

**IN THE SPECIAL COURT FOR THE TRIAL OF PMLA CASES/
SPECIAL COURT (SPE/CBI)-I, ERNAKULAM.**

Present:-

Sri. P.K. Mohandas, Judge, Special court for PMLA Cases

Thursday the 24th day of October, 2024 / 2nd Karthika, 1946.

Crl.M.P. No. 124/2024

In

SC (PMLA) No. 03/2023

Petitioner/ Accused No.1 : Shri. Santiago Martin, Aged 54 Years, S/o.
Shri.Santiago,135/1, Thiruvalluvar Street,
G.N Mill Post, Vellaikinar Road,Coimbatore
– 641 029.

By Adv. Sri. Mathews K Uthuppachan.

Respondent/Complainant: : **Central Bureau of Investigation, Cochin.**
Represented by Smt. Ramya Prasad,
Public Prosecutor, CBI.

This Criminal M.P coming on for hearing before me on 16.10.2024 and the Court on 24.10.2024 passed the following:

ORDER

This application is filed u/s. 173 and 207, r/w. Section 91 of the CrPC, and Rule 19(4) of the Criminal Rules of Practice, to issue direction to the CBI for the production of additional documents.

2. The case of the petitioner is that, pursuant to an application for

inspection filed by the petitioner, the Court, vide its order dated 05.04.2024, was pleased to permit the petitioner to inspect the file of this case. In compliance with the said order, the files were inspected on 12/04/2024 and 15/04/2024. On inspection of the documents, it was revealed that in addition to the documents shown in the list appended to the final report, the prosecution is also relying on another list of documents containing items Nos.1 to 111. Copies of these documents are not provided to the accused.

3. The CBI had carried out investigation in connection with 32 FIRs. The cases were initially investigated by the Kerala Police and later transferred to the CBI. After investigation, the CBI has filed closure reports in 25 cases, though it was alleged that all the 32 cases were registered in connection with a larger conspiracy. In the final report in this case it is stated: *“..... the investigation of the said cases revealed that there was a single larger conspiracy among A-1 to A-7 to violate the provisions of the Lotteries Regulation Act and to obtain wrongful gain in all the 32 cases and the same has been investigated in detail in RC-11(S)2011, CBI, ACB, Cochin. However, the FIR allegations against the accused in all these 23 cases were found insufficient for a prosecution due to several reasons as mentioned in the refer reports of the said 23 cases. Those refer reports were already filed before this Hon'ble Court ...”*

4. A perusal of the charge sheet filed by the CBI would show that it

had alleged a larger conspiracy in all 32 cases. It is also apparent from the charge sheet that the CBI by randomly picking up the statements and material from different FIRs had lumped together unconnected allegations to allege larger conspiracy. The petitioner also contends that as the CBI has claimed a larger conspiracy in connection with all 32 cases, the charge sheet in this case alone cannot be treated as the final report and the same has to be read together with the closure reports filed in the other case, before and after filing the charge sheet in this case.

5. The petitioner prays that the CBI may be directed to provide a list of unrelayed upon documents in terms of Rule 19(4) of the Criminal Rules of Practice Kerala. The petitioner also prays that the CBI may be directed to produce the closure reports and the records relating to the 25 closure reports and/or in the alternative to summon the closure reports and the records connected therewith from the court concerned.

6. The investigating officer opposed the application and filed an objection contending that the petition is not maintainable either in law or on facts. The petitioner filed this petition clubbing S.173, 207 and 91 of CrPC and Rule 19 (4) of Criminal Rules of Practice, Kerala.

7. It is contended that the prayer u/s.173 and 207 of CrPC are liable to be dismissed as the prayer itself is against the spirit of the said sections. As per the scheme of Section 207 Cr.PC, the prosecution is bound to supply only

documents which are relied upon by it under the said Section. This Section enumerates the documents of which copies need to be furnished and these documents refer to those on which the prosecution proposes to rely.

8. The petition u/s.91 of CrPC is also not maintainable at this stage. As per S.91 of CrPC, production of document must be by its custodian. Since CBI filed closure reports, the originals are with the Court and CBI cannot be considered as custodian of the said reports. Further, the said documents are not necessary or desirable at this stage. The petition is only to be dismissed.

9. When the matter came-up for hearing, I have heard the counsel for the petitioner and the learned Public Prosecutor.

10. The present application is filed with two prayers, viz., to direct the CBI to produce the list of unrelayed documents as per Rule 19(4) of the Criminal Rules of Practice and also to direct the CBI to produce the closure reports and records relating to 25 cases filed before the court or in the alternative to summon the documents from the court concerned.

