IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.11.2020

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THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

W.P.NOS.5466 & 5470 OF 2020 AND
WMP.NOS.6391, 6394, 6396 & 6397 OF 2020

WP.No.5466 of 2020

Sanjay Bhandari ...Petitioner

Vs.

1. The Secretary of Govt. of India,
   Ministry of Home Affairs,
   North Block,
   Central Secretariat,
   New Delhi - 110 001.

2. The Inspector of Police,
   Central Bureau of Investigation,
   Anti Corruption Bureau,
   III Floor, Shastri Bhavan,
   No.26 Haddows Road,
   Nungambakkam,
   Chennai 600006. ...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records of the first respondent comprised in order No.14/3/97-CBI dated 20.11.2014 and quash the same as illegal and consequently direct the respondents to destroy all telephone conversation, recorded transcript / messages of the petitioner.

For Petitioner:Mr.Sathish Parasan,
Senior Counsel
For M/s.Kumarpal R Chopra

For Respondents
For R2 : Mr.K.Srinivasan,
Special Public Prosecutor for CBI cases

WP.No.5470 of 2020

Shreyans Bhandari ...Petitioner

Vs.

1. The Secretary of Govt. of India,
   Ministry of Home Affairs,
   North Block,
   Central Secretariat,
   New Delhi - 110 001

2. The Inspector of Police,
   Central Bureau of Investigation,
   Anti Corruption Bureau,
   III Floor, Shastri Bhavan,
   No.26 Haddows Road,
   Nungambakkam,
   Chennai 600006 ...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records of the first respondent comprised in order No.14/3/97-CBI dated 28.10.2014 & 30.12.2014 and quash the same as illegal and consequently direct the respondents to destroy all telephone conversation, recorded transcript / messages of the petitioner.

For Petitioner : Mr.Sathish Parasan,
Senior Counsel
For M/s.Kumarpal R Chopra

For Respondents
For R2 : Mr.K.Srinivasan,
Special Public Prosecutor for CBI cases

COMMON ORDER

Both the writ petitions have been filed challenging the order passed by the first respondent dated 20.11.2014 bearing order No.14/3/97-CBI, thereby directed that any telephone message relating to clandestine contact / movement / activity etc to and from 9841019190 and 9884218840 shall be intercepted and disclosed to Director, CBI.

2. Mr.Sathish Parasaran, the learned Senior Counsel appearing for the petitioners submitted that the impugned order is against law, arbitrary and contrary to the fundamental rights

guaranteed under the Constitution of India. It infringes into the right of the privacy of the petitioners and contravention of Article 21 of the Constitution of India. The tapping of telephones is violation of the right to freedom of speech and expression of the petitioners herein and violative of Article 19 (1)(a) of the Constitution of India. There was no public emergency which could have enabled the authorisation of any telephone tapping and hence, it is violative of the conditions mentioned in Section 5(2) of the Indian Telegraph Act, 1985. It could be passed with limited circumstances as mentioned under Section 5(2) of Indian Telegraph Act such as (i) sovereignty and integrity of India (ii) Security of the State (iii) the friendly relationship with foreign state or (iv) public order or (v) for preventing incitement to the commission of an offence. In this regard, the learned Senior Counsel relied upon the judgment reported in AIR 2007 AP 102 in the case of KLD Nagasree vs. Government of India on the file of the Andhra Pradesh High Court. Accordingly, the first respondent can pass order only on the event that any public emergency or in the interest of public safety. None of the aforesaid pre-requisite were present in the case on hand to invoke the power under Section 5(2) of the said Act. The order of interception of the telephonic conversation can be passed for the reasons to be recorded in writing. Whereas the impugned order was passed without stating any reasons and it shows non application of mind of the first respondent herein.

