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WP.No.21847 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 11.01.2023

Pronounced on: 28.03.2023

CORAM

THE HONOURABLE **DR. JUSTICE ANITA SUMANTH**

WP.No.21847 of 2014

V.Vidya

... Petitioner

Vs

1.The State Chief Commissioner,
Tamil Nadu Information Commission,
Teynampet,
Chennai 600017.

2.The Home Department,
S.C.Deputy Secretary Government,
Secretariat, Chennai 600009.

3.Special Branch CID,
Director General of Police,
Kamarajar Salai, Mylapore,
Chennai – 600004.

[R3 impleaded vide order dated 28.10.2022
made in W.M.P.No.27135 of 2022 in
W.P.No.21847 of 2014]

... Respondents



PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records made in impugned order in case No.55285 (6413 & 6415)/SCIC/2013 dated 08.01.2014 passed by the first respondent herein and quash the same as illegal and direct the respondents to supply necessary copies of all information sought by me including the report of the SBCID.

For Petitioner : Ms.V.Vidya,
Petitioner in person.

For respondents : Mr.Niranjan Rajagopalan [for R1]
Standing Counsel
Mr.J.Ravindran, [for R2 & R3]
Additional Advocate General
assisted by
Mr.Veda Bagath Singh,
Special Government Pleader.

ORDER

The petitioner Ms.V.Vidya appears in person and her detailed submissions as well as those of Mr.Niranjan Rajagopalan, learned Standing Counsel for the State Chief Commissioner, Tamil Nadu Information Commission/R1 and Mr.J.Ravindran, learned Additional Advocate General for Mr.Veda Bagath Singh, learned Special Government Pleader for R2 and R3, being the Deputy Secretary, Home Department and Special Branch, CID., office of the Director General of Police, have been heard.



2.The question that arises for determination in this writ petition is one of considerable importance. The petitioner has sought the quash of an order passed by R1 on 08.01.2014 and a consequential direction to supply the information sought for by her, being the report of the Special Branch, CID (in short 'SBCID').

3.The petitioner claims to be an industrialist catering to large scale industrial sector. She was also carrying out transactions in real estate and in the course of such activities, engaged with one Mr.K.C.Bose and his associates. According to her, the aforesaid individual and his associates had defrauded her.

4.She alleges that they were engaged in criminal conspiracy, fabrication of documents with the intention of falsifying revenue records and obtaining statutory approvals including approvals of the DTCP fraudulently. She also alleges that they had cheated her of a sum of Rs.25,00,000/- pertaining to 140 plots located at Orathur Village, Kanchipuram District.

5.According to the petitioner, they were able to succeed in their fraudulent endeavours by conspiring with prominent police officials who framed and foisted several criminal complaints against her with the sole intention of victimising her. In particular, she names Mr.S.R.Jangid, the then Additional Director General of Police (Economic Offence Wing) in this regard.



6. Both the petitioner and learned Additional Advocate General have drawn attention to a slew of litigation inter se the parties, the purpose being to emphasise the strained and acrimonious relationship inter se the parties. Both the sides also lay claim to some measure of success before the Courts in this regard.

7. For his part, Mr.Ravindran draws attention to some Court orders where the petitioner has drawn flak from the Courts for acts of omission and commission, and put to terms. He emphasises that the efforts of the petitioner are not bonafide. The report of the SBCID is a classified document as the Special Branch of the Crime Investigation Department is an organisation exempt from the application of the provisions of the Right to Information Act, 2007 (in short 'Act'/'RTI Act'), by virtue of Section 24 thereof. The exemption, according to the State, is absolute and unfettered and no exception can be made in that regard.

8. In any event, proceedings are pending before various authorities and furnishing the information sought for at this stage would prejudice those proceedings. Thus, he also states that the request of the petitioner is premature, would jeopardise the proceedings, and has been rightly rejected.

9. Since the matter involves an interpretation of Section 24 of the Act, I extract the provision hereunder:



24. Act not to apply to certain organizations.—

(1) Nothing contained in this Act shall apply to the intelligence and security organisations specified in the Second Schedule, being organisations established by the Central Government or any information furnished by such organisations to that Government:

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 Central 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.

(2)

(3)

(4) Nothing contained in this Act shall apply to such intelligence and security organisations, 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.

(5) Every notification issued under sub-section (4) shall be laid before the State Legislature.”

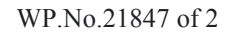


10. The Act has been made inapplicable to intelligence and security organizations established by the Central Government or in respect of information furnished by such organizations to the Central Government, such agencies/organisations being specified in the second Schedule.

11. As far as the State is concerned, Section 24(4) states that the Act shall not apply to such intelligence and security organizations, being organizations established by the State Government as that Government may, from time to time, by Notification in the official gazette, specify.

