

**Mac Electronics Vs. Dy. Chief Controller of Imports and Exports**

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**Court :** Chennai

**Decided On :** Jun-29-1990

**Reported in :** 1991(34)ECC176; 1991(53)ELT199(Mad)

**Judge :** Padmini Jesudurai, J.

**Appeal No. :** Criminal R.C. No. 658 of 1983 and CrI. R.P. No. 642 of 1983

**Appellant :** Mac Electronics

**Respondent :** Dy. Chief Controller of Imports and Exports

**Advocate for Def. :** Shri B. Sriramula, Public Prosecutor

**Advocate for Pet/Ap. :** Shri G. Krishnam, Adv.

**Judgement :**

ORDER

1. The accused, who along with others are facing trial before the Additional Chief Metropolitan Magistrate (Economic Offences I) Egmore, Madras in E.O.C.C. No. 68 of 1983 for offences under the Import and Export Control Act, 1947, has filed the present revision against the order passed by the trial Court in M.P. No. 1447 of 1983 filed by him under Sec. 91 Cr.P.C., refusing to direct the first respondent herein to produce the Report of the Superintendent of Police (S.P.'s Report) on the basis of which the first respondent had laid the complaint.

2. Under Sec. 6 of the Import and Export Control Act, 1947 (hereinafter referred to as the Act), the first respondent had filed the complaint against the petitioners and respondents 2 and 3. Before the trial could commence, the petitioners filed an application under Sec. 91 of the Cr.P.C. seeking a direction from the court to the first respondent to produce the S.P.'s report in the case, as well as the first information report, stating that for the cross-examination of the first respondent, who was cited as the first witness in the complaint, and for a just and proper discussion (Sic) of the case the above document were necessary. The first respondent had no objection to produce the copy of the F.I.R. but objected to the production of the copy of the S.P.'s Report on the ground that the said document was a confidential document, which the accused was not entitled to get by means of summons under Sec. 91 Cr.P.C. and that the accused was not entitled to peruse it or made use of it or obtain a copy of it. On the learned Magistrate ordering production of the copy of the F.I.R. and upholding the first respondent's contentions in so far as it relates to the S.P.'s Report, the accused has filed the present revision, challenging the order relating to the S.P.'s Report.

3. Thiru G. Krishan, learned counsel for the petitioners contended that S.P.'s Report was not a privileged document nor a confidential as a privileged document, under Sec. 123 of the Evidence Act, as per decisions of the Supreme Court. An affidavit claiming privileges had to be filed by the Head of the Department stating the injury to public interest by disclosure of the contents of the document and that in the instant case, the same had not been done. The Learned counsel also urged that the S.P.'s Report, is based upon the first information report which has been ordered to be given to the petitioners and as such, the complaint itself having been based on the S.P.'s Report, the accused were entitled to have a copy of it. It was also urged that the first respondent had not chosen to produce the document even for the court's perusal.

4. Per contra, Thiru B. Sriramula, learned Public Prosecutor, submitted that the S.P.'s Report is a confidential communication, containing not only the result of the investigation but also the opinion of the S.P. about the merits of the case, his discussion about the strength and weakness of the prosecution case, the defence plea, the opinion of the S.P. about the investigation, role of his subordinate

officers, embodying the legal opinion offered by the Law Officers of the Department and the report not coming within the ambit of Sec. 74 of the Evidence Act, and not being a Public document and not maintained under the Cr.P.C. could not be directed to be produced for the perusal of the accused. The learned counsel relied upon certain decisions which I shall refer to.

5. The short question that arises for determination is whether the Report of the Superintendent of Police C.B.C.I.D. required by the Department to be maintained be a summoned for the perusal of the accused

6. The Report of the S.P. C.B.I. is not a document required to be maintained under the Cr.P.C. The C.B.I. Manual (Crime) issued in 1982 placed before me shows that the Manual has been issued for providing guidelines for, the functioning of C.B.I, and its officers and would not supercede any law for statutory rules. Sec. 2 of the Manual deals with the investigation and Chapter X deals with Final Reports and S.P.'s Reports. Clauses 304 to 316 relate to the object of a Final Report, the form and the contents of the Final Report, while clauses 317 to 325 relate to the object of the S.P.'s Report its preparation, issues and contents and its use. As per clause 317 S.P.'s Report, giving the result of enquiries/investigation, are required to be sent to Ministries or other departmental authorities for getting sanction of prosecution, for filing a report or complaint against any person as required under Cr.P.C. or under Sec. 6 of the Import and Export Control Act, 1947, for taking Regular Departmental Action, for information and such action as may be considered appropriate by the Department and for information alone. Clause 319 provides that S.P.'s report should contain all useful and relevant information from Final Report, Information of a departmental nature which is of interest to DSPE Division Officers only, controversial, points on which different opinions might have been expressed by different officers of the DSPE Division, SPE being required to settle the differences, the pros and cons of the case, the explanations given and the defence plea advanced by the suspected or accused persons, how they could be rebutted and explained, allegations against each accused which would necessitate action/banning of business etc., the discussion of the evidence against each accused, either to establish a criminal or departmental misdemeanor and so on. Clause 321 requires the S.P.'s Report to be self-contained and the issues fully

