

(2010) 06 MAD CK 0045

In the Madras High Court

Case No : Writ Petition No. 8499 of 2010 and M.P. No. 1 of 2010

The Public Prosecutor Office

APPELLANT

Vs

V. Vijayaprakash

RESPONDENT

Date of Decision : 28-06-2010

Acts Referred:

Advocates Act, 1961 — Section 49(1)
Bar Council of India Rules, 1975 — Rule 17
Criminal Procedure Code, 1973 (CrPC) — Section 207
Evidence Act, 1872 — Section 126
Penal Code, 1860 (IPC) — Section 417, 420
Right to Information Act, 2005 — Section 2, 22, 8, 8(1)

Citation : (2010) 06 MAD CK 0045

Hon'ble Judges : D. Hariparanthaman, J

Bench : Single Bench

Advocate : Lita Srinivasan, for the Appellant; Party-in-Person, for the Respondent

Final Decision : Allowed

Judgement

D. Hariparanthaman, J.—The respondent's father-in-law lodged a complaint on 17.09.2008 to the Commissioner of Police, Chennai

Suburban Police, St. Thomas Mount, Chennai alleging that the respondent demanded dowry and harassed his daughter. Apprehending arrest, the

respondent approached this Court on 22.09.2008, seeking anticipatory bail, by filing Crl. O.P. No. 23805 of 2008. This Court on 25.09.2008

granted anticipatory bail to the respondent.

2. The respondent made an application dated 15.04.2009 to the Public Information Officer, Office of the Joint Commissioner of Police (South),

St. Thomas Mount, Chennai- 600 016 seeking information under Right to Information Act, 2005 (shortly "RTI Act") with reference to the

anticipatory bail order dated 25.09.2008 granted by this Court in Crl. O.P. No. 23805 of 2008 and with reference to FIR No. 21 of 2008 dated

10.11.2008 filed on the file of the All Women Police Station, Tambaram, Chennai-600 045. He made 6 queries on the anticipatory bail order and

5 queries on the FIR referred to above and the same are as follows:

Queries on anticipatory bail order:

1. Name and Designation of enquiry officer, who was responsible for conducting enquiry in this matter.
2. Names and details of all the persons enquired in this matter.
3. Copy of the complaint/petition.
4. Statements of all the persons (including myself) inquired in this matter.
5. Complete action taken report and outcome of the petition enquiry conducted by designated investigating officer.
6. All information and all record lying with investigating agency with regards to this petition enquiry.

With reference to the First Information Report (FIR No. 21/2008) dated 10/11/2008, please provide me the following information under the provisions of RTI Act, 2005.

1. Name and Designation of enquiry officer, who was responsible for conducting enquiry in this matter.
2. Names and details of all the persons enquired in this matter.
3. Statements of all the persons inquired in this matter.
4. Complete action taken report and outcome of the investigation conducted by designated investigating officer in this matter.
5. All information and all record lying with investigating agency in this matter.

3. The Sub Inspector of Police, All Women Police Station, Tambaram furnished information to all the queries, vide letter dated 15.05.2009. The

complaint lodged by the father-in-law of the respondent that was sought in query No. 3 was also furnished.

4. After receiving the aforesaid information, the respondent made another application dated 20.05.2009 to the Public Information Officer, Office

of the Chief Justice of High Court, Madras seeking information under RTI Act, 2005 with reference to the anticipatory bail order dated

25.09.2008 passed by this Court in Crl. O.P. No. 23805 of 2008. The following

four queries were raised in the said application:

(i) Kindly provide the copy of the criminal complaint/petition filed in the respondent police station.

(ii) If the copy of the complaint/petition is not on the records of the Honorable court, Please provide the reasons for the same.

(iii) Kindly provide the details regarding confirmation received from the respondent police or the concerned Judicial Magistrate by the Honorable court about the compliance to the conditions imposed in the bail order.

(iv) Kindly provide all other information and all other records lying with the Honorable Court with regards to Criminal Original Petition

23805/2008.

5. The aforesaid application makes it clear that he wanted him to be furnished the copy of the complaint that led him to file application seeking anticipatory bail.

6. Since the information was not furnished, the respondent approached the appellate authority through his appeal dated 10.07.2009. Accordingly,

the appellate authority, namely, the Registrar General of this Court, furnished the information as sought for by the respondent, vide his order dated

18.09.2009, in the following terms:

With reference to the appeal petition cited, it is ordered as follows:

Regarding Query Nos. 1 to 3, the particulars will be available only with the Investigation Officer in the concerned Police Station.

