BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 15.04.2015
CORAM:

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

CRL.O.P.(MD)No.6394 of 2015
and
M.P.No.1 of 2015

I.Periasamy : Petitioner/Accused No.1

Vs.

State of Tamil Nadu rep. By
The Deputy Superintendent of Police,
Vigilance and Anticorruption,
Dindigul.
(Cr.No.1 of 2012) : Respondent/Complainant

PRAYER: Petition is filed under Section 482 of the Code of Criminal Procedure to call for the records in Crl.M.P.No.513 of 2014 in Spl.C.C.No.27 of 2014 dated 26.02.2015 passed by the learned Chief Judicial Magistrate cum Special Judge for Prevention of Corruption Act Cases, Dindigul and set aside the same, consequently direct the trial Court to furnish the statements recorded, documents collected during the course of detailed enquiry and the detailed enquiry report.

For Petitioner : Mr.M.Ajmal Khan
Senior Counsel for
Mr.S.Ravi

For Respondent : Mr.S.Shanmuga Velayutham
State Public Prosecutor
Assisted by
Mr.C.Mayilvahana Rajendran
Additional Public Prosecutor

O R D E R

The petitioner is the first accused in Special Case No.27 of 2014, on the file of the learned Chief Judicial Magistrate cum Special Judge for Prevention of Corruption Act Cases, Dindigul. Including the petitioner, totally, there are four accused. The second accused is his wife and the third and fourth accused are his sons. The petitioner was the Minister for Revenue and Prison Departments, Governemnt of Tamil Nadu, between 13.05.2006 and 31.03.2010. The respondent registered a case against the petitioner in Crime No.1 of 2012, under Section 13(2) r/w 13(1)(e) of the Prevention of Corruption Act, 1988 and on completing the investigation, laid a final report before the learned Chief Judicial Magistrate cum Special Judge, under the Prevention of Corruption Act, at Dindigul. According to the said final report, the petitioner, along with the other accused, during the check period between 13.05.2006 and 31.03.2010, had disproportionate assets to the known sources of income of A-1 and his family members to the tune of Rs.2,01,35,152.16. With the above conclusions, the respondent filed a final report alleging that the petitioner had committed offence under Section 13(2) r/w 13(1)(e) of the Prevention of Corruption Act, 1988 and the other accused had committed the offence under Section 13(2) r/w 13(1)(e) of the Prevention of Corruption Act, 1988 r/w Section 109 of the Indian Penal Code.

2. All the accused have made appearance before the lower Court and the copies of the documents, which are going to be relied on by the prosecution during the trial, have already been furnished to the accused under Section 207 of Code of Criminal Procedure. The case is now listed for hearing the petitioner and the other accused as well as the prosecution on the question of charges. At that stage, the petitioner filed a Miscellaneous Petition in Crl.MP.No.513 of 2014 before the lower Court, supported by an affidavit, seeking a direction to the respondent Police to produce the following documents:

> "i).Statement of witnesses recorded during the enquiry held prior to the registration of the case.
>
> ii).Documents collected by the respondent during enquiry held prior to the registration of the case.
>
> Iii).Detailed enquiry report prepared by the respondent based on the above materials collected".

3. In the affidavit filed in support of the petition, it was submitted by the petitioner before the lower Court that the documents are very relevant for him to make his submissions. In paragraph No.9 of the affidavit, more specifically, it is stated that he has reason to suspect that the said detailed enquiry report filed by the respondent is contrary to the present charges, which are sought to be levelled against the accused. It is also stated that if the above documents are produced, it would be useful for the accused to make his submissions on the charges.

4. A counter was filed by the respondent before the Lower Court, wherein it was stated that all the documents, including the statement of witnesses, which came into being during the investigation, were supplied to the accused as required under Section 207 of the Code of Criminal Procedure. During the course of preliminary enquiry/detailed enquiry held, prior to the registration of the case, according to Paragraph No.6 of the counter affidavit, the Officer did not examine any witness and he only enquired some of the persons, who had knowledge of the affairs of the petitioner and his family members. Precisely, Paragraph No.6 of the counter reads as follows:-

> "6.For the averments in para-5 and 6, it is submitted that Tr.N.Jeyakumar formerly D.S.P., Vigilance and Anti-Corruption, Dindigul, in the detailed enquiry, he did not examine witnesses and he only enquired some of the persons who have the knowledge of affairs of the petitioner and his family members and perused documents to find out whether there was prima facie case for the limited purpose of registering the F.I.R. The petitioner was also enquired in this regard."

It was also contended that the petitioner is not entitled for the documents sought for by him.

5. Having considered the above submissions, the Trial Court, by order dated 26.02.2015, dismissed the petition. As against the same,

the petitioner is now before this Court with this Criminal Original Petition under Section 482 of Code of Criminal Procedure.

