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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

|               |   |            |
|---------------|---|------------|
| Reserved on   | : | 08.08.2023 |
| Pronounced on | : | 22.11.2023 |

Crl.O.P.(MD).Nos.7108, 7650, 8175, 10278 and 10280 of 2023  
and  
Crl.M.P(MD).Nos.8174 and 8178 of 2023

Crl.O.P.(MD).No.7108 of 2023

Dr.T.Arivudai Nambi

Petitioner

Vs.

The State of Tamil Nadu,  
Rep by Inspector of Police,  
Vigilance and Anti-Corruption Wing,  
Thanjavur.  
(Crime No.6 of 2022)

Respondent

**PRAYER:** Criminal Original Petition has been filed under Section 482 of Cr.P.C., to call for the records pertaining to the Impugned FIR in Crime No.6 of 2002 pending on the file of the respondent police and to quash the same as far as the petitioner is concerned.

Crl.O.P.(MD).Nos.7108, 7650, 8175 of 2023

|                |                                                           |
|----------------|-----------------------------------------------------------|
| For Petitioner | : Mr.Issac Mohanlal Senior Counsel for<br>Mr.S.Venkatesan |
| For respondent | : Mr.T.Senthil Kumar<br>Additional Public Prosecutor      |



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Crl.O.P.(MD).Nos.10278 and 10280 of 2023

For Petitioner : Mr.C.Iyyapparaj  
For Respondent : Mr.T.Senthil Kumar  
Additional Government Pleader

### **COMMON ORDER**

All the petitioners filed the petitions to quash the proceedings in  
FIR in Crime No.6 of 2022.

2. The crux of the allegation in the FIR is that all the accused conspired together and made an appointment to the post of the Assistant Professor in Sri Pushpam College, situated at Poondi, Thanjavur District without following the roster system and also made an appointment to A4 and A5 on the basis of the fake community Certificate. They also committed offence of filling 19 vacant posts without following the reservation policy and other procedure stated by the Government of Tamil Nadu. The accused in Crl.O.P.(MD).7108 of 2023 is the Regional Deputy Director of the Thanjavur District, he alone has the jurisdiction to appoint the Assistant Professor.



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3. The learned senior counsel Thiru. Isaac Mohanlal representing Thiru R.Venkatesan submitted that as per the private college regulation Act, there is no necessity to follow the roster system. He is only the approving authority and the selection was made by the selection committee. After selection process, it is placed only for the approval and for purpose of grant. In sum and substance, Regional Deputy Directors are the supervising the appointments. In view of the above factual circumstances, the case of the prosecution is that he approved the appointment of the persons with false community certificate, which is not in accordance with law. The selection committee and the recruitment authorities called for the posts under the category of the denotified communities(DNC). After selection, it should be placed before him for approval. However, he has no knowledge about the placement of fake community certificate and hence, allegation against him in the FIR is without any necessary ingredient to constitute the offence under Sections 120 (b) r/w 468, 465, 471, 477(A), 409 and 420 IPC r/w Section 13(2) r/w 13(i) C of the prevention of corruption Act.



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4. The learned Senior counsel has made the meticulous submissions on the basis of the private college regulation Act and the various provisions of the IPC and stated that the offence is not made out against the petitioners. He also placed number of orders relating to the appointment of the Assistant Professors.

5. The learned Additional Public Prosecutor submitted that the appointed candidates are the old students of the college. They got admission and completed their studies under the category of backward community. Subsequently, they got the community certificate of DNC, and both records were placed before the petitioner. Hence, he has not perused the documents and granted the approval and thereby they were allowed to withdraw the salaries and hence, his part of the conspiracy is *prima facie* available. Further, it is in the investigation stage, apart from the above materials the investigating agency collected materials to prove the conspiracy about the involvement of the petitioners and also he is the party to the illegal appointment to ineligible persons. At this stage, as per the Hon'ble Supreme Court Judgment, the quash petition cannot be



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entertained. He relied number of judgments of the Hon'ble Supreme Court. He also produced a file for perusal of this Court and seeks for dismissal of the quash petition.

6. The petitioner in Crl.O.P.(MD).No.8175 of 2023 also reiterated the above submissions and seeks for the quashment of FIR.