12. There is thus a difference in the identification of the organizations at the Central and State levels. While the second Schedule to the Act has enumerated conclusively those Central organizations that stand outside the purview of the RTI Act, as far as the State is concerned, the discretion has been left with the State Government.

13. This is perhaps for the reason that every State would have devised its own structure of intelligence and security organizations and thus the State would be best positioned to decide which of such organizations must be covered under the purview of the RTI Act or otherwise. Such decision, undoubtedly, will be taken by the State in a considered manner having regard to the sensitivity of the information dealt with by that particular organization.



16. Though the PIO had assured the petitioner that the information sought would be given within ten days, i.e., on or before 25.10.2012, such assurance was not maintained and hence she approached the SIC. Pursuant to an enquiry conducted on 17.07.2017, an order of even date was passed by the SIC.



17. The SIC noted the submissions of the PIO that the report of Chandra Basu would be given to her within one week from date of receipt of that order. As regards a copy of the enquiry report of DSP, SBCID, the PIO adopted the stand that it was protected by virtue of Section 24(4) of the RTI Act. This submission was accepted by the SIC.

18. As against that order, the petitioner filed a Writ Petition in W.P.No.26086 of 2013. In that Writ Petition, an interim order was passed on 25.10.2013 by Hon'ble Mr.Justice K.K.Sasidharan directing the SBCID to produce the enquiry report in question in a sealed cover.

19. The Writ Petition was ultimately closed on 29.11.2013. Inter alia, the learned Judge refers to Section 10 of the RTI Act relating to severability. He was of the opinion that that portion of the report which was unobjectionable and that can be reasonably severed could well be furnished to her and that the authority had failed in not adverting to this aspect of the matter.

20. Learned Judge further noted that Section 10 had been invoked on an earlier occasion in the petitioner's own case and hence, felt that this course of action could be adopted by the authorities in dealing with the present request as well. The relevant portion of the order of Hon'ble Mr.Justice K.K.Sasidharan reads thus:

Analysis:-



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6. *The affidavit filed in support of the writ petition and the counter affidavit filed by the second respondent clearly indicates that pursuant to the complaint made by the petitioner, the Director General of Police was pleased to direct SBCID to conduct an enquiry. The enquiry was conducted by Thiru.R.Gunasekaran, Deputy Superintendent of Police, Crime Branch CID, Chennai. The second respondent pleads confidentiality, as according to him, discreet enquiry was conducted in a confidential manner and there would not be any proof to substantiate the finding. Therefore, it is not possible to provide a copy of the enquiry report.*

7. *Sub Section 2 of Section 24 provides that the provisions of the Right to Information Act would not apply to Intelligence and Security Organizations, specified in II Schedule. The Government of Tamil Nadu issued G.O.Ms.No.1042 dated 14 October 2005, granting exemptions to 11 Departments, in view of the nature of their functioning. The first respondent by placing reliance on the said Government Order, rejected the request made by the petitioner.*

8. *The earlier order passed by the Tamil Nadu Information Commission at the request of the petitioner dated 4 June 2012, indicates that the very same objection was taken by CBCID and in spite of such objection, the commission, by placing reliance on Section 10 of R.T.I Act directed the police officials to furnish copy of the unobjectionable part of report.*

9. *Section 10 of Right to Information Act contains a provision regarding Severability. The said provision permits disclosure of information to that part of the record which does not contain any information which is exempt from disclosure under the Act and which can reasonably be severed from any part that contains exempted information.*

10. *The application, submitted by the petitioner was rejected in its entirety, without making any attempt to verify as to whether Section 10 could be invoked. When an application is made requesting disclosure of information, and a plea of exemption is taken, Information Commission should call for the records and verify as to whether there is substance in the contention taken by the concerned Department.*



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11. *The Commission has already, invoked Severability clause under Section 10 of the Act on an earlier occasion. However, such a course was not taken when a request was made on a subsequent occasion. Since the impugned order does not contain any indication as to whether the State Information Commission perused the report for the purpose of invoking section 10 of the Act, necessarily, the impugned order is liable to be quashed.*

12. *In the result the impugned order dated 17 July 2013 is quashed and the matter is remitted to the first respondent for fresh consideration. The first respondent is directed to consider the matter afresh with notice to the petitioner and second respondent. Such exercise shall be completed within period of four weeks from the date of receipt of a copy of this order.*

13. *In the upshot, I allow the Writ Petition. No costs. Consequently, connected miscellaneous petitions are closed.*

21. Pursuant thereto, the matter was listed for enquiry again on 08.01.2014 by the SIC. The SBCID reiterated their stand that the organization was absolutely exempt under Section 24(4). They pointed out that the SBCID stood on par with the Intelligence Bureau of the Government of India in the context of State security. They also averred that the SBCID does not conduct investigation on allegations of corruption and human rights violation.

