

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.04.2019

CORAM

THE HON'BLE MR.JUSTICE A.D. JAGADISH CHANDIRA

Crl.O.P.No.5341 of 2019
& Crl.MP.No.3071 of 2019

The State, Represented by
The Inspector of Police,
Vigilance and Anti-Corruption
City-III Department, Chennai
(Crime No.1/2011/AC/CC-IV) Petitioner/Complainant

Vs

P.Sankaran Respondent /Accused

Criminal Original Petition filed under Section 482 Cr.P.C.,
to call for the records in Crl.M.P.No.1674 of 2018 on the file
of the Special Court for Cases under the Prevention of
Corruption Act, Chennai and set aside the order passed therein
on 17.10.2018.

For Petitioner : Mrs.S.Thankira
Government Advocate (Crl.Side)

For Respondent : Mr.R.N.Amarnath

O R D E R

This Criminal Original Petition has been filed seeking to
call for the records in Crl.M.P.No.1674 of 2018 in C.C.No.8 of
2012 on the file of the Special Court for Cases under the
Prevention of Corruption Act, Chennai and set aside the order
dated 17.10.2018 directing the respondent to produce the
Investigation Report shown as enclosure No.01 in the letter of
the Superintendent of Police, Vigilance and Anti-Corruption
Chennai-28 to the Commissioner, Corporation of Chennai, Chennai-
3 Lr.Rc.25/2011/CB/ec111 dated 26.09.2011.

2.The brief facts relating the present petition is that the
respondent/accused is facing trial in C.C.No.8 of 2012 for the
offences under Sections 7 and 13(2) r/w 13(1) (d) of the
Prevention of Corruption Act, 1988. During the course of trial,
the petitioner had filed a petition under Section 91 of Cr.P.C
in Crl.M.P.No.1674 of 2018, seeking for production of the

document mentioned above. In that petition, the respondent/accused had stated that PW.1 in his evidence had stated that he had given sanction to prosecute the accused on the basis of the report submitted by the Inspector of Police, Vigilance and Anti-Corruption Chennai City-III Detachment, Chennai dated 26.09.2011 and that the sanction order contains statement which were not found in any of the documents supplied to the respondent/accused, more particularly, with regard to the genuineness of the complaint, the statement made by the respondent/accused etc., and thereby, a petition in CrI.M.P.No.497 of 2018 was filed by the respondent/accused, seeking to produce the report dated 26.09.2011 and by order dated 09.04.2018, the trial Court had allowed the said petition and the prosecution had produced the letter dated 26.09.2011. The letter had revealed that it was issued from the Superintendent of Police, Vigilance and Anti-Corruption Chennai-28 to the Commissioner, Corporation of Chennai, Chennai-3 and in that letter, a mention was made about five enclosures, the first of the enclosure cited in Ex.P1 was the Investigation Report. Further, in the evidence before the Trial Court, PW.1 had deposed that he had passed the order on the basis of the Investigation Report. Since Ex.P1 contains facts which were not found in any of the documents supplied to the respondent/accused and since the enclosure which were kept in Ex.P1 were not furnished to the respondent/accused, he had filed the petition seeking for summoning of those documents under Section 91 of Cr.P.C. The petitioner/complainant had filed a counter before the Trial Court resisting the application stating that the petition is not maintainable and that the case is pending from the year 2012 and the petition has been filed at a belated stage to drag on the case and that the said report is a confidential official communication and thereby, the petitioner/complainant cannot be compelled to produce the documents.

3. The learned Trial Judge, after perusing the documents and hearing both sides passed an order allowing the petition, stating that no prejudice would be caused to the petitioner/complainant by issuing the copy of the aforesaid document to the respondent/accused and against which, the petitioner/complainant has filed this petition to set aside.

4. The learned Government Advocate (CrI.Side) appearing for the petitioner/complainant would submit that the document sought for by the respondent/accused is a privileged communication between the Investigating Officer and the Sanctioning Authority and disclosure of such documents would be detriment to the interest of public and she would seek to set aside the impugned order. She would rely on the unreported judgments of this Court, dated 05.03.2013 in CrI.O.P.No.31145 of 2012 in the case of Sumathi Ravichandran Vs.State rep by the Inspector of Police and

Cr1.O.P.No.1499 of 2002 dated 25.09.2002 in the case of Krishnan Vs.State, rep. by CBI.