Regarding Query No. 4: The documents sought for by you can be obtained from the concerned section on proper application as per the Court

Procedures.

Your appeal petition is disposed off on the above lines.

7. After getting the copy of the complaint dated 17.09.2008 lodged by his father-in-law, from the Sub-Inspector of Police, All Women Police

Station, Tambaram, as explained above, the respondent again sought the copy of the complaint from the High Court, for which, the Registrar

General directed him to approach the Investigating Officer in the concerned Police Station. In fact, he had already received the copy of the

complaint from the concerned Police Station and that was not made known to this Court, when he sought the copy of the complaint again.

8. In the meantime, he made another application on 26.06.2009 to the Public Information Officer, Public (Law Officers) Department, Secretariat,

Chennai under the RTI Act seeking information on 15 queries relating to the anticipatory bail application in Crl. O.P. No. 23805 of 2008. Those

15 queries are as follows:

1. Kindly provide the name and designation of the learned government advocate (Crl. Side) who appeared for this case before the Hbl. Court.

2. What are the documents received from the respondent police by the government advocate with regards to this case.

3. If documents were received, when was those received and from whom those documents were received.

4. Kindly provide the name and designation of the staff currently having control over the documents received from police.

5. Kindly provide the name and designation of ALL the staffs who had control over the documents received from police between the time period

starting from September 25th 2008 until today.

6. Kindly provide a copy of the bail petition given to the state government and all the records lying in your department with regards to this case.

7. Was there a copy of criminal complaint petition given to the court to maintain in its records from the prosecution side.

8. What is the procedure to be followed by the Govt. advocate (Crl. Side) while dealing with anticipatory bail petition?

9. Did the Govt. advocate read the complaint petition? If so, when was it read?

10. Were there allegations of cheating against any of the petitioners in the criminal complaint? If there were such allegations, kindly provide reasons

for not informing the court during the hearing of the bail petition.

11. Were there allegations of dowry being taken against any of the petitioners in the criminal complaint? If there were such allegations, kindly

provide reasons for not informing the court during the hearing of the bail petition.

12. Were there any other allegations against any of the petitioners apart from the alleged dowry demand, and ill-treatment as mentioned in the bail

order of the Hbl Court? If it was present, kindly provide reasons for not informing the court during the hearing of the bail petition.

13. There is a hand-written file noting at the back of the bail petition given to the respondent side which reads as under

Current papers

Petition enquiry pending

Demanded dowry 10 Lakhs

Harassed and tortured

Kindly provide the name and designation of the person who has written the above file noting and please provide the purpose of writing and the meaning of this file noting.

14. Was there any legal opinion given to police by your department in this regards if so kindly provide the details of the same.

15. Was there any other correspondence between the respondent police and your department with regards to this case? If so kindly provide the details of the same.

9. The application dated 26.06.2009 filed before the Public Information Officer, Public (Law Officers) Department, was forwarded to the Home

Department on 08.07.2009 as the matter comes within the purview of the Home Department. On 04.08.2009, the Home Department forwarded

the said application to the Inspector General Police (Administration), Chennai to provide necessary information to the respondent.

10. Since the information was not furnished, he preferred an appeal on 29.10.2009 before the Tamil Nadu Information Commission.

11. On 04.03.2010, the Assistant Commissioner of Police, CRB, Chennai Suburban Police, Chennai provided all the information as sought by the respondent and those information are furnished here-under:

1. The name and designation of the learned Govt. Advocate criminal side is mentioned in the Anticipatory bail No. 23805/08 copy of which is also available with you.

2. When the Anticipatory Bail was pending before the court, no case was registered. Petition enquiry was pending on the petition of Srinivasa

Ragavan, G2, Rao Janaki Apartment, No. 97/236, GST Road, Chrompet, Chennai 44 forwarded to All Women Police Station Tambaram by the

Commissionerate Chennai Sub Urban. Therefore the copy of the petition of Srinivasa Ragavan was given to Govt. Advocate and the enquiry details were given.

3. After receipt of a petition from Srinivasa Ragavan, Sriram @ Vijayaprakash

and Radhika have been examined and signed statements were received on 25.09.08.

4. The above mentioned document at present available under the control of Asst. Commissioner of Police, Anti Dowry Cell, COP Office, Sub Urban.

