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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 06.02.2024
PRONOUNCED ON : 3.09.2024

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.R.C.Nos.153 & 191 of 2024 and
Crl.M.P.Nos.1337 & 1635 of 2024

Crl.R.C.No.153 of 2024:

Manoharan ... Petitioner

Vs.

The State Rep. by,
The Inspector of Police,
CCB, Wing 5,
Veppery, Chennai-07. ... Respondent

Crl.R.C.No.191 of 2024:

Manoharan ... Petitioner

Vs.

The State Rep. by,
The Inspector of Police,
CCB, Wing 5,
Egmore, Chennai-07. ... Respondent

PRAYER in Crl.R.C.No.153 of 2024: Criminal Revision Petition filed under

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Sections 397 r/w 401 of Criminal Procedure Code, to call for the records in Crl.M.P.No.24071 of 2023 dated 07.12.2023 in C.C.No.1311 of 2020 on the file of learned CCB & CBCID Metropolitan Magistrate, Egmore, Chennai-8 and to set aside the same.

PRAYER in Crl.R.C.No.191 of 2024: Criminal Revision Petition filed under Sections 397 r/w 401 of Criminal Procedure Code, to call for the records in Crl.M.P.No.51857 of 2023 in Crl.M.P.No.24071 of 2023 in C.C.No.1311 of 2020 on the file of learned CCB & CBCID Metropolitan Magistrate, Egmore, Chennai-8 and to set aside the same the order passed in Crl.M.P.No.51857 of 2023, dated 07.12.2023.

For Petitioner in both revisions	:	Mr.R.Ganesan
For Respondent in both revisions	:	Mr.C.E.Pratap, Government Advocate (Crl. Side)

COMMON ORDER

Crl.R.C.No.153 of 2024 has been filed to set aside the impugned order, dated 07.12.2023 in Crl.M.P.No.24071 of 2023 in C.C.No.1311 of 2020 passed by the learned Metropolitan Magistrate for exclusive trial of CCB Cases (relating to cheating cases in Chennai) and CBCID Metro Cases, Egmore, Chennai.

2.Crl.R.C.No.191 of 2024 has been filed to set aside the impugned

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order, dated 07.12.2023 in Crl.M.P.No.51857 of 2023 in C.C.No.1311 of 2020 passed by the learned Metropolitan Magistrate for exclusive trial of CCB Cases (relating to cheating cases in Chennai) and CBCID Metro Cases, Egmore, Chennai.

3.Crl.M.P.No.24071 of 2023 in C.C.No.1311 of 2020 filed by the petitioner/A6 under Section 239 Cr.P.C seeking discharge from the charges under Sections 120(B), 465, 468, 471, 472, 420 r/w 34 of IPC in C.C.No.1311 2020. Crl.M.P.No.51857 of 2023 in C.C.No.1311 of 2020 filed under Section 25 r/w 301 & 302 of Cr.P.C questioning the counter affidavit filed by the Holding Investigating Officer and not filed by the Assistant Public Prosecutor.

4.Since both the criminal revision cases arise out of dismissal of common impugned order, dated 07.12.2023 and the petitioner and the respondent are one and the same, this Court disposes both the revisions by way of common order.

5.The brief facts of the case in C.C.No.1311 of 2020 is that Mr.M.Chandrasekaran/LW1, Regional Officer of All India Council of

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Technical Education (AICTE) lodged a complaint to the respondent Police and a case in Crime No.158 of 2015 registered against the accused for offence under Sections 120(B), 465, 468, 471, 472, 420 r/w 34 of IPC. The petitioner is A6 of M/s.Muthukumaran Educational Trust, K.K.Nagar West, Chennai/A1 (In short 'Trust') was formed by one A.N.Radhakrishnan/A2, Founder of the Trust and Gomathi/A3, Managing Trustee and other Trustees *viz.,* Kothandaram and Meenakshiammal. During the year 2012-13, the Trust submitted certain forged documents of building and planning permission as though obtained from the Chennai Metropolitan Development Authority (CMDA) and cheated AICTE with a sole intention to get recognition. The said A.N.Radhakrishnan, Gomathi, Kothandaraman, Meenakshiammal, Manokaran/petitioner and Karunanithi had conspired together and in pursuant to the conspiracy, produced forged planning and building permission as though the Planner Priyadevi and Executive Engineer Vedhagiri approved and signed the documents along with seal. Based on which, the signature and seal of Member Secretary forged and projected as though approval obtained from the competent authority. This forged documents submitted by the petitioner/A6 and Karunanithi/A7. Later, an inspection by AICTE was conducted. When it was at the stage of approval,

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anonymous complaint received by AICTE that CMDA document submitted are forged. AICTE caused enquiry, found the forgery committed by the accused and lodged the complaint to the respondent Police. After investigation, the respondent Police filed charge sheet against the accused listing witnesses and documents. During trial, the petitioner filed the above said discharge petition and also filed a petition questioning the counter affidavit filed by the Holding Investigating Officer and not by the Assistant Public Prosecutor. The Trial Court *vide* impugned common order, dated 07.12.2023 dismissed both the petitions. Against which the present criminal revision cases.