3. He further submitted that in the absence of public emergency or interest of public safety as contained under Section 5 (2) of the said Act, the impugned order cannot be sustained and it is liable to be quashed. The procedural safeguards for the exercise of Section 5(2) of the said Act mentioned under Rule 419(a) of the Indian Telegraph Rules, 1951 has flagrantly been violated by the first respondent while passing the impugned order. The petitioners are citizen of democratic country like India, where one holds right to life, right to privacy and right of freedom and expression also has right to have private telephonic conversation in an uninterrupted manner as recognised by the Hon'ble Supreme Court of India in the case of People's Union for Civil Liberties (PUCL) Vs. Union of India reported in (1997) 1 SCC 301. The Hon'ble Supreme Court of India held that telephonic tapping cannot happen unless specific criteria as mentioned in Section 5 (2) of Indian Telegraph Act are satisfied along with the criteria laid down in the case. The circumstances in which such permission can be granted is when there is a specific public emergency and the same related to some matter relating to sovereignty and the integrity of India; the security of the states; friendly relationship with foreign states; public order or for preventing incitement to the commission of an offence. These steps laid down have been reaffirmed by the Hon'ble

Supreme Court of India in the case of K.S.Puttuswamy(Retd) and another Vs. Union of India and others reported in (2017) 10 SCC 1 in respect of right to privacy and (2019) 1 SCC 1 in respect of adhar recognising the limited field within which telephonic tapping can be permitted, namely where objective for such telephone taping pertains to a need arising out of a 'public emergency'.

4. He further submitted that in pursuant to the impugned order, the telephone record details which have been annexed and furnished are much prior to the date of sanction. It shows the fact that the tapping of the telephone records are illegal and it was carried out without any sanction whatsoever and in arbitrary manner. Based on the aforesaid order of interception, the petitioners' telephone conversation have been tapped and in pursuant to which a criminal case was registered as against the petitioners and the same has been culminated in trial in CC.No.25 of 2016 on the file of the IX Additional Session Special Judge for CBI cases, Chennai, in which the petitioners are arrayed as A4 and A5. Thereafter, the respondent also lodged complaint under form I of the Chartered Accounts Act, 1949. On receipt of the complaint, the Institute of Chartered Accounts of India issued letter dated 26.09.2016. Therefore, the implication of the criminal case against the petitioners herein based on the illegal and unconstitutional impugned order is immense and tantamount to an abuse of process of court and law. The petitioners have been harassed with criminal proceedings based on the illegal records and as such the consequential proceedings cannot be allowed to carry on in the absence of a conclusive determination regarding the illegality of the impugned order.

5. Per contra, Mr.K.Srinivasan, the learned Special Public Prosecutor filed counter and submitted that the order impugned in this writ petition was made with complete application of mind taking into consideration the circumstances prevailing in the matter after having satisfied himself on the basis of the material placed before the first respondent and the circumstances of the case warrant lawful interception. It was passed for detection, prevention, investigation and prosecution of corrupt activities, in which the petitioners were indulging. The procedure laid down by the rules framed under the Indian Telegraph Act, which have been upheld by the Hon'ble Supreme Court of India in various cases to be just and reasonable and hence passing the test of principle of proportionality and legitimacy. The five circumstances which are related to the public emergency or interest of public safety, the first respondent is within the power conferred by the Act to order for lawful interception. Therefore, the judgment relied upon by the learned Senior Counsel for the petitioners in the case of PUCL

(supra) is not applicable to the case on hand.

