

(2011) 03 MAD CK 0204

In the Madras High Court

Case No : Writ Petition No's. 1, 2 and 186 of 2009

A. Shankar

APPELLANT

Vs

State of Tamil Nadu

RESPONDENT

Date of Decision : 04-03-2011

Acts Referred:

Information Technology Act, 2000 — Section 43, 66
Penal Code, 1860 (IPC) — Section 378, 463, 470, 505

Citation : (2011) 03 MAD CK 0204

Hon'ble Judges : Vinod K. Sharma, J

Bench : Single Bench

Advocate : M. Radhakrishnan, for the Appellant; B. Vijay, Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Vinod K. Sharma, J.—The Petitioner has approached this Court with the prayer for issuance of a writ in the nature of certiorari to quash the

impugned part of the Government Order No. SS.II/211-40/2008 Public (SC) Department dated 09.09.2008, accepting the recommendation (b)

(i) & (ii) of the Commission of Inquiry with a consequential prayer for issuance of a writ in the nature of prohibition, forbearing the Respondent /

State from commencing / continuing any departmental or criminal action against the Petitioner in pursuance to the said recommendations. The

recommendation (b) (i) & (ii) reads as under:

(b) Thiru A. Shankar, Special Assistant, DVAC:

(i) Criminal case may be registered and proceeded with u/s 5 of the Office Secret Act, Section 43 and 66 of the Information Technology Act,

Sections 378, 463, 470 and 505 of India Penal Code investigated and proceeded

against Thiru A. Shankar.

(ii) To initiate departmental proceedings for misconduct and endangering the security and confidentiality of official communication by accessing the computer unauthorisedly and leaking it to the media persons in question

2. The State of Tamil Nadu appointed a Commission of Inquiry, headed by the Hon"ble Thiru Justice P. Shanmugam to;

i) inquire into the origin of the alleged transcript, which appeared in the "Deccan Chronicle dated 14.04.2008 regarding the overhearing and

recording of the telephonic conversation between the Chief Secretary to the Government and a Senior Officer.

ii) go into the source / the agency responsible for the above news item containing the alleged conversation between the said two senior Officers of the Government and also on tapping of the telephonic conversation, if any.

iii) recommend to the Government specific civil / criminal action to be taken against the person or agency or both who are all responsible for the

alleged transcript and also action to be taken against the person or agency or both responsible for the tapping of the telephonic conversation, if

any, between the said two senior Officers of the Government.

3. The Commission of Inquiry submitted a report recommending to initiate the departmental as well as criminal action against the Petitioner. The

State Government accepted the recommendation and initiated departmental inquiry and also registered FIR No. 2 of 2008 dated 17.07.2008,

which reads as under:

The Government have appointed a Commission of Inquiry chaired by the Single member, namely Hon"ble Justice Thiru P. Shamugam, Retired

High Court Judge, for the purpose of making an inquiry into the alleged transcript which appeared in the ""Deccan Chronicle"" dated 14.04.2008

regarding the overhearing and recording of the telephonic conversation between the Chief Secretary to the Government and a Senior Officer.

2. Accordingly, the Commission of Inquiry conducted an Inquiry and submitted its report to Government. The Commission found that the

Telephone conversation made on 20.09.2007 between the Chief Secretary to Government and the former Director of Vigilance and Anti-

Corruption, did take place and the same was recorded by the former Director, Vigilance and Anti Corruption, in his laptop computer connected to

the Telephone No. 24612561. The transcript is by and large is as appeared in Deccan Chronicle. The Commission also found that the main person responsible for the access and the leak of the conversation is Thiru A. Shankar, Special Assistant, Directorate of Vigilance and Anti Corruption, Chennai. The Commission has recommended that Criminal Case may be registered against Thiru A. Shankar, Special Assistant, Directorate of Vigilance and Anti-Corruption, Chennai, u/s 5 of the Official Secrets Act, Section 43 and 66 of the Information Technology Act, Sections 378, 463, 470 and 505 of Indian Penal Code and investigated and proceeded against him.