11. One of the objection of the respondent is that the petition is premature and the petitioner could not file an application u/s.91 of Cr.PC at this stage of the case. It is also contended that a petition under the provisions mentioned above is not maintainable. In a criminal case there is no bar in filing an application claiming more than one relief. The only requirement is that the

petitioner has to pay court fee for each prayer. In this case the petitioner has paid a court fee of Rs.10/- and hence the application with two prayers is maintainable.

12. The first prayer, a direction under Rule 19(4), is sought for as the prosecution did not furnish copy of the list of unrelieved documents to the accused. During the pendency of the petition it was submitted that a copy of the list of unrelieved documents has been furnished to the accused. The learned counsel for the petitioner also submitted that the first prayer in the petition is satisfied and he does not want any relief regarding the same.

13. Now the question is regarding the direction for production of the closure reports and records relating to the cases registered against the petitioner and others which were referred by the CBI after investigation.

14. The learned Public Prosecutor submitted that a petition under section 91 of the CrPC is premature and it cannot be entertained at this stage. She relied on the decision dated 12-02-2024 of the Hon'ble Supreme Court in State of Rajasthan v. Swarn Singh @ Baba in Crl. Appeal No. 856/2024 and argued that the accused is not entitled to summon any document for their defence before framing of charges. It is submitted that the Hon'ble Supreme Court while passing the above judgment has referred to the decision of the Apex Court in State of Orissa v. Debendranatha Pathi (2005) 1 SCC 568.

15. In Debendranath's case the Apex Court has held that:

"25. Any document or other thing envisaged under the aforesaid provision can be ordered to be produced on finding that the same is "necessary or desirable for the purpose of investigation, inquiry, trial or other proceedings under the Code". The first and foremost requirement of the section is about the document being necessary or desirable. The necessity or desirability would have to be seen with reference to the stage when a prayer is made for the production. If any document is necessary or desirable for the defence of the accused, the question of invoking Section 91 at the initial stage of framing of a charge would not arise since defence of the accused is not relevant at that stage. When the section refers to investigation, inquiry, trial or other proceedings, it is to be borne in mind that under the section a police officer may move the court for summoning and production of a document as may be necessary at any of the stages mentioned in the section. Insofar as the accused is concerned, his entitlement to seek order under Section 91 would ordinarily not come till the stage of defence. When the section talks of the document being necessary and desirable, it is implicit that necessity and desirability is to be examined considering the

stage when such a prayer for summoning and production is made and the party who makes it, whether police or accused. If under Section 227, what is necessary and relevant is only the record produced in terms of Section 173 of the Code, the accused cannot at that stage invoke Section 91 to seek production of any document to show his innocence. Under Section 91 summons for production of document can be issued by court and under a written order an officer in charge of a police station can also direct production thereof. Section 91 does not confer any right on the accused to produce document in his possession to prove his defence. Section 91 presupposes that when the document is not produced process may be initiated to compel production thereof.”

16. In this case, it is the admitted case of the prosecution that 32 FIRs were registered in various Police Stations against the present accused and later, investigation of all those cases was entrusted with the CBI. It is further admitted that after investigation the CBI came to the conclusion that accused Nos.1 to 7 named in the charge sheet in this case have committed the offences punishable u/s.120B and 420 IPC and Section 4(d), 4(f) and 9 r/w.s. S.7(3) of Lotteries (Regulation) Act, 1998 and Rule 3(5) and 4(5) of Lotteries (Regulation) Rules, 2010 and a consolidated final report was filed for 7 cases

registered at different Police Stations. Based on that final report, the present case was taken on file and summons was issued to the accused. In the final report, it is admitted that out of 32 cases, closure reports were filed before the Magistrate Court referring 23 cases. It is also not in dispute that subsequent to the filing of the final report in this case, the remaining 2 other cases were also referred by the CBI and final reports were filed before the Magistrate Court.

17. The learned counsel for the petitioner argued that in all the 32 cases the allegation against the petitioner and others was that the crimes in those cases were committed as part of a larger conspiracy. According to him, the refer reports in the connected cases have a direct consequence and impact in this case also. According to him those cases were referred finding that the accused have not committed any offence as alleged and that will point towards the fact that the story regarding the larger conspiracy put out by the CBI is not true. According to him, such documents are relevant for a just decision in this case, even at the stage of framing the charge.

