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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON:	17.03.2022
PRONOUNCED ON:	30.03.2022

CORAM:

THE HONOURABLE MR.JUSTICE P.N.PRAKASH
AND
THE HONOURABLE MR.JUSTICE A.A.NAKKIRAN

CRL.O.P.NOS.5725 TO 5727 OF 2022

Karthik Dasari
Deputy Director
Directorate of Enforcement
Government of India
Ministry of Finance
Department of Revenue
IV Floor, Shastri Bhavan
No.26, Haddows Road
Chennai 600 006

... Petitioner in all the Crl.O.Ps.

vs.

The State by
the Inspector of Police
Central Crime Branch
Chennai
(Cr. Nos.344 of 2018)

... Respondent in Crl.O.P.No.5725 of 2022

The State by
the Inspector of Police
Central Crime Branch
Chennai
(Cr. Nos.441 of 2015)

... Respondent in Crl.O.P.No.5726 of 2022

The State by
the Inspector of Police
Central Crime Branch
Chennai
(Cr. Nos.298 of 2017)

... Respondent in Crl.O.P. No.5727 of 2022



Prayer in CrI.O.P.No.5725 of 2022:

Criminal Original Petition filed under Section 482 Cr.P.C. seeking to call for the records in CrI.M.P. No.20053 of 2021 in connection with C.C.No.25 of 2021 on the file of the Additional Special Court for trial of criminal cases relating to MPs and MLAs, Singaravelar Maaligai, Chennai, dated 09.11.2021 and set aside the same for the purpose of a fair investigation and direct the Assistant Sessions Judge, Additional Special Court for Trial of Criminal Cases relating to MPs and MLAs, Singaravelar Maaligai, Chennai to furnish the remaining unmarked documents in C.C. No.25 of 2021 for aiding the investigation under the Prevention of Money-Laundering Act, 2002, by the petitioner.

Prayer in CrI.O.P.No.5726 of 2022:

Criminal Original Petition filed under Section 482 Cr.P.C. seeking to call for the records in CrI.M.P. No.20055 of 2021 in connection with C.C.No.24 of 2021 on the file of the Additional Special Court for trial of criminal cases relating to MPs and MLAs, Singaravelar Maaligai, Chennai, dated 09.11.2021 and set aside the same for the purpose of a fair investigation and direct the Assistant Sessions Judge, Additional Special Court for Trial of Criminal Cases relating to MPs and MLAs, Singaravelar Maaligai, Chennai, to furnish the remaining unmarked documents in C.C. No.24 of 2021 for aiding the investigation under the Prevention of Money-Laundering Act, 2002, by the petitioner.

Prayer in CrI.O.P.No.5727 of 2022:

Criminal Original Petition filed under Section 482 Cr.P.C. seeking to call for the records in CrI.M.P. No.20054 of 2021 in connection with C.C.No.19 of 2020 on the file of the Additional Special Court for trial of criminal cases relating to MPs and MLAs, Singaravelar Maaligai, Chennai, dated 09.11.2021 and set aside the same for the purpose of a fair investigation and direct the Assistant Sessions Judge, Additional Special Court for Trial of Criminal Cases relating to MPs and MLAs, Singaravelar Maaligai, Chennai, to furnish the remaining unmarked documents in C.C. No.19 of 2020 for aiding the investigation under the Prevention of Money-Laundering Act, 2002, by the petitioner.



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For petitioner : Mr.R.Sankaranaryanan,
in all cases Addl. Sol. Gen.
assisted by
Mr.S.Sasikumar
Special Public Prosecutor
(Enf. Directorate)

Amicus Curiae : Mr.Hasan Mohamed Jinnah
Public Prosecutor

COMMON ORDER

P.N.PRAKASH, J.

In view of commonality of the issue involved, the instant three criminal original petitions are considered and decided by this common order.

2. One Senthil Balaji was the Transport Minister in the AIADMK Government headed by late Selvi J. Jayalalithaa sometime during 2011-2015 and there were lot of complaints against him, in that, it was alleged that he had received huge amounts as bribe from various persons for appointing them as Conductors and Drivers in the Transport Corporations. In connection with these allegations, three FIRs were registered against him which culminated in charge sheets being filed against him and those charge sheets are now pending on the file of the Assistant Sessions Court (Special Court for trial of criminal cases relating to MPs and MLAs), Chennai, the details of which are as under:

CCB Cr.No.	C.C.No.	Provisions	No.of victims
441 / 2015	24 of 2021	120-B, 465, 467, 471, 420 & 201 IPC and Sections 7,12 and 13 of the Prevention of Corruption Act	84
298/2017	19 of 2020	406, 420 & 506 (II) IPC	21
344/2018	25 of 2021	406, 420 & 506 (I) IPC	44

3. Since the charge sheets disclosed the commission of a scheduled offence under the Prevention of Money-Laundering Act, viz. Section 420 IPC, the Enforcement Directorate registered a



case in ECIR No.21 of 2022 against Senthil Balaji and others on 29.07.2021 and took up the investigation of the case.

