*the Questioned Left Thumb Impression marked as QT-2 found against the name of Devendra Kumar on the front side of the Original Admission Certificate for Recruitment to the Post of Multi-Tasking(Non Technical) staff in different States and Union Territories, 2014 bearing Roll No.8201010547, ticket/Seat No.8000073 dated 17.08.2014 is "IDENTICAL" with the Specimen Left Thumb Impression marked "S" found against the name of Anish Kumar on the Original Specimen Left Thumb Impressions sheet taken by Harish Singh, Inspector in the presence of independent witness Pankaj Kumar on 24.06.2022.*"

2.5. During the course of further investigation, the specimen hand writings and signatures of A2-Anish Kumar were obtained voluntarily in the presence of independent witness at Hilsa, Bihar, and the same were forwarded to the Director, CFSL, Hyderabad alongwith questioned documents marked as Ex.P32(Sheet No.2) for comparison and report. CFSL, Hyderabad, vide its Examination Report No.CFSL(H)/1080/DOC/ 249/CH-106 A/2022 dated 25.08.2022 had opined that A2-Anish Kumar had impersonated as A1-Devendra Kumar and appeared for Part-II examination held on 17.08.2014, thereby in view of the additional evidence collected during the course of further investigation, had established that A1 in furtherance of a criminal conspiracy with A2 had committed the offence of impersonation and cheating and Supplementary Charge Sheet was filed against A1 and A2 for the offences punishable under Sections 120-B read with 419 and 420 IPC and substantive offence under Section 420 IPC for A1 and Section 419 IPC for A2. The present Criminal Original Petition has been filed by A2-Anish Kumar seeking to quash the Supplementary Charge Sheet filed in C.C.No.3383 of 2016 on the file of Additional Chief Metropolitan Magistrate, Chennai.

3. Ms.Mamta Pandey, learned counsel appearing for the petitioner/A2, while assailing the supplementary charge sheet filed, would contend as follows:

(i)In this case, originally, charge sheet was filed against A1-Devendra Kumar on 22.04.2016 and out of total 16 witnesses, 12 witnesses have been examined as early as on 22.03.2021 and thereafter, in the month of August, 2022, viz.,after six years from the date of filing of final report, the prosecution has chosen to file the Supplementary Charge Sheet. The prosecution has falsely implicated A2-Anish Kumar in the Supplementary Charge Sheet without any authentic material evidence against him.

(ii) The original Admission Certificate containing the alleged finger print of A2-Anish Kumar was not produced and only a xerox copy/scanned copy was produced, which is not admissible in evidence. The finger prints obtained from the accused were not done in accordance with Section 311A of Cr.P.C., and thereby, the Expert Opinion based on the same is inadmissible. The finger print was stated to be taken in the presence of one Pankaj Kumar and he has not been cited as a witness.

(iii) One K.Israel(L.W.12), who had been examined as P.W.11 on 24.02.2021 had deposed that A1-Devendra Kumar had appeared for the examination and the photo image available in the Admission Certificate tallied with the candidate and further, in his cross-examination dated 22.03.2021, he had deposed that he cannot say without any doubt that the accused present here is Mr.Devendra Kumar, who was present at the time of his invigilation in Room No.3 and thereby, leading to an inference that A1-Devendra Kumar is the person, who has appeared for examination and the case of the prosecution that the petitioner appeared on behalf of A1-Devendra Kumar is doubtful.

(iv) Learned counsel further submitted that the petitioner is an innocent person, who has been wrongly roped in this case and the proceedings against the petitioner is an abuse of process of law and thereby, seeks to quash the proceedings.