6. I have heard Mr.M.Ajmal Khan, the learned Senior Counsel appearing for the petitioner, Mr.S.Shanmuga Velayutham, the learned State Public Prosecutor appearing for the State of Tamil Nadu and I have also perused the records carefully. The respondent is also present before this Court.

7. The learned Senior Counsel appearing for the petitioner would submit that the Hon'ble Supreme Court, in the Judgment in **V.K.Sasikala Vs. State, [2012 9 SCC 771**], following the earlier Judgment in **Manu Sharma Vs. State [NCT of Delhi], 2010 6 SCC 1 : 2010(2) SCC [Crl] 1385]**, held that irrespective of the fact whether the documents are relied on by the prosecution or not, the accused are entitled for copies of those documents. It is the further submission of the learned Senior Counsel that whether the documents are produced before the Lower Court or not, the accused are entitled for copies of those documents, as the accused are entitled to have fair trial as guaranteed under Article 21 of the Constitution of India.

8. The learned Senior Counsel also relied on a Judgment of this Court in **K.Ramajeyam Vs State, [2014 2 LW 226**] wherein, the Hon'ble Justice Mr.P.Devadoss, in paragraph No.18 of the judgment held as follows:-

> "Such furnishing of copies of documents is the duty of the Court. Even documents which were forwarded to the Court, which are not relied on by the prosecution, may be of helpful to the accused to establish his innocence. Copies of them can also be asked for by the accused. Copies of such documents also have to be furnished to the accused. But, it such documents are not forwarded to the Court by the police and are still with the police, it becomes the duty of the Court to direct the police to produce those documents to the Court and then, the Court has to furnish copies of the same to the accused. However, when there is no such document, the question of furnishing them to the accused will not arise at all."

9. The learned Senior Counsel would, nextly, contend that the documents, which have been asked for by the accused, are very relevant to prove his case. He would further submit that the documents, which are in favour of the accused and which are very important, are in the hands of the prosecution and they are sought to be suppressed by the prosecution.

10. The learned Public Prosecutor would, however, vehemently oppose this Criminal Original Petition. According to him, under Section 207 of the Code of Criminal Procedure, the accused are entitled for copies of the documents, upon which the prosecution makes reliance. In the case on hand, the prosecution does not rely on those documents, which are sought to be produced. The learned Public Prosecutor would also contend that under Section 207 of the Code of Criminal Procedure, the petitioner cannot make a claim for copies of those documents.

11. Nextly, it is contended by the learned Public Prosecutor that in **V.K.Sasikala's** case, the Hon'ble Supreme Court was concerned with the documents, which have already been produced before the Court. The Hon'ble Supreme Court was not concerned with the documents, which were collected during the preliminary enquiry and not produced before the Court. Therefore, according to the learned Public Prosecutor, the dictum laid down in **V.K.Sasikala's** case cannot be made applicable to the facts of the present case.

12. The learned Public Prosecutor would further submit that subsequently, in **Manjeet Singh Khera Vs. State of Maharashtra**, [**2013 9 SCC 276**], the Hon'ble Supreme Court had an occasion to consider **V.K.Sasikala's** case and then, the Hon'ble Supreme Court has held that the dictum laid down in **V.K.Sasikala's** case is applicable only to the cases, where the documents are produced before the Court by the police. He would further submit that the Hon'ble Supreme Court in **Manjeet Singh Khera**'s case, further held that if the prosecution does not rely on the documents, then, the accused is not entitled for copies of such documents. Thus, according to the learned Public Prosecutor, in the instant case, the petitioner is not entitled for copies of those documents, as the prosecution does not rely on the same.

13. Nextly, the learned Public Prosecutor, would make his further submission, which appears to be very strange to me, that Section 173 of the Code of Criminal Procedure, deals only with the production of the documents or statements collected during the investigation and the accused is entitled for those documents or statements filed along with the final report, as provided in Section 207 of the Code of Criminal Procedure and since the statements recorded, the preliminary reports prepared and the documents collected prior to the registration of the case do not fall within the ambit of investigation, they cannot be compelled to be produced before the Court and the accused cannot have any access to those documents. The learned Public Prosecutor would try to distinguish the legal meaning for the word, 'enquiry' and 'investigation' as has been defined in the Code of Criminal Procedure.

14. Thus, according to the learned Public Prosecutor, in the instant case, since the detailed enquiry reports and the documents collected fall outside the purview of investigation, the accused is not entitled to copies of the documents and the detailed enquiry reports. In the alternative, the learned Public Prosecutor would submit that assuming that those documents, upon which reliance is not placed by the prosecution and which have not been produced before the Court, could be compelled to be produced before the Court and the accused would be entitled for copies of those documents, it should be shown that non-production of those documents or non-furnishing of copies of those documents would cause prejudice to the accused. In other words, the learned Public Prosecutor would submit that it should be shown that the documents sought for by the petitioner are relevant for the purposes of the accused to have a fair trial. In the instant case, according to the lower Court, the documents, which are asked for by the accused, do not have any relevance to the check period and they have got nothing to do with the defence of the accused and therefore, the documents cannot be

compelled to be produced and the accused cannot have any access to the same.

