

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 20.09.2017

DELIVERED ON : 14.12.2017

Coram

The Honourable Mr. Justice RAJIV SHAKDHER

and

The Honourable Mr. Justice ABDUL QUDDHOSE

W.A.No.857 of 2017
and C.M.P.No.11754 of 2017

V.Vidya

.. Appellant

Vs.

1. The State Information Commissioner,
Tamil Nadu Information Commission,
Teynampet, Chennai - 600 018.
2. The Public Information Officer CBCID,
Pantheon Road, Egmore,
Chennai - 600 008. ... Respondents

Prayer : Appeal filed under Clause 15 of the Letters Patent,
against the order dated 04.07.2017, passed in W.P.No.39767 of
2016.

Petition Under Article 226 of the Constitution of India
praying to issue writ of mandamus to call for the records made
in the impugned order in case No.SA 5407/F/2016 & SA 5408/F/2016
(CP173/2015 & MP15086/2015) dated 19.8.2016 passed by the 1st
respondent herein and quash the same as illegal and direct the
2nd respondent to supply necessary copies of all information
sought by me in my petition to the PIO (Public Information
Officer) CBCID

For Appellant : Mr.V.Vidya,
Party-in-person
For Respondent 1 : Mr.Niranjan
for M/s.G.R. Associates
For Respondent 2 : Mr.P.S.Shiva Shanmugasundaram,
Special Government Pleader
- - - - -

J U D G E M E N T

RAJIV SHAKDHER, J.

1. This appeal is directed against the order of the learned Single Judge dated 04.07.2017, passed in W.P.No.39767 of 2016.

2. The appellant had assailed before the learned Single Judge the order dated 19.08.2016, passed by the first respondent, i.e., the State Information Commissioner. Furthermore, a direction was also sought qua the second respondent, i.e., the Public Information Officer, (in short "PIO"), to furnish copies of information sought by her via petitions filed with him. The information, which the appellant sought from the second respondent veers around the two reports generated (based on the appellant's complaints dated 01.12.2014, 22.12.2014 and 23.12.2014), by the officers of the Crime Branch Crime Investigation Department ("CBCID").

2.1. Evidently, the complaints of the appellant were directed to be enquired into. The enquiry was conducted by Mr.Balu, DSP and Mr.Karan Singha, ADGP. The report of Mr.Balu, DSP, is dated 08.07.2015, while that of Mr.Karan Singha is dated 17.08.2015. In effect, the appellant's plea before the second respondent was to furnish the copies of these two reports along with copies of summons sent to witnesses and also the statement of witnesses and other materials received during the course of the enquiry.

2.2. This, in a nutshell, is the grievance of the appellant.

3. However, before we proceed further, it may be relevant to note the following broad facts :

3.1. The appellant claims that she is an industrialist and a businesswoman, whose area of interest is real estate. The appellant claims that during the course of business, she was introduced to Mr.K.C.Bose, Mr.Venkatakrisnan and Mr.Venkateswaran, with regard to property transaction related to a land located in Orathur village.

3.2. The appellant further avers that the transaction between her and the aforementioned persons pertained to a land ad-measuring 125 grounds. According to the appellant, a representation was made to her that requisite approval qua the subject land had been obtained from the Director of Town and Country Planning (in short, "DTCP"). With regard to the purported approval, the appellant has relied upon a reference number, which is, reference No.991 of 1981. The appellant further claims that it was represented to her that the subject land was owned by Mr.K.C.Bose. It is the appellant's case that, based on this representation, she paid a sum of

Rs.25,00,000/- to Mr.K.C.Bose, for taking the transaction further. It is averred that after the money had been paid to Mr.K.C.Bose, the appellant became aware of the fact that the subject land was not owned by Mr.K.C.Bose.

3.3. Since, the appellant was, purportedly, duped of her money, she filed a criminal complaint against Mr.K.C.Bose and other persons, who, allegedly, were involved in duping her. It is the appellant's case that the police closed the complaint in 2008, based on influence exerted by, one, Mr.S.R.Jangid, the then, Additional Commissioner of Police, Chennai City (erstwhile Suburban Commissioner). The appellant claims that Mr.S.R.Jangid and Mr.K.C.Bose are close associates. It is also averred by the appellant that no sooner she realised that her complaint had been closed at the behest of Mr.S.R.Jangid, she lodged a complaint in 2008, with the then, DGP, Tamil nadu.

