

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 02.03.2018

Pronounced on : 07.06.2018

CORAM

THE HONOURABLE MR. JUSTICE K.KALYANASUNDARAM

WP.No.31490 of 2013

R.Saravanakumar

... Petitioner

Vs.

1. The Inspector of Police (Estt.)
cum Public Information Officer,
Office of the Director General of Police,
Kamarajar Salai,
Chennai - 600 004.

2. The Public Information Officer
cum Addl. Superintendent of Police,
Office of the Superintendent of Police,
Dharmapuri District,
Dharmapuri.

... Respondents

PRAYER: Writ petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus to direct the 2nd respondent to furnish the information as per the direction issued by the 1st respondent in Rc.No.090780/RTI II (2)/2013, dated 24.10.2013.

For Petitioner : Mr.R.Jayaprakash

For Respondents : Mr.V.Shanmuga Sundar, Spl.G.P.

ORDER

The petitioner has come up with the present writ petition seeking for issuance of a Writ of Mandamus to direct the 2nd respondent to furnish the information as per the direction issued by the 1st respondent in Rc.No.090780/RTI II (2)/2013, dated 24.10.2013.

2. The case of the petitioner is that he married one Vidhya daughter of Dhanasekaran on 06.02.2012 at Madura Bai Mariage Hall, Dharmapuri. However, it was not consummated and the problem started even in the month of March 2012. The petitioner alleged that the information given by the said Vidhya and her

family members pertaining to her qualification, job, her father's occupation, etc., were false and with an intention to enrich themselves several complaints have been made by his wife in different police stations. The police in Harur registered a case in Crime No.29 of 2012 under Section 498A IPC read with Sections 3 & 4 of the Dowry Prohibition Act. After filing final report, the case is taken up file in C.C.No.33 of 2013. The petitioner's wife also initiated proceedings under the Domestic Violence Act before the Judicial Magistrate, Harur. Both the proceedings have been stayed by the High Court. The petitioner has filed H.M.O.P.No.119 of 2012 on the file of the Sub Court, Dharmapuri for nullity of the marriage.

3. The petitioner has further alleged that his wife is having relationship with her boy friend even before the marriage and it was continuing after marriage. Hence, he sought for call details pertaining to her mobile number by applications dated 27.08.2012 and 14.09.2012. The second respondent refused to furnish the information, hence he preferred an appeal before the first respondent, and the first respondent by her proceedings dated 24.10.2013, directed the second respondent to provide information to him, but no action was taken thereafter, hence, the writ petition.

4. The second respondent has filed a detailed counter affidavit denying each and every allegations made in the affidavit and further stated that the writ petition is liable to be dismissed for the reasons that it has been filed bypassing an appeal remedy provided under the Right to Information Act and the appeal filed before the first respondent was beyond the period of limitation. The petitioner's wife, who is a necessary party has not been made as a respondent and the proceedings of the first respondent is only a communication forwarded under Section 6 (3) of RTI Act.

5. It is further stated that as per the provisions of the Act, the appeal should have been filed before the Superintendent of Police, Dharmapuri District, within 30 days from the rejection order passed by the second respondent dated 22.09.2012, but an appeal to the first respondent was preferred on 29.09.2013. Further, the second appeal ought to have been filed before the Tamil Nadu State Information Commission, but without exhausting the second appeal, this writ petition has been filed.

6. It is further stated that in similar facts, the Central Information Commission in the case of Hitendra Kumar Raghuvanshi vs. BSNL, Chhindwara has held that in such cases, the husband cannot ask for the call details of his estranged wife. In Girish Ramachandra Desh Ponde vs. CIC, reported in (2013) 1 SCC 212,

the Hon'ble Supreme Court has held that no one has right to ask for the personal information of third parties as a matter of right especially when there was no public interest is involved.

7. The second respondent has further stated that the petitioner's father, who is working as a Sub-Inspector of Police, is also one of the accused in a criminal case and further he was charge sheeted for burning and destroying registered FIRs and other connected records of a case of the police station, in which, he was working and releasing of arrested accused without informing the superior officials.

8. In reply, the petitioner has stated that the statutory provision of Section 23 of the Act cannot take away the jurisdiction of this Court under Article 226 of the Constitution of India and in the affidavit, instead of application, it was worded as appeal, which was misunderstood by the second respondent. The first respondent has rightly clarified that she had forwarded his application under Section 6(3) of the Act. Once it is forwarded under Section 6(3) of the Act, the second respondent is duty bound to act on his application. The privacy of the individual has to be looked in par with the right of liberty of a person. The exemption under Section 8 of the Act has been misconstrued by the second respondent and after giving false complaint, the petitioner's wife cannot take shelter under Section 8 of the Act.

9. The petitioner has further stated that the information pertaining to his father is unconnected to the writ petition and it has been incorporated only to defame and tarnish the image of his family.

10. Heard Mr.R.Jayaprakash, learned counsel for the petitioner and Mr.V.Shanmugasundar, learned Special Government Pleader for the respondents and perused the materials available on record.

11. In the instant case, in the applications dated 27.08.2012 and 14.09.2012, the petitioner sought for details of call statement and text messages of his wife D.Vidhya, for a period of one year. The second respondent rejected the request of the petitioner on the ground that the information could not be furnished without permission of his wife Vidhya, as she had objected furnishing information stating that it would endanger to her life and safety. Section 6 of the Act deals with making an application seeking information and Section 7 of the Act states that subject to the proviso to sub-section (3) of Section 6, the Central Public Information Officer or the State Public Information Officer, as the case may be, on receipt of a request under Section 6 shall, within 30 days of the receipt of

the request, either provide information on payment of such fee or reject the request for any of the reasons specified in Sections 8 and 9. Section 19 prescribes time of 30 days for filing of the appeal against the decision under Section 7 of the Act.