5. The petition of Srinivasa Ragavan received by COP on 17.09.08 forwarded AC Tambaram Range office and inturn it was forwarded to

Inspector All Women police Station on 19.09.08. Later Sriram @ Vijayaprakash and Radhika were examined on 25.09.08, and signed

statements received by then and it was with Tmt. Nayeen Munisha, Sub-Inspector AWPS Tambaram till 24.11.08. Till the date of dispatch of the same to COP office through AC office Tambaram.

6. Bail petition copy enclosed. A case in AWPS Tambaram in Cr. No. 21/08, u/s 417, 420 IPC has been registered on the complaint of Radhika

on 10.11.08 and Vijayaprakash has been shown as an accused and the investigation has been taken up by Sub Inspector Tmt. Nayeen Munisha.

The above case in Cr. No. 21/08, u/s 417, 420 IPC the investigation was completed on 30.04.09 and charge sheet against the Vijayaprakash has

been filed in JM Tambaram Court on 30.04.09 and the court allotted CC No. 300/09 dated 14.05.09. After that the copies of the all documents

relied on by the prosecution have been given to you u/s 207 CrPC by the court.

7. The Question asked by you is not clear and we are unable to understand what you require in this regard.

8. Procedure to be followed by the Govt. Advocate in the case Anticipatory Bail application is after getting instructions from concern police

station, he has to make a representation before the Hon''ble High Court in the case of Anticipatory Bail.

9. The petition of Srinivasa Ragavan dated 17.09.08 was pending with AWPS for enquiry from 19.09.08. The copy of the said complaint was

shown to the Govt. Advocate on 23.09.08 for his perusal.

10. The duty of the Police is to provide all the materials available with them to Govt. Advocate for opposing the Anticipatory Bail and accordingly

on 23.09.08. The materials were shown to him for making a representation before the court. It is the prerogative powers of Govt. Advocate what

should be represented before the court. Therefore the answer for this question from us does not arise.

11. The contents of the petition of Srinivasa Ragavan was disclosed by the Govt. Advocate before the court on the date of argument in the above

Anticipatory Bail.

12. The answer which is given in question No. 10 is also applicable to this question.

13. We don't remember who has made such endorsement in the back of the bail petition. Probably it could be made by the Govt. Advocate or by

his junior.

14. No legal opinion is obtained by us in this regard.

15. No other correspondence except the correspondence narrated above.

12. When the appeal was heard on 08.03.2010 by the State Information Commission, the respondent informed that the information sought was

provided by the Public Authority on 04.03.2010 for all the points. Still the respondent was not satisfied with the information and asked details as

per the records available with the Government Advocate.

13. In those circumstances, the State Information Commission passed an order on 10.03.2010, directing the Public Information Officer, Office of

the Public Prosecutor, High Court, Chennai, to provide the information as sought for by the respondent within a period of 30 days from the date of

receipt of the said order. The said order dated 10.03.2010 is put to challenge by the Office of the Public Prosecutor, represented by its Manager,

by filing the present writ petition.

14. Notice of motion was ordered on 23.04.2010. Notice was served on the respondent. The respondent entered appearance in person and filed

counter affidavit along with typed set.

15. Heard Mrs. Lita Srinivasan, learned Government Advocate for the petitioner and the respondent, who appeared as party-in-person.

16. The learned Government Advocate submits that the respondent was not specific on his request and that even the impugned order of the State

Information Commission states that the respondent was not specific about the information, which is sought for. In any event, it is submitted that all

the details sought for by the respondent were furnished by different Public

Authorities, when he filed 3 applications as stated above. It is further submitted that though the Office of the Public Prosecutor is a Public Authority u/s 2(h) of the RTI Act, the information sought for by the respondent are privileged one and the Office of the Public Prosecutor would not divulge the same in view of Section 126 of the Indian Evidence Act, r/w Rule 17 of the Bar Council of India Rules framed u/s 49(1)(c) of the Advocates Act, 1961, as the Public Prosecutor is also an advocate under the Advocates Act, 1961. The petitioner shall not furnish information without the consent of their client. If they furnish any information without the permission of the client, it amounts to professional misconduct. In this regard, the learned Government Advocate relies on a decision of this Court in The Superintendent, Office of the Public Prosecutor, High Court, Chennai 104 v. The Registrar, Tamil Nadu Information Commission W.P. No. 20574 of 2009.

