
(1985) 08 MAD CK 0027

In the Madras High Court

Case No : Criminal Miscellaneous Petition No. 5651 of 1985

D. Namperumal and 2 others

APPELLANT

Vs

State by Public Prosecutor S.P.O., C.B.I., CrI. No. C.C. 38/78

RESPONDENT

Date of Decision : 30-08-1985

Acts Referred:

Constitution of India, 1950 — Article 32

Citation : (1987) LW(Cri) 128

Hon'ble Judges : Sengottuvelan, J

Bench : Single Bench

Advocate : A.A. Selvam, for the Appellant; B. Sriramulu, Public Prosecutor for the Special Police Establishment, for the Respondent

Final Decision : Dismissed

Judgement

Sengottuvelan, J.—The petitioner and two others are being tried before the Sessions Judge, Coimbatore, for offence under the provisions of Prevention of Corruption Act, 1947. The trial went on for three years and the prosecution examined 26 witnesses in the first instance and closed its side. The prosecution relied on the evidence of one Divisional Manager of the National Textile Corporation, who was examined as P.W. 7, in respect of the perpetration of the offences. In an attempt to discredit the evidence of P.W. 7, the defence attempted to bring out certain information relating to the charges of corruption levelled against P.W. 7 and for the purpose sought to summon P.W. 7 and the Superintendent of Police, C.B.I., Madras, who is said to have conducted the enquiries with references to the allegations of corruption against P.W. 7, and also two other witnesses, by filing an application, before the Sessions Judge, Coimbatore. The learned Sessions Judge refused to summon P.W. 7 and the Superintendent of Police, C.B.I., Madras, and issued summons only to the other two witnesses. As against the said order the petitioner filed CrI. R.C. No. 345 of 1982 and Natarajan, J., allowed the revision and conceded the request for examination of P.W. 7 and the Superintendent of Police, C.B.I., Madras, as

defence witnesses and at the same time directed that the examination of the Superintendent of Police, C.B.I. Madras, should be confined only to peripheral matters regarding the nature of the case against P.W. 7 and the examination should not go into the details of investigation of the cases registered against P.W. 7. A suggestion was put to P.W. 7 in the course of cross-examination that P.W. 7 was deposing falsely at the instance of prosecution since otherwise the prosecution will take action against him relating to the cases pending against him. Even in CrI ... No. 345 of 1082 as argument was advanced that P.W. 7 was examined in Court on 7.3.1981 and the case against P.W. 7 was registered only on 3.1.1982 and hence the fact of registration of case against P.W. 7 is not relevant for the purpose of enquiry and the said argument was negated by the learned Judge on the ground that preliminary investigation might have been taken against P.W. 7 on 7.3.1981 and on the account the request for summoning P.W. 7 cannot be rejected. The above said two witnesses were subsequently examined and during the examination of the Superintendent of Police, C.B.I, Madras, who was examined as D.W.2, he deposed that four cases have been registered against P.W.7 with C.B.I, in S.C. Nos. 3/82 and 4/82 on 31.1.1982, S.C. No. 52/82 on 29.9.1982 and S.C. No. 58/82 on 17.11.1982. He also deposed that he received information regarding the said four cases on 6.1.1982, 22.12.1982, 23.1.1982 and 7.10.1982, respectively. He also deposed that cases were registered on the course report given by C.B.I."D.W.2 was further asked in cross examination as to the name of the police officer who gave the source report and an objection was taken to this question under S. 125 of the Evidence Act, which was entertained by the learned Sessions Judge.

3. The attempt on the part of the defence is that the Superintendent of Police, C.B.I., Madras, who was examined as D.W.2 is the very same person who investigated the offences against P.W. 7 and hence P.W. 7 is compelled by circumstances to support the prosecution as otherwise cases will be filed against P.W. 7.

4. The point for determination in this petition is whether D.W.2 can be compelled to divulge the name of the Police Officer who gave the source report in respect of the offences against P.W. 7.

5. An answer to this question depends upon the interpretation of S. 125 of the Evidence Act, which reads as follows:

125. Information as to commission of offences : No Magistrate or Police Officer shall be compelled to say whence he got any information as to the commission of any offence, and no Revenue Officer shall be compelled to say whence he got any information as to the commission of any offence against the public revenue.