15. I have considered the above submissions.

16. At this length of time, it will appear as though it is overstating on the part of this Court that fair trial includes providing every reasonable opportunity to the accused to have an effective defence to his satisfaction.

17. The Hon'ble Supreme Court has been consistently holding that the concept of fair trial is in built in Article 21 of the Constitution of India. What is fair trial is a matter to be considered in each case and there cannot be any straight jacket formula on this aspect. Prior to **V.K.Sasikala**'s case, there was a time that arguments were accepted by the Higher Indian Judiciary that the accused are not entitled for copies of the documents, which are not relied on by the prosecution under Section 207 of Code of Criminal Procedure. In **Manu sharma's** case, cited supra, the Hon'ble Supreme Court made a march on the concept of fair trial and deviated from the earlier dictums and took a view that fair trial includes furnishing of copies of all those documents and statements of witnesses collected/recorded during investigation, which have been either produced or not by the prosecution before the Court, except to the extent indicated in Section 173(6) of the Code of Criminal Procedure Code. As a matter of fact, in Paragraph Nos.216 to 218 of the Judgment in **Manu sharma's** case, the Hon'ble Supreme court has held as follows:-

> "**216.** Under Section 170, the documents during investigation are required to be forwarded to the Magistrate, while in terms of Section 173(5) all documents or relevant extracts and the statement recorded under Section 161 have to be forwarded to the Magistrate. The investigating officer is entitled to collect all the material, which in his wisdom is required for proving the guilt of the offender. He can record statement in terms of Section 161 and his power to investigate the matter is a very wide one, which is regulated by the provisions of the Code. The statement recorded under Section 161 is not evidence *per se* under Section 162 of the Code. **The right of the accused to receive the documents/statements submitted before the court is absolute and it must be adhered to by the prosecution and the court must ensure supply of documents/statements to the accused in accordance with law.** Under the proviso to Section 162(1) the accused has a statutory right of confronting the witnesses with the statements recorded under Section 161 of the Code thus indivisible. [Emphasis supplied].
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> **217.** Further, Section 91 empowers the court to summon production of any document or thing which the court considers necessary or desirable for the purposes of any investigation, inquiry, trial or another proceeding under the provisions of the Code. Where Section 91 read with Section 243 says that if the accused is called upon to enter his defence and produce his evidence there he has also been given the right to apply to the court for issuance of process for compelling the

attendance of any witness for the purpose of examination, cross-examination or the production of any document or other thing for which the court has to pass a reasoned order.

218. The liberty of an accused cannot be interfered with except under due process of law. The expression "due process of law" shall deem to include fairness in trial. The court (*sic* Code) gives a right to the accused to receive all documents and statements as well as to move an application for production of any record or witness in support of his case. This constitutional mandate and statutory rights given to the accused place an implied obligation upon the prosecution (prosecution and the Prosecutor) to make fair disclosure. **The concept of fair disclosure would take in its ambit furnishing of a document which the prosecution relies upon whether filed in court or not.** That document should essentially be furnished to the accused and even in the cases where during investigation a document is bona fide obtained by the investigating agency and in the opinion of the Prosecutor is relevant and would help in arriving at the truth, that document should also be disclosed to the accused." [Emphasis Supplied].

18. In Paragraph No.218 of the Judgment, these words of the Hon'ble Supreme Court, "the concept of fair disclosure would take in its ambit furnishing of a document which the prosecution relies upon whether filed in Court or not", need to be underlined. Therefore, whether the document is produced before the Court or not by the prosecution, as has been held by the Hon'ble Supreme court in **Manu sharma's** case, when the accused wants those documents for an effective fair trial, it becomes the bounden duty of the Court to issue a direction to the Police to produce those documents, except those documents, referred to in Section 173(6) of the Code of Criminal Procedure.

19. The law laid down in **Manu sharma's** case was followed in **V.K.Sasikala's** case with approval. In the said case, the question was whether the accused was entitled for copies of the documents, which were not relied on by the prosecution. The Hon'ble Supreme Court extended the scope of fair trial, as provided in Article 21 of the Constitution of India and held that the accused is entitled for copy of every document, which has been forwarded to the Court, though such document may not be relied on by the prosecution. The Hon'ble Supreme Court further held that it is in tune with the concept of "fair disclosure" and "fair trial", as inbuilt in Article 21 of the Constitution of India.

