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Crl.OP(MD)Nos.20609, 20614 and 20616 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 10/09/2024

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THE HONOURABLE MR. JUSTICE G.ILANGOVAN

Crl.OP(MD)Nos.20609, 20614 and 20616 of 2022

and

Crl.MP(MD)Nos.14323, 14324, 14328, 14329, 14332 and 14334
of 2022

(1)Crl.OP(MD)No.20609 of 2022:-

Dr.P.K.Kalyani

: Petitioner/A1

Vs.

1.The State,

Through the Deputy Superintendent of Police,
Vigilance and Anti-Corruption,
Tirunelveli.

(Crime No.07 of 2017)

: 1st Respondent/
De-facto Complainant

2.The Inspector of Police,
Department of Vigilance and
Anti-Corruption,
Tirunelveli.

: 2nd Respondent/
Respondent

Prayer:- This Criminal Original Petition is filed under section 482 of the Criminal Procedure Code, to call for the records pertaining to the final report in Special CC No.6 of 2021 on the file of the Chief Judicial Magistrate (Special Court for Trial Cases), Tirunelveli, in Crime No.07 of 2017, dated 22/05/2017 on the file of the 1st respondent and quash the same as illegal against the petitioner alone.



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(2)Crl.OP(MD)No.20614 of 2022:-

Dr.P.K.Kalyani

: Petitioner/A1

Vs.

1.The State,

Through the Deputy Superintendent of Police,
Vigilance and Anti-Corruption,
Tirunelveli.

(Crime No.07 of 2017)

: 1st Respondent/
De-facto Complainant

2.The Inspector of Police,
Department of Vigilance and
Anti-Corruption,
Tirunelveli.

: 2nd Respondent/
Respondent

Prayer:-This Criminal Original Petition is filed under section 482 of the Criminal Procedure Code, to call for the records pertaining to the final report in Special CC No.7 of 2021 on the file of the Chief Judicial Magistrate (Special Court for Trial Cases), Tirunelveli, in Crime No.07 of 2017, dated 22/05/2017 on the file of the 1st respondent and quash the same as illegal against the petitioner alone.

(3)Crl.OP(MD)No.20616 of 2022:-

Dr.P.K.Kalyani

: Petitioner/A1

Vs.

1.The State,

Through the Deputy Superintendent of Police,
Vigilance and Anti-Corruption,
Tirunelveli.

(Crime No.07 of 2017)

: 1st Respondent/
De-facto Complainant

2.The Inspector of Police,
Department of Vigilance and
Anti-Corruption,
Tirunelveli.

: 2nd Respondent/
Respondent



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Prayer:- This Criminal Original Petition is filed under section 482 of the Criminal Procedure Code to call for the records pertaining to the final report in Special CC No.8 of 2021 on the file of the Chief Judicial Magistrate (Special Court for Trial Cases), Tirunelveli, in Crime No.07 of 2017, dated 22/05/2017 on the file of the 1st respondent and quash the same as illegal against the petitioner alone.

For Appellant : Mr.T.Lajapathi Roy
(in all cases) Senior counsel
for Mr.T.Lajapathi Roy Associates

For Respondents : Mr.R.Meenakshi Sundaram
(in all cases) Additional Public Prosecutor

COMMON ORDER

These criminal original petitions are filed seeking quashment of the Special CC Nos.6,7 and 8 of 2021 on the file of the Chief Judicial Magistrate (Special Court for P.C cases), Tirunelveli and quash the same.

2.The facts in brief:-

The petitioner is an accused in Special CC Nos.5 to 8 of 2021 pending on the file of the Special Court for P.C Cases, Tirunelveli, filed Crl.OP(MD)No.3610 of 2022 seeking quashment of the criminal proceedings in Special CC No.5 of 2021 pending on the file of the Special Court, Tirunelveli. At that time, this petitioner omitted to mention or even file petition seeking quashment of the proceedings in



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Special CC Nos.6, 7 and 8 of 2021 pending on the file of the Special Court, Tirunelveli.

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3.The co-accused namely S.Prabakar filed Cr1.OP(MD)Nos.19909, 19912, 19913 and 19915 of 2021 seeking quashment of the criminal proceedings in Special CC Nos.5 to 8 of 2021. Those petitions were taken up along with Cr1.OP(MD)No.3610 of 2022 filed by this petitioner seeking quashment of Special CC No.5 of 2021. Elaborate submissions were made on both sides. After hearing both sides, common order was passed by this court, dated 09/09/2022 allowing all the petitions, the criminal proceedings pending in Special CC Nos.5 to 8 of 2021 so far as S.Prabakar is concerned and Special CC No.5 of 2021 which was pending against this petitioner were quashed. Against the same, the State Government filed SLP before the Hon'ble Supreme Court in Special Leave Petition (Criminal) Diary No(s).38909 of 2022. The Hon'ble Supreme court, by order, dated 16/10/2023 made the following observation and dismissed the SLP.

"1.Delay condoned.

2.We are not inclined to interfere with the orders impugned herein under Article 136 of the Constitution of India.

3.The Special Leave Petitions are dismissed.

Pending application(s), if any, shall stand disposed of."



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4. Pending further process by the State Government in the above said criminal original petitions, this petitioner filed these petitions on 16/11/2022 seeking quashment of the proceedings in Special CC Nos.6 to 8 of 2021.

5. The facts need not be elaborated since there was elaboration in the common order, dated 09/09/2012 passed in Crl.OP(MD)Nos.19909, 19912, 19913, 19915 of 2021 and 3610 of 2022. What applies to S.Prabakar and others, squarely stands apply to the petitioner also in respect of these special calendar cases. On that limited scope, these petitions can be disposed of.