22. Their stand was accepted by the SIC, by way of impugned order, going by the distinction made between Crime Branch of the CID (CBCID) and SBCID. The functional difference between the two Departments were noted by the SIC, which also states that '*the powers that be*', in their wisdom, have chosen to bring CB-CID within the ambit of the RTI Act while exempting SB-



CID from it. The said wisdom is not to be called in question before the Commission, the SIC concludes.

23. The SIC thus concludes that the exemption of SBCID was total and absolute unlike in the case of CBCID. Thus, the earlier instance where the CBCID had been directed to furnish information was different and such a conclusion would not impact or affect the decision to be taken in the context of SBCID. The operative portion of the order reads thus:

9. The SB-CID is structurally and functionally quite different from the CB-CID. The SB-CID forms the impression on the basis of the materials gathered by them through their own inbuilt instrumentalities and it does not have legal consequences unless it is followed by actions contemplated as per law. May be that SB-CID's report might end as a report or further action might be pursued on the exigencies of the situation which emerge from the materials available in the report of the SB-CID. This, by no stretch of imagination, could be equated to the functions performed by the CB-CID which is invariably entrusted with the job of investigation and may be followed by prosecution. Thus, functionally these two entities stand apart from each other. The powers that be, in their wisdom, have chosen to bring CB-CID within the ambit of the RTI Act while exempting SB-CID from it. The said wisdom is not to be called in question before this Commission. Thus, it is demonstrably clear that the exemption of SB-CID is total and absolute unlike in the case of CB-CID. In the earlier case, information has been ordered to be furnished inasmuch the information sought for related to CB-CID and not SB-CID. At the risk of repetition, it may be pointed out that SB- CID's report is impressionistic whereas that of CB-CID is not as indicated supra.

10. Thus, when there is a total exemption made available to SB-CID from the RTI Act by virtue of the provisions of Section 24(4), no request for information touching SB-CID could be asked for by virtue of the bar of law. If any inroad into the bar of information



touching SB-CID is made, then it will entail the consequence of such a situation militating against the provisions of Section 24(4) No doubt, there is a proviso to Section 24(4) to the effect that in the case of corruption and human rights violation, the bar under Section 24(4) would not apply. The SB-CID comes out only with reports of its impression and does not in any manner perform the functions of an investigating agency much less a prosecuting agency and as such the SB-CID would not have any occasion to deal with allegations of corruption and human rights violations and in this state of affairs, the case at hand would not fall within the ambit of the proviso to Section 24(4).”

24. Before me, the respondents have placed G.O.Ms.Nos.1042, 1043 and 1044, all dated 14.10.2005 that exempt various Departments of the State including SBCID and CBCID from the ambit of the RTI Act, reading thus:

G.O.Ms.No.1042:

“ABSTRACT

The Right to Information Act, 2005 (Central Act 22 of 2005) - Act not to apply to certain organizations – Notification - Issued.

PUBLIC (ESTT.I & LEG.) DEPARTMENT

G.O.Ms.No.1042 Dated 14.10.2005

Read:

- 1. From the Additional Director General of Police (Int.), Special Branch CID, Letter No.C.11 No.36375/C, dated 09.10.2005.*
- 2. From the Home Dept. U.O.No.6606/SC/05 dated 11.10.2005.*

ORDER:

The Government of India have enacted the Right to Information Act, 2005 (Central Act 22 of 2005) to provide for setting up the practical regime of right to information for citizens to secure access to the information under the control of Public Authorities in



order to promote transparency and accountability in the working of every Public Authority.

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2. As per sub-section (4) of section 24 of the Right to Information Act, 2005, nothing contained in the Act shall apply to such Intelligence and security organization being organizations established by the State Government as that Government may from time to time, by notification in the Official Gazette specify.

3. The Government have examined the report of the Additional Director General of Police (Intelligence). Special Branch Criminal Investigation Department sent in the letter first read above. After careful consideration, the Government have decided to specify the organizations indicated hereunder in the notification as those organizations for which nothing contained in the Right to information Act, 2005 shall apply.

4. The following Notification shall be published in the Tamil Nadu Government Gazette Extraordinary, dated the 14th October 2005 : -

NOTIFICATION

In exercise of the powers conferred by sub-section (4) of section 24 of the Right to Information Act, 2005 (Central Act 22 of 2005), the Governor of Tamil Nadu hereby specifies the following Intelligence and Security Organizations established by the Government of Tamil Nadu for which the said Act shall not apply:-

1. Special Branch CID
2. "Q" Branch CID
3. Special Division
4. Security Branch"

G.O.Ms.No.1043:

"ABSTRACT

The Right to Information Act, 2005 (Central Act 22 of 2005) - Act not to apply to certain organizations – Notification – Issued.