4. The respondent has filed a detailed counter, the relevant paragraphs of which are extracted hereunder.

"...D. That the averments made in para 5 are wrong hence denied. It is submitted that the signature and left Hand Thumb Impression of the person who had impersonated as Devendra kumar in Part-I exam on 16.02.2014 was obtained in the Admission Certificate during the examination process. The suspect impersonator who appeared in Part-I examination has written mobile number 7870686267 as the contact number of the candidate in Admission Certificate (Commission Copy). During the course of investigation, the user mobile no.7870686267, the CAF details of the said number was obtained from Telenor Bihar Circle and it disclosed that the name of the subscriber as 'Pankaj Kumar" S/o Shri Ram Krishna Prasad and the address of the subscriber shown as 16 Sumka, Talluk and Village Sumka, Anchal Chandi, Distt.Nalanda (Bihar). During the course of further investigation, specimen Handwritings and specimen Thumb Impressions of suspected impersonator were obtained in presence of independent witness at Bihar and sent to CFSL Hyderabad by the Hon'ble Court of ACMM, Egmore for comparison and expert opinion. The Expert has given negative opinion with regard to specimen handwritings in respect of suspect Pankaj Kumar. The Thumb Impressions of suspect was sent to Superintendent of Police(FB), Finger Print Bureau, Chennai, by the Hon'ble Court of ACMM, Egmore. The Expert vide its report/certificate No.50/FPB/ Crime/2022 dated 17.08.2022 has opined that the Thumb Impressions of suspect Pankaj Kumar is not Identical with the Thumb Impression marked as QT-1 found against the name of Devendra Kumar on the front side of the Original Admission Certificate for Recruitment to the Post of Multi Tasking(Non-Technical) staff in different states and Union Territories, 2014 bearing Roll No.8201010547, ticket/seat No.8012061 dated 16.02.2014. Hence, the suspect Pankaj Kumar was not charge sheeted and he was also not shown as witness in the Supplementary Charge Sheet.

E. It is further submitted that Shri Pankaj Kumar, then Manager in Bank of India, Bihar sharif Branch (under Zonal

Office, Bank of India, Patna) in whose presence further specimen handwritings and thumb impressions of accused/ petitioner A-2 were obtained at Hilsa, Distt.Nalanda, Bihar and so his name is figured in List of witnesses.

F. That the averments made in para 6 and 7 are totally wrong, hence denied. It is submitted that the part-II examination was held on 17.8.2014. Shri Anish Kumar S/o Tuntun Prasad R/o Village Gannipur, Tehsil Hilsa, Police Station Hilsa, [Distt.Nalanda, Bihar found to have impersonated himself as Devendra Kumar appeared for part-II examination on 17.08.2014. His signature, Left Thumb Impression and certificate on the Admission Certificate(Commission's Copy) that " I certify that I am the person whose LTI and signature appear on this attendance sheet" along with his mobile number 9155399417 was obtained. Accused Anish Kumar (A-2) who impersonated as Devendra Kumar(A-1) unlawfully wrote MTS Part-II examination held on 17.8.2014 at Presidency Girls Higher Secondary School, Egmore, Sub

Centre Code No.8201001 has written mobile number 9155399417 as the contact number of' the candidate in Admission Certificate(Commission Copy). It is further submitted that during the course of investigation , the user mobile No. 9155399417, the CAF details of the said number was obtained from Uninor/Telenor Bihar. Circle through e-mail dated 18.12.2015 and it discloses the name of “Surati Devi(mother of Anish Kumar) w/o Tuntun of village Gannipur, Tehsil Hilsa, Distt.Nalanda, Bihar. During the course of further Investigation, Specimen Finger Impression (including Left Thumb Impression) were obtained voluntarily in the presence of independent witness at Hilsa, Bihar and the same were sent by the Hon'ble Court of ACMM, Egmore to Superintendent of Police(FB), Finger Print Bureau, Chennai for comparison and expert opinion vide letter DN.1148/2022 dated 6.7.2022. The Expert vide Opinion/Report [Certificate No. 32/FPB/Crime/2022 dated 26.7.2022 gave positive opinion that “The Questioned Left Thumb impression marked as QT-2 found against the name of Devendra Kumar on the front side of the Original Admission Certificate for Recruitment to the Post of Multi-Tasking(Non Technical) staff in different states and Union Territories, 2014 bearing Roll No.8201010547, ticket/seat No.8000073 dated 17.8.2014 is “IDENTICAL' with the Specimen Left Thumb impression marked “S” found against the name of Anish Kumar on the Original Specimen Left Thumb impressions sheet taken by Harish Singh, Inspector in the presence of independent witness Pankaj Kumar on 24.6.2022." It is further submitted that during the course of further investigation, the Specimen Handwritings and Signatures of accused Anish Kumar was obtained voluntarily in presence of independent witness at Hilsa, Bihar and the same were forwarded to Director, CFSL, Hyderabad along with Questioned Documents marked by this Hon’ble Court as Exhibit No.P-32(sheet No.2) for comparison and report. CFSL Hyderabad vide its Examination Report

No.CFSL(H)/1080/DOC/249/CH-106 A/2022 dated 25.8.2022 had given positive report on the handwritings of accused//Petitioner A-2 Anish Kumar. It is further submitted that Inspector in C51 is fully empowered to conduct further investigation and was duly authorized by his Supervisory Officer, in this case.