3.4. The appellant further claims that since, she was pursuing with the relevant authorities her complaint with regard to six (6) false cases were foisted upon her, at the behest of, and under the instructions of Mr.S.R.Jangid, four (4) of these cases being: Crime No.1225/2009, 1247/2009, 960/2009 and 804/2009, stand closed, while remaining two (2) cases i.e., Crime No.528/2009 and 310/2009 are pending. The appellant says that these cases were lodged against her because of alleged collusion between Mr.S.R.Jangid and the Additional Public Prosecutor appearing for the State.

3.5. Furthermore, the appellant states that she had filed a petition for quashing Cr.No.528 of 2009, on which an order was passed by this Court, against which, a Special Leave Petition (SLP) had been preferred by her, which is pending adjudication. In addition thereto, it is also averred that because the aforementioned four (4) criminal cases were closed, she filed a writ petition being : W.P.10524 of 2017, to initiate action against Mr.S.R.Jangid, who, according to her, as alluded to above, was responsible for triggering, what she alleges were false cases to begin with.

3.6. Furthermore, the appellant states that the enquiries, to which we have made a reference above, were made by Mr.Balu, DSP, and Mr.Karan Singha, ADGP, because she had filed a petition dated 12.06.2015, with the then Chief Minister of Tamil Nadu.

3.7. To be noted, the enquiry by Mr.Balu and Mr.Karan Singha had its genesis in the three complaints preferred by the appellant.

3.8. The petitioner avers that the two enquiry reports dated 08.07.2015 and 17.08.2015, relate to the six (6), purported, false cases lodged against her.

4. It is in this background, that the appellant, apparently, had moved the second respondent PIO.

4.1. The petition, in this behalf, was filed under Section 6(1) of the Right to Information Act, 2005 (in short, "the RTI Act"), on 18.12.2014. This was followed by yet another petition dated 24.08.2015.

4.2. Since, the second respondent failed to furnish the requisite information within the time stipulated under the RTI Act, the appellant preferred an appeal on 13.10.2015, with the first appellate authority, in view of the fact that there was no movement in the matter.

4.3. In addition to this, the appellant filed an original complaint under Section 18(1) of the RTI Act with the first respondent. This original complaint was registered as: C.P.173 of 2015.

4.4. On 10.02.2016, the first respondent directed that C.P.No.173 of 2015, should be tagged and heard along with another complaint being : M.P.No.15086 of 2015.

4.5. The matter appears to have been taken up by the first respondent on 09.06.2016, when, it was noticed that the appellant had not preferred a second appeal upon failure of the first appellate authority to act on her appeal within the time stipulated under the RTI Act.

4.6. Based on the direction issued by the first respondent, the appellant filed a second appeal under Section 19(3) of the RTI Act, dated 15.06.2016, which was numbered as S.A.No.5407/F/2016. Consequently, the first respondent vide order dated 19.06.2016, took up for hearing C.P.No.173 of 2015, S.A.No.5407/F/2016, M.P.No.15086 of 2016 and S.A.No.5408/F/2016.

4.7. By virtue of the order dated 19.08.2016, the two second appeals were dismissed and C.P.No.173 of 2015 and M.P.No.15086 of 2015 were closed.

5. Being aggrieved by this order of the first respondent, as indicated above, the appellant filed a writ petition under Article 226 of the Constitution in this Court. The learned Single Judge vide order dated 04.07.2017, dismissed the writ petition.

6. It is in these circumstances that the appellant has preferred the instant appeal.

7. Both, the first respondent and the learned Single Judge have declined the appellant's request to furnish the copies of

the report dated 08.07.2015 and 17.08.2015, on the ground that CBCID was an authority which came within the ambit of sub-section (4) of section 24 of the RTI Act and hence, the provisions of the said Act were not applicable to it. In this behalf, reference was made to the G.O.Ms.No.1043, dated 14.10.2015, issued by the Government of Tamil Nadu.

8. In effect, it was contended that the CBCID was one amongst those establishments, to which the RTI Act would not apply. The said G.O. was issued by the State Government, admittedly, in exercise of powers vested upon it under Section 24(4) of the RTI Act.