12. Though the petitioner had contended that against the decision of the second respondent, he preferred an appeal to the first respondent, after seeing the counter affidavit of the second respondent, in the reply affidavit, the petitioner has categorically stated that it was not an appeal and it is an application. From the perusal of records, it is evident that this writ petition has been filed mainly contending that the first respondent as appellate authority, issued a direction to the second respondent to provide information, but in the reply, the petitioner has taken a totally different stand, admitting that it was not an appeal.

13. Section 8 deals with the exemption from disclosing of personal information. In the case of Girish Ramachandra Desh Ponde vs. CIC (supra), the petitioner submitted an application before the Regional Provident Fund Commissioner, calling for various details relating to the third respondent, viz., copies of all the memos, show cause notices and censure / punishment awarded to the third respondent and the details of his investments, lending and borrowing from banks and other financial institutions and he also sought for details of gifts said to have been accepted by the third respondent, his family members and friends and relatives at the time of marriage of his son. It was refused on the ground that it would amount to invasion of privacy of others.

The Hon'ble Supreme Court, has held as under:

"13. We are in agreement with the CIC and the courts below that the details called for by the petitioner i.e., copies of all memos issued to the third respondent, show cause notices and orders of censure/punishment etc., are qualified to be personal information as defined in clause (j) of Section 8(1) of the RTI Act. The performance of an employee/officer in an organization is primarily a matter between the employee and the employer and normally those aspects are governed by the service rules which fall under the expression "personal information", the disclosure of which has no relationship to any public activity or public interest. On the other hand, the disclosure of which would cause unwarranted invasion of privacy of that individual. Of course, in a given case, if the Central Public Information Officer or the State Public Information Officer of the Appellate Authority is

satisfied that the larger public interest justifies the disclosure of such information, appropriate orders could be passed but the petitioner cannot claim those details as a matter of right.

14. The details disclosed by a person in his income tax returns are "personal information" which stand exempted from disclosure under clause (j) of Section 8 (1) of the RT Act, unless involves a larger public interest and the Central Public Information Officer or the State Public Information Officer or the Appellate Authority is satisfied that the larger public interest justifies the disclosure of such information.

15. The petitioner in the instant case has not made a bona fide public interest in seeking information, the disclosure of such information would cause unwarranted invasion of privacy of the individual under Section 8(1) (j) of the RTI Act 16. We are, therefore, of the view that the petitioner has not succeeded in establishing that the information sought for is for the larger public interest. That being the fact, we are not inclined to entertain this special leave petition. Hence, the same is dismissed."

14. Though the petitioner has made serious allegations against his wife Vidhya, she is not made as a party to this writ petition. In my considered opinion, she is a necessary party. Further, as per the decision of the Supreme Court, the information sought for by the petitioner is her personal information, which is exempted under Section 8 of the Act.

15. For the foregoing reasons, I am of the considered view that the petitioner is not entitled for the relief sought for in the writ petition. In fine, this writ petition fails and the same is dismissed. No costs.

Sd/-
Assistant Registrar(CCC)

//True copy//

Sub Assistant Registrar

pvs

To

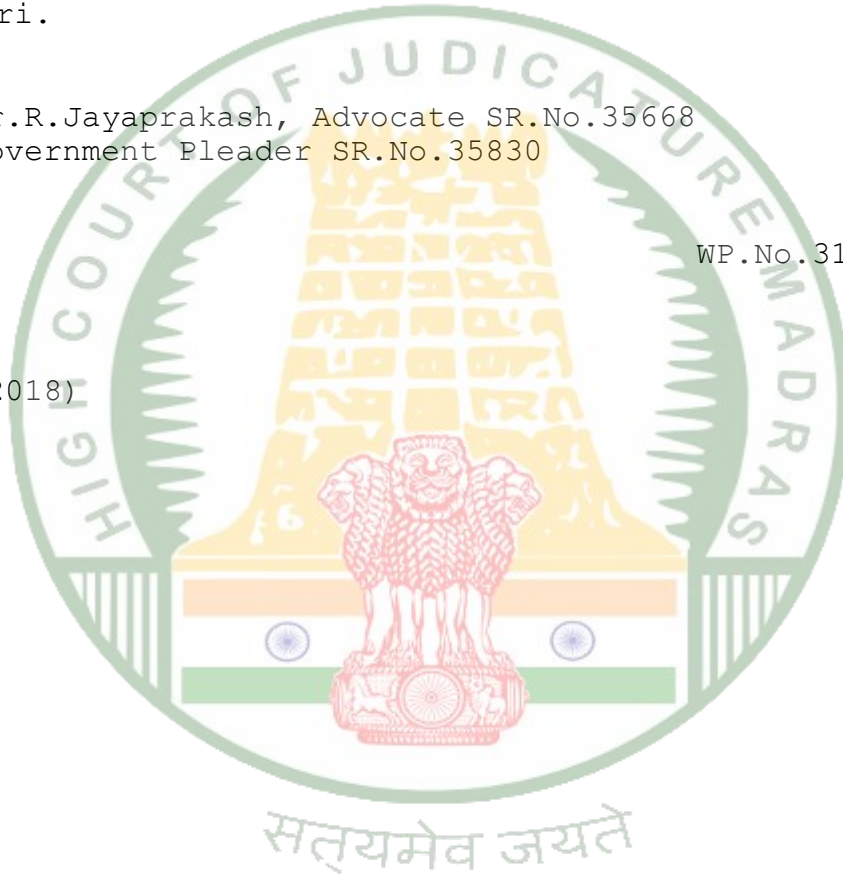
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+1cc to Mr.R.Jayaprakash, Advocate SR.No.35668
+1cc to Government Pleader SR.No.35830

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GN(02/07/2018)



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