

Jose Dhanapa Vs. The State Represented By

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Court : Chennai

Decided On : Feb-24-2015

Judge : M.Sathyannarayanan

Appellant : Jose Dhanapa

Respondent : The State Represented By

Judgement :

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT DATED:

24. 02.2015 CORAM THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN CrI.O.P.(MD)Nos.2987 of 2015 and CrI.O.P.(MD)Nos.3087 of 2015 and M.P.(MD)Nos.1 and 1 of 2015 CrI.O.P.(MD)No.2987 of 2015 Jose Dhanapaul .. Petitioner/Petitioner/Accused Vs. The State represented by The Inspector of Police, Vigilance and Anti-corruption, Nagercoil. In Crime No.7/2008 ... Respondent/Respondent/ Complainant Prayer Criminal Original Petition filed under Section 482 Cr.P.C., to call for the records pertaining to the order passed in the Special Court for Vigilance and Anticorruption Cases cum Chief Judicial Magistrate, Nagercoil, Kanyakumari District in CrI.M.P.1340 of 2014 in Special Case No.2 of 2010 dated 07.01.2015 and set aside the same. CrI.O.P.(MD)No.3087 of 2015 Periannan .. Petitioner/Petitioner/Accused Vs. The State represented by The Inspector of Police, Vigilance and Anti-corruption, Nagercoil. In Crime No.7/2006 ... Respondent/Respondent/ Complainant Prayer Criminal Original Petition filed

under Section 482 Cr.P.C., to call for the records pertaining to the order passed in the Special Court for Vigilance and Anticorruption Cases cum Chief Judicial Magistrate, Nagercoil, Kanyakumari District in CrI.M.P.1337 of 2014 in Special Case No.4 of 2007 dated 07.01.2015 and set aside the same. !For Petitioner in both cases : Mr.F.Deepak ^For Respondent in both cases : Mr.C.Ramesh Additional Public Prosecutor *** :COMMON

ORDER

By consent, both the Criminal Original Petitions are taken up for final disposal at the stage of admission itself.

2. The petitioner in CrI.O.P.(MD)No.2987 of 2015 is the sole accused in Spl.Case.No.2 of 2010 pending on the file of the Special Court for Vigilance and Anti-Corruption Cases cum Chief Judicial Magistrate, Nagercoil, Kanyakumari District and he is facing prosecution for the alleged commission of the offences under Sections 7 and 13(1)(d) r/w 13(2) of the Prevention of Corruption Act, 1988.

3. The facts of the case would disclose that the petitioner, who was working as the Bill Collector cum Junior Assistant in Ganapathipuram Town Panchayat, demanded and accepted a sum of Rs.2,500/- on 22.10.2008, by way of illegal gratification other than legal remuneration in relation to his official act i.e. to work out and fix the tax for the house of the defacto complainant.

4. The petitioner in CrI.O.P.(MD)No.3087 of 2015 is arrayed as sole accused in Spl.Case.No.4 of 2007 pending on the file of the Court of Special Court for Vigilance and Anti-Corruption Cases cum Chief Judicial Magistrate, Nagercoil, Kanyakumari District and he is facing prosecution for the alleged commission of the offences under Sections 7, 13(2) r/w 13(1)(d) of Prevention of Corruption Act, 1988. The allegation against the petitioner is that the petitioner during his tenure as Inspector of Police, District Crime Branch, Nagercoil, Kanyakumari District, a petition enquiry was pending with him for action. The defacto complainant has approached him on various dates and the petitioner has demanded and accepted the illegal gratification of Rs.5,000/- on 16.06.2006 to dispose of the petition.

5. In both cases, the trial of the cases had commenced. In Spl.Case.No.2 of 2010, the stage of the case is questioning under Section 313(1)(b) Cr.P.C., and in Spl.Case.No.4 of 2007, the Investigating Officer is in the witness box. At this juncture, the respective petitioner herein filed Crl.M.P.No.1340 of 2014 in Spl.Case.No.2 of 2010 and Crl.M.P.No.1337 of 2014 in Spl.Case.No.4 of 2007 under Section 91 Cr.P.C., praying for appropriate direction, directing the respondent to produce the Directorate of Vigilance and Anticorruption Manual before the Court. According to them, the respondent, while conducting the investigation, violated very many mandatory provisions of the said Manual.

6. The said applications were opposed by the respondent/State by filing a counter affidavit contending that in the light of the judgment rendered by this Court in K.Selvarajan and Others Vs. The State reported in 2004 CRL.L.J.

3754 and the judgment in Duraimurugan Vs. State represented by the Deputy Superintendent of Police, Vigilance and Anti-Corruption, Vellore reported in (2013)2 MLJ(Crl.)(DB)1, the prayer sought for by the petitioners may not be granted.