PUBLIC (ESTT.I & LEG.) DEPARTMENT

G.O.Ms.No.1043 Dated: 14.10.2005



Read:

1. From the Additional Director General of Police (Int.), Special Branch CID, Letter No.C.11.No.36375/C, dated 09.10.2005.
2. From the Home Dept. U.O.No.6606/SC/05, dated 11.10.2005.

ORDER:

The Government of India have enacted the Right to Information Act, 2005 (Central Act 22 of 2005) to provide for setting up the practical regime of right to information for citizens to secure access to the information under the control of Public Authorities in order to promote transparency and accountability in the working of every Public Authority.

2. As per sub-section (4) of section 24 of the Right to Information Act, 2005, nothing contained in the Act shall apply to such Intelligence and security organization being organizations established by the State Government as that Government may, from time to time, by notification in the official Gazette specify.

3. The Government have examined the report of the Additional Director General of Police (Intelligence), Special Branch Criminal Investigation Department sent in the letter first read above. After careful consideration, the Government have decided to specify the organizations indicated hereunder in the notification as those organizations for which nothing contained in the Right to Information Act, 2005 shall apply.

4. The following Notification shall be published in the Tamil Nadu Government Gazette Extraordinary, dated the 14th October 2005:-

NOTIFICATION

In exercise of the powers conferred by sub-section (4) of section 24 of the Right to Information Act, 2005 (Central Act 22 of 2005), the Governor of Tamil Nadu hereby specifies the following Intelligence and Security Organizations established by the Government of Tamil Nadu for which the said Act shall not apply-

1. Crime Branch CID
2. Special Investigation Team



3. Video Piracy Cell”

G.O.Ms.No.1044:

“ABSTRACT

The Right to Information Act, 2005 (Central Act 22 of 2005) - Act not to apply to certain organizations – Notification – Issued.

PUBLIC (ESTT.I & LEG.) DEPARTMENT

G.O.Ms.No.1044 Dated: 14.10.2005

Read:

From the Home Dept. U.O.No 6606/SC/05, dated 11.10.2005.

ORDER:

The Government of India have enacted the Right to Information Act, 2005 (Central Act 22 of 2005) to provide for setting up the practical regime of right to information for citizens to secure access to the information under the control of Public Authorities in order to promote transparency and accountability in the working of every Public Authority.

2. As per sub-section (4) of section 24 of the Right to Information Act, 2005, nothing contained in the Act shall apply to such Intelligence and security organization being organizations established by the State Government as that Government may, from time to time, by notification in the Official Gazette specify.

3. After careful consideration, the Government have decided to specify the organizations indicated hereunder in the notification as those organizations for which nothing contained in the Right to Information Act, 2005 shall apply.

4. The following Notification shall be published in the Tamil Nadu Government Gazette Extraordinary, dated the 14th October 2005:-

NOTIFICATION



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In exercise of the powers conferred by sub-section (4) of section 24 of the Right to Information Act, 2005 (Central Act 22 of 2005), the Governor of Tamil Nadu hereby specifies the following Intelligence and Security Organizations established by the Government of Tamil Nadu for which the said Act shall not apply:-

1. *Home (Police.VII) Department*
2. *Home (SC) Department”*

25. To that end, the observation of the SIC that ‘*The powers that be, in their wisdom, have chosen to bring CB-CID within the ambit of the RTI Act while exempting SB-CID from it*’ is incorrect, since both the CBCID and SBCID are notified as organizations to which the RTI Act will not apply subject to the application of the provisos to Section 24(4) of the Act.

26. The Government Orders do not make any distinction between the categories of organisations that have been notified. To be reiterated at this juncture that the CBCID has been directed to furnish a copy of the enquiry report per the decision in W.A.No.857 of 2017 dated 14.12.2017, and that order has attained finality.