18. The main contention of the learned Public Prosecutor is that at the stage of framing charge, the court need to look into only to the documents and evidence placed before it by the prosecution along with the final report and the accused have no right to produce documents. In the decision referred above, the Hon'ble Supreme Court has held that the court has to consider whether the document sought to be produced is necessary or desirable for the defence of

the accused at the stage at which it is sought to be produced. In this case, the documents sought to be called for are the final reports filed by the investigating agency in the connected cases in which similar allegations were raised against the accused. It cannot be said that those documents are the documents relied on by the accused to contend that they are entitled to a discharge in the case. In order to consider the prosecution records will point towards the guilt or otherwise of the accused, such documents also are relevant for consideration by the court.

19. The learned Public Prosecutor contended that since the final reports were filed before the Magistrate Court, the investigating officer is not in possession of the same and no direction can be issued against the CBI for production of the documents. It is admitted that the closure reports were filed before the Chief Judicial Magistrate Court, Ernakulam, which is the Court established for trial of the cases investigated by the CBI. As the CBI has already filed final reports and the relevant documents before the court, the court cannot issue a direction to the CBI to produce such documents. But, the documents now sought to be called for are absolutely necessary for a decision in this case. The reason for referring the connected 25 cases is relevant for the decision in the present case. So I am of the view that the documents pertaining to the 25 crimes registered against the petitioner and others are to be called for from the Chief Judicial Magistrate Court.

20. The learned counsel for the petitioner has submitted a memo on 31.07.2024 containing the details of the cases and the date of filing of the closure reports in all these 25 cases as shown below:

CBI Cochin unit F.I.Rs

Sl. No.	Original FIR	CBI FIR No.	Date of Filing of Closure Report
1.	640/10, Palakkad Town South PS, dated 12/09/2010	RC.14(S)/2011/CBI/ACB/Cochin	18/02/2014
2.	730/10, Kasba PS, Palakkad, dated 19/08/2010	RC.15(S)/2011/CBI/ACB/Cochin	29/11/2012
3.	217/2010, Town South PS, Palakkad dated 29/08/2010	RC.16(S)/2011/CBI/ACB/Cochin	29/11/2012
4.	24/2010, Malampuzha PS; dated 18/09/2010	RC.17(S)/2011/CBI/ACB/Cochin	29/11/2012
5.	50/2010, Idukki PS, dated 16/01/2010	RC-18(S)/CBI/ACB/Cochin	29/11/2012
6.	496/2010, Town North Police Station, Ernakulam dated 12/03/2010	RC.23(S)/2011/CBI/ACB/Cochin	29/11/2012
7.	96/2010, PS North Paravur, dated : 14/01/2010	RC.24(S)/2011/CBI/ACB/Cochin	29/11/2012
8.	419/2010, Panniyankara PS, Ernakulam, dated 24/09/2010	RC.25(S)/2011/CBI/ACB/Cochin	29/11/2012
9.	526/2010, Town PS, Kozhikode, dated 24/09/2010	RC.30(S)/2011/CBI/ACB/Cochin	29/11/2012
10.	1146/2020 Fort PS, Thiruvananthapuram, Dated 07.11.2010	RC.12(S)/2011/CBI/ACB/Cochin	

CBI Thirvananthapuram unit F.I.R.s

Sl. No.	Original FIR	CBI FIR No.	Date of Filing of Closure Report
1.	64/2010, Kayamkulam PS, Dated 12.01.2010	RC 05(S)/2011-CBI/TVPM	26/11/2012
2.	65/10, Kayamkulam PS, Dated 12.01.2010	RC 06(S)/2011/CBI/TVPM	13/05/2013
3.	38/2010, Chengannur PS, Dated 13.01.2010	RC 07(S)/2011/CBI/TVPM	30/11/2012
4.	39/2010, Chengannur PS, Dated 13.01.2010	RC 08(S)/2011/CBI/TVPM	30/11/2012
5.	41/2010, Chengannur PS, Dated 13.01.2010	RC 10(S)/2011/CBI/TVPM	26/11/2012
6.	42/2010, Chengannur PS, Dated 13.01.2010	RC 11(S)/2011/CBI/TVPM	26/11/2012
7.	42/2010, Chingavanam PS, Dated 15.01.2010	RC 12(S)/2011/CBI/TVPM	30/11/2012
8.	82/2010, Chenganassery PS, Kottayam. Dated 15.01.2010	RC 13(S)/2011/CBI/TVPM	26/11/2012
9.	30/2010, Mavelikkara PS, 13/01/2010	RC 14(S)/2011/CBI/TVPM	26/11/2012
10.	26/2010, Mannar PS, Dated 13/01/2010	RC 15(S)/2011/CBI/TVPM	26/11/2012
11.	