20. But, the learned Public Prosecutor would make reliance on Paragraph Nos.17 and 18 of the Judgment in **V.K.Sasikala's** case, wherein the Hon'ble Supreme Court has held as follows:-

"**17.** Seizure of a large number of documents in the course of investigation of a criminal case is a common feature. After completion of the process of investigation and before submission of the report to the court under Section 173 CrPC, a fair amount of application of mind on the part of the investigating agency is inbuilt in the Code. Such application of mind is both with regard to the specific offence(s) that the investigating officer may consider to have been committed by the accused and also the identity and particulars of the specific documents and records, seized in the course of investigation, which supports the conclusion of the investigating officer with regard to the offence(s) allegedly committed. Though it is only such reports which support the prosecution case that are required to be forwarded to the Court under Section 173(5) in every situation where some of the seized papers and documents do not support the prosecution case and, on the contrary, supports the accused, a duty is cast on the investigating officer to evaluate the two sets of documents and materials collected and, if required, to exonerate the accused at that stage itself. However, it is not impossible to visualise a situation whether the investigating officer ignores the part of the seized documents which favour the accused and forwards to the court only those documents which support the prosecution. If such a situation is pointed by the accused and such documents have, in fact, been forwarded to the court would it not be the duty of the court to make available such documents to the accused regardless of the fact whether the same may not have been marked and exhibited by the prosecution? What would happen in a situation where such documents are not forwarded by the investigating officer to the court is a question that does not arise in the present case. **What has arisen before us is a situation where evidently the unmarked and unexhibited documents of the case that are being demanded by the accused had been forwarded to the court under Section 173(5) but are not being relied upon by the prosecution.** Though the prosecution has tried to cast some cloud on the issue as to whether the unmarked and unexhibited documents are a part of the report under Section 173 CrPC, it is not denied by the prosecution that the said unmarked and unexhibited documents are presently in the custody of the court. Besides, the accused in her application before the learned trial court (IA No. 711 of 2012) had furnished specific details of the said documents and had correlated the same with reference to specific seizure lists prepared by the investigating agency. In such circumstances, it can be safely assumed that what has happened in the present case is that along with the report of investigation a large number of documents have been forwarded to the court out of which the prosecution has relied only on a part thereof leaving the remainder unmarked and unexhibited. [Emphasis Supplied]..

18. In a recent pronouncement in *Manu Sharma* v. *State (NCT of Delhi)* to which one of us (Sathasivam, J.) was a party, the role of a Public Prosecutor and his duties of disclosure have received a wide and in-depth consideration of this Court. This Court has held that though the primary duty of a Public Prosecutor is to ensure that an accused is punished, his duties extend to ensuring fairness in the proceedings and also to ensure that all relevant facts and circumstances are brought to the notice of the Court for a just determination of the truth so that due justice prevails.

The fairness of the investigative process so as to maintain the citizens' rights under Articles 19 and 21 and also the active role of the court in a criminal trial have been exhaustively dealt with by this Court. Finally, it was held that it is the responsibility of the investigating agency as well as that of the courts to ensure that every investigation is fair and does not erode the freedom of an individual except in accordance with law. It was also held that one of the established facets of a just, fair and transparent investigation is the right of an accused to ask for all such documents that he may be entitled to under the scheme contemplated by the Code of Criminal Procedure. The said scheme was duly considered by this Court in different paragraphs of the report."

21. Referring to the above Paragraphs, the learned Public Prosecutor would submit that in **V.K.Sasikala's** case, though the Hon'ble Supreme Court has held that the accused were entitled for copies of those documents already produced before the Court, which may not be relied on by the prosecution, the Hon'ble Supreme Court left it open as to whether the accused would be entitled to copies of those documents, which were not produced and not relied on by the prosecution. It is, of course, true that the Hon'ble Supreme Court did not deal with the said question, because the said question was not before the Hon'ble Supreme Court in **V.K.Sasikala's** case and thus, there was no necessity for the Hon'ble Supreme Court to deal with the said question.

22. But, in **Manu sharma's** case, upon which much reliance is placed by the learned Public Prosecutor, the answer is available. The Judgments in **Manu sharma's** case and **V.K.Sasikala**'s have not been deviated by the Hon'ble Supreme Court in **Manjeet Singh Khera**'s case. All these Judgments are from co-equal Benches. In **Manjeet Singh Khera**'s case, the question was as to whether the accused were entitled for copies of those documents, which were not produced before the Court by the police, though they were collected during the investigation. The Hon'ble Supreme Court, after having followed **V.K.Sasikala's** case, in **Manjeet Singh Khera**'s case, in Paragraph Nos.10 and 11, held as follows:-