3. The Government have examined the recommendations of the Commission and have decided to initiate criminal proceedings under the

appropriate Sections of Law against Thiru A. Shankar, Special Assistant, Directorate of Vigilance and Anti-Corruption, Chennai. I, therefore,

request you to kindly register a criminal case against him under the appropriate Sections of Law against Thiru A. Shankar, Special Assistant,

Directorate of Vigilance and Anti-Corruption, Chennai and take further investigation immediately.

4. This letter should not either be quoted in charge memo or cited as prosecution documents. The receipt of the letter may be acknowledged, early.

4. The Petitioner challenged the departmental inquiry by filing writ which is pending in this Court, in which, further proceedings in departmental proceedings have been ordered to be stayed.

5. The Petitioner has not chosen to challenge the criminal petition, proceedings by taking appropriate legal proceedings in accordance with law.

Challenge in this writ petition is only to the issuance of Government Order No. SS.II/211-40/2008 Public (SC) Department dated 09.09.2008, in

accepting the recommendation of the Inquiry Commission, on the ground that it was incumbent upon the State Government to have considered the

report of Inquiry Commission and formed an independent opinion, as to whether the recommendations deserved to be accepted or not. In view of

the fact that though the Commission recommended initiation of the departmental as well as criminal proceedings against the Petitioner, but in the

case of Senior Officer, only departmental action was recommended.

6. In order to appreciate the contention of the learned Counsel for the Petitioner, it is necessary to consider the legal force of the recommendations

of the Commission of Inquiry. The Hon'ble Supreme Court in the case of T.T. Antony Vs. State of Kerala and Others, considered this question,

and it was held as under:

31. In Ram Krishna Dalmia Vs. Shri Justice S.R. Tendolkar and Others, , a Constitution Bench of this Court while considering the constitutional

validity of the Commission of Inquiry Act, indicated that the Commission is merely to investigate, record its findings and make its recommendations

which are not enforceable proprio vigore and that the inquiry or report cannot be looked upon as judicial inquiry in the sense of its being an

exercise of judicial function properly so called. The recommendations of the Commission of Inquiry are of great importance to the Government in

order to enable it to make up its mind as to what legislative or administrative measures should be adopted to eradicate the evil found or to

implement the beneficial objects it has in view. It would be appropriate to notice the following observations of the Constitution Bench:

But seeking that the Commission of Inquiry has no judicial powers and its report will purely be recommendatory and not effective proprio vigore

and the statement made by any person before the Commission of Inquiry is, u/s 6 of the Act, wholly inadmissible in evidence in any future

proceedings, civil or criminal, there can be no point in the Commission of Inquiry making recommendations for taking any action ""as and by way of

securing redress or punishment"" which, in agreement with the High Court, we think, refers, in the context, to wrongs already done or committed,

for redress or punishment for such wrongs, if any, has to be imposed by a Court of law properly constituted exercising its own discretion on the

facts and circumstances of the case and without being in any way influenced by the view of any person or body, howsoever august or high

powered it may be.

32. In State of Karnataka Vs. Union of India (UOI) and Another, , the observations referred to above were approved by a seven Judge Bench of

this Court. In Sham Kant v. State of Maharashtra 1992 suppl.(2) SCC 521, it was held that the findings of the Inquiry Commission would not be

binding on the Supreme Court. There, the question was whether an undertrial

died due to injuries sustained by him in police custody. The report of the Commission of Inquiry mentioned that the injuries possibly might have been sustained by him even prior to his arrest. In the appeal arising out of conviction and sentence of the concerned police officer, this Court, on material before it, found that the victim died on account of ill treatment meted out by the police and held that the findings of the Commission would bind this Court.