G. That the averments made in para 8 & 9 are misleading and not applicable in the instant case. Section 311A, Cr.P.C reads as under: "If a Magistrate of the first class is satisfied that, for the purposes of any investigation or proceeding under this Code, it is expedient to direct any person, including an accused person, to give specimen signatures or handwriting, he may make an order to that effect and in that case the person to whom the order relates shall be produced or shall attend at the time and place specified in such order and shall give his specimen signatures or handwriting, provided that no order shall be made under this section unless the person has at some time been arrested in connection with such

Investigation or proceeding." Section 311A, Cr.P.C is applicable to any action to be taken for the purposes of "any investigation or proceeding under the Code of Criminal Procedure" in respect of any person provided the person had been previously arrested. Section 311A Cr.P.C brings within its ambit such persons who may have been arrested in the course of an investigation or proceeding but who may not necessarily be an accused in the offence that the police is investigating but may also be a suspect, among other persons. It is further submitted that in the instant case, accused/petitioner A-2 was never arrested by CB1 during the course of further investigation and his Specimen Handwriting/Specimen Thumb Impressions were taken voluntarily in presence of independent witness at his native village Hilsa, Distt.Nalanda, Bihar, so section 311A Cr.P.C is not applicable in the instant facts of the case.

H. That the averments made in para 10 are wrong, hence denied. It is submitted that Shri Pankaj Kumar is then

Manager in Bank of India, Bihar sharif Branch (under Zonal Office, Bank of India, Patna) in whose presence further specimen handwritings and thumb impressions of accused/petitioner A-2 were obtained at Hilsa, Distt.Nalanda, Bihar. It is further submitted that accused petitioner/accused A-2 cheated the Staff Selection Commission and Government of India by impersonating himself as Devendra Kumar and attended MTS Paper-II examination conducted by Staff Selection Commission on 17.08.2014. Accused Anish Kumar also gave a certificate on the Admission Certificate (Commission's Copy) that " I certify that I am the person whose LTI and signature appear on this attendance sheet." Accused Anish Kumar hatched a criminal conspiracy with accused Devendra Kumar and in the matter of writing the MTS examination in place of Devendra Kumar and cheated SSC by Impersonation as confirmed by Expert Opinion."

5.1. Mr.K.Srinivasan, learned Special Public Prosecutor for CBI Cases appearing for the respondent, would submit that it is a clear case that the accused have involved in conspiracy and cheated the department by impersonation. A1-Devendra Kumar had applied for the post of MTS in the Income Tax Department conducted by the Staff Selection Commission, Southern Region and the Staff Selection Commission had conducted the examinations by two parts. Part-I examination was held on 16.02.2014 and Part-II examination was held on 17.08.2014. Based on the marks secured by A1-Devendra Kumar, he was selected and directed to join duty on 27.01.2015. Thereafter, as a routine practice, the left thumb impression of said A1-Devendra Kumar was obtained from him in the presence of higher officials and they were sent to the State Crime Records Bureau, Chennai-28, for comparison along with the original Left Thumb Impression already obtained in the Admission Certificate issued by the Staff Selection Commission for appearing in the written examination. After comparison, it was reported by the Finger Print Bureau, Chennai, that the Left Thumb Impression of A1-Devendra Kumar obtained at the time of joining service did not tally with the Left Thumb Impression found on the Admission Certificate for Part-I and Part-II examinations.

5.2. He would further submit that the Left Thumb Impression found on the admission card dated 16.02.2014 and 17.08.2014 respectively were not identical and thereby, inferring that two different persons had impersonated as A1-Devendra Kumar and had written exams conducted on 16.02.2014 and 17.08.2014 on behalf of A1-Devendra Kumar. He would also submit that since the impersonators were unknown, a Final Report was filed as against A1-Devendra Kumar and unknown persons for having cheated the Department and obtained an employment. At the time of filing Final Report, a request was made that a Supplementary Charge Sheet would be filed under Section 173(8) of Cr.P.C., after unearthing other facts. Thereupon, the Additional Chief Metropolitan Magistrate, Egmore, Chennai, had taken congnizance of the case in C.C.No.3383 of 2016. Learned Special Public Prosecutor would submit that at the request of CBI, permission was accorded by the trial Court for further investigation under Section 173(8) of Cr.P.C., vide order of the Court dated 20.10.2021 in Crl.M.P.No.14428 of 2021 to find out the actual accused, who had impersonated and attended MTS Paper-I dated 16.02.2014 and MTS Paper-II examination dated 17.08.2014 on behalf of the candidate Devendrakumar.

