

Sumathi Vs. State

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Court : Chennai

Decided On : Mar-05-2013

Judge : S.Palanivelu

Appellant : Sumathi

Respondent : State

Judgement :

IN THE HIGH COURT OF JUDICATE AT MADRAS DATED:

05. 03.2013 CORAM: THE HONOURABLE MR.JUSTICE S.PALANIVELU
Criminal Original Petition No.31145 of 2012 Mrs. Sumathi Ravichandran :
Petitioner/Accused-1 Vs. State rep. by The Inspector of Police, CBI ACB, Chennai
: Respondent/Complainant PRAYER: Criminal Original Petition filed under Section
482 of the Code of Criminal Procedure to set aside the order of the learned IX
Additional Special Judge for CBI Cases, Chennai, insofar as it denies the right of
the petitioner to peruse the sanction file passed in CrI.M.P.No.379 of 2012 in
C.C.No.37 of 2011 date 26.09.2012 and permit the petitioner to peruse the
sanction file. For Petitioner : Mr.N.R. Elango Senior Counsel for
Mr.M.Krishnamoorthy For Respondent : Mr.N. Chandrasekaran Special Public
Prosecutor for CBI Cases O R D E R 1.The following are the allegations contained
in the charge sheet filed by the respondent police in CC.No.37 of 2011 on the file
of IX Additional Special Judge for CBI Cases, Chennai:

1. (a) The petitioner was working as Regional Passport Officer, Chennai for the period from 13.7.2005 till 24.04.2009 on deputation. She was the authority, entrusted with the task of issuance of passports at Regional Passport Office, Chennai under regular and Tatkal provisions. During the period 2008-2009 the petitioner entered into a criminal conspiracy with one Fathima(A2), Director M/s. Ahmed World Tours and Travels Pvt. Ltd., and in pursuance of the same the petitioner official position to obtain pecuniary advantage to the said Fathima against public interest, by corrupt and illegal means, fraudulently and dishonestly and thus facilitated her in submission and issuance of passports to the applicants under Tatkal Provisions. It is further alleged in the charge sheet that on 22.4.2009 when P.Lakshmanan visited the Regional Passport Office to ascertain the process to obtain a passport expeditiously, he was told to approach M/s. Ahmed World Travels who would get it done directly from the Regional Passport Officer. When he approached Fathima (A2) Director of Ahmed World Travels, she demanded Rs.12,500/- as the total amount to be paid for the issuance of passport including passport fees of Rs.2,500/-. A2 also told him that out of the said amount, she has to pay an amount of Rs.9000/- to the petitioner. 1.(b) On 22.4.2009 P.Lakshmanan, after submitting his passport application through A2 under Tatkal provision, made a written complaint before the respondent police. On the basis of the complaint, the investigating agency registered a case and initiated trap proceedings. In the presence of independent witness, an amount of Rs.12,500/- was received from the complainant by the staff of A2 on her direction, which included the amount of Rs.9000/- to be paid to the petitioner and the same was recovered. 1.(c) When the CBI Team reached the Regional Passport Office, A2 was available in the office. She was intercepted and it was found that the money found on her was not the same as that given to her in the office. In a short period of 4 months ie., between January 2009 and April 2009, 88 Tatkal applications have been submitted through A2 and in all the applications endorsements have been made by the petitioner, mentioning the name of A2. The applicants acknowledged payment of service charges ranging between Rs.7000/- and Rs.15000/- to A2 and they were also told that payments were to be made to the then Regional Passport Officer, the petitioner. The petitioner by abusing her official position expedited the issue of the said passports with a dishonest intention and

caused pecuniary gain to A2. The above acts of the petitioner and said Fathima constitute offence punishable u/s 120-B r/w Sec 8 of PC ACT 198.and Sec.13(2) r/w 13(1) (d) of PC Act 1988. 1.(d) It is stated in the petition filed before this Court that the charge sheet was taken on file by the learned IX Additional Special Judge in CC NO.37 of 2011 and P.W.1 was examined in chief and cross. In his cross examination P.W.1 has deposed that the sanctioning authority had initially refused to grant the sanction and only after the pressure from the PMO and the Department of Post the sanctioning authority accorded sanction without any additional materials being provided by the investigating agency. Since the sanction for prosecution which had been initially refused by the Sanctioning Authority was again subsequently given, based on the same materials, the petitioner filed a quash petition In Crl.O.P.No.16262 of 2012 before this Court and the same is pending. In the meantime, the petitioner filed a petition before the trial Court under Section 91 Cr.P.C. for production of sanction file.