17. On the other hand, the respondent submits as follows:

The complaint given by his father-in-law is fabricated. The complaint dated 17.09.2008 of his father-in-law, that was shown to him was a different one from the one that was furnished to him by the Sub-Inspector of Police, All Women police Station, Tambaram, pursuant to his application under RTI Act. The person, who made those notings behind the bail application, could have tampered the complaint dated 17.09.2008 of his father-in-law. He proceeds that this Court, while granting anticipatory bail, observed that it was a case of demand of dowry and ill-treatment. But the complaint also refers to cheating. Had there been cheating mentioned in the complaint, this Court could have also observed about the allegation of cheating. Thus, he suspects that the complaint copy furnished to him was a fabricated one and that he wanted the copy of the complaint available with the Public Prosecutor to establish his version as to fabrication of complaint.

18. I have considered the submissions made on either side and perused the materials available on record.

19. The respondent sought information on his 15 queries in his application dated 26.06.2009. Since information was not given within the time, he approached the State Information Commission. In the meantime, he was provided with all the details, which is recorded in the impugned order of

the State Information Commission itself. The details sought for by the respondent is relating to the bail application in CrI. O.P. No. 23805 of 2008.

The relevant passage in the impugned order is extracted here-under:

The details available with the Public Authority has been provided as per the records. Now, the petitioner is asking the details as per the records

available with the Government Advocate. Though the information has been provided and the petitioner was not specific about the Public Authority,

the Commission feels that the information available with the Government Advocate has to be provided to the petitioner as requested by the

petitioner.

The aforesaid passage from the impugned order makes it clear that all the details were furnished to the respondent.

20. The respondent refers to question No. 13 and the answer that was given to question No. 13 and contends that the complaint given by his

father-in-law is tampered. Question No. 13 and the answer given to the same are extracted here-under:

Q. No. 13:

There is a hand-written file noting at the back of the bail petition given to the respondent side which reads as under

Current papers

Petition enquiry pending

Demanded dowry 10 Lakhs

Harassed and tortured

Kindly provide the name and designation of the person who has written the above file noting and please provide the purpose of writing and the

meaning of this file noting.

Answer:

We don't remember who has made such endorsement in the back of the bail petition. Probably it could be made by the Government Advocate or

by his junior.

He was provided with the copy of his bail application, by the Sub-Inspector of Police, All Women Police Station, Tambaram. The same is

enclosed at page No. 51 of his typed set. Behind the bail application, notings were made as stated in question No. 13. After the said notings, I

have found that a Police Official in Grade-I has made an endorsement stating that ""Attended the Court"" and put up his signature. I am not able to read the name of the police official, who put the signature. From the answer to question No. 13, it is seen that when the bail application was moved, the Public Prosecutor or his junior would have obtained instructions and made notings. It is not known whether the Public Prosecutor or his junior took instructions. In any event, as disclosed in the impugned order, all the details were furnished to him. According to the respondent, since the notings do not refer to cheating, he wanted a copy of the complaint of his father-in-law that was available with the Public Prosecutor. He was of the view that the complaint could have been a different one from the one that was furnished to him, as the Public Prosecutor did not note about cheating on the back side of the bail petition.

21. In fact, question Nos. 9 and 10 and the answers thereto make it very clear that the copy of the complaint lodged by the father-in-law of the respondent was not furnished to the Public Prosecutor and it was only shown for his perusal.

22. Further, from the counter affidavit and oral submissions before this Court, the respondent erroneously proceeds that his father-in-law made the allegation of cheating in his complaint. In fact, the allegation of cheating was made in the FIR filed in Cr. No. 21/08 based on the complaint dated

10.11.2008 of the wife of the respondent, as revealed from answer to query No. 6 in the order dated 04.03.2010. Based on the complaint dated

17.09.2008 of the father-in-law of the respondent, the respondent and his wife alone were enquired and nothing more took place, as revealed

from the answer to query No. 5 in the order dated 04.03.2010 and also the answer No. 5 in the order dated 15.05.2009 of the Sub-Inspector of

Police, All Women Police Station, Tambaram, furnishing the information. Hence, the request for the copy of the complaint with the Public

Prosecutor is totally misconceived. The State Information Commission after having found that all the information were furnished, ought to have

closed the matter. In fact, the State Information Commission observed that the respondent was not specific on his demand. In those circumstances,

the State Information Commission ought not to have directed the respondent to provide the information available with them.