6. He further submitted that the first accused by abusing his official position with an ulterior motive had approved for conducting survey at the business premises of the first accused knowing fully well that the investigation wing of Income Tax Department is conducting an investigation into the affairs of the first accused and waiting for their survey report and the impounded documents are material objects from the investigation wing of the Income Tax Department. The first accused also visited various places of the second accused and conspired with the third accused, the Managing Director of the second accused and also conspired with accused 4 and 5 are being the Chartered Accountants asked to take care of the survey conducted by the first accused. In pursuance to the conspiracy, the fourth accused made arrangement for the third accused to meet the first accused on 15.12.2014. After the said meeting, the third accused called the fourth accused and told that the first accused demanded a disclosure of Rs.12 crores and the same was confirmed by the fifth accused to the fourth accused, namely his father. The fifth accused also contacted the fourth accused and told that the first accused demanded Rs.8 lakhs and not Rs.10 lakhs, for which the fourth accused replied to the fifth accused that he will take care of it. Thereafter, the fourth accused informed the third accused over phone that he had closed the matter for a disclosure of Rs.4 crores. He also made call to one Balaji, owner of Vummidi Bangaru Jewellers, Chennai for whom the fourth accused is the Chartered Accountant and he had informed that he had closed the deal of third accused in three days and sorted out the matter. On 09.01.2015, the fourth accused had met the first accused and called the fifth accused and told that the first accused sought for Rs.8 lakhs immediately. Thereafter, the first accused also called the fifth accused to inform that the person was started from Sowcarpet and it will take 15 to 20 minutes. Later, the fifth accused informed his father namely the fourth accused that the money is to be handed over at Habibulla Road. Thereafter, the first accused was caught red-handedly by the officers of the CBI, Chennai while he was accepting a bribe of Rs.8 lakhs from the fifth accused on 10.01.2015. It is also evident from the above circumstances that in cases of corruption at high places, economic and organised crimes, conspiracies are hatched in the most secretive manners. Therefore, the interception order in the present case was issued by the first respondent herein after being satisfied that the interception was necessary to prevent the offence of corruption. Impact of corruption on public safety cannot be gainsaid in the present times. Therefore, the first respondent passed the order in accordance with the rules with complete application of mind taking into consideration of the circumstances prevailing in the matter after having satisfied himself on the basis of the

material placed before him that the circumstances of the case warrant lawful interception.

7. He further submitted that after the order, the second respondent is referring to the call detail records which have been procured from the telephone service provider during the investigation and it does not have any connection with the order of the first respondent herein for interception of the mobile numbers of the petitioners. The telephone calls had been intercepted only from the date mentioned in the order passed by the first respondent. Thereafter, the second respondent registered the case and completed investigation and filed final report and the same has been taken cognizance in CC.No.25 of 2016 on the file of the Special Court for CBI cases, Chennai for the offences under Section 120(b) of IPC read with Sections 7, 12, 13 (4), read with 13 (1) (b) of the Prevention of Corruption Act as against the accused A1 to A5 herein. Both the petitioners herein are arrayed as A4 and A5. In fact, A4 the petitioner in WP.No.5466 of 2020 filed discharge petition in Crl.MP.No.2180 of 2017 before the trial court and the same was dismissed and aggrieved by the same, the fourth accused filed revision petition before this Court in Crl.RC.No.783 of 2019 and A2 and A3 also filed quash petition to quash the criminal proceedings before this Court in Crl.OP.No.3903 of 2019. Both the criminal revision and the quash petition were dismissed by this Court by an order dated 03.10.2019. Therefore, already this Court elaborately discussed about the offence committed by the petitioners and the present writ petitions are nothing but clear abuse of process of court and prayed for dismissal of both the writ petitions.

8. Heard Mr.Sathish Parasaran, learned Senior Counsel appearing for the petitioners and Mr.K.Srinivasan, learned Special Public Prosecutor for CBI cases appearing for the second respondent.