4. The Deputy Director, Enforcement Directorate filed individual third party copy applications in C.C. Nos.24 of 2021, 19 of 2020 and 25 of 2021 before the Special Court, seeking certified copies of certain documents.

5. The Special Court, by three separate orders dated 09.11.2021, passed almost on similar lines, directed the issuance of certified copies of some documents such as final report, complaint and FIR and 161 Cr.P.C. statements, but, refused to grant the certified copies of unmarked documents sought by the Enforcement Directorate, aggrieved by which, the Enforcement Directorate has filed the instant three criminal original petitions invoking Section 482 Cr.P.C.

6. Heard Mr. R. Sankaranarayanan, learned Additional Solicitor General assisted by Mr. Sasikumar, learned Special Public Prosecutor for the Enforcement Directorate and Mr. Hasan Mohamed Jinnah, learned State Public Prosecutor, who was appointed by us as Amicus Curiae.

7. At the outset, it may be apropos to state here that charge sheets have been filed in the predicate offence by the Central Crime Branch and therefore, the law laid down by the Full Bench of this Court in Selvanathan @ Raghavan vs. State by the Inspector of Police¹ will not apply to this case, as it is common knowledge that in Selvanathan (supra), the issue before the Full Bench was the certified copies of which documents can be furnished to an accused before charge sheet is filed in the case in question. As stated above, in this case, charge sheets have been filed and in the list of documents annexed to the charge sheets, the Central Crime Branch has given the description of the documents that have been submitted by them to the Special Court along with the charge sheets. On the same reasoning, Rule 231(1) and (2) of the Criminal Rules of Practice, 2019, (for brevity "the CRP 2019") would also have no application to the present case, because, those Rules also deal with the grant of certified copies of documents to the accused before the filing of the final report (charge sheet). However, Rule 231(3), *ibid.*, reads as under:

"231. Grant of certified copies of other documents. –

(3) Certified copies of photocopies of unmarked documents shall not be given."

1 1988 L.W. (Crl.) 503



Be it noted, Rule 231(3), *ibid.*, extracted above is a stand-alone rule and is not controlled by Rule 231(1) and (2). In some cases, it may happen that the police / parties may file photocopies of some documents. This Rule simply bars the issuance of the certified copies of photocopies of unmarked documents, which, on the contrary, implies that certified copies of originals may be given, even if the originals are unmarked.

8. Coming to the procedure adumbrated under the CRP 2019 for third party applications, Rule 210 reads as under:

"210. Application for copies by third parties.— Application for the grant of copies of judgment or order or any proceeding or document in the custody of a Court by a third party to the proceeding shall be allowed only by order of the Court obtained on a petition supported by an affidavit setting forth the purpose for which the copy is required."

9. Mr. Sankaranarayanan placed strong reliance upon this rule and contended that this rule gives a substantive right to a third party to obtain certified copies of documents from a Criminal Court. We are unable to subscribe to the above submission of the learned Additional Solicitor General for the simple reason that a complete reading of Rule 210, *ibid.*, shows that it lays down only the procedure for making a third party copy application, in that, it says that a third party copy application shall be allowed only by an order of the Court obtained on a petition supported by an affidavit setting forth the purpose for which the copy is required. Just because the affidavit discloses the purpose for which the copy is required, it does not mean that the third party would be automatically entitled to the certified copy of the document sought by him. The expression "shall be allowed only by an order of the Court" qualifies the subsequent requirement, viz., obtained on a petition supported by an affidavit setting forth the purpose for which the copy is required. A fortiori, if a person makes a third party copy application, he is required to file an affidavit setting forth the purpose for which the copy is required. On that affidavit and petition, the judicial officer is required to pass a judicial order whether to grant or refuse to grant the certified copy. In a given case, the judicial officer can refuse to grant the certified copy, bearing in mind, the privacy rights of the victim and the accused and other factors. Sometimes, the bona fides of the third party may also be in a cloud. Therefore, the judicial officer is not required to mechanically grant certified copy of documents available in his Court to a third party, but is expected to adopt a judicious approach on a case-to-case basis and pass a judicial order. If a



person is aggrieved by the order, the same can be subjected to judicial review by the superior Court.