"**10.** We state at the cost of repetition that the prosecution has categorically taken the stand that they do not propose to rely upon the information passed on to the Anti-Corruption Bureau leading to an open inquiry against the accused persons. We fail to see how the accused persons are prejudiced by non-disclosure of the name of the person who sent the complaint as well as the original copy of the complaint received by the Anti-Corruption Bureau. The situations are many where certain persons do not want to disclose the identity as well as the information/complaint passed on by them to the Anti-Corruption Bureau. If the names of the persons, as well as the copy of the complaint sent by them are disclosed, that may cause embarrassment to them and sometimes threat to their life. This complaint only triggered an enquiry. Ultimately, the first information was lodged on the basis of an open inquiry bearing VER No. 31 of 1987 and it is based on that inquiry the first information report dated 13-10-1992 was registered. After completion of the investigation and after getting the sanction to prosecute Accused 1, charge-sheet was filed. PW 1 also did not depose anything about the receipt of complaint/application in his examination-in-chief but receipt of the complaint/application and its contents having been relied upon by the defence during cross-examination of PW 1.

11. We also emphasise that in the instant case the prosecution has relied upon the material which was collected during the investigation. It is not a case where some materials/documents were collected by the investigating agency during the investigations which are in favour of the prosecution (*sic* accused) and the prosecution is suppressing those documents. We are of the opinion that non-supply of the complaint or contents thereof do not, at all, violate the principle of fair trial. The said complaint has no relevancy in the context of this prosecution and in no manner, it would prejudice the petitioner."

23. A close reading of the above Judgment would make it abundantly clear that in **Manjeet Singh Khera**'s case, the Hon'ble Supreme Court has followed **V.K.Sasikal's** case and **Manu Sharmas's** case with approval, wherein the Hon'ble Supreme Court has also fallen in line with the earlier Judgments and held that the right of fair trial includes right to have copies of documents, which would be useful for the accused. But, the Hon'ble Supreme Court developed a bench mark to decide as to what are all the documents, which the accused is entitled for.

24. The Hon'ble Supreme Court held that the accused is not entitled to have every document, which is collected during the investigation or during the preliminary enquiry and that if at all, he is entitled for copy of any document, he should show that such document is either relevant and that the non-furnishing of copy of such document will cause prejudice to the accused. To put it in short, the bench mark is the relevancy and the possible prejudice to the accused. Therefore, from the above Judgments, the following principles could be noticed:-

i. Fair trial includes fair disclosure of all the materials collected either during the investigation or during the preliminary enquiry, including the statements recorded from the witnesses, documents collected and reports submitted.

ii. The accused is entitled to have free copies of all the documents, statements, etc., as enumerated in Section 207 of the Code of Criminal Procedure, upon which the prosecution makes reliance.

iii. Any document, either collected during the investigation or during preliminary enquiry and the preliminary enquiry report and the statement of witnesses, if any, if not produced by the police, along with the final report, the accused has got right to make an application before the Court seeking a direction to the police to produce those documents/statements of witnesses/reports.

iv. On such production of those documents/statements of witnesses/reports irrespective of the fact that the prosecution does not rely on those documents and records, the accused is entitled for copies of those documents/statements of witnesses/reports, [vide **V.K.Sasikala's** case and **Manu Sharmas's** case].

v. If the documents, statements of witnesses or reports, so produced, are not relevant for the case or if no prejudice is likely to be caused to the accused on account of the non-furnishing of those documents/statements of witnesses/reports, then, the accused is not entitled for the copies of those documents/statements of witnesses/reports, [vide **Manjeet Singh Khera**'s case].

vi. If the documents fall within the category of documents referred to in sub-section 6 of Section 173 of the Code of Criminal Procedure, the accused shall not be entitled for copies of those documents.

25. The learned Public Prosecutor submitted that the accused is entitled for copies of those documents, statement of witnesses, etc., which came into being or collected only during the investigation, which is after the registration of the case and on the other hand, the accused is not entitled for copies of documents, which were collected prior to the registration of the case by the Investigating Officer.

26. This argument of the learned Public Prosecutor does not persuade me at all. Probably, this argument is founded on the language employed in Section 207 of the Code of Criminal Procedure. In my considered view, Section 207 of the Code of Criminal Procedure speaks only of procedure, which is in tune with the fair trial guaranteed in Article 21 of the Constitution of India as a fundamental right. Neither section 207 nor any other provision in the Code bars the furnishing of copies of those documents, which do not fall within the purview of Section 207 of the Code of Criminal Procedure.