9. The appellant, on the other hand, contested the approach adopted by the respondents, by relying upon the first proviso to Section 24(4) of the RTI Act. It is the appellant's case that the bar created under Sub-section (4) of Section 24 of the RTI Act would not apply to an information sought from an intelligence or, security organization, which is established by the State Government, if it pertains to allegations involving matters of corruption and human rights violation.

9.1. The appellant contends the fact that out of six (6) cases foisted against her, four (4) cases were closed, was proof enough to show that there had been violation of human rights. The appellant submitted that in support of her contentions, a plethora of material had been filed, with the first respondent, which was given a shot shrift.

9.2. The appellant also contended that the learned Single Judge committed a similar error, as he did not enquire into this aspect of the matter, which is the non-consideration of the material by the first respondent.

9.3. The appellant, in support of her submission, and in order to demonstrate that false cases had been lodged against her, relied upon an order dated 24.02.2014, passed by a learned Single Judge of this Court in CrI.O.P.No.21902 and 18452 of 2010. Pertinently, by virtue of this order, the Court quashed proceedings in C.C.No.101 of 2010, pending before the Judicial Magistrate, Ambattur, and the proceedings in C.C.No.426 of 2010, pending on the file of the Judicial Magistrate, Alandur. It was pointed out that the learned Judge had observed in paragraph 8 of the order that the prosecution in both cases was based on falsehood and triggered for mala fide reasons. It was submitted that the rationale, based on which, the learned Judge had come to this conclusion was set forth in the preceding paragraphs i.e. paragraphs 6 and 7. Thus, for the sake of easy of reference paragraph 6, 7 and 8 of the learned Single Judge's order are extracted here after.

"6. This Court finds that, in both cases, complaints have been preferred on

04.11.2009. Both complaints inform of alleged transaction of the year 2004. Both stand registered for offences under Sections 406, 420 and 506(i) IPC. In both cases, the first respondent police fall within the jurisdiction of the then Sub-urban Commissionerate at St.Thomas Mount.

7. Learned counsel for second respondent / de facto complainant in CrI.O.P.No.18452 of 2010 seeks time. The matter repeatedly has been adjourned at the instance of the second respondent. As regards CrI.O.P.No.21902 of 2010, it is seen that the first respondent has been unable to effect service on the de facto complainant. The reason adduced is that the addressee is not available at the given address.

8. Considering the facts and circumstances of the case, this Court finds that the prosecution in both cases is false and malafide. Accordingly, the proceedings in C.C.No.101 of 2010 on the file of learned Judicial Magistrate, Ambattur and the proceedings in C.C.No.426 of 2010 on the file of learned Judicial Magistrate, Alandur, are quashed. These Criminal Original Petitions are allowed. Consequently, connected miscellaneous petition is closed."

9.4. It was also brought to our notice that the complainant had carried the matter in appeal to the Supreme Court, and that the Supreme Court vide order dated 03.02.2017, in Special Leave Petition (SLP) No.1057 of 2015, had dismissed the same with the observation:

"We do not see any reason to interfere with the impugned order".

9.5. Based on the observations made by the learned Single Judge in the aforementioned order, it was contended by the appellant that not only the complainant, who, later on, filed the SLP, was not available at the given address, but also both the complaints were lodged in the police station, which fell within the jurisdiction of the suburban Commissionerate, which is situate at St. Thomas Mount, and that even though, the transaction related to the year 2004, the complaint, themselves, were filed on 04.11.2009.

10. The appellant also drew our attention to the fact that she has filed a civil suit (C.S.No.645 of 2012), claiming damage of Rs.1,00,00,000/- against, one, Mr.Velu, and

Mr.H.Sankaranarayanan, Inspector of Police, for colluding, in filing a false cases against her. The said suit has been lodged in this Court. The appellant states that the said suit was filed, after she was discharged in the criminal case lodged against her based on the allegation made by Mr.Velu, who is first defendant in the aforementioned suit, that she had taken a loan by cheating him, which was not repaid.

10.1. Our attention was drawn to the fact that an application for dismissal of the suit, which is a suit for malicious prosecution and defamation, was filed under Order 7, Rule 11, which was rejected by the Single Judge. Furthermore, it was brought to our notice that the matter was carried in appeal to the Division Bench, which suffered the same fate. Reference in this behalf was made to the order dated 17.10.2016, passed by the Division Bench in O.S.A.No.183 of 2016.