2. In the counter filed by the prosecution, it is stated as follows:

2. (a) P.W.1, the sanctioning authority has stated in his deposition that since certain documents were not forthcoming from CBI, the file was sent to CVC under the assumption that CVC might have received the said documents. The CVC have after perusal of the entire records recommended for prosecution. On the basis of the said recommendation, the sanctioning authority granted the prosecution sanction. The mere fact that because the sanction was initially not accorded would not necessarily mean that the sanction order subsequently granted was not correct. 2.(b) As deposed by P.W.1 the sanction was accorded by order and in the name of the President of India. Hence the sanction was issued by the Government of India. When the Government accorded sanction as per 114 (e) of the Indian Evidence Act, it raises a presumption that official acts have been regularly performed and hence it is statutory presumption. Further prosecution examined P.W.1 and adduced evidence that the copies of the documents statements of the witnesses were taken into consideration for issuing sanction order in this case. The petition filed by the petitioner is not maintainable and also barred as per Section 123 and 124 of Indian Evidence Act. 2.(c) The sanction file mentioned in this petition contains the official records relating to the State and it also contains

various confidential correspondence among CBI, CVC, the Ministry of Communication and Information Technology and also Ministry of Personnel and Training as the same are affairs of the state and the sanction file is the privileged document. Hence the petitioner is not entitled to summon the entire sanction file in this case. The petitioner already filed a petition u/s 239 Cr.P.C to discharge her from the case and the same was dismissed by the trial Court on 30.1.2012 and the revision preferred against the order before the High Court was also faced dismissal on 17.4.2012 and the present petition is only to cause unnecessary delay and hamper the on going process of trial in this case. Hence this petition may be dismissed.

3. After hearing both sides and analysing the circumstances, following the legal propositions laid down by the Honourable Supreme Court and this Court, the learned d IX Additional Special Judge for CBI Cases, Chennai has allowed the petition in part, directing the officer concerned to cause production of the sanction file from the concerned authority only for the perusal of the Court for its satisfaction and not for the accused or his authorized agent to look into it. This is the order under challenge before this Court.

4. Points for consideration:

1. Whether permission in favour of the petitioner by the Court would be prejudicial to public interest? 2. Whether the authorised agent of the petitioner can be allowed to refer to the sanction file during cross examination of the sanctioning authority? Point Nos.1 and 2:

5. As adverted to the earlier part of order, the petitioner who is A1 charged by the respondent under Section 120-B r/w Sec 8 of PC ACT 1988 and Sec.13(2) r/w 13(1) (d) of PC Act 1988. Trial was taken by the learned Special Judge and P.W.1 working as Assistant Director General, Vigilance Department, New Delhi was examined. He was working as Regional Passport Officer, Chennai during 2005-2009 on deputation. The President of India is competent authority to take disciplinary action against Group A officers of Indian Postal Service. The first accused viz., the petitioner falls under Group A officer. P.W.1 was examined in Chief and cross examined by A1 on 29.3.2012 and the case was posted for cross

examination by A2. At that point of time, the petitioner filed application under section 91 Cr.P.C., praying the Court to send for file which contains particulars regarding grant of sanction for prosecution against her since P.W.1 had not brought the same at the time of adducing his evidence. Respondent raised stiff opposition for summoning of the file with regard to sanction. But the Court below after hearing both parties, on the strength of legal principles entertained the petition directing summoning of the sanction file from the authority concerned. However, it has added a rider that sanction file is only for the perusal of the Court for its satisfaction and not for the accused or his authorised agent to look into it. The petitioner getting aggrieved with the above said direction has preferred this revision.

6. Mr.N.R. Elango, the learned Senior Counsel appearing on behalf of the petitioner would contend that inasmuch as the denial of the opportunity to the petitioner to look into the file is against the principles of natural justice and the same is also violative of the fundamental rights guaranteed by the Constitution under Article 21 and that in order to ensure effective defence, the petitioner may be permitted to peruse the file, that it is to be noted that the sanction for prosecution which was initially refused by the sanctioning authority was again subsequently given based on the same materials and it is the duty of the petitioner to indicate the conflict of views between two authorities to enable the Court to infer the non application of mind of the authorities concerned, that in the absence of new materials provided by the Investigating Officer, it is not appropriate on the part of the authority concerned to review the earlier order and that no kind of prejudice to public interest would arise in this case, if the petitioner were permitted to peruse the file.