5. The learned counsel appearing for the respondent/accused would submit that no claim of privilege had been made by the petitioner/complainant before the Trial Court stating that by furnishing the copies of those documents either the interest of the State or public interest would be affected. Further no immunity has been claimed that the documents are privileged communication and thereby, the Trial Court after perusal of the documents and having found that it is necessary for arriving at a just decision of the cases and the Trial Court having considered that the production of the document is necessary or desirable for the purpose of trial, had directed the respondent/accused to furnish the copies to the petitioner. He would further submit that the documents sought for by the respondent/accused before the Trial Court have been referred to as an enclosure while seeking sanction before the Sanctioning Authority and the learned Trial Judge has also found that the Sanctioning Authority had stated that he had accorded sanction to prosecute the accused after perusing the documents only and being convinced that the respondent/accused has right to peruse the documents, based on which the sanction was accorded had directed the prosecution to furnish the copy of the said report. He would further submit that there had been no delay on the part of the respondent/accused to conduct the trial and PW.1 was examined on 12.12.2012 and on the same day PW.1, was cross examined by the learned counsel for the respondent/accused. PW.2 was examined on 06.05.2016 and it took almost four years for the prosecution to produce PW.2 who is the complainant in the case before the Court. PW.3 was examined on 25.10.2016. PW.4 was examined on 01.08.2017. PW.5 was examined on 09.10.2017. PW.6 was examined on 01.11.2017. PW.7 was examined on 19.12.2017. PW.8 was examined on 02.01.2018 and PW.9 was examined on 20.07.2018 and all the witnesses were cross examined by the counsel for the accused on the same day of their examination in chief and such being so, the delay cannot be attributed to the respondent/accused.

6. The learned counsel for the respondent/accused would further submit that the prosecution took 68 adjournments during the period of four years from 12.02.2012 to 06.05.2016 to produce PW.2 before the Trial Court and thereby, the prosecution cannot now claim that the respondent/accused is the reason for the delay. He would also submit that there is no error or infirmity in the impugned order passed by the Trial Court and the Trial Court, after perusing the documents and being satisfied with the contents of the documents and finding that no public interest would be affected and finding that it is not a

privileged document, has issued a direction to the petitioner/complainant to furnish copies of the documents sought for in CrI.M.P.No.1674 of 2018. He would further submit that in order to claim privilege, the petitioner/complainant has to satisfy the Court with regard to the contents of the document in respect of which privilege is claimed and whether it is really a document (unpublished) relating to any affairs of State; and whether disclosure of the contents of the document would be against the public interest. He would further submit that in order to claim immunity regarding disclosure of unpublished State documents and the prosecution should satisfy that the documents must relate to affairs of the State and that the disclosure thereof would be against the interest of the State and the public.

7. He would further reiterate that the judgments referred by the petitioner/complainant are different from the facts on the case on hand. He would also submit that in the cases referred by the petitioner/complainant, the Trial Court having satisfied that the documents are privileged communication and finding that such disclosure would be against public interest had rejected the prayer and against which the accused had come before this Court. He would further submit that the facts of the case on hand are different and he would submit that though the respondent/accused is not entitled to have copies of the same during the enquiry or investigation, the respondent being an accused has a right to defend the case and is entitled to have copies of the same. He would rely on the judgment of the Hon'ble Apex Court in the case of People's Union for Civil Liberties and another Vs. Union of India and others reported in 2004 (2) SCC 476 and would submit that when any claim of privilege is made by the State in respect of any document, the question whether the document belongs to the privilege class has first to be decided by the Court and in this case, the learned Trial Judge having perused the documents and having satisfied that the documents does not belong to the privilege class has directed the State to furnish copies to the respondent/accused and he would further submit that the documents forms part of Ex.P1 and the respondent/accused is entitled to have copies of the same to effectively defend himself.

8. The unreported judgments referred to by the petitioner/complainant of this Court, dated 05.03.2013 in CrI.O.P.No.31145 of 2012 (Sumathi Ravichandran Vs.State rep by the Inspector of Police) and in CrI.O.P.No.1499 of 2002 dated 25.09.2002 (Krishnan Vs.State, rep. by CBI) are relating to the cases where the learned Trial Judge after perusal of the documents and having satisfied and finding the documents to be privileged communication has rejected the same and thereby, this Court has also confirmed the finding of the learned Trial Judge.