11. Based on these broad submissions, the appellant, who argued in person, submitted that the impugned judgement ought to be set aside.

12. Mr.Niranjan, who appeared on behalf of the first respondent, and Mr.P.S.Shiva Shanmugasundaram, who appeared for the second respondent, largely, relied upon the judgement of the learned Single Judge to resist the petition.

13. The main plank of the submission of the counsels appearing for the respondents, was that, the RTI Act was not applicable to CBCID, in view of the provisions of Sub-section (4) of Section 24 of the RTI Act. The fact that CBCID had been notified as an organization, which was exempt from the provisions of the RTI Act, was sought to be demonstrated by relying upon G.O.Ms.No.1043, dated 14.10.2015.

14. We have heard the learned counsel for the parties and perused the record.

15. Shorn of unnecessary details and verbiage, the only issue which arises for our consideration is, as to whether the first proviso to Sub-section (4) of Section 24 of the RTI Act is applicable to the facts obtaining in the instant case.

16. For the sake of convenience, the relevant part of the aforesaid Section is extracted hereafter :

"24. (1) xxxx

(2) xxxx

(3) xxxx

(4) Nothing contained in this Act shall apply to such intelligence and security organisation being organisations established

by the State Government, as that Government may, from time to time, by notification in the Official Gazette, specify:

Provided that the information pertaining to the allegations of corruption and human rights violations shall not be excluded under this sub-section:

Provided further that in the case of information sought for is in respect of allegations of violation of human rights, the information shall only be provided after the approval of the State Information Commission and, notwithstanding anything contained in section 7, such information shall be provided within forty-five days from the date of the receipt of request.” (emphasis is ours)

17. It is not in dispute that by virtue of G.O.Ms.No.1043, dated 14.10.2005, CBCID has been notified as an agency by the Government of Tamil Nadu, to which the provisions of RTI Act would not apply. The issue, which arises for consideration is as to whether the instant case falls within exception carved out to in the first proviso to Sub-section (4) of Section 24 of the RTI Act.

18. The first proviso of Sub-section (4) of Section 24 of the RTI Act, stipulates that information pertaining to allegations of corruption and human rights violation, shall not stand included in the Sub-section, i.e., Sub-section (4) of Section 24 of the RTI Act.

19. The facts narrated above would show that the appellant alleges that because of the association of Mr.S.R.Jangid (the then Suburban Commissioner) with Mr.K.C.Bose, her complaint against the latter was not taken forward, and instead six (6) false cases were foisted upon her. The fact that out of the six (6) false cases, four (4) cases were closed, has not been disputed by the counsel for the respondents. As a matter of fact, the record also shows that the appellant had filed a writ petition against Mr.S.R.Jangid for initiating departmental action against him. The said writ petition, we are informed, is pending adjudication in this Court.

20. Furthermore, as indicated above, the appellant has also filed a civil suit for damages on the alleged ground of malicious prosecution and defamation. As noticed above, vide order dated 24.02.2014, two (2) criminal complaints of cheating being C.C.No.101 of 2010 and 426 of 2010, were quashed by this Court on the ground that both cases had falsehood and mala fides as its edifice. The observations made by a learned Single Judge

of this Court, tend to indicate that the then Suburban Commissioner may have had something to do in the lodgement of the complaints. This order of the learned Single Judge, despite a SLP having been filed by the complainant in those cases, was not interfered by the Supreme Court. As a matter of fact, the complainant made himself scarce as he was not available at the given address. The police, in fact, were unable to effect service in the CrI.O.P. filed by the appellant, to quash the said criminal complaints.

21. The matter thus boils down to one aspect, which is, do these broad assertions bring the case within the purview of the first proviso to Section 24(4) of the RTI Act.

21.1. The term "human rights" has not been defined in the RTI Act. However, the expression "human rights" has been defined in the Protection of Human Right Act, 1993 (in short "1993 Act"). Section 2(1)(d) of the 1993 Act, which provides a definition of human rights reads as follows:

"2. Definitions - (1) In this Act, unless the context otherwise requires-

XXXXX

(d) "human rights" means the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants and enforceable by courts in India. XXXX"

21.2. "Human rights" means the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in International Covenants and enforceable by a Court in India. Therefore, quite clearly, a citizen of this country is entitled to live his life with dignity. Deprivation of dignity would, to our minds, involve violation of human rights.