Explanation :--"Revenue Officer? in this section means any Officer employed in or about the business of any branch of the public revenue.

The framers of the Act thought fit to, introduce the above section on the grounds of public policy, and the source of information of offences against the laws should

not be divulged. If the same of the informers and the channel of communication are not protected from disclosure, no one would be forthcoming to give such information. This privilege is necessary for creating confidence and offering encouragement to informants. It is the duty of every citizen to communicate to his Government any information which he has of the commission of an offence against the Laws. To encourage him in performing this duty without fear of consequences, the law holds such information as a secret. Court of Justice therefore will not compel or allow the discovery of such information, either by subordinate officers as to when it is given, by the informer himself or by any other person. The said section entitles the police officer to refuse to disclose the source of information as to the commission of any "offence while public policy demands that no adverse inference be drawn against the prosecution for withholding such information from the witness box.

6. The contention of the part of the petitioner is that in order to assume the probative value of the evidence of P.W. 7 and in order to see whether P.W. 7 has given evidence as a result of any compulsion, the discovery of the fact as to who submitted the source papers is necessary. The purpose behind the question is that in case there had been complaints against P.W. 7 of misapprehension that will reduce the probative value of the evidence of P.W. 7 on account of his involvement in criminal offences and an element of compulsion regarding the evidence of P.W. 7 also can be inferred since if P.W. 7 refuses to depose in favour of the prosecution they may prosecute him in respect of the allegations pending against him. It is also contended that the source of information cannot be asked only in the trial of the case pending against P.W. 7 and such prohibition cannot be extended to this case. The learned Advocate for the petitioner relied on the following cases in support of his contention:-The first case relied on by the petitioner is the case reported in *Queen-Empress v. Ramdhan Habarue* 1900 (2) B.L.R. 329. In that case the accused was convicted of criminal breach of trust in respect of three gold bangles. The evidence is that the accused insured a parcel in the Post Office as containing three gold bangles, but shortly after delivery to the addressee, the parcel was found to contain only a piece of steel. One of the witnesses deposed to having sold the steel to the accused. Accused counsel asked the Superintendent of Post Offices the name of the person who had informed him about the sale of steel to the accused, but the Sessions Judge refused to allow the question to be put as he was of the opinion that the Superintendent was protected by Ss. 124 and 125 of the Indian Evidence Act, because he had evidently regarded the communication as made to him in official confidence, more especially as at the time the case was being investigated as an attempted frame on the public revenue. The Division Bench of the Bombay High Court held that the Session Judge was wrong in disallowing the question, as neither S. 124 nor S. 125 of the Indian Evidence Act, had any application to the case. The conclusion of the Bombay High Court is based upon the wording of the section that as Magistrate or Police Officer shall be compelled to say whence he got the information and that protection will not be available to persons other

than a Magistrate or a Police Officer. In this case the question is addressed to a Police Officer regarding course of information of a criminal offence and hence the principle laid down in the above case cannot be applied to the facts of the present case.

7. The next case on which the petitioner placed reliance is the case reported in *Shyam Kumar Singh v. Emperor* AIR 1941 Oudh. 130, where it has been observed as follows:

There is no reason why an investigating Police Officer should indicate before the court the source of the information upon which he takes action and it is some times of assistance to the Court to know what the source is.

That was a case where the investigating Officer gave evidence regarding the source of information in support of the prosecution and the Court held that in such cases the prosecution cannot be restrained from disclosing the source of information. In this case the officer concerned is claiming protection and hence the principle laid down in the above case cannot be applied to the present case. In the case reported in *Public Prosecutor v. Govindaraja Mudaliar* 1954 M.W.N. (Crl.) 149 : 67 L.W. 861, *Somasundaram, J.*, held that what S. 125 contemplates is only a prohibition of the source from whom the Magistrate or the Police Officer got information as to the commission of the offence and not as to the custody of any document or other material objects. In this case the question is not related to the document or other material objects, but relate to the source of information and hence the principle laid down in the above decision cannot be of any use so far as this case is concerned. In the case reported in *Khatri v. State of Bihar* 1961 Crl. L.J. 597 (S.C.), the Supreme Court observed that in a writ proceeding under Art. 32 of the Constitution the statement made to a police officer during the investigation of a crime can be produced and S. 162, Crl. P.G., cannot be urged as a bar against such production. The observation made in connection with a writ proceeding cannot be of any application to this case. In the case reported in *B. Kandasamy Reddy v. State of A.P.* 1982 Crl. L.J. 393, a Single Judge of the Andhra Pradesh High Court held that in a petition made by an accused about the Collection of the police officer with the prosecution, the privilege can not be claimed under S. 125 of the Evidence Act, The said case cannot be said to be an authority in respect of the question reining to the source of information regarding the commission of the offence.