27. In **Manu sharma's** case, followed by **V.K.Sasikala's** case, the Hon'ble Supreme Court directed furnishing of copies of those documents, which are not relied on by the prosecution outside the scope of Section 207 of the Code of Criminal Procedure. Thus, in respect of the documents collected or statements recorded or the reports prepared prior to the registration of the case, Section 207 of the Code of Criminal Procedure is applicable. But, as has been held by the Hon'ble Supreme Court, right to have access to those documents, statement of witnesses and reports prepared prior to the registration of the case flows from Article 21 of the Constitution of India, as a fundamental right. This right was elaborated by the Hon'ble Supreme Court in **Manusharma's** case and **V.K.Sasikala's** case and the Hon'ble Supreme Court laid down that the accused is entitled for copies of those documents/statements of witnesses/reports. Therefore, the argument of the learned Public Prosecutor, referring to Section 207 of the Code of Criminal procedure that the accused are not entitled for copies of those documents, statement of witnesses and the reports prepared prior to the registration of the case is not at all acceptable. As I have already pointed out, these documents/statements of witnesses/reports fall outside the scope of Section 207 of the Code of Criminal Procedure, but fall within the substantive fundamental right guaranteed under Article 21 of the Constitution of India.

28. Now, turning to the facts of the present case, by applying the above principles and the law laid down by the Hon'ble Supreme Court, as I have already pointed out, there are three kinds of documents asked for by the accused. Insofar as the statement of witnesses, who were examined during the enquiry and prior to the registration of the case are concerned, it is categorically stated in the counter filed by the respondent that no statement was recorded from any witness, though 43 witnesses were examined during the enquiry. Since there is no statement available, as there was no statement recorded from any of these 43 witnesses, now, there is no scope to direct the respondent Police to produce any statement of witnesses, who were examined prior to the registration of the case. To that extent, the order of the lower Court needs to be confirmed.

29. Now, turning to the preliminary report prepared by the investigating officer, there are two reports. One report is dated 12.11.2011 and the other report is dated 07.02.2012. Insofar as these reports are concerned, now, the question is whether these reports are, first of all, relevant and subsequently, whether non-furnishing of copies of these reports to the accused would cause prejudice, as has been held by the Hon'ble Supreme Court in **Manjeet Singh Khera**'s case. A perusal of these reports would go to show that there are lot of statements of accounts, reference to documents, extracts, inferences of the police officer etc., and thus, in my considered view, these documents cannot be stated to be irrelevant. Thus, I hold that these documents are relevant and I also hold that non-furnishing of these documents would cause prejudice to the accused and therefore, the accused is entitled for copies of these reports.

30. According to the counter, during the course of investigation, 97 documents were collected. Now, 74 documents have already been produced before the Court and copies o the same were also furnished to the accused and the remaining documents are 23, details of which are as follows:

sl.No	***Documents***	***Reason for not included***
1	Attested copy of the vacant plot purchased in the name of Tr.I.P.Senthil Kumar, S/o. The A.O through Doc.No.2954/2010, dated 17.07.2010 of SRO., Batlagundu.	Due to beyond the check period
2	Attested copy of the house plot purchased in the name of Tr.I.P.S.Sendur Ahavan, S/o.I.P.Senthilkumar, grand son of the A.O through Doc.No.445/2011 dated 09.02.2011 of JSRO., Batlagundu	-do-
3	Attested copy of the statement of accounts in Election SB Ac No.65158 at Canara Bank, Main Branch, Dindigul, in the name of AO.	A/c opened after the check period

sl.No	Documents	Reason for not included
4	Attested copy of the Statement of Accounts in SB A/c No.31597 at Canara Bank, Batlagundu, in the name of I.P.Prabu.	A/c opened after the check period
5	Attested copy of the Statement of Accounts for Election in SB A/c No.55 at Indian Overseas Bank, Dindigul in the name of I.P.Senthil Kumar	A/c opened after the check period
6	Attested copy of the Statement of Accounts in SB A/c No.222 at Indian Overseas Bank, Dindigul in the name of I.P.Senthilkumar	A/c opened after the check period
7	Attested copy of the Statement of Accounts in SB A/c No.422 at Repco Bank, Adaiyar Branch, Chennai, in the name of Tmt.A.Arul Mercy	Daughter-in-law of the petitioner, since she was not an accused and this document was not taken in the investigation.
8	Attested copy of the Statement of Accounts in SB A/C No.1199 at Repco Bank, Dindigul in the name of Tmt.A.Arul Marcy	-do-
9	Attested copy of the Election Affidavit-2011 filed by Tr.I.Periasamy during the Assembly Election -2011	Since it was covered after check period and it was not taken in the investigation
10	Attested copy of the Election Affidavit-2011 filed by Tr.I.P.Senthil Kumar during the Assembly Election 2011.	Since it was covered after check period and it was not taken in the investigation.
11	Letter No.A3/395/2012 dated 19.01.2012 of the Joint Director, Agriculture Department, Theni District, regarding the Net Agricultural income of the AO from the land in the name of his family members in Theni District.	It was received again during the investigation.
12	Electricity Charge detail for the SC.No.201-002-1777 in Door No.H2, M2,166, Pillayarpalayam, Dindigul, furnished by the AE, TNEB, Nehruji Nagar, Dindigul.	A-3 stayed at this house after check period
13	Attested copy of the Election Expenditure for the Assembly election-2011 submitted by the AO at Collectorate, Dindigul.	Since the expenditure was held after check period and it was not taken in the investigation.