21.3. The appellant contends that six (6) false criminal cases were lodged against her, out of which four (4) were closed. These being : Crime Nos.1225/2009, 1247/2009, 960/2009 and 804/2009. Besides these four (4) cases, the appellant has referred to, two other cases i.e., C.C.No.101 of 2010, pending before the Judicial Magistrate, Ambattur, and C.C.No.No.426 of 2010, pending on the file of the Judicial Magistrate, Alandur. These cases as noted herein above were quashed by the learned Single Judge of this Court vide judgement dated 24.02.2014, on the ground that they were predicated on falsehood and mala fides.

21.4. Having regard to these facts and circumstances, to

our minds, it was incumbent upon the first respondent to make further inquiries in the matter.

21.5. The first respondent, on the other hand, rejected the appellant's plea on the short ground that it was for her to establish that her complaints related to corruption and violation of human rights. Furthermore, the first respondent went on to observe that in the complaints lodged against her, by Mr.K.C.Bose, investigation was carried out and she was placed in judicial custody. According to the first respondent, since, the police officer acted in accordance with law, it could not be said that their action violated human rights or they had indulged in corrupt activities.

21.6. The learned Single Judge, more or less, adopted the same reasoning. In our view, the reasoning is flawed. The reason for the same is this: While, the police officers in lodging cases against the appellant, based on the complaints made against her, and in having her prosecuted thereafter may have acted under the authority of law - the fact that four (4) out of the six (6) cases fell by the wayside did denude the appellant of her dignity, while she was being prosecuted. The reasoning given by the first respondent that the police officer acted under the authority of law, may be a valid defence in an action for malicious prosecution, provided they are able to show good faith that, however, by itself would not prevent the appellant from contending that her dignity was impaired and hence, violated her human rights. If, that be the position, surely, information with regard to the result of the enquiries carried out, based on her complaints ought to be furnished to the appellant for whatever they are worth.

22. In view of the foregoing discussion, we are inclined to allow the writ appeal. Consequently, the order of the learned Single Judge is set aside. This would result in the order of the first respondent dated 19.08.2016 also being set aside. Consequently, the second respondent will furnish the information sought by the appellant in her applications dated 18.12.2014 and 24.08.2015.

23. Before we conclude, we must note that we had asked the Special Government Pleader to furnish the report sought for by the appellant in a sealed cover. The second respondent, in fact, has submitted two reports dated 13.07.2015 and 11.09.2015. The first report has been prepared by Mr.Balu, DSP,CBCID, while, the second report was generated by Mr.Karan Singha, ADGP, CBCID, Chennai. As would be evident from the narrations of facts set out herein above, the copies of reports which the appellant has sought (apart from copies of summons sent to witnesses) are dated 08.07.2015 and 17.08.2015. The first report, according to the appellant, has been prepared by Mr.Balu, DSP, while the

second report is prepared by Mr.Karan Singha, ADGP.

23.1. The learned Special Government Pleader, however, did not indicated to us at any stage that reports dated 08.07.2015 and 17.08.2015 do not exist. Therefore, if, these reports exist, apart from those, given to us in sealed cover, copies of the same, along with the information with regard to the summons issued to the witnesses and the statement of witnesses, would also be furnished to the appellant.

24. Resultantly, pending application shall stand closed. There shall, however, be no order as to costs.

Sd/-

Assistant Registrar (CS-V)

//True Copy//

Sub Assistant Registrar

gg/kk

To

1. The State Information Commissioner,
Tamil Nadu Information Commission,
Teynampet, Chennai - 600 018.
2. The Public Information Officer CBCID,
Pantheon Road, Egmore,
Chennai - 600 008.

+1cc to Mr.G.R.ASSO Advocate, S.R.No. 89157
+1cc to Mr.V.VIDYA Advocate, S.R.No. 89316
+1cc to the Government Pleader, S.R.No. 89953

Pre-Delivery Judgement

in W.A.No.857 of 2017

and C.M.P.No.11754 of 2017

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