23. This Court has categorically held in the judgment in *The Superintendent, Office of the Public Prosecutor, High Court, Chennai 104 v. The*

Registrar, Tamil Nadu Information Commission W.P. No. 20574 of 2009 that though the office of the Public Prosecutor is a Public Authority

comes under the purview of the Right to Information Act, the Public Prosecutor is also an Advocate and he could not furnish the information

sought for to the others, without the consent of his client. The said judgment has categorically held that in view of Section 126 of the Indian

Evidence Act r/w Rules framed u/s 49(1)(c) of the Advocates Act, there is a prohibition for the advocates from committing breach of obligation

imposed by Section 126 of the Indian Evidence Act. In this regard, Section 126 of the Indian Evidence Act, 1872, r/w Rule 17 of the Bar Council

of India Rules framed u/s 49(1)(c) of the Advocates Act, 1961 are extracted here-under:

Indian Evidence Act, 1872 Section 126 "Professional communications." No barrister, attorney, pleader or vakil shall at any time be permitted,

unless with his client's express consent, to disclose any communication made to him in the course and for the purpose of his employment as such

barrister, pleader, attorney or vakil, by or on behalf of his client, or to state the contents or condition of any document with which he has become

acquainted in the course and for the purpose of his professional employment, or to disclose any advice given by him to his client in the course and

for the purpose of such employment:

Provided that nothing in this section shall protect from disclosure

(1) Any such communication made in furtherance of any [illegal] purpose;

(2) Any fact observed by any barrister, pleader, attorney or vakil, in the course of his employment as such, showing that any crime or fraud has

been committed since the commencement of his employment.

It is immaterial whether the attention of such barrister, [pleader], attorney or vakil was or was not directed to such fact by or on behalf of his client.

Rule 17 of the Bar Council of India Rules framed u/s 49(1)(c) of the Advocates Act, 1961

17. An advocate shall not, directly or indirectly, commit a breach of the obligations imposed by Section 126 of the Indian Evidence Act.

24. Paragraph Nos. 18 to 20 of the judgment in *The Superintendent, Office of the*

Public Prosecutor, High Court, Chennai 104 v. The Registrar,

Tamil Nadu Information Commission W.P. No. 20574 of 2009 are relevant to the present case and the same are extracted here-under:

18. Therefore, Section 22 of the RTI Act cannot undoubtedly override Section 126 of the Indian Evidence Act. It must also be noted that the rules

framed u/s 49(1)(c) of the Advocates Act, 1961 as extracted above, clearly prohibit a counsel directly or indirectly from committing breach of the

obligation imposed by Section 126 of the Indian Evidence Act. A careful reading of Section 126 of the Indian Evidence Act as well as the

standards of professional conduct framed u/s 49(1)(c) of the Advocates Act, 1961 will clearly show that it is not as if this information cannot be

asked from the Government directly rather than asking a counsel to divulge the nature of the advice tendered by him. Though the office of the

Public Prosecutor is a public authority, the Act only enjoins upon him to furnish such information, which are available with him to be furnished

subject to Section 8(1)(e) of the Act.

19. But if the communication is privilege and with the express permission of the client, it can be furnished, it is not expected of the Public

Prosecutor to furnish the information after getting permission of his client, i.e. the State of Tamil Nadu. Such a contingency is not contemplated

provided under the Act. On the contrary, the Public Prosecutor's Office had clearly informed the respondents that they can approach the State

Government with whom the documents are available. Though the attention of this Court was drawn to the exemption granted to the Home (Police)

Department by G.O. Ms. No. 1042, Public Department, dated 14.10.2005, this Court is not going into the validity or otherwise of such an

exemption.

20. It is suffice to state that in the present case, instead of asking the petitioner, who holds such an information in the capacity of counsel, the

petitioner is very well entitled to approach the client, i.e. the State of Tamil Nadu directly for getting such information. If such information are

available to the public domain without being circumscribed by Section 8 of the RTI Act, he can always get such information without seeking such

information from the hands of the Public Prosecutor.

25. In this case, all the details, which were required by the respondent, were

furnished by various Public Authorities as explained above. The respondent could not seek information from the Public Prosecutor, which he had already sought from the Police and the same were furnished by various Public Authorities. In these circumstances, on facts, the order of the State Information Commission directing the petitioner to furnish the details to the respondent is not warranted.

26. Further, as already stated, the issue is covered by the judgment of this Court in *The Superintendent, Office of the Public Prosecutor, High*

Court, Chennai 104 v. The Registrar, Tamil Nadu Information Commission W.P. No. 20574 of 2009, wherein it is held that there is a statutory

prohibition u/s 126 of the Indian Evidence Act, r/w Rules framed u/s 49(1)(c) of the Advocates Act, 1961, for any counsel, including the Public

Prosecutor, to divulge any information, which they obtained during the professional work.

27. Hence, the impugned order dated 10.03.2010 passed in Case No. 27833/Enquiry/2009, by the State Information Commission, is set aside

and the writ petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.