7. The trial Court, after taking note of the above cited two decisions, found that the DVAC Manual is non-statutory in character and there is a possibility of the said Manual being available in the bookshops, wherein the petitioners can purchase it. The trial Court further found that the said petitions have been filed only to protract trial and citing the said reasons, dismissed both the petitions, by separate orders dated 07.01.2015. Aggrieved by the same, both the petitioners came forward with these two Criminal Original Petitions.

8. Mr.F.Deepak, learned Counsel appearing for the petitioners would contend that even as per the own admission of the respondent/prosecution, certain guidelines have been provided to the Investigating Agency as to how and the manner in which, they will proceed with the investigation and in the cases on hand, the respective Investigating Officer has violated the said guidelines with impunity and to strengthen the defence of the respective petitioner/accused, production of DVAC Manual is absolutely necessary and hence, prays for interference.

9. Per contra, Mr.C.Ramesh, learned Additional Public Prosecutor appearing for the State would contend that in the light of the above cited two decisions, the petitioners have no legs to stand for the reason that even for the sake of argument that the guidelines contained in the DVAC Manual are violated, the accused cannot take advantage of it and it is for the Department to take appropriate disciplinary action against the erring Officials and hence, prayed for dismissal of these petitions.

10. This Court had carefully considered the rival submissions made by both sides and perused the materials available on record in the form of typed of set of papers as well as the above cited two decisions.

11. The DVAC Manual is non-statutory character and the said legal position is no longer res integra in the light of the judgments rendered by this Court K.Selvarajan and Others Vs. The State reported in 2004 CRL.L.J.

3754 (cited supra). The said judgment has been referred to in the Division Bench judgment of this Court in Duraimurugan Vs. State represented by the Deputy Superintendent of Police, Vigilance and Anti-Corruption, Vellore reported in (2013)2 MLJ(Crl.)(DB)1 (cited supra) and it is relevant to extract Paragraph Nos.36 to 38, thus: "36.The scope of the Manual of DVAC came up for consideration in a decision rendered in K.Selvaraj vs. State, 2004 Cri.L.J.

3754. In the said case, the appellant and others were convicted for the offences under Sections 7, 13(1)(d) r/w 13 (2) of the PC Act and aggrieved by the conviction and sentence passed by the trial Court, they preferred an appeal before this Court. One of the points urged before the learned Judge was that Clause No.41 of the Manual of DVAC, as per which a public servant whose rank is preferably higher than that of the officer to be trapped, was not followed, which has resulted in serious prejudice to the first accused. The respondent/prosecution, in response to the said submission, submitted that the rules are framed for the guidance of vigilance officials and they are only directory and the non-observance of the same would not in any way affect the trap nor vitiates the prosecution. A single Bench of this Court has considered the said submissions and relying upon the earlier decision of this Court in G.A. Ethiraj vs. State, 2002 (1) Mad. L.W. (Cri.)

2001. Cri.L.J.

4139, wherein it has been held that Rules under Vigilance Manual are only administrative and on non-observance of the same, there is no mandatory violation, which would affect the validity of the prosecution, the learned Judge held that the said rule came into operation on 18.09.1990 and whereas, the charge sheet was filed even in 1989 and hence, Rule 53 is not applicable to the case. 37. In the decision in *Shashikant vs. CBI*, (2007) 1 SCC 630 the appellant, namely, Shashikant claims himself to be a vigilant employee, made an anonymous complaint to the Central Bureau of Investigation (CBI), alleging corrupt practice and financial irregularities on the part of the officers of the department. A preliminary enquiry was conducted and thereafter, the investigating officer has opined that it was not necessary to register an F.I.R., but it would suffice to initiate departmental proceedings against the officers concerned. The higher officers had also accepted the said recommendation and the opinion of the Central Vigilance Commission was also obtained. The appellant was in the services of Railways Department and he was transferred and challenging the legality of the transfer on the ground of mala fide, he moved the Central Administrative Tribunal and the same was dismissed and challenging the said order, he filed a writ petition before the High Court of Bombay at Nagpur Bench and the High Court dismissed the writ petition. The Hon'ble Supreme Court of India has considered the submissions of learned Additional Solicitor General appearing on behalf of the CBI with regard to the procedure for conducting investigation including the preliminary enquiry contemplated under the CBI manual and framed a question as to whether it was obligatory on the part of the first respondent/CBI to lodge an F.I.R. and carry out a full-fledged investigation about the truthfulness or otherwise of the allegation made in the anonymous complaint. The Hon'ble Supreme Court of India, after considering the said submission, held that when an anonymous complaint is received, no investigating officer would initiate investigative process immediately thereupon and it may, for good reasons, carry out a preliminary enquiry to find out the truth or otherwise of the allegations contained therein. Reliance was also placed upon the decision of the Hon'ble Supreme Court of India in *Vineet Narain*

vs. Union of India, (1998) 1 SCC226::

1998. SCC (Cri.) 307, wherein it has been held as follows:- "58.I.12. The CBI Manual based on statutory provisions of the Cr PC provides essential guidelines for the CBI's functioning. It is imperative that the CBI adheres scrupulously to the provisions in the Manual in relation to its investigative functions, like raids, seizure and arrests. Any deviation from the established procedure should be viewed seriously and severe disciplinary action taken against the officials concerned. (Emphasis supplied) 38.A careful reading of the above cited decision would disclose that the accused cannot make any complaint with regard to the non-following of the procedures contemplated under the Vigilance Manual and as per the decision rendered in Vineet Narain's case, cited supra, any deviation from the established procedure should be viewed seriously and severe disciplinary action taken against the officials concerned.