6.The grounds raised by the learned counsel for the petitioner is that in this case, the Investigating Officer not filed the counter and it is the Holding Inspector one Ms.Chithra filed the counter which was not legitimately signed by the Assistant Public Prosecutor. Hence, it cannot be considered as counter affidavit and the objections filed is without any authority of law. He further submitted that the Trial Court dismissing the discharge petition as matter of routine giving a finding that grounds raised can be considered and decided only after ful-fledged trial is not proper. The

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Trial Court failed to consider that out of the seven accused except the petitioner/A6 and A3/Gomathi, all the other accused *viz.,* A2, A4, A5 and A7 are no more. A2, A4 and A5 are Trustees of A1. Hence, the charges against A2, A4, A5 and A7 stands abated. The Trial Court failed to consider that the petitioner/A6 and A7/Karunanithi were employees of the Trust/A1. The petitioner/A6 is the paid servant of A1 to A5 in capacity of Manager. As a loyal servant of the Trust, he carried the Trust papers and submitted the same to the Technical Education Appellate Committee (TEAC). As the scrutiny committee rejected the claim of A1 to A5 by its order, dated 22.04.2012, the petitioner/A6 along with A7 appeared before TEAC on 28.04.2012, signed the attendance register in acknowledgment of appearing before the Committee and submitted its papers for consideration to start polytechnic college. Thereafter, TEAC conducted spot inspection and on satisfaction with the compliance of the conditions, directed A1 to A5 to deposit a sum of Rs.50,00,000/- for granting permission to start polytechnic college. Since the Trust withdrew the application from AICTE, nothing thereof proceeded or acted based on the alleged forged documents. Hence, no offence is made out.

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7.The learned counsel further submitted that the Investigating Officer not conducted the investigation as per the procedure laid down. In fact, the Investigating Officer safeguarded the officials of TEAC and AICTE and made the petitioner as scapegoat. The investigation in respect of connivance of CMDA with AICTE not carried out. In fact similar anonymous petition sent to the Central Bureau of Investigation (CBI) against the Trust/A1. The CBI conducted preliminary enquiry and gave opinion that no Central Government Public Servant involved in the crime, then only LW1 gave a complaint to the respondent Police. LW1 is not a expert to depose in respect of the documents submitted by A1 to A5. The other witnesses LW4, LW5 and LW10 played active role in commission of offence. The Investigating Officer took no steps to find out active role played by LW4, LW5 and LW10 in commission of offence. The Investigating Officer took the role of a Judge arrayed LW4, LW5 and LW10 as witnesses who actively participated in the commission of offence without following the procedure under Section 306 of Cr.P.C.

8.He further submitted that the entire case rest on preparation of forged documents by forging the signature of CMDA Officials and seals.

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The specimen signatures of the witnesses not obtained and documents not forwarded to the forensic examination. In a case of forgery, forensic report is must, based on which, the case can proceed. In this case, admittedly, no document forwarded to the forensic examination and no report obtained. In such circumstances, the proceeding against the petitioner is not proper. In support of his submissions as regards filing of counter affidavit by the Holding Inspector and for selective prosecution, the learned counsel for the petitioner relied on the decisions of this Court in the cases of "***Sathyavani Ponrani Vs. Samuel Raj and Ors.*** reported in ***2010 (4) CTC 833*** and ***A.V.Bellarmin and Ors. Vs. Santhakumaran Nair*** reported in ***2015 (4) MLJ (Crl) 436***". Making the above submissions and relying on the decisions, the learned counsel for the petitioner prays for setting aside the impugned order.

9.The learned Government Advocate (Crl. Side) appearing for the respondent Police vehemently opposed the petitioner's submissions and submitted that the petitioner is the Manager of the Trust/A1. As a Manager, he plays pivotal role in the Trust, Administration of the Trust, educational institutions, coordinates with various officials for getting permission and

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approval and submitting documents and report as and when it is required. In this case, the Trust/A1 made application for starting polytechnic college to AICTE which was rejected. Thereafter, an appeal made to the scrutiny committee and the scrutiny committee approved the same. The petitioner/A6 submitted the documents to the Technical Committee which is not seriously disputed. The petitioner/A6 along with A7 had gone to New Delhi and submitted the documents. Later, an anonymous complaint received that the signature and seal found in the building and planning permission as though approved by the CMDA found forged. On the complaint, AICTE caused enquiry with CMDA officials, confirmed the documents submitted forged. Similarly, the CBI received the same complaint. After preliminary enquiry, the CBI found no Central Government Public Servant involved in the commission of offence and directed LW1 to take appropriate action. Pursuant to that, a complaint was lodged by LW1 to the respondent Police. On receipt of complaint, FIR in Crime No.158 of 2015 registered against the accused for offence under Sections 120(B), 465, 468, 471, 472, 420 r/w 34 of IPC registered, investigation conducted and documents collected. During investigation, it was confirmed that the Trust/A1 made application for starting a polytechnic

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college and submitted forged documents confirmed by CMDA officials. The Trust/A1 officials confirmed the active role played by the petitioner/A6 with other accused.