27. The details of the litigation with the conclusion of the Courts as stressed upon by the parties is set out below:

<i>Sl.No.</i>	<i>Police Station, Crime No and Section of law</i>	<i>Stage</i>
<i>1.</i>	<i>CBI, ACB, Chennai, R.C MAI/2004/A0003 u/s 120(B) r/w 420, 468, 471 IPC and 13(2) r/w 13(1)(d) of PC Act 1988.</i>	<i>Pending trial in the Court of the Principal Special Judge for CBI Cases, Chennai.</i>



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2.	<i>Pazhavanthangal PS Cr No.310/2009 u/s 408, 341, 385 and 506(ii) IPC.</i>	<i>Pending trial before the Judicial Magistrate, Alandur.</i> <i>Petitioner had filed a quash petition before the High Court and same was dismissed in Crl.OP No.6037/2014.</i> <i>Trial is stayed by Justice P.Rajamanickam.in Crl OP No.32074/2019.</i>
3.	<i>Madhavaram PS Cr.No.528/2009 u/s 406, 467, 468, 471 and r/w 420 IPC.</i>	<i>Pending trial before the Judicial Magistrate, Thiruvottriyur.</i> <i>Three unsuccessful attempts made to quash the trial in Crl OP 6037/2014, (dismissed on 31.10.2014), Cr OP.No.10652/2015, (dismissed on 30.04.2015) and Crl OP 2224/217, (dismissed with fine of Rs.10000/- and directing Petitioner to cooperate with trial on 13.04.2018)</i>
4.	<i>Pallavaram Police Station Cr.No.960/09, u/s 420 IPC</i>	<i>Acquitted by Judicial Magistrate, Tambaram. Private case filed in the court of JM Saidapet dismissed as well as Appeal.</i>
5.	<i>Ambathur PS Cr.No.804/09 u/s 406, 420, 506(ii) IPC.</i>	<i>Quashed on 24.02.2014 vide Crl.OP Nos.21902 and 18452 of 2010. Order</i>



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		<i>has become final. SLP also dismissed. The enquiry report of the CB CID and counter filed by the Govt have criticized this conduct of the then police officers and termed it as collusion with the accused.</i>
6.	<i>St. Thomas Mount Police Station Cr.No.1225/09 u/s 406, 420, 506(i) IPC.</i>	<i>Quashed on 24.02.2014 vide Crl.OP.Nos.21902 and 18452 of 2010. -As in serial no:5 above -</i>
7.	<i>Selaiyur Police Station Cr.No.1257/09 u/s 406, 420, 294(b), 506(i) IPC</i>	<i>Case was discharged by Judicial Magistrate, Tambaram Revision filed and withdrawn. The enquiry report of the CB CID and counter filed by the Govt have criticized this conduct of the then police officers and termed it as collusion with the accused.</i>

28. C.S.No.645 of 2012 had been filed by the petitioner seeking damages for malicious prosecution. An application bearing No.4158 of 2013 had been filed by the defendants for rejection of plaint and had been allowed on 05.06.2018 as against which the petitioner filed O.S.A.No.417 of 2018. By order dated 22.01.2021 the order allowing the application under Order VII Rule 11 of the Code of Civil Procedure was set aside by the Division Bench and both parties were directed to complete pleadings and face trial.

29. Inter alia, the Division Bench at paragraphs 13 to 16 have stated thus:



‘13.The complaint was given before the Selaiyur Police Station which does not have jurisdiction over the complainant's address namely, 2/44, MambakkamSalai, Gowrivakkam, Medavakkam, Chennai – 600 302. The RTI details dated 03.12.2016 obtained by the appellant from the Deputy Commissioner of Police, St.Thomas Mount District, Greater Chennai Police would reveal that the address viz.,2/44, MambakkamSalai, Medavakkam Road, Chennai falls within the jurisdiction of Pallaikaranai Police Station. Therefore, the case of the appellant that the second respondent with a malafide intention had received first respondent's complaint which is civil in nature, that too with a false address, appears to be correct. Even assuming that the address given by the complainant/first respondent is correct, RTI information obtained by the appellant would reveal that the Selaiyur Police Station does not have jurisdiction with regard to the Mambakkam Road.

14.The second respondent who is a responsible police official, that too, Station House Master of the Police Station is expected to know the jurisdiction of his Police Station. This Court could take judicial notice that many complaints are not even taken on file quoting lack of jurisdiction and the aggrieved parties are driven from pillar to post to register the complaint. Assuming that the complaint could be taken without jurisdiction, the complaint should be forwarded to the concerned Police Station thereafter. Hence, prima face it is clear that there is no jurisdiction for the second respondent to receive the first respondent's complaint. Hence, the allegation of the appellant that with malice, the complaint was received without jurisdiction with false address and the case was registered deliberately and she was arrested and kept in prison for 60 days, cannot be brushed aside.

15.The Special Report of the Inspect of Police, CBCID, Cyber Crime Cell, dated 20.07.2012 would state that there was no such address as stated in the FIR. Therefore, the contention of the appellant, prima facie appears to be correct, as per the special report. Only at the time of trial, whether the address given by the complainant is correct or not can be proved through oral and documentary evidence. There are documents in support of the appellant as on date which can be repudiated by employment of appropriate documents by the respondents during trial.