8. The respondent relied upon the following cases in support of its contention that information sought for privileged. In the case reported in *Karka v. Beyfus* 25 Q.B.D. 494, in dealing with a section similar to S. 125 of the Indian Evidence Act in the *Prosecution of Offences Acts, 1873 and 1884*, Lord Esher, M.R. quoted with approval the following observation of Pollock, C.B., in *Attorney General v. Briants*:

The rule clearly established and acted on is this, is a public prosecution a witness cannot be asked such questions as will disclose the informer, if he be a third person...and we think the principle of the rule applies to the case where a

witness is asked if he himself is the informer.

The Queen's Bench Division also held that the rule as to non-disclosure of informer applies not only to the trial of the prisoner, but also to a subsequent civil action between the parties on the ground that the criminal prosecution was maliciously instituted or brought about. In the case reported in *Weston and others v. Peary Mohan Dass* ILR 40 Cal. 890, a Division Bench of the Calcutta High Court observed as follows:

Although S. 125 of the Evidence Act does not in express terms prohibits a witness, if he be willing from saying whence he got his information, the protection afforded by that Section does not depend upon a claim of privilege being made, to discharge duty of the Court, apart from objection taken, to exclude such evidence.

A fortiori, where a privilege is claimed, no adverse inference can be drawn therefrom.

In the case reported in *Amirta Lal Kanga v. Emperor* ILR 42 Cal. 957 at page 1026, the following observation is found:

It may be taken as settled rule that witnesses for the Crown Criminal prosecution under taken by the Government are privileged from disclosing the channel through which they have received or communicated information.

In the case reported in *Liladas Oberai v. Emperor*, a Division Bench of the Sind Judicial Commissioner's Court observed as follows:

S. 125 of the Indian Evidence Act rests upon public policy and it protects the name of a spy on secret informant, not the nature of the information and it has no application whatsoever of an informant who lays a sworn information and thereby initiates criminal proceedings.

Considering the section and the above decisions the nature and extent of the privilege under S. 125 of the Evidence Act is the effect that no Magistrate or Police Officer can be compelled to say from whence information was got as to the commission of the offence. Now there is nothing to prohibit in from disclosing if he is so willing. So the discretion as to whether he may or not had been left with the Magistrate or the Police Officer. Under the English Law, protection does not depend upon a claim being made, and the duty is cast upon Judges apart from objections being taken to exclude such evidence if it is detrimental to public interest as held in *Honssay v. Bright* 29 Q.B.D. 494. But so far as we are concerned under S. 125 of the Indian Evidence Act a police officer cannot be compelled to say from where he got information in relation to the commission of any offence whether it is an offence in respect of which the prosecution is instituted or with reference to the commission of the offence in any other case. Hence the conclusion arrived at by the learned Sessions Judge is correct and the same will have to be confirmed.

9. But at the same time only the source of information is privileged and the detail can be elicited. In this case nobody know-whether the source report in respect of which the question is asked contains any information which cannot be divulged under S. 125 of the Evidence Act. Under the circumstances the prosecution will have to produce the source report in a sealed cover and the Sessions Judge can peruse the same to find out whether that report contains any information which cannot be divulged under S. 125 of the Evidence Act, and with reference to information not hit by S. 125 the Sessions Judge may permit the counsel for the petitioner to put question to D.W. 2 regarding the details of criminal cases against P.W. 7. With these observations this criminal miscellaneous Petition is dismissed.