7. Contending contra, Mr.N.Chandrasekaran, the learned Special Public Prosecutor for CBI Cases would argue that inasmuch as the request is barred by the provisions under Sections 123 and 124 of the Evidence Act, it cannot be entertained, that in case the petitioner or his authorised agent looks into the file, it may lead to the prejudice to the affairs of the State since the sanction file contains confidential communications and reports from various authorities.

8. In order to appreciate the point in issue, it is advantageous to extract Sections 123 and 124 of the Evidence Act which read as follows: "123. Evidence as to affairs of State. No one shall be permitted to give any evidence derived from unpublished official records relating to any affairs of State, except with the permission of the officer at the head of the department concerned, who shall give or withhold such permission as he thinks fit.

124. Official communications. No public officer shall be compelled to disclose communications made to him in official confidence, when he considers that the public interest would suffer by the disclosure." 9. As far as Section 123 is concerned two questions are involved: (1) Whether the document in respect of which privilege is claimed, is really a document (unpublished) relating to any affairs of State? And (2) Whether disclosure of the contents of the documents would be against public interest? In order to be governed by this section the document should be privileged documents. The term "Privilege" is a narrow one unless it is fully satisfied of the paramountcy of public interest. The question of privilege under the cover of "affairs of state" needs very careful examination, especially in the matters relating to policies, trading or industrial activities of the Government.

10. In P. Ramanatha Aiyar's "Advanced Law Lexicon" 3rd Edition Volume 3 at page 3733, the term "privilege" has been explained on various contexts. A few instances relevant to the point are as follows: "The word "Privilege" has a variety of meanings, according to the connection or context in which it is used; but inherent in the term is the idea of something apart and distinct from a common right which pertains to all citizens or exists in all subjects, and the word connotes some sort of a special grant from the sovereignty, some type of necessary special permission or consent which the sovereign in its discretion might have withheld or failed to provide, such as the right to do business as a corporation or the right to record a mortgage. Standing alone the word "privilege" carries the idea of permission, a permissive use, and while it is frequently defined in terms of a right or immunity granted, it is often said that a person takes privileges to which he may not be entitled." "The Word "Privilege", as used in its broad and comprehensive sense, means an advantage; a peculiar advantage; a peculiar benefit, favour, or

advantage; a particular and peculiar benefit or advantage enjoyed by a person, company or class beyond the common advantage of other citizens; a favour granted, an option." "A Privilege is a peculiar advantage an immunity." "A privilege is a peculiar benefit or advantage; a right or immunity not enjoyed by others or by all; special enjoyment of a good or exemption from an evil." "A privilege is a particular and peculiar benefit or advantage enjoyed by a person, company or class beyond the common advantage of their citizens" 11. The Supreme Court observed: "Care has, however, to be taken to see the interests other than that of the public do not masquerade in the garb of public interest and take undue advantage of the provisions of Section 123" [State v. Sodhi Sukhdev] AIR 196.SC 493.

12. It is for the Court to judge the question whether disclosure should be allowed or withheld in public interest.

13. The learned Senior Counsel appearing for the for the petitioner in support of his contention placed much reliance upon a decision of the Honourable Supreme Court reported in 2012 (2) L.W.Crl.759[V.K. Sasikala v. State rep. By Superintendent of Police] wherein Their Lordships have elaborately dealt with the doctrine of "Perception of Possible prejudice" and observed that it may be on the part of the accused and not for the prosecution or for the Court to comprehend. The aforestated case is with regard to the denial of opportunity to the accused for access to unmarked and unexhibited documents in the custody of the Court, which were despatched to the court then and there. The short facts of the case go to show that the appellant/accused filed an application seeking certified copies of certain unmarked and unexhibited documents, in the custody of the Court which were forwarded along with report of the investigation under Section 173(5) Cr.P.C. In the said decision an earlier Judgment of Supreme Court in Sidhartha Vashisht v. State (NCT of Delhi) [(2010) 6 SCC 1.has been referred to, and Their Lordships have observed as follows: "If the present appellant has perceived certain difficulties in answering or explaining some part of the evidence brought by the prosecution on the basis of specific documents and seeks to ascertain if the allegedly incriminating documents can be better explained by reference to some other documents which are in the courts custody, an opportunity must be given to