9. The first respondent passed order impugned in these writ petitions to intercept the telephone messages relating to the clandestine contact / movement / activity etc belong to the petitioners herein vide telephone Nos. 9841019190 and 9884218840 for the reasons of public safety, it is necessary and expedient so to do in the interest of public order and for preventing incitement to the commission of an offence dated 20.11.2014, 28.10.2014 and 30.12.2014. The grounds raised in both the writ petitions are as follows:

"The impugned order is against law, arbitrary and running contrary to the fundamental right guaranteed under the Constitution of India. It infringes into the right of privacy of the petitioners and violative of Article 21 of Constitution of

India. The tapping of telephones amount to a violation of right to freedom of speech and expression of the petitioners herein and violative of Article 19 (1) (a) of the Constitution of India. There was no public emergency which could have been enabled the authorisation of any telephone tapping and it is violative of the conditions mentioned in Section 5 (2) of the Indian Telegraph Act, 1885. The impugned order could not be passed without satisfying the five circumstances as mentioned under Section 5(2) of the Indian Telegraph Act. As per the impugned order, telephone record details which have been annexed and furnished are much prior to the date of sanction and it shows the fact that the illegal recording were carried out without any sanction order to intercept the telephonic message of the petitioners."

10. The orders impugned in these writ petitions were passed by the first respondent herein to intercept any telephone message relating to clandestine contact / movement / activity etc to and from 9841019190 and 9884218840 of the petitioners herein for the reasons of public safety, in the interest of the public order and for preventing incitement to the commission of an offence. The petitioner's conversation were unlawful to commit an offence. The first respondent passed order with complete application of mind taking into consideration of the circumstances prevailing in the matter after having satisfied himself on the basis of the materials placed before the first respondent that the circumstances of the case warrant lawful interception. Further the action of the interception in the present case was for detection, prevention, investigation and prosecution of corrupt activities, in which the petitioners were indulging. The learned Senior Counsel contended that there was no public emergency which could have enabled the authorisation of any telephone tapping and it is violative of the conditions mentioned in Section 5 (2) of the Indian Telegraph Act, 1885. The expression "public emergency" has not been defined in the statute. In sub-section (1) the phrase "occurrence of any public emergency" is connected with and is immediately followed by the phrase "or in the interests of the public safety". These two phrases appear to take colour from each other, in which the first part of sub-section (2) those two phrases again occur in association with each other, and the context further clarifies with amplification that a "public emergency" within the contemplation of this Section is one which raises problems concerning the interest of the public safety, the sovereignty and the integrity of India, the security of the State, friendly relations with foreign States or public order or for the prevention of incitement to the commission of an offence. It is in the contest of these matters that the appropriate authority has to form an opinion with regards to the occurrence of "public emergency with a view to taking further action". In the case on

hand, the order for telephone tapping was passed on the occurrence of the aforesaid circumstances, namely on the occurrence of any public emergency or in the interest of public safety. In this regard, the learned Senior Counsel would rely upon the judgment of the Hon'ble Supreme Court of India in the case of People's Union for Civil Liberties (PUCL) Vs. Union of India reported in (1997) 1 SCC 301, wherein it is held as follows:

> 28. Section 5(2) of the Act permits the interception of messages in accordance with the provisions of the said Section. "Occurrence of any public emergency" or "in the interest of public safety" are the sine qua non. for the application of the provisions of Section 5(2) of the Apt. Unless a public emergency has occurred or the interest of public safety demands, the authorities have no jurisdiction to exercise the powers under the said Section. Public emergency would mean the prevailing of a sudden condition or state of affairs affecting the people at large calling for immediate action. The expression "public safety" means the state or condition of freedom from danger or risk for the people at large. When either of these two conditions are not in existence, the Central Government or a State Government or the authorised officer cannot resort to telephone tapping even though there is satisfaction that it is necessary or expedient so to do in the interests of sovereignty and integrity of India etc. In other words, even if the Central Government is satisfied that it is necessary or expedient so to do in the interest of the sovereignty and integrity of India or the security of the State or friendly relations with sovereign States or public order or for preventing incitement to the commission of an offence, it cannot intercept the messages or resort to telephone tapping unless a public emergency has occurred or the interest of public safety or the existence of the interest of public safety requires. Neither the occurrence of public emergency nor the interest of public safety are secretive conditions or situations. Either of the situations would be apparent to a reasonable person.