sl.No	Documents	Reason for not included
14	Attested copy of the Election expenditure for the Assembly Election-2011 submitted by Tr.I.P.Senthilkumar, son of the AO at Collectorate, Dindigul.	-do-
15	Income Tax returns filed by Tmt.A.Arul Mercy, W/o.I.P.Senthil Kumar at Income Tax Office, Dindigul for the assessment year 2010-11.	Daughter-in-law of the petitioner, since she was not an accused and this document was not taken in the investigation.
16	Copy of the Registration Certificate of Tvl.Susee Agency, Batlagundu, dated 04.06.2010.	Since the agency was started after check period and it was not taken.
17	Letter dated 24.01.2012 of Primary Agricultural Co-operative Credit Society, Old Batlagundu, in respect of AO's Member No.2455.	No transaction was held during the check period.
18	Letter dated 28.01.2012 of Primary Agricultural Co-operative Society, Athoor, in respect of A.O.	No account in the society.
19	Letter dated 30.01.2012 of Kodaikanal Primary Co-operative Agriculture and Rural Development Bank, Limited in respect of AOs Loan No.1/91-92 (FMS)	AO has availed Tractor loan through this society and the entire amount was repaid in the year 2011 after that there is no transaction in this society. Hence, the document was not taken in the investigation.
20	Letter received from I.O.B Valmiki Nagar, Chennai, in respect of Tmt.Arul Mercvy, in A/c.No.9796	Daughter-in-law of he petitioner, since she was not an accused and this document was not taken in the investigation.
21	Details of LIC Policy No.713325983, in the name of Tmt.A.Arul Mercy	Daughter-in-law of the petitioner, since she was not an accused and this document was not taken in the investigation.

sl.No	Documents	Reason for not included
22	Certificate of VAO Genguvarpatti PIT-II in respect of Genguvarpatti Village Patta No.1453	During the detailed enquiry VAO has given that this land was cultivated by A.O. But during the investigation while verifying the document and patta, the land was in the name of Chellaiah Chettiar and he stated that the said land was in his possession and he cultivated the land. Hence, it was not taken in the investigation.
23	Income Tax Payers counter foils in the name of A.O for the period between 1997-1998 and 2005-2006.	The amount of Rs.3,44,386/- was paid as income tax on 26.04.2006 (before check period) for the Assessment Years between 1996-97 and 2005-06 by the petitioner. The same was shown in the I.I returns filed during the Assessments year 2007-08. Hence, it was not included in the investigation and it is also discussed in the Detailed Enquiry report.

31. It is the contention of the learned Public Prosecutor that these documents are not relevant, as they relate to non-check period. These 23 documents are now available with the respondent. According to the learned Public Prosecutor, the preliminary enquiry report culminated in the registration of the case and the documents collected during the preliminary enquiry were all included in the investigation, considered and then only, final report was filed and therefore, the reports are not relevant and further, these documents are also not relevant in the opinion of the Investigating Officer.

32. In this regard, I may state the following. Admittedly, these documents were seized either from the accused or from some third parties. They were all collected either during preliminary enquiry or during investigation only for the purpose of this case. If any document or property, which has been seized, but later found not useful for the prosecution, I do not understand as to how the Police Officer can keep the same in his custody, without handing over the same to the Court. As

per the Code of Criminal Procedure, as soon as any document is collected or seized, either during preliminary enquiry or which is added at the time of investigation, the same should be produced before the Court concerned. If those documents are produced before the Court, it will be possible for the accused or the person concerned, who is entitled for those documents, to make an application under Section 451 of the Code of Criminal Procedure for return of the same. The Police Officer has got no right or power to keep such document in his custody.

33. In the instant case, therefore, it is for the Investigating Officer to produce all these documents, which were collected prior to the registration of the case, to the Court and if they are not useful for the case and if they are not going to be used by the prosecution or the accused, it will be open for the Court to return those documents. Insofar as the above 23 documents in question are concerned, in my considered view, the respondent is bound to produce those documents to the Court and once they are produced, the accused is entitled for copies of the same. Thus, I do not find any justification on the part of the Investigating Officer to withhold these documents in his case diary, without producing the same to the Court.