the accused to satisfy herself in this regard. It is not for the prosecution or for the Court to comprehend the prejudice that is likely to be caused to the accused. The perception of prejudice is for the accused to develop and if the same is founded on a reasonable basis it is the duty of the Court as well as the prosecution to ensure that the accused should not be made to labour under any such perception and the same must be put to rest at the earliest such a view, according to us, is an inalienable attribute of the process of a fair trial that Article 21 guarantees to every accused." 14. In the case of V.K. Sasikala, the trial Court has dismissed the application. Aggrieved against the order of the trial Court i.e., XXXVI Additional City Civil and Sessions Court, Bangalore, the accused preferred Criminal Petition before the Karnataka High Court, where the order of the trial Court was confirmed and the petition was dismissed. The accused took the matter to the Apex Court and the Honourable Supreme Court has allowed the accused to inspect the unmarked and unexhibited documents referred by her. As far as the above said decisions of Honourable Supreme Court are concerned, they have emerged on the circumstances wherein the proceedings under Sections 207, 173(5) and 313 Cr.P.C. were involved. But the point which has arisen in the case on hand is under Sections 123 and 124 of the Evidence Act. The case before the Supreme Court is with regard to the case records which were forwarded to the Court during investigation then and there which remain unmarked and unexhibited, barring the records supplied to the accused under Section 207 Cr.P.C. But in the case on hand, the dissension is with regard to the records which are being maintained by the sanctioning authority treating them as confidential. There is a world of difference between those two categories of documents. Hence, the petitioner cannot take recourse to the above said decisions.

15. The learned trial Court Judge has observed, following the Judgment of this Court reported in 2011-2 L.W.(CrI.) 609 [Karanit Singh v. State rep by Inspector of Police, CBI/ACB, Chennai] wherein G.M.Akbar Ali.J., has elaborately discussed the matter by referring and following the settled principles by the Honourable Supreme Court. In this case also, a dispute with regard to the right available to the accused to peruse the file relating to sanction has arisen. Concluding the Judgment, the learned Judge has affirmed that the matters available in the sanction file is only to the perusal of the Court to satisfy itself that the sanctioning

authority had applied his mind on the facts placed before him while according sanction and not for the accused or his authorised agent to look into it. I am in respectful agreement with the finding recorded by the learned Judge.

16. Adverting to the facts of the present case, the sanction file would comprise communications, reports of various departments of Central Government and the notes recorded by the authorities such as officers of Chief Vigilance Office, Officers of the Deputy Director General of Vigilance Office and also Officers of Prime Minister. It goes without saying that the sanction file would be comprising of important documents which have to be treated as confidential and it is incumbent upon the authorities concerned and the Court also to safeguard the secrecy as such. They are not published official records as provided in Section 123 of the Evidence Act. As described in Section 123 of the Evidence Act, those records remain as evidence derived from unpublished public records relating to the affairs of the state and as per section 124 of the Evidence Act, in case of disclosure of such official information, certainly the public interest would suffer, since they were named to public officers with official confidence. In view of the above, it is held that the documents contained in sanction file are privileged documents.

17. In the light of the observations obtained from the scrutiny of the materials available in this case, following the principles of Apex Court, I hold that the documents which are available in the sanction file would come under the purview of Sections 123 and 124 Cr.P.C. and disclosure of these documents would put the public interest in peril. In such a view of this matter this Court does not find any legal flaw nor infirmity in the order passed by the Court below which deserves to be confirmed and accordingly it is confirmed. The revision is devoid of merits which suffers dismissal. These points are answered as indicated.

18. In fine, the Criminal Original Petition is dismissed. 05.03.2013 Index :yes/no Internet:yes/no ggs To 1.IX Additional Special Judge for CBI Cases, Chennai. 2.The Public Prosecutor, High Court, Madras 600104. S. PALANIVELU, J.

ggs Pre-delivery order in: CRL.O.P.No.31145 o

05. 03.2013