discussed, logically marshalling the arguments so to lead to convincing conclusions. Clause 322 requires S.P.'s Report to be classified as 'Confidential', with a higher security, grading like secret and top secret, depending upon the contents of the Report, and privilege should be claimed for its production in Court. Finally clause 325 requires lapses and loopholes noticed in the course of an open enquiry by the CBI, which had facilitated the misconduct and malpractices to be mentioned, with suggestions for avoiding lapses and for plugging of the loopholes. An extract of this part of the S.P.'s Report had to be sent to the Policy Division of the CBI for follow up action.

7. The S.P.'s report is required to contain all useful and relevant information from the final Reports prepared by the Investigating Officers and containing not only the result of the investigation but the comments of the prosecuting staff, in part II of the proforma. In cases against Gazetted Officers and in other important cases, those comments should be originally prepared by the Senior Public Prosecutor or Public Prosecutor or Assistant Public Prosecutor and vetted by the Senior Public Prosecutor. Final Reports contain the opinions and suggestions of the Investigating Officer. The S.P.'s Report, therefore, would contain the opinions of the Investigating Officers, and the comments of the Law Officers of the Department in *K. S. Venkatasami Naidu & Sons, Madras v. The State of Madras* 1959 M.L.J. Cri. 304 the Chief Justice P. V. Rajamannar held that inter-departmental correspondence, which had passed between the Superintending Engineer and the Executive Engineer could not be compelled to be produced in court.

8. Relating to the case diary maintained by the police, a Full Bench of this court in *Selvanathan (at the rate) Raghavan v. State* 1988 L.W. Cri. 503 has held that a reading of Sec. 172(3) Cr. P.C. made it clear that, neither the accused nor his agents were entitled to call for the same either during an enquiry or trial, nor would the accused and his counsel be entitled to see the same merely because the entries in the case diary were referred to by the court. It was only when the entries are used by the police officer for refreshing his memory or the court used them for the purpose of contradicting such Police officer, that the accused would have a right to peruse the diary.

9. In *Mukund Lal v. Union of India* : AIR 1989 SC144 , the Supreme Court laid down that the accused had no unfettered right to make a roving inspection of the entries in the case diary, regardless of whether these entries were used by the police officer to refresh his memory or regardless of the fact whether the court used these entries for the purpose of contradicting such police officer. Ultimately the Supreme Court observed that the court was best custodian or guardian of the interests of justice and the court had a right to make use of the entries in the diary to the advantage of the accused, by contradicting the police with reference to the contents of the diary. The composite scheme embedded in Sec. 172(2) Cr.P.C. protected the interests of the accused, as well as the public interest of enabling the investigating agency to investigate the crime against the society so that a culprit is traced and brought to book.

10. The nature, contents and the object of the S.P.'s Report as well as the relevant decisions referred to above touching the subject would show that, the S.P.'s Report is not a mere collection of facts unearthed during investigation. Besides containing the facts, it had to contain the useful and relevant information from the Final Report, which in turn contains the comments, opinions and suggestions of not only the Investigating Officer but also their Law Officers. Conflicting opinions expressed by different subordinates officers, have to be mentioned and settled by the S.P. in his report. There has to be a discussion with convincing arguments to lead to conclusions. Lapses and loop holes when noticed, has to be mentioned, together with suggestions for avoiding them. An S.P.'s Report therefore, is not the kind of a report that is contemplated under Sec. 173 Cr.P.C., which is required to be sent to court on completion of the investigation. As rightly submitted by the learned Public Prosecutor for the first respondent, the opinions expressed in the report, would not be admissible either under Sec. 45 or any other provision of the Evidence Act. Relating to the admissibility of the opinion of third parties. In *Queen Express v. Arumuga and Others* I.L.R. 20 Mad 189 a Full Bench of this Court held that a report of a police officer is not a public document. The instant case instituted on a private complaint by the first respondent. Merely because the complaint happens to be based upon the S.P.'s Report, that would not give the accused a right to summon or peruse the Report. The decision of the Supreme Court referred to by the learned counsel for the petitioner relates to privileges under Sec. 123 of

the Evidence Act which is not the case here. The S.P.'s Report is an interdepartmental communication containing law officers, their comments, their suggestions, opinions of police officers/discussion of the facts, lapses of the department, suggestions for avoiding them and so on. The nature of the report is such that the document is not one, which an accused either, under the Criminal Procedure Code or under the Evidence Act, is entitled to peruse. The learned Magistrate has rightly rejected the petitioners' prayer with reference to the S.P.'s Report.

11. In the result, this revision is dismissed.

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