33. It is thus seen that the report and findings of the Commission of Inquiry are meant for information of the Government. Acceptance of the report of the Commission by the Government would only suggest that being bound by the Rule of Law and having duty to act fairly, it has endorsed to act upon it. The duty of the police - investigating agency of the State - is to act in accordance with the law of the land. This is best described by the learned law Lord - Lord Denning - in R. v. Metropolitan Police Commissioner 1968 (1) All E.L.R. 763. observed as follows:

I hold it to be the duty of the Commissioner of Police, as it is of every chief constable, to enforce the law of the land. He must take steps so to post his men that crimes may be detected; and that honest citizens may go about their affairs in peace. He must decide whether or no suspected persons are to be prosecuted; and, if need be, bring the prosecution or see that it is brought; but in all these things he is not the servant of anyone, save of the law itself.

7. In view of the judgment of Hon"ble Supreme Court in the case of T.T. Antony v. State of Kerala and Ors. (supra), holding that the Commission of Inquiry has no judicial power, and its report is purely recommendatory and not effective being a ""proprio vigore"", the Petitioner, therefore, can have no grievance to the acceptance of the report, as acceptance of the report of the Commission by the Government only suggests that the Government being bound by the rule of law and having a duty to act fairly could endorse to act upon it. It will be for the criminal court and the department to see, whether any independent evidence is available to support the proceedings against the Petitioner.

8. In the case of N. Manoharan v. State of T.N. and Anr. reported in AIR 1981 Mad 147 the Hon"ble Division Bench of this Court, was pleased to hold that the finding given by the Commission, which adversely affects public

servant, could not be accepted, if there is violation of statutory requirement of affording the hearing to the person, likely to be adversely affected.

9. The Hon'ble Division Bench of this Court, in coming to this conclusion, placed reliance on Section 8-B of the Commission of Inquiry Act, 1952, and Rules 7 and 10 of the Rules, regulating proceedings before Commission of Inquiry, which reads as under:

8-B. If, at any stage of the Inquiry, the Commission;

(a) considers it necessary to inquire into conduct of any person; or

(b) is of the opinion that the reputation of any person is likely to be prejudicially affected by the inquiry, the Commission shall give to that person a

reasonable opportunity of being heard in the inquiry and to produce evidence in his defence;

Provided that nothing in this section shall apply where the credit of a witness is being impeached.

Rule-7: The manner of holding enquiry and the procedure to be followed:

1. The Commission shall, as soon as may be after its appointment, Notice:

(a) issue a notice to every person, who, in its opinion, should be given an opportunity of being heard in the inquiry, to furnish to the Commission a

statement relating to such matters as may be specified in the notice.

(b) issue a notification to be published in such manner as it may deem fit, inviting all persons acquainted with the subject matter of the inquiry, to

furnish to the Commission a statement relating to such matters as may be specified in such notification.

2. Every statement furnished under Sub-rule (1) shall be accompanied by an affidavit in support of the facts, set out in the statement sworn or

solemnly affirmed by the person furnishing the statement.

3. Every person furnishing a statement under Sub-rule (1) shall also furnish to the Commission, along with such statement, wherever possible, the

originals or true copies of such of the documents as may be in his possession power and shall state the name and address of the person with whom

the remaining documents are available....

Rule-10: Persons likely to be prejudicially affected to be heard:

If, at any stage of the inquiry, the Commissioner;

(a) considers it necessary to inquire into the conduct of any person; or

(b) is of the opinion that the reputation of any person is likely to be prejudicially affected by the inquiry, the Commission shall give to that person a reasonable opportunity of being heard in the enquiry and to produce evidence in his defence.

10. There is no necessity to go into this question, as the learned Counsel for the Petitioner, took a positive stand, that the Petitioner does not want to challenge the findings of the Commission of Inquiry, but is only aggrieved by acceptance of the report of the Commission of Inquiry, without recording its own views for acceptance of the report of the commission.

11. In view of the fact that the report of the Commission of Inquiry has no force in law, and the authority / Criminal Court has to form an independent opinion, on the evidence to be produced in departmental / criminal proceedings, this Court feels, that it was not necessary for the Government to record independent findings as to whether the report is to be accepted or not. The Petitioner cannot be said to be prejudiced merely by acceptance of inquiry report, by the State Government.

12. For the reasons stated, finding no merit in this petition, the writ petition is ordered to be dismissed. No costs. Consequently, connected miscellaneous petitions are closed.