7. The learned counsel petitioner Crl.O.P.(MD).No.10280 of 2023, made a submission that on the basis of the supreme Court Judgment reported in **2021 5 SCC 469** in the case of ***Charansingh vs. State of Maharastra and others.***, without conducting enquiry and giving opportunity to the petitioner, the FIR was registered. The FIR is without any basic ingredients. He further stated that proper notification was issued and proper selection process was made and appointment was made and hence, there is no case of conspiracy to commit the offence under Sections 465 and 468 IPC and other offences. When the appointment was made as per the procedure, there is no criminality in the procedure. Therefore he seeks to quash the FIR.



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8. The learned Additional Public Prosecutor submitted that the community certificate is genuine one or not is in the stage of investigation. If the community certificate is a forged one or with false particulars, officers involving in the said process are to be added as accused. He further submitted that the investigation is proceed on correct line and whether the selection process itself was made with the conspired act of all the accused or not is to be investigated. The compliance of the judgment of the Hon'ble Supreme Court reported in 2021 5 SCC 469 in the case of *Charansingh vs. State of Maharastra and others.*, is misplaced in this case. Subsequently, the issue was considered by the Hon'ble Three Member Bench of the Supreme Court in **AIR 2021 SC 5041 (2021 SCC Online 923)** in the case of *CBI Vs Thommandru Hannah Vijayalakshmi @ T.H.Vijayalakshmi* The Larger Bench clearly stated that before registration of the case, it is not necessary to consider the defence of the accused. At the stage of FIR, if there is a reason to believe that the allegation constitutes the offence, then the investigation is allowed to be conducted.



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9. In this case, there is a serious allegation against the petitioner particularly on the allegation that they produced the community certificate with the false particulars and got an appointment. In the said circumstances, only after the investigation, the allegation made in the FIR can be found to be true or false. Hence, he seeks for quashment of FIR.

10. This Court considered the rival submissions made on either side and perused the materials available on record and precedents relied upon by them.

11. There are two allegations in the FIR. The appointment was made to number of accused on the basis of the fake community certificate. Another allegation is that through the appointment of ineligible persons, salary amount was disbursed. In continuation of the said allegation, some false report was produced before the University Grants Commission as if a number of persons have been working for 24 months and collected the amount of Rs.11,68,896/-. The appointment file contains the community certificate of the candidates. The candidates produced two community



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certificates. One is backward community and another is the DNC certificate. On the basis of the DNC certificate, an appointment was made. When both the documents are available before the authorities their duty is to verify the community status of each appointee. But, the petitioner did not verify the same and hence, ineligible persons got appointment. i.e., the post meant for DNC allotted to the BC Community and thereby the right of DNC community has been deprived. Hence, the offence under Section 13(1) c of the prevention of corruption Act and other IPC offence are clearly made out. It is not necessary to prove that the petitioner gained something through the appointment as held by the Hon'ble Constitution Bench Judgement of the Supreme Court in the case of ***M. Narayanan Nambiar v. State of Kerala***, reported in AIR 1963 SC 1116:

*10.....On a plain reading of the express words used in the clause, we have no doubt that every benefit obtained by a public servant for himself, or for any other person by abusing his position as a public servant falls within the mischief of the said clause.*



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Further more, whether the petitioner made the intentional act to give an appointment on knowing the factum of misrepresentation of the community certificate is a matter for investigation and evidence of appreciation.

12. This case is in the stage of FIR. The Hon'ble Supreme Court in 2023 6 SCC 559 stated that the power of the Court under Section 482 to quash the FIR in the case of Corruption is applied only in the exceptional circumstances ie., to sparingly exercise its power under Section 482 of Cr.P.C., to entertain the quash petition. The Hon'ble Supreme Court further held that in the case of Corruption, the Court must made the hand off approach in entertaining the quash petition. The Hon'ble Supreme Court insisted not to entertain the quash petition and allow the investigation to go on either on the positive side or the negative side on the basis of the material collected by them.