9. Further in the constitutional bench judgment reported in AIR 1975 SC 865 (The State of Uttar Pradesh Vs. Raj Narain and others) the Hon'ble Apex Court has held as follows:-

"The foundation of the law behind Sections 123 and 162 of the Evidence Act is the same as in English law. It is that injury to public interest is the reason for the exclusion from disclosure of documents whose contents if disclosed would injure public and national interest. Public interest which demands that evidence be withheld is to be weighed against the public interest in the administration of justice that courts should have the fullest possible access to all relevant materials. When public interest outweighs the latter, the evidence cannot be admitted. The Court will proprio motu exclude evidence the production of which is contrary to public interest. It is in public interest that confidentiality shall be safeguarded. The reason is that such documents become subject to privilege by reason of their contents. Confidentiality is not a head of privilege. It is a consideration to bear in mind. It is not that the contents contain material which it would be damaging to the national interest to divulge but rather that the documents would be of class which demand protection. To illustrate the class of documents would embrace Cabinet papers, Foreign Office dispatches, papers regarding the security of the State and high level inter-departmental minutes. In the ultimate analysis the contents of the documents are so described that it could be seen at once that in the public interest the documents are to be withheld."

"Further the Hon'ble Apex Court in the case of People's Union for Civil Liberties and another Vs. Union of India and others, (2004) 2 SCC 476, has while considering issue for determining the question of privilege observed as follows:-

"70 For determining a question when a claim of privilege is made, the Court is required to pose the following questions:

(1) whether the document in respect of which privilege is claimed, is really a document (unpublished) relating to any affairs of State; and

(2) whether disclosure of the contents of the document would be against public interest?"

It was further observed as under:

"73 In order to claim immunity from disclosure of unpublished State documents, the documents must relate to affairs of the State and disclosure thereof must be against interest of the State or public interest."

10. In the case on hand, the learned Trial Judge after perusing the documents and going through the evidence already let in has rendered a finding that the documents sought for by the petitioner/complainant have been referred as enclosures, while seeking sanction before the Sanctioning Authority and that the Sanctioning Authority had after perusing all the documents enclosed there upon had accorded the sanction to prosecute the respondent/accused and in such circumstances has held that the respondent/accused has a right to peruse the documents based on which sanction was accorded to prosecute to him and also stated that no prejudice would be caused to other side by issuing a copy of the aforesaid document to the petitioner/complainant.

11. Further as submitted by the learned counsel for the respondent/accused, even in the counter filed by the petitioner/complainant before the Trial Court, the petitioner/respondent has not claimed any immunity, stating that the documents are privileged communication and that the disclosure of it would be detrimental to the public interest and even in the petition filed before this Court nothing has been stated that the communication is a privileged communication and that the disclosure of it would affect the public interest.

12. Considering the facts of the present case, the respondent is an accused in a case under the Prevention of Corruption Act, 1988 and the respondent/accused has a right to challenge the validity of the criminal prosecution in all aspects including the procedure relating to grant of sanction. The said plea of defence can be established by summoning the relevant communications between the Sanctioning Authority and the prosecuting agency. Admittedly, the claim of privilege or immunity had not been claimed by the petitioner/complainant before the Trial Court. The learned Trial Judge after having called for and perused the records had directed the petitioner/complainant to furnish copies to the respondent/accused. Further, this Court also called for and perused the documents.

13. This Court is of the opinion that the documents which had been directed to be furnished do not seem to fall in the class of documents which would, in any manner, cause injury to the public interest and this Court is of the further opinion that disclosure of the documents will not injure public interest

or national interest but their production is necessary in the interest of fair trial and administration of justice.

14. I do not find any infirmity in the order passed by the Trial Court. In view of the above the Criminal Original Petition stands dismissed. The petitioner/complainant shall comply with the order passed by the learned Trial Judge in Crl.M.P.No.1674 of 2018 dated 17.10.2018 in C.C.No.8 of 2012. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To

- 1.The Special Judge for Cases under the Prevention of Corruption Act, Chennai.
- 2.The Inspector of Police, Vigilance and Anti-Corruption City-III Department, Chennai.
- 3.The Public Prosecutor, High Court of Madras.

+1cc to Mr.R.N.Amarnath, Advocate Sr.34491

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Crl.O.P.No.5341 of 2019
& Crl.MP.No.3071 of 2019

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