11. The learned Senior Counsel further submitted that the same has also been approved by the Andhra Pradesh High Court in the case of KLD Nagasree vs. Government of India reported in AIR 2007 AP 102, wherein it is held as follows:

> 6. A bare reading of the above provision shows

that for the purpose of making an order for interception of messages in exercise of powers under Sub-section (1) or Sub-section (2) of Section 5 of the Telegraph Act, 1885 (for short, 'the Act'), the occurrence of any pubic emergency or the existence of a public safety interest are the sine qua non.

7. In the event of the occurrence of any public emergency or in the interest of public safety the interception of messages can be ordered under Sub-section (2) of Section 5 by the Central Government or the State Government, if satisfied, that it is necessary or expedient so to do in the interest of :

(i) The sovereignty and integrity of India.

(ii) The security of the State.

(iii) Friendly relations with foreign States.

(iv) Public order.

(v) For preventing incitement to the commission of an offence.

In the above, the action of the interception in the case on hand was for detection, prevention, investigation and the prosecution of corrupt activities. As such the contention of the petitioners that the Hon'ble Supreme Court of India in the case of PUCL (supra) has held that the telephone tapping cannot happen unless specific criteria as mentioned in Section 5(2) of Indian Telegraph Act or satisfied along with the criteria laid down is not applicable to the case on hand. Further it is also seen that the first respondent passed the order with application of mind taking into consideration the circumstances prevailing in the matter after having satisfied on the basis of the material placed before the authority that the circumstances of the case warrants lawful interception. The five circumstances laid under Section (5) (2) of the Indian Telegraph Act related to the public emergency or interest of the public safety. The authority is within the powers conferred by the Act to order for lawful interception. It would also be seen that not only the bodily injury to the members of the public or the injury to a minimum number of persons would constitute public safety. With the latest communication tools in the form of powerful mobile phones becoming available in every hand in the country which are equipped with applications ensuring encrypted communication. The available avenues with the potential criminals, have increased manifolds and it is becoming increasingly difficult to prevent and detect crime. Restricting the concept of public safety to the mere "situations that would be apparent to the reasonable persons" will exclude most of the actual threats which present the most grave circumstances like terrorist attacks, corruption at high places, economic and organised crimes, most of which are hatched in the most secretive of manners. In most of the circumstances, threat to public safety is from hidden factor which are neither apparent nor obvious to the general public and members of the law enforcement community and the information about these circumstances and factors cannot be connected by any other reasonable means. In addition, most of such information, is sensitive in nature, which may not be circulated in the public domain. Therefore, the first respondent passed the order to intercept phone messages of the petitioners herein.

12. In pursuant to the report submitted as directed by the order impugned in these writ petitions, the second respondent registered the case against the petitioners and others for the offences punishable under Section 120(b) read with 7, 12 and 13 (2) read with 13(1)(d) of Prevention of Corruption Act, 1988 alleging that all the accused persons conspired together in order to cause minimum damage to the assessee third accused in the matter pertaining to covering up of huge undisclosed investments unearthed during search and to finalise the assessment with minimum penalty and fine. In pursuant to the said conspiracy, the first accused demanded Rs.8 lakhs as illegal gratification from the second accused as a motive or reward for showing undue favour. It was agreed that Rs.8 lakhs will be delivered by fifth accused, namely the petitioner in WP.No.5470 of 2020 to the first accused at his place of stay on afternoon on 10.01.2015. Subsequently, a separate check was conducted at room No.G6, Chennai Stays, No.8/16 Prema illam, 3rd Cross Street, Habibullah Road, T.Nagar, Chennai-17. The first and fifth accused were arrested during the course of transacting Rs.8 lakhs which was seized as case property. The first accused by abusing his official position and with an ulterior motive had approved for conducting survey at the business premises of the first accused knowing fully well that the investigation wing of Income Tax Department is conducting an investigation into the affairs of the first accused and waiting for their survey report and the impounded documents and material objects from the investigation wing of Income Tax Department. The second and third accused conspired with the fourth accused and asked him to take care of the survey conducted by the first accused. In pursuance of conspiracy, the fourth accused made arrangement for the third accused to meet the first accused on 15.12.2014. Thereafter, the third accused called the fourth accused and told that the first accused demanded a disclosure of Rs.12 crores and the same was confirmed