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16. It is a known fact that the police are not even receiving the complaint even if grave criminal offences are said to have been committed and only in rare cases, CSR numbers are given. The complainants are driven from pillar to post and ultimately they are made to approach this Court and everyday this Court is issuing directions to register a case or enquire and act in accordance with law following the guidelines issued by the Hon'ble Apex Court in the case of *Lalitha Kumari vs. State of Uttar Pradesh*. When that is the position, the second respondent without even verifying the address of the first respondent received the complaint and registered the FIR. It appears that receiving and registering the complaint without jurisdiction and enquiry and arresting the appellant is a pre-planned one.'

30. At paragraph 21, the Division Bench has this to say:

'21. The learned Single Judge observed that the appellant has to aver that the second respondent/second defendant instituted criminal proceedings by abusing his official power as public servant maliciously, when there being no reasonable and probable cause and that the defendant was actuated by ill will or improper motive. The averments in paragraph 9 and 10 would prima facie make out the pleadings for malicious prosecution. The crux of the issue has to be culled out from the averments in the plaint and one cannot expect statements/averments in the pleadings in a particular manner. From the facts, it is evident that though the police complaint was given with false address to register the complaint and knowing fully well the falsity of the allegations was preferred by the first defendant with malice, the second defendant connived with the first defendant by registering FIR. In the plaint, the parties are supposed to plead material facts and that they need not give minute details as if it is a proof affidavit. What is expected are only material facts. When material facts are pleaded, the parties are at liberty to explain the same by way of evidence and the Court cannot expect evidence by way of pleadings. Therefore, the finding of the learned Single Judge in this regard has to be set aside.'



31. This order was challenged in SLP Civil Nos.5590 of 2021 and by an order dated 29.06.2021, the Hon'ble Supreme Court has dismissed the petition stating that it was not inclined to interfere with the impugned order. This order supports the allegations of the petitioner regarding corruption and violation of human rights.

32. Evidently, there has been, and continues to be, considerable bad blood between the petitioner and the police authorities. The consistent allegation of the petitioner is that she has been incarcerated illegally. False cases have been foisted upon her solely on account of collusion between her enemies and superior police officers.

33. Writ Appeal No.857 of 2017 had been filed by the petitioner challenging the order of a learned single Judge dated 04.07.2017 dismissing her challenge to an order passed by the State Information Commission to furnish a copy of the report of the Crime Branch of the CID (CBCID). The writ appeal was allowed on 14.12.2017 and that order has attained finality.

34. She has thus seen some measure of success before the Courts in some matters and the litigation between the parties continues before the authorities. The persistent stand of the State is that the investigation into some complaints is yet pending and the allegation of human rights violation and corruption is yet to be tested by the authorities. Hence the request of the petitioner is premature.



If the stand of the Petitioner is vindicated, she can well seek redress for malicious prosecution as she has done in other instances.

35. In arguing as above, the respondents have lost sight of two considerations. Firstly, the proviso to Section 24(4) carves out an exception to the exemption in the event of '*information pertaining to the allegations of corruption and human rights violations*'. Hence even an allegation of corruption or human rights violation would suffice though the allegations cannot be random or arbitrary to attract the exception. The second proviso protects against such a situation, stating that the information shall be furnished only with the approval of the SIC within 45 days from the date of receipt of request.

36. Thus, there is a check and balance built-in, to ensure that the allegations have some basis. The urgency and immediacy in matters of human rights violations have also been factored in, the proviso making it clear that the information shall be provided within 45 days from receipt of the request.

37. The respondents maintain that there is a distinction between the officers of the CBCID and SBCID, which is critical, in their view to appreciate the applicability of the exemption under Section 24(4) of the Act. They point out that while BOTH CBCID and SBCID are investigative arms of the Department, the SBCID assumes the role of an intelligence agency.



38. The officers, while gathering intelligence are in plain clothes, the manner and mode of the investigation is discreet and covert rather than overt as in the case of CBCID and that their reports would, more likely than not, contain information which is highly sensitive and which cannot, under any circumstances, be divulged or shared.

39. The Court has carefully applied its mind to this distinction and has the highest consideration in protecting and preserving the interests of security and public safety. However, there is a constitutional duty cast upon the Court to interpret the Statute in line with the specific terms of the provisions and bearing in mind the objects and purpose of that law.

40. The framers are seen to have taken note of multiple factors in the construction of the provisions, striking a balance is struck between public and private interest at all times. This is a recurring theme in the scheme of the Act.

41. Section 3 of the Act vests a right in citizens to information, subject to the provisions contained therein and this provision has been interpreted such that there is no necessity for the information seeker to explain or justify the request for information.

42. While absolute, a caveat has been set out in the form of exemptions under Section 8 and in the procedure to be followed for disclosure of information relating to private/third parties under Section 11. Section 24



exempts organizations engaged in national security and defence, both at the level of the Centre and the State, from the application of the Act.

43. However, the exemption is circumscribed by excluding information relating to corruption and human right violations, placing such situations on a higher pedestal. The balance between private and public interest, enshrined in the statutory frame work, is in favour of private interest, on this aspect. Thus, accepting the argument of the respondents would distort this fine balance.

44. Upon a perusal of the trajectory that the matter has taken and the orders passed by this Court, I have no doubt, and there is really no dispute on this score, that the allegations made by the petitioner touch upon aspects of corruption and human rights.

45. I may add at this juncture that the term ‘corruption’ has wide ramifications as defined in the Black’s Law Dictionary to mean: *1. Depravity, Perversion, or taint; an impairment of integrity, virtue, or moral principle, exp., the impairment of a public official’s duties by bribery.* Thus, the matter attracts both provisos under Section 24 of the Act.

46. Mr. Ravindran cites the following judgements to support his arguments:

1. *Sanjiv Kumar Vs. S.K.Bansal, Dy.Director, IB, Ministry of Home Affairs and another.*[2006 SCC Online CIC 109].



2. *Udyami Evam Khadi Gramodyog Welfare Sanstha and another Vs. State of Uttar Pradesh and others.* [(2008) 1 Supreme Court Cases 560].
3. *Esab India Limited Vs. Special Director of Enforcement and another.* [2011 SCC Online Del 1212].
4. *K.Jayaram and others Vs. Bangalore Development Authority and others.* [2021 SCC Online SC 1194].

47. The relevant paragraph in the case of *Sanjiv Kumar* (supra) is as

below:

4. We heard both the sides and it is our considered opinion that the exemption provided to the organisations listed in Second Schedule of the RTI Act, 2005 is absolute in nature. In the present case, the immigration details sought by the appellant in respect of one particular individual were collected and maintained by the Intelligence Bureau which is an organisation figuring in Schedule II. As such, we see no scope for disclosure of the information maintained by a Schedule II - organisation whether or not it is classified as sensitive or non-sensitive. We are also unable to accept the argument of the appellant that the type of information which he has sought have had any human rights or corruption implications which would constitute an exception to the rule i.e. excluding organisations in the schedule-II from disclosure of information obligations. The appellant, no doubt, has our sympathy for the trauma he had to endure because of the loss of his newly born son allegedly due to medical neglect. There are other laws through which he can seek appropriate relief. However, before parting with the appeal, we would urge the high officers of the Intelligence Bureau, to consider if they could volunteer to supply the information requested by the appellant if it did not in any way compromise the functioning of IB.”

48. The judgements in the cases of *Sanjiv Kumar Jain* and *Esab India Limited* are distinguishable. In those judgements, there is a categorical finding by the appellate authorities that the information sought for has been looked into



and verified and found not support the allegation of corruption or human rights violations.

49. In *Sanjiv Kumar Jain*, the finding is towards the end of paragraph 1, reading thus:

The appellate authority had further stated that the information sought did not pertain to any allegation relating to charges of corruption or human right violation and, therefore, did not qualify for the exception under proviso to Section 24(1).

50. In *Esab India Limited*, the finding is recorded at paragraph 8 of the judgment, reading thus:

8. In the present case, nothing which has been stated would show that the exception to the exemption rule contained in Section 24 of the RTI Act is attracted. In other words, there is no case of human rights violation or corruption that needed to be examined for a decision in this matter.

51. In the present case, the respondents have nowhere stated that the report of the SBCID contains matter that is objectionable or that should, in State or public interest, be withheld. Their defence has always been only on the aspect of total exemption.

52. The judgements in the cases of *Udyami Evam Khadi* and *K.Jayaram* reiterate the settled proposition that a person must come to Court with clean hands even to be heard on a plea for discretionary remedy. The respondents state, in this regard that the Petitioner has suppressed some of the decisions passed by this Court, particularly those where the Court has found her conduct



unsavoury and put her to terms. It is only at the instance of the respondents that those decisions are placed before the Court. I do not agree.

53. No doubt, the petitioner has produced those decisions that conclude in her favour. However, I am of the considered view mere non-production of the other orders would not lead to a conclusion that the Petitioner has suppressed information. The present writ petition raises a legal issue and material relevant to the same has been produced.

54. The position that the allegations of the petitioner touch upon corruption and violation of human rights is an admitted one. That has been the constant refrain of the petitioner since inception. The argument of the State to the effect that the exemption under Section 24 is absolute can be accepted only to the extent of the first proviso that carves out a statutory exception in matters of corruption and human rights violations. Hence, the submission that such exemption is absolute and unfettered is rejected.