In the case of ***State of Chhattisgarh v. Aman Kumar Singh***, reported in **(2023) 6 SCC 559**



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*80. Having regard to what we have observed above in paras 47 to 50 (supra) and to maintain probity in the system of governance as well as to ensure that societal pollutants are weeded out at the earliest, it would be eminently desirable if the High Courts maintain a hands-off approach and not quash a first information report pertaining to “corruption” cases, specially at the stage of investigation, even though certain elements of strong-arm tactics of the ruling dispensation might be discernible. The considerations that could apply to quashing of first information reports pertaining to offences punishable under general penal statutes ex proprio vigore may not be applicable to a PC Act offence. Majorly, the proper course for the High Courts to follow, in cases under the PC Act, would be to permit the investigation to be taken to its logical conclusion and leave the aggrieved party to pursue the remedy made available by law at an appropriate stage. If at all interference in any case is considered necessary, the same should rest on the very special features of the case.*



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13. By following the above principles laid down by the Hon'ble Supreme Court, this Court feels that there are prima facie materials to continue the investigation against the petitioners. This Court further clarified that the discussion made by this Court is for the continuation of the investigation against the petitioners. The petitioners are at liberty to agitate their points before the trial Court. The learned trial Judge, is directed to decide the case of the petitioners independently uninfluenced by the discussions made hereinabove in the case.

14. The learned counsel for one of the petitioner Thiru.Ayyapparaj, submitted that before registering the case, preliminary enquiry has to be conducted. Without conducting the preliminary enquiry, the registration of the FIR itself is illegal. Hence, he seeks the quashment of FIR. The said submission has no legs to stand in view of the law laid down by the Hon'ble Supreme Court in AIR 2021 SC 5041 (2021 SCC Online 923) CBI Vs Thommandru Hannah Vijayalakshmi @ T.H.Vijayalakshmi held as follows:

*40. In view of the above discussion, we*



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*hold that since the institution of a Preliminary Enquiry in cases of corruption is not made mandatory before the registration of an FIR under the CrPC, PC Act or even the CBI Manual, for this Court to issue a direction to that affect will be tantamount to stepping into the legislative domain. Hence, we hold that in case the information received by the CBI, through a complaint or a “source information” under Chapter 8, discloses the commission of a cognizable offence, it can directly register a Regular Case instead of conducting a Preliminary Enquiry, where the officer is satisfied that the information discloses the commission of a cognizable offence.*

*41. The above formulation does not take away from the value of conducting a Preliminary Enquiry in an appropriate case. This has been acknowledged by the decisions of this Court in P.Sirajuddin(supra), Lalita Kumari (supra) and Charansingh (supra). Even in Vinod Dua (supra), this Court noted that “[a]s a matter of fact, the accepted norm - be it in the form of CBI Manual or like instruments is to insist on a preliminary inquiry”. The registration of a Regular Case can*



*have disastrous consequences for the career of an officer, if the allegations ultimately turn out to be false. In a Preliminary Enquiry, the CBI is allowed access to documentary records and speak to persons just as they would in an investigation, which entails that information gathered can be used at the investigation stage as well. Hence, conducting a Preliminary Enquiry would not take away from the ultimate goal of prosecuting accused persons in a timely manner. However, we once again clarify that if the CBI chooses not to hold a Preliminary Enquiry, the accused cannot demand it as a matter of right. As clarified by this Court in Managipet (supra), the purpose of Lalita Kumari (supra) noting that a Preliminary Enquiry is valuable in corruption cases was not to vest a right in the accused but to ensure that there is no abuse of the process of law in order to target public servants.*

In the case of ***National Confdn. of Officers Assn. of Central Public Sector Enterprises v. Union of India***, reported in (2022) 4 SCC 764 : reiterated the said principle and held as follows:

**62.** In CBI v. Thommandru Hannah  
Vijayalakshmi [CBI v. Thommandru Hannah



*Vijayalakshmi, (2021) 18 SCC 135 : 2021 SCC OnLine SC 923] , a three-Judge Bench of this Court held that it is not mandatory to hold a preliminary enquiry in all cases before registering an FIR against a public official,*

15. Accordingly, all the petitions dismissed with the above observations. Consequently, connected miscellaneous petitions are closed.

22.11.2023

NCC :Yes/No  
Index :Yes/No  
Internet :Yes/No

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**K.K.RAMAKRISHNAN,J**

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