by the fifth accused to the fourth accused. He also informed that the fifth accused also informed to the fourth accused that the first accused demanded only Rs.8 lakhs not Rs.10 lakhs, for which the fourth accused replied to the fifth accused he will take care of it. Later the fourth accused had informed the third accused over phone that he has closed the matter for a disclosure of Rs.4 crores. The fourth accused also made a call to one, Balaji, owner of the Vummidi Bangaru Jewellers, Chennai for whom the fourth accused is the Chartered Accountant and informed that he had closed the deal of the third accused in three days and sorted out the matter. On 09.01.2015, the fifth accused met the first accused and thereafter called the fourth accused and told that the first accused sought for Rs.8 lakhs immediately. When the fifth accused handed over the bribe of Rs.8 lakhs to the first accused, the first accused was caught red-handedly by the CBI on 10.01.2015. After completion of investigation, the second respondent filed final report and the same has been taken cognizance in CC.No.25 of 2015 on the file of IX Additional Session Special Judge for CBI cases, Chennai for the offence under Section 120(b) of IPC read with Sections 7, 12, 13 (4), read with 13 (1) (b) of the Prevention of Corruption Act.

13. In pursuant to the final report filed against them, the disciplinary proceedings commenced by the Institute of Chartered Accounts of India under Sections 21 of the Chartered Accounts Act, 1949 as amended by the Chartered Accounts Amendment Act, 2006. Both the proceedings are now pending against the petitioners. That apart, the orders impugned were passed on 20.11.2014, 28.10.2014 and 30.12.2014 and after period of nearly 6 years, these writ petitions have been filed after having been failed in the discharge petition and quash petition. The petitioner in W.P.No.5466 of 2020 is arrayed as A4 and he filed discharge petition before the trial court in Crl.MP.No.2180 of 2017 and the same was dismissed by the trial court by order dated 13.02.2019. Aggrieved by the same, he filed revision petition before this Court in Crl.RC.No.783 of 2019 and the same was also dismissed by this Court by an order dated 03.10.2019. Other accused namely A2 and A3 had filed quash petition before this Court in Crl.OP.No.3903 of 2019 and the same was also dismissed with the criminal revision filed by A4 by order dated 03.10.2019. Therefore, the present writ petitions are nothing but clear process abuse of process of law and nearly after period of six years from the date of the orders, these writ petitions have been filed, that too after dismissal of discharge petition and the quash petition filed by the other accused. There is absolutely no valid reason assigned by the petitioners challenging the orders passed by the first respondent after period of nearly six years.

14. That apart, in view of the above discussion the

first respondent passed the orders for detection, prevention, investigation and prosecution of corrupt activities of the petitioners herein in accordance with the provision under Section 5(2) of the Indian Telegraph Act, 1885. Therefore, this Court finds no violation of Section 5(2) of the Telegraph Act and also it would not amount to violation of the right to privacy under Article 21 and freedom of speech and expression guaranteed under Article 19(1) and 19(2) of the Constitution of India. Therefore, these writ petitions are devoid of merits.

15. Accordingly, these writ petitions are dismissed. Consequently, connected miscellaneous petitions are closed. No costs.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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To

1. The Secretary of Govt. of India,
   Ministry of Home Affairs,
   North Block,
   Central Secretariat,
   New Delhi - 110 001

2. The Inspector of Police,
   Central Bureau of Investigation,
   Anti Corruption Bureau,
   III Floor, Shastri Bhavan,
   No.26 Haddows Road,
   Nungambakkam,
   Chennai 600006.

CO(CA)

BDL/19/12/2020