10.It is further submitted that it is not in all cases the forged documents to be forwarded for forensic examination. It is for the Court to decide whether the signature and seal are forged or not. With the available material as per Section 73 of the Indian Evidence Act, the Court can compare/study the signatures and writings. Added to it, the offence is not only on forgery, it includes conspiracy and common intention. In a case of conspiracy, direct evidence may not be available and it can be inferred on the totality of the case at the time of trial. The other point of counter affidavit filed by the Holding Inspector is not sustainable and proper. The Assistant Public Prosecutor acknowledged the counter affidavit and he only filed the same before the Presiding Officer. Added to it, the Assistant Public Prosecutor not disputed filing of counter affidavit. The Trial Court not considered the counter but considered the petitioner's grounds for discharge along with charge sheet and materials filed and found *prima facie* case made out. Hence, he prays for dismissal of the revisions.

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11.This Court considered the rival submissions and perused the materials on record.

12.The contention of the petitioner questioning the counter affidavit filed by the Holding Investigating Officer is not sustainable and the same is rejected for the reason that the Assistant Public Prosecutor acknowledged the counter affidavit and he only filed the same before the Presiding Officer. Added to it, the Assistant Public Prosecutor not disputed filing of counter affidavit. Further, the Trial Court not considered the counter affidavit, but considered the submissions based on the records and materials in charge sheet.

13.As regards the dismissal of discharge petition is concerned, the petitioner is charged for offence under Sections 120(B), 465, 468, 471, 472, 420 r/w 34 of IPC. For the charge of conspiracy, the evidence may not be apparent, it has to be seen taking the case as a whole and it can also be inferred but it can be only during trial. The beneficiary is the Trust/A1 and the petitioner/A6 is its Manager. The Trust/A1 made application for starting

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polytechnic college is not denied and not disputed. Earlier approaching AICTE and resubmitting to the scrutiny committee along with CMDA approved planning and building permission found to be forged during investigation. Thereafter, recording the statements of AICTE and CMDA officials, charge sheet filed before the Trial Court.

14.It is not a Rule that in all cases of forgery, the documents necessarily to be sent to forensic examination. On the statements and materials submitted, the Trial Court *prima facie* found case made out against the petitioner and cognizance taken. In the discharge petition, the points raised by the petitioner considered along with the statements and documents submitted. At this stage, the Trial Court is required to find out whether a *prima faice* case is made out against the accused or not and not to see whether it would lead to conviction. Thus, the Trial Court on analysis of statements and materials passed a detailed order. Hence, no interference of this Court is called for.

15.The issue decided in the decision relied upon by the learned counsel for the petitioner "***Sathyavani Ponrani Vs. Samuel Raj and Ors.***

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reported in ***2010 (4) CTC 833***" is whether a victim is entitled to be heard and take part in a criminal proceeding or not. The issue decided in ***A.V.Bellarmin and Ors. Vs. Santhakumaran Nair*** reported in ***2015 (4) MLJ (Crl) 436***" is that the Authorized office had conducted an enquiry, get satisfied with the offence committed and found that Sections 180 and 180-B of the Railways Act not followed. Both the decisions are not applicable to the facts and circumstances of the present case.

16.In view of the above, this Court does not find any illegality or infirmity in the impugned common order, dated 07.12.2023 passed by the learned Metropolitan Magistrate for exclusive trial of CCB Cases (relating to cheating cases in Chennai) and CBCID Metro Cases, Egmore, Chennai and the same is hereby confirmed. Accordingly, both the criminal revision cases are dismissed. Consequently, connected criminal miscellaneous petitions are closed.

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Neutral Citation: Yes/No
Speaking Order/Non Speaking Order
Index: Yes/No

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To

1.The Metropolitan Magistrate for exclusive trial of CCB Cases
(relating to cheating cases in Chennai) and CBCID Metro Cases,
Egmore, Chennai.

2.The Inspector of Police,
CCB, Wing 5,
Veppery, Chennai-07.

3.The Public Prosecutor,
High Court, Madras.

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M.NIRMAL KUMAR, J.

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PRE-DELIVERY ORDERS IN
Crl.R.C.Nos.153 & 191 of 2024

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