Based on the mobile number found on the Admission Card for Part-II examination, A2-Anish Kumar was traced. During the course of investigation, the finger print specimen hand writings and signatures of A2 were obtained voluntarily in the presence of independent witnesses and later, based on prima facie material, A2-Anish Kumar was arrested and the expert opinion obtained revealed that the finger prints obtained from A2-Anish Kumar tallied with the left thumb impression found on the original admission certificate, thereby, confirming that A2-Anish Kumar is the person, who had appeared on behalf of A1-Devendra Kumar.

5.3. Learned Special Public Prosecutor would further submit that the Original Admission Certificate on which A2-Anish Kumar had affixed his signature is available in the Court and the respondent has also filed an affidavit to that effect before this Court. He would further submit that though the invigilator is stated to have deposed that A1-Devendra Kumar is the person, who has appeared for Part-II examination, the finger print on the Original Admission Certificate does not tally with A1-Devendra Kumar and there are ample evidence by way of documentary material viz.,Finger Print

Report, which conclusively proves that A2-Anish Kumar is the person, who had appeared for examination on 17.08.2014. Further, A2-Anish Kumar had also made an endorsement that "I certify that I am the person whose LTI and signature appear on this attendance sheet" along with his mobile number 9155399417" and the mobile number was found to be in the name of his mother Surati Devi. He would further submit that the specimen finger print was obtained from the petitioner prior to his arrest and there is no requirement to comply with Section 311A of Cr.P.C. He would further submit that the science of identifying the thumb impression/finger print is an exact science and it does not admit any mistake or doubt and that when there are prima facie materials against the accused by way of Expert Opinion regarding Finger Prints, a mini trial or roving enquiry cannot be conducted at the stage of deciding a petition for quash and thereby, he would seek for dismissal of the petition.

6. Heard Ms.Mamta Pandey, learned counsel appearing for the petitioner and Mr.K.Srinivasan, learned Special Public Prosecutor appearing for CBI Cases and perused the materials available on record.

7. This petition has been filed seeking to quash the supplementary charge sheet. The main contention by the learned counsel for the petitioner is that the petitioner/A2 has been implicated after seven years of the arrest of the main accused viz., A1-Devendra Kumar and that the sample thumb impressions and specimens were not collected in compliance of Section 311A of Cr.P.C. It is also the case of the petitioner that the invigilator Israel, who had been examined as LW12 had deposed that A1-Devendra Kumar is the person, who has appeared for the examination. It was also claimed that the original admission certificate obtained from the candidate at the time of examination for MTS Paper-II dated 17.08.2014 was not produced before the Court.

8. From the counter and the submissions made on behalf of the learned Special Public Prosecutor for CBI Cases appearing for the respondent, it is seen that the original admission card, in which, the petitioner/A2 is stated to have affixed his left thumb impressions and made his self declaration is available in Court. Further, the sample thumb impressions and signatures have been obtained prior to the arrest of the

accused and thereby, there is no requirement of compliance of Section 311A of Cr.P.C. Though the Invigilator-Israel is stated to have deposed that A1-Devendra Kumar is the person, who has appeared for Part-II examination, the documentary evidence viz.,the Expert Opinion shows otherwise.

9. In this regard, it is relevant to refer to the judgment of the Supreme Court in *Jaspal Singh Vs. State of Punjab ((1980) 1 Supreme Court Cases 487*, wherein the Apex Court has held that the science of identifying the thumb impression is an exact science and does not admit of any mistake or doubt.

10. It is also useful to refer page 3 of C.E.Chapel's Finger Printing, a Manual of Identification, where it is stated:-

> "Finger prints offer the one positive means of Identification that never changes from the cradle to the grave. Plastic surgery may change the contours of your face, ill health and old age may shorten your stature, but the arches and whorls that graced your fingers and thumbs at birth will still be there when yon reach the end of life's journey."

11. In the light of the above discussions, this Court is of the opinion that at the stage of deciding the petition for quashing the proceedings, the Court cannot conduct a mini trial. The respondent had obtained permission to conduct further investigation based on which, it has unearthed several other materials fixing that the petitioner is the person, who has appeared for Part-II examination on behalf of A1-Devendra Kumar. This Court does not find any merit in the petition seeking to quash and hence, the petition stands dismissed. Consequently, connected criminal miscellaneous petitions are dismissed.

20.12.2023

Index : Yes / No
Speaking / Non-speaking
Neutral Citation : Yes / No
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To

1. The Inspector of Police,
   CBI, SCB, Chennai.

2. The Special Public Prosecutor,
   High Court of Madras.

A.D.JAGADISH CHANDIRA, J.

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Pre-delivery Order in
Crl.O.P.No.23646 of 2023 and
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