6. For better understanding of the issue, let me reproduce some portions of the earlier order, as under:-

"5. As per the order of the Director, Vigilance & Anti-Corruption, Chennai, enquiry was undertaken and S.Prabakar was the Head of the Department of English, now Controller of Examination, Manonmaniam Sundaranar University, Tirunelveli; Both of them entered into criminal conspiracy to do the illegal act and in pursuance of the conspiracy, by misusing the official position have issued admission in the



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Post Graduate degree in the University for ineligible candidates, who secured lessor mark than the eligible mark prescribed; They refused admission for eligible candidates for the Academic year 2011-2012, 2012-2013, 2013-2014 and 2014-2015. They also framed incorrect records, used the same as genuine and they have violated the instructions issued by the Government of Tamil Nadu in G.O.(1D) High Education (G1) Department, dated 31/05/2013 and G.O(1D) No.75 Higher Education Department, dated 10/05/2008, by which, communal rotation has been prescribed. They also prepared incorrect admission list in admitting ineligible candidates and refused to admit the eligible candidates. On the basis of the above said enquiry, FIR was registered for the offences under sections 120(B), 167, 465, 468, 471 IPC and section 13(2) r/w 13(1)(d) (1 & 2) of the Prevention of Corruption Act, 1988.

6. Investigation was undertaken and after completing the formalities of investigation, final report was filed in the form of four final reports, charging both the accused persons for different kinds of offences in respect of separate occurrences."



7. So this makes role that was allegedly played by this petitioner also.

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8. We can straightaway go the operative portion of the order. Para 14 of the order reads as under:-

"14. In short, the question, which arises for consideration in simple terms is, whether the alleged misconduct with reference to the violation of the circular, that was issued by Tamil Nadu Government and violating the procedure contemplated under the provision of the Tamil Nadu State Council for Higher Education Act, 1992, amount to criminal misconduct as defined under section 13(1) of the Prevention of Corruption Act."

9. The argument that was advanced on behalf S. Prabakar and Dr. P. K. Kalyani is available in para 18, which reproduced hereunder:-

"18. Now A1-P. K. Kalyani was working as HOD from 31/12/2012 to 30/06/2017 and A2-S. Prabhakar was working from 31/12/2019 to 31/12/2021. S. Prabhakar is the successor of P. K. Kalyani of M. S. University. Now P. K. Kalyani retired and S. Prabhakar



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still in service. According to S.Prabhakar, the University is guided by its Act called 'M.S. University Act'. Being the HOD, the accused persons are bound by the resolution passed by the Selection Committee. Selection process is being undertaken through the Registrar. The Registrar will issue notification and the Committee will be formed for selecting the candidates. Normally the H.O.D, Senior and another member from SC/ST community will be the Selection Committee. The University, by circular, dated 28/05/2010 directed the H.O.D to fix the eligible for Post Graduate courses by 75% of the under graduation marks and 25% of the Higher Secondary mark for M.Phil English course also that was admitted. Based upon on the above said, notification was issued. The above said circular was uploaded by the Vice Chancellor and Registrar and Dean of the University. So according to S.Prabhakar, what was undertaken by him as one of the members of the Selection Committee was adopting and following the resolution passed by the syndicate, he is bound by syndicate resolution and he cannot violate the same. He would further submit that during the relevant period for M.A(English) the post graduate M.Phil English course were not



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much significance. For the past four years, no seats were filled up and so there is no question of gaining pecuniary advantage."

10.In the light of the above said, para No.27 of the earlier order requires reproduction:-

"27.So this court need not trouble this judgment by venturing the point whether M.S University is not bound to follow the circular issued by the Government from time to time. Whether the above said issue can be canvassed and decided is foreign to the present issue."

11.Para 29 was the answer to the discussion, which reads as under:-

"29.As rightly pointed by the petitioners, what they have followed is only the circular issued by the University Registrar, in pursuance of the above syndicate resolution. The persons involved in passing of the resolution, such as the Vice Chancellor and other persons have not been proceeded. But these persons have been singled out, since they happened to be the members of the selection committee. They cannot be prosecuted for what has



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been done by them, in obedience to the syndicate resolution, absolutely, no criminality is attached. No material has been collected to show that the petitioners gained pecuniary advantage."

12.By making the above said observation, finally passed the following order, which is available in para 31 which reads as under:-

"31.So, I am of the considered view that continuation of the proceedings will be an abuse of process of court and law. They have been unnecessarily penalised for having obeyed the syndicates directory, they have not acted on their own. On that ground, all the petitions are liable to be allowed."

13.In view of the above said earlier order and is not interfered by the Hon'ble Supreme Court, I am of the considered that what applies to Special CC No.5 of 2021 stand apply to the other proceedings in Special CC No.6 to 8, which are the subject matter of the petitions now. So, no more discussion is required since the matter attained finality.



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14. So, all the criminal original petitions are **allowed**. The impugned proceedings are quashed. Consequently connected Miscellaneous Petitions are closed.

10/09/2024

Index : Yes/No
Internet : Yes/No
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To,

1. The Chief Judicial Magistrate,
(Special Court for Trial cases),
Tirunelveli.
2. The Deputy Superintendent of Police,
Vigilance and Anti-Corruption,
Tirunelveli.
3. The Inspector of Police,
Department of Vigilance and
Anti-Corruption,
Tirunelveli.
4. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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G.ILANGOVAN, J

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10/09/2024