



W.P(MD).No.16060 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On	:	20.12.2023
Pronounced On	:	19.03.2024

CORAM :

THE HONOURABLE MR.JUSTICE K.K. RAMAKRISHNAN

W.P(MD).No.16060 of 2023

and

W.M.P(MD).No.13457 of 2023

R.Karuppasamy

... Petitioner

Vs.

The Inspector of Police,
Vigilance and Anti-Corruption,
Tenkasi District.

... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to pass an Order or Direction or Writ more particularly in the nature of Writ of Certiorarified Mandamus by calling for the entire records pertaining to the communication made by the respondent vide her in RC.176/2018/CT/TI, dated 19.06.2023 and quash the same and consequently direct the respondent to furnish the statement of witnesses sought for through the petitioner's representation dated 12.06.2023.

For Petitioner : Mr.R.Anand

For Respondent : Mr.T.Senthil Kumar,
Additional Public Prosecutor



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ORDER

This writ petition has been filed to call for the records pertaining to the communication made by the respondent in RC.176/2018/CT/TI, dated 19.06.2023 and direct the respondent to furnish the statement of witnesses sought for through the petitioner's representation dated 12.06.2023.

2.The petitioner is the Assistant Commissioner Commercial Tax Department, Virudhunagar. The respondent Police registered a case against him under Section 13(2) r/w 13(1)(e) of Prevention of Corruption Act, 1988 in Crime No.5 of 2018. According to the prosecution, he amassed wealth to the tune of Rs.23,15,145/- beyond his lawful source of income. Therefore, the investigating officer conducted the investigation and after completing investigation, he issued show cause notice to give explanation for the assessment made by the investigating officer. According to the prosecution, on 30.05.2023, the department issued the final opportunity notice with all the documents. After receiving the same, the petitioner requested the respondent Police to furnish the following documents:-



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I submit that your notice cited RC. 176/2018/CT/TI received on 02.06.2023. With reference to the notice, I request you to provide me with the following documents,

i)A copy of the “Statement given by you” as mentioned in para (1) of the notice RC.176/2018/CT/TI.

ii)Copies of the statement of me and the statements of witnesses examined in the “preliminary enquiry conducted” as mentioned in point(8) of FIR No. 05 of 2018 dated 16.07.2018.

The above documents may kindly be furnished as early as possible. I also request you to provide one month extension of time from the date the above mentioned documents are provided, for furnishing explanation.

3.Thereafter, the department passed the following impugned order dated 19.06.2023:-

It is submitted that, your letter dated 12.06.2023 was received. The first document will be produced before the Honourable Court along with final report and the second documents related to the



statement of witnesses examined during the Preliminary Enquiry. It is pertinent to inform you that the Preliminary Enquiry is a Confidential Enquiry. Hence, the statement of witnesses may not be able to furnish as you required.

You are requested to furnish your explanation, within 15 days from the date of receipt of this letter, failing which, it will be constructed that you have no valid explanation to offer and the case will be finalized, on the basis of the information available with the Directorate, Vigilance and Anti-Corruption, Chennai-16. Please acknowledge receipt of this communication.

4.Challenging the same, the petitioner filed the present writ petition to quash the proceedings and also direct the respondent to furnish the statement of the witness sought through the petitioner's representation dated 12.06.2023.

5.The learned counsel appearing for the petitioner submitted that the respondent Police has passed the impugned order dated 19.06.2023 and declined to furnish the statement of the witnesses recorded during the preliminary enquiry report on the ground that it is confidential



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enquiry. The same was not in accordance with law. He further submitted that the preliminary enquiry report also forms part of the investigation and hence, the respondent Police is duty bound to furnish the same. The non furnishing of the report and demanding explanation amounts to violation of the principle of fair trial and investigation. Once investigation is completed, all the records are deemed as public records and hence, the petitioners are entitled to the same. The claim of the Vigilance Department that the preliminary enquiry is a confidential enquiry, cannot be accepted. In view of the development of law as laid down by the Honourable Supreme Court in the case of *V.K.Sasikala Vs. State* reported in **2012 (9) SCC 771** and in the case of *I.Periyasamy Vs. State of Tamil Nadu* reported in **2015 SCC Online Mad 14172**, it is permissible to claim the said statement and hence, he seeks for quashing of the impugned proceedings in RC.176/2018/CT/TI, dated 19.06.2023.