10. Mr. Hasan Mohamed Jinnah, learned Amicus Curiae, placed before us the rules obtaining in other High Courts, especially the High Courts of Andhra Pradesh, Patna and Jharkhand wherein the Rules clearly say that the judicial officer has a discretion to grant or refuse to grant the certified copy of a document sought by a third party.

11. Mr. Sankaranarayanan submitted that the foundation for the investigation under the PMLA Act is the materials gathered by the police in the scheduled offence without which the guilty cannot be brought to book under the PML Act. In this case, Mr. Sankaranarayanan submitted that Senthil Balaji who was a Minister in the AIADMK cabinet defected to the DMK, won in the 2021 Assembly election on a DMK ticket and is now the Minister of Electricity; therefore, the police are reluctant to share the investigation materials gathered by them with the Enforcement Directorate, despite the mandate of Section 54-f of the PML Act. Section 54-F, *ibid.*, reads thus:

"54. Certain officers to assist in inquiry, etc.-The following officers and others are hereby empowered and required to assist the authorities in the enforcement of this Act, namely:-

- (a)
- (b)
- (c)
- (d)
- (f) officers of police;"

12. He also brought to the notice of this Court that the prosecution in C.C. No.25 of 2021 in CCB Cr. No.344 of 2018 has been quashed by the High Court in O.P. No.13374 of 2021 on 30.07.2021 on the ground that an amicable settlement has been reached between the de facto complainant and the accused. Once the prosecution of the scheduled offence is quashed, the documents that have been filed by the police in that case would not get marked, obviously because, there would be no trial. Mr.Sankaranarayanan's poser is, if that portion of the Special Court's order negating the prayer for furnishing certified copies of unmarked documents is upheld, then, the Enforcement Directorate would not be able to obtain any document in C.C.No.344 of 2018 since the charge sheet has been quashed, as aforesaid. Therefore, he submitted that, that portion of the Special Court's order negating the prayer for furnishing certified copies of unmarked documents, is not sustainable in



law, especially when there is no bar in the CRP 2019 for a third party to obtain the certified copy of an unmarked document.

13. There appears to be sufficient force in the aforesaid submission of Mr. Sankaranarayanan. We, therefore, set aside that portion of the impugned orders which states "certified copies of unmarked documents cannot be granted and the said prayer is accordingly negatived." However, we are not remanding the matter to the Special Court, because, in the third party copy application, for instance, in Cr.M.P. No.20055 of 2021 in C.C.No.25 of 2021, the Enforcement Directorate has made an omnibus prayer which reads as follows:

List of documents

1. Certified copy of the final report filed u/s 173 (2) of Cr.P.C., 1973 along with relied upon documents (RUDs).
2. Certified copy of the statements of witnesses recorded u/s 161 and 164 of Cr.P.C., 1973.
3. Certified copy of the complaint and FIR registered in Cr.No.441/2015 by the complainant.
4. Certified copies of the digital evidence including hard disk, mobile phone, etc., and email correspondence recovered from the accused.

14. In our considered opinion, the Enforcement Directorate should have first filed an application under Rule 237 of the CRP 2019 for inspection of the records in the Special Court and since they are officers of the Enforcement, they are entitled to inspect the records under Rule 237(1), *ibid.* Under Rule 238, *ibid.*, they can take extracts which means, they can take notes of the contents of the documents which they require. The expression "take only written extracts" used in Rule 238, *ibid.*, means the Enforcement Officer cannot capture those records in his mobile phone camera or any other electronic gadget, but is only entitled to take written notes for his use and thereafter, may make a third party copy application specifying the document which he needs and the purpose for which the same is required, as laid down in Rule 210, *ibid.*

15. In view of the foregoing discussion, those portions of the impugned orders which state "certified copies of unmarked documents cannot be granted and the said prayer is accordingly negatived" are set aside. It is open to the Enforcement Directorate to follow the procedure of conducting inspection under Rule 237, *ibid.*, and thereafter, file a fresh third party copy application before the Special Court, if so advised.



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In the result, these three criminal original petitions stand ordered on the above terms.

Sd/-
Assistant Registrar(CS-IX)

//True Copy//

Sub Assistant Registrar

cad

To

1. The Special Judge,
Special Court for trial of criminal cases
relating to MPs and MLAs,
Singaravelar Maaligai, Chennai,
2. The Inspector of Police
Central Crime Branch
Chennai
3. The Public Prosecutor
High Court of Madras
Chennai

+3ccs to M/s.S.Sasikumar, Special Public Prosecutor (Enf. Directorate), Advocate, S.R.Nos.21282, 21280, 21281

Cr1.O.P.Nos.5725 to 5727 of 2022

SSN(CO)
RLP(07/04/2022)