34. Now, the learned Senior Counsel would take me through the preliminary report, which has been made available before this Court for inspection, wherein it is stated that number of witnesses were examined. When the learned Public Prosecutor was requested to explain as to how and under what authority, the Police Officer did not record those statements, he placed reliance on Clause 18 of the Manual known as "Tamil Nadu Vigilance Manual", issued by the Directorate of Vigilance and Anti-Corruption. Clause 18 of the Manual reads as follows:

> "18.Scope and procedure:
>
> Usually, the first enquiry into a complaint or information is in the nature of a Preliminary Enquiry. This Preliminary Enquiry should be conducted with the utmost secrecy. Witnesses should normally be contacted only through sources or otherwise, indirectly. Where it becomes necessary to contact them directly, the purpose of enquiry must be suitably camouflaged. **Willingness of witnesses to make statements may be ascertained, but actual statements should not be recorded.** Departmental files and other records, including those that may be available with private sources like Hotels, Lodging Houses, shops, etc., may be looked into. Departmental records may also be taken into custody wherever considered desirable in the interest of preserving any available evidence. Where there is some difficulty in taking them into custody, the Investigating Officer may peruse the records in the Department itself and if a particular record were to be found important for purposes of further enquiry, a written requisition should be given to the local responsible officer of the Department to keep that particular record in safe custody, under his personal responsibility, so that the record could be taken over, at a later stage, when required. Records with private parties may also be taken into custody, if the parties do not raise any objection. If objections are

raised, summons from a Magistrate may be got issued by filing a written report before the Magistrate, indicating that an enquiry is being made into the alleged commission of an offence connected with bribery, corruption, etc., and the need to secure the records concerned for the purpose of the enquiry.” [Emphasis Supplied].

35. Regarding this, I have to say that this manual has got no statutory force. This has not been issued by the Government in exercise of its executive power so as to have statutory force. Assuming that this has got some statutory force, this cannot run counter to the constitutionally guaranteed fundamental right under Article 21 of the Constitution of India, which guarantees fair trial to the accused. In Clause 18 of the Manual, it is stated that the Police Officer, who holds enquiry should not record any statement. I do not understand the logic behind the same. Suppose, in a given case, during preliminary enquiry, some witnesses give statements in favour of the prosecution and later on, after the registration of the case, when they are examined by a different Police Officer, they make totally contradictory statements, it would quite naturally be difficult to contradict the witnesses, because the investigating Officer may not know as to what was the statement made by those witnesses during the preliminary enquiry held. Though Section 161 of the Code of Criminal Procedure states that there is an element of discretion given to the Police Officer not to record any statement of any witness, that does not give an unbridled power to the Police Officer not to record any statement of witness. Similarly, by quoting clause 18 of the Manual, which has got no statutory force, the Police Officer, who holds enquiry, cannot be prohibited or barred from recording the statement, because the earliest statements given by the witnesess always carry weightage. Therefore, the reliance made by the learned Public Prosecutor on Clause 18 of the Manual cannot be accepted. It is the high time for the Director of Vigilance and Anti Corruption to revisit this provision in consonance with the march of law on the concept of fair trial. As I have already pointed out earlier, the concept of fair trial is widened, which now includes fair investigation, fair disclosure and furnishing of copies of all the documents to the accused, outside the scope of Section 207 of the Code of Criminal procedure. When the law has marched to this extent, there is no meaning in relying on Clause 18 of the Manual, which runs quite contrary to the statutory provisions as well as the concept of fair investigation inbuilt in Article 21 of the Constitution of India. Therefore, I would only suggest that to avoid the officers, who hold enquiry, from being mislead, the Director of Vigilance and Anti corruption may make necessary amendments to the Manual.

36. In view of all the above, this Criminal Original Petition is partly allowed in the following terms:

- The order of the Lower Court declining to give direction to the respondent to produce copies of statements of witnesses examined during the preliminary enquiry is confirmed.
- The order of the Lower Court declining to direct the respondent to produce the preliminary enquiry report and the detailed enquiry report, recorded prior to the registration of the case, is set aside and the respondent is directed to produce both the reports before the Lower

Court and the Lower Court shall furnish copies of those documents to all the accused.

- The order of the Lower Court declining to direct the respondent Police to produce 23 documents mentioned herein above is set aside and the respondent is directed to produce all those 23 documents before the Lower Court and the accused shall be entitled for copies of those documents.

Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CO)

/TRUE COPY/

Sub Assistant Registrar

To
1.The Chief Judicial Magistrate
cum Special Judge for Prevention of Corruption Act Cases,
Dindigul.

2.The Director,
Vigilance and Anti Corruption,
NCB-21 to 28, P.S.Kumarasamyraja Salai,
Raja Annamalaipuram,
Chennai – 600 028.

3.The Deputy Superintendent of Police,
Vigilance and Anticorruption,
Dindigul.

4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1cc to Mr.S.Ravi, Advocate, SR.No.19131

ORDER MADE IN
CRL.O.P.(MD)No.6394 of 2015
15.04.2015

vs/NB
PA/24.04.2015/17P/6C