"12. In the light of the above said legal position, no purpose will be achieved by directing the respondent to produce the DVAC Manual before the trial Court and as rightly contended by Mr.C.Ramesh, learned Additional Public Prosecutor appearing for the State that even if the guidelines contained in the DVAC Manual, are violated, the accused cannot take advantage of the same and it is for the Department to take appropriate disciplinary action against the erring Officials.

13. The respondent in paragraph No.7 of the counter affidavit, took a stand that the DVAC Manual is only a guideline to his subordinates and also kept it as a secret privilege document not displayed before any forum.

14. In the considered opinion of this Court, the said stand taken by the respondent is wholly untenable for the reason that there must be transparency in performance of public duty and in event, cannot claim privilege before the Court of law. In fact, a Single Bench of this Court (THE HONOURABLE MR.JUSTICE D.HARIPARANTHAMAN), in Superintendent of Police, Central Range, Office of the Directorate of Vigilance and Anti-Corruption, Chennai Vs. M.Kannappan and Another reported in (2013)1 MLJ348 has considered the said issue and has observed and held as follows:

"0. In view of the judgment of the Division Bench read with the provisos to Section 24(4) of the RTI Act, I am of the view that the first respondent herein is entitled to have the manual of the DVAC. The manual cannot be kept as a secret document. It is nothing but a set of rules as to how the DVAC is functioning. I am not able to understand as to why the DVAC feels shy to furnish the manual. In fact, the information that were the subject matter before the Division Bench were concerned with the corruption and the consequent action taken by the DVAC and those details were directed to be furnished. Hence, the DVAC cannot refuse to furnish the manual maintained by it. At this juncture, I wish to refer to the submission made by the learned senior counsel for the second respondent that the manual is not exempted from disclosure as per Section 8 of the RTI Act. While Section 8 states that there shall be no obligation to give the information relating to various documents mentioned therein, the manual of the DVAC is not one among them. Likewise, the public authorities shall maintain the rules, regulations, instructions, manuals and records for discharging their functions as contemplated under Section 4(1)(b)(v) of the RTI Act. Section 2(f) defines "information" and the same is also extracted hereunder: "2.Definitions - In this Act, unless the context otherwise requires, - (f) "information" means any material in any form, including records, documents, memos, e-mails, opinions, advices, press releases, circulars, orders logbooks, contracts, reports, papers, samples, models, data material held in any electronic form and information relating to any private body which can be accessed by a public authority under any other law for the time being in force."

11. On a cumulative reading of Sections 2(f), 4(1)(b)(v), 8 and the provisos to Section 24(4), I am of the view that the first respondent is entitled to the manual of DVAC. Hence, finding no infirmity in the impugned order, the writ petition fails and the same is dismissed. No costs."

15. In this regard, this Court heard Mr.G.R.Swaminathan, learned Special Public Prosecutor for CBI Cases, who, on instructions, would submit that the CBI Manual is almost in paramateria with DVAC Manual and it is uploaded in the website by the CBI and it is also updated from time to time.

16. In the light of the decision cited above coupled with the factual situation especially the fact that the premier Investigating Agency viz., CBI is having its manual containing guidelines in the matter of investigation etc., and it is also uploaded in their website, there cannot be any impediment for the DVAC to upload their DVAC Manual in their website. Therefore, the DVAC is directed to upload the DVAC Manual in their website within a period of six weeks from the date of receipt of a copy of this order and update the same from time to time without any delay.

17. In the result, both the Criminal Original Petitions are dismissed, confirming the orders dated 07.01.2015 in CrI.M.P.1340 of 2014 in Special Case No.2 of 2010 and in CrI.M.P.1337 of 2014 in Special Case No.4 of 2007. Consequently, the connected Miscellaneous Petitions are also dismissed. 24.02.2015 Index: Yes/No Internet:Yes/No ssl To 1. The Special Court for Vigilance and Anticorruption Cases cum Chief Judicial Magistrate, Nagercoil, Kanyakumari District 2. The Inspector of Police, Vigilance and Anti-corruption, Nagercoil.

3. The Additional Public Prosecutor, Madurai Bench of Madras High Court, Madurai.

4. The Director, Department of Vigilance and Anti-Corruption, P.S.K.R. Salai, Chennai-600 028. M.SATHYANARAYANAN,J.

ssl CrI.O.P.(MD)Nos.2987 and 3087 of 2015 and M.P.(MD)Nos.1 and 1 of 2015
24.02.2015

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