6.The learned Additional Public Prosecutor appearing for the respondent Police produced the records and submitted that the judgments relied by the petitioner in **2012 (9) SCC 771** and **2015 SCC Online Mad 14172** are not applicable to the facts of the present case. In both the above cases, during trial (*Periyasamy case*), they filed a petition seeking



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the preliminary enquiry report, in (*Sasikala case*) at the stage of the defence witness, he filed a petition seeking the preliminary enquiry report. Further, in this case final report is not filed, it is only at the stage of the issuance of the final opportunity notice. In the said circumstances, the petitioner is not entitled to any relief claimed in the petitioner's representation dated 12.06.2023. Further, the preliminary enquiry is conducted without recording any statement. Preliminary enquiry is conducted only to verify the facts of the case relating to the assets of the accused officers. There is no recording of the statement. In the said circumstances, the preliminary enquiry report and the statement recorded during the preliminary enquiry is not at all relevant and also the same can neither be used for contradicting the witness nor used for any other purpose. In the said circumstances, the learned Additional Public Prosecutor stated that the Sasikala case was subsequently considered by the case of *Manjeet Singh Khara Vs. State of Maharashtra* reported in **2013 9 SCC 276**, where the Honourable Supreme Court, after considering the Sasikala case, declared that the secret information received and preliminary enquiry conducted is not a material required to be furnished under Section 207 Cr.P.C., to the accused officer. Therefore, he seeks for dismissal of this writ petition.



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7.This Court considered the rival submission made on behalf of both the parties and also precedents relied upon by them.

8.The respondent police registered a case against the petitioner under Section 13(2) r/w 13(1)(e) of Prevention of Corruption Act, 1988. In the said FIR, it is alleged that he had been in possession of the assets and pecuniary resources in his name and in the name of his family members to the tune of Rs.74,57,593/- in the form of immovable and movable properties, which are disproportionate to the known source of income during the tenure of his service between 01.04.2012 and 31.03.2017. The investigating officer conducted investigation and finally calculated the known source of income as Rs.39,83,757/- and expenditure incurred by the family of the account officer during check period as Rs.31,96,078/-. Hence, the likely savings during check period is Rs.7,87,679/-. Hence, the investigating officer assessed the disproportionate asset to the tune of Rs.66,63,370/-. After the completion of the investigation and assessing the above quantum of disproportionate asset to the value of Rs.66,63,370/-, the investigating officer issued show cause notice to the petitioner dated 30.05.2023 to give explanation. After the receipt of the notice, the petitioner sent a representation to furnish



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some documents to give the reply and also sought one month further time from the date of furnishing the documents. In the representation, he sought statement given by him and statement of the witnesses examined during the preliminary enquiry conducted before the registration of the case. The same was declined by the investigating officer stating that the preliminary enquiry is a confidential enquiry and hence, the statement of the witnesses cannot be furnished to the petitioner.

9. The petitioner's request to furnish the statement of the witnesses recorded during the course of the preliminary enquiry to furnish the explanation to the final opportunity notice issued by the investigating officer deserves to be rejected on the following reasons:

(i)The petitioner is said to have committed the offence under Section 13(1)(e) r/w 13 (2) of the Prevention of Corruption Act for the alleged accumulation of the assets to the tune of Rs.66,63,370/- disproportionate to the known source of income during the check period between 01.04.2012 and 31.03.2017. After the Hon'ble Supreme Court judgment in K.Veerassamy Vs. Union of India reported in 1991 3 SCC 655, the vigilance manual incorporated the provision in the vigilance manual in 76.2., to provide the opportunities to the accused officer to