55. The request for information was reiterated on 11.03.2014 by the petitioner in the following terms:

*From
V.Vidya*

.....

*To
Sri Apoorva Varma IAS / Public Information Officer, Home SC,*

.....

Respected Sir,



WEB COPY

Sub: Request to Procure the copy of the report of Mr.Gunasekaran DSP (Ex SBCID) in 2011 – 2012 from the SBCID and to supply the same under the RTI act.

Ref: The PIO home SC Mr.Murugan was directed to allow me to peruse the required file and receive copies as required by me as directed by the previous home secretary Mr.Rameshram Mishra IAS in regard to my case under section 21 of the RTI act. Special note in Re No.X2/1063(a)/189390/2012 dt 16.12.2012 initiated by Mr.Venkatraman CM Secretary ordered to supply the information to me under RTI immediately.

With respect to the subject matter, I was framed false in 2009, in a motivation in a hidden agenda by Mr.S.R.Jangid in collusion with one K.C.Bose, a fraudulent real estate promoter, who is a close associate of Mr.S.R.Jangid (Ex Suburban Commissioner).

I had given a petition on 16.11.2011 to the DIG intelligence to conduct an enquiry and submit a report against the 6 false cases framed against me in a motivation. The petition was enquired by Mr.Gunasekaran DSP (Ex SBCID) in 2011-2012 from the SBCID which was corroborated with authentic materials and records.

But the senior officials presently in the intelligence department are suppressing many of the facts and the report of the DSP Mr.Gunasekaran in order to safe guard Mr.S.R.Jangid who acted as the DMK cadre in uniformed service during the DMK regime. Even my representation was construed on the floor of the state assembly in 2011 when the Hon'ble Chief Minister J.Jayalalitha had resumed power.

Many Political parties including communists and others represented on my behalf to bring out the atrocities which happened in the DMK regime especially to a women cadre, in floor of the state assembly.

Hence I kindly requested to procure the report of Mr.Gunasekaran from the SBCID and to supply the same under the RTI act and thus render justice.

Even the high court has commented on the cases foisted against me as false and malafide.'

56. The very fact that the State has accepted the decision of this Court in

W.P.No.26086 of 2013 dated 29.11.2013 will support my conclusion rejecting



the submission of the respondents. In that order, extracted at paragraph 20 of this order, learned Judge has directed the SIC, in light of the second proviso to Section 24(4), to examine if the information could be severed and the unobjectionable portion furnished to the petitioner, as provided for under Section 10 of the Act.

57. The above tantamounts to a rejection of the position that the exemption granted under Section 24(4) to the SBCID is absolute as it is, statutorily, subject to the application of the provisos thereunder. The SIC has, in my considered view, erred in merely concluding that the report of the SBCID is classified as that organisation is exempt.

58. The very remand was only to examine severability of the report and furnish unobjectionable portions of the same, if any. Thus, while there is no question that the SBCID enjoys exemption under Section 24(4), it is subject to the provisos thereunder. The conclusion of the SIC is found to be contrary to the provisions of law as well as the orders of this Court.

59. In the present case, it has never been the case of the respondents that the Report of the SBCID contains material that is objectionable in any way. The sole defence put forth is on the premise that the SBCID is entitled to an unfettered and absolute exemption under Section 24 of the Act.



60. Thus, and in light of the discussion as aforesaid, the petitioner succeeds and this Writ Petition is allowed. The Public Information Officer of R3 will supply a copy of the report sought for within a period of four (4) weeks from date of receipt of a copy of this order. No costs.

28.03.2023

vs/sl

Index : Yes

Speaking Order

Neutral Citation: Yes

To

1. The State Chief Commissioner,

Tamil Nadu Information Commission,
Teynampet,
Chennai 600017.

2. The Home Department,
S.C. Deputy Secretary Government,
Secretariat, Chennai 600009.

3. Special Branch CID,
Director General of Police,
Kamarajar Salai, Mylapore,
Chennai – 600004.



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DR.ANITA SUMANTH, J.

Vs/sl

WP.No.21847 of 2014

28.03.2023



WEB COPY

WP.No.21847 of 2



W.P.No.21847 of 2014

Dr.ANITA SUMANTH, J.

This matter is listed today at the instance of the petitioner, who points out that in tabulation contained in paragraph 27, there are certain errors in CrI.O.P and S.L.P. numbers at columns 2 and 4. They are to read as CrI.O.P.No.9227 of 2014 and S.L.P.(CrI).No.4691 of 2018.

2. Barring the aforesaid, no other changes are made to the aforesaid order.

11.04.2023

ssm

Note : Registry to issue fresh copy of this order incorporating only the changes as above.