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give explanation for the final conclusion arrived by the investigating officer relating to the accumulation of the assets disproportionate to their known source of income, which reads as follows:

76.Final opportunity to be given to accused officers (DVAC Circular Memo No.23321/VAC-4/88, dated 26th August, 1988)

2) In cases where actionable material is found, after approval of the Final Report at the Headquarters, the Accused Officer should be given the final opportunity by the investigating officer, communicating to the Accused Officer in writing and under acknowledgement, the details of total income and total expenditure during the check period and the likely savings at the end of the check period, details of the properties and pecuniary resources found possessed as also the quantum of disproportion at the end of the check period, as worked out in Basic Statements I to V, asking him to explain, within a reasonable time, the disproportion in assets as determined against the Accused Officer. The format of the letter to be addressed to the Accused Officer in this regard will be proforma-28.



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10. On the basis of the same, the investigating officer issued the final opportunity to the petitioner. The petitioner wants the statement of the witness recorded during the course of the preliminary enquiry. As per the manual and the judgment of the Hon'ble Supreme Court reported in **1991 3 SCC 655**, it is not necessary to give the said documents. Further, the final opportunity notice is issued only to verify the difference of amount calculated by the investigating officer compared to the statement Nos.1 to 6, in order to ascertain any escape of income and expenditure. With the said legitimate object, the said final opportunity notice is issued. To send reply for that, it is not necessary to give the statement recorded during the course of the preliminary enquiry. The Hon'ble Supreme Court never intended to expand the scope of the investigation to receive the reply for the final opportunity notice and adjudicate the issue whether there is any accumulation of the said disproportionate to the known source of accused officer. The investigating officer should produce all the materials before the trial Court. In the said circumstances, there is no bonafides on the part of the petitioner to claim the statements of the witness recorded under the Preliminary enquiry which culminates into detailed enquiry and into the FIR and recording of statement under Section 161 of Cr.P.C., which would form part of the final report and the



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copies under Section 207 of Cr.P.C, will be provided. It is settled principle as per the Hon'ble Full Bench of this Court and the Division Bench of this Court, the statement of the witnesses are not liable to be disclosed till the stage under Section 207 of Cr.P.C. Even in the precedents relied by the petitioner in the case of ***V.K.Sasikala Vs. State*** reported in ***2012 (9) SCC 771*** and in the case of ***I.Periyasamy Vs. State of Tamil Nadu*** reported in ***2015 SCC Online Mad 14172***, the accused officer made the demand of the document only after commencement of trial. Apart from that, the said case in ***V.K.Sasikala Vs. State*** reported in ***2012 (9) SCC 771*** was reconsidered and clarified by the Hon'ble Supreme Court in ***Manjeet Singh Khera Vs. State of Maharashtra*** reported in ***2013 9 SCC 276***, and held that there is no such requirement. In addition to that, as per the recent development of law in ***P.Ponnusamy Vs. State of Tamil Nadu*** reported in ***2022 SCC Online SC 1543*** and in the case of ***Manoj and Others Vs. State of Madhya Pradesh*** reported in ***2023 2 SCC 353***, it is the duty of the investigating officer to file all the material documents before the trial Court apart from the documents which become part of the 207 Cr.P.C., with a separate index. Hence, during the course of the trial, it is open to the accused to peruse and obtain the same if law permits. Hence, this Court finds no merit in the



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contention of the petitioner and therefore, this writ petition is dismissed with a direction to the investigating agency to file the final report within a period of three months from the date of receipt of a copy of this order. There shall be no order as to costs. Consequently. Connected miscellaneous petition is closed.

19.03.2024

NCC :Yes/No
Index :Yes/No
Internet :Yes/No
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To

1. The Inspector of Police,
Vigilance and Anti-Corruption,
Tenkasi District.
2. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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K.K. RAMAKRISHNAN. J.,

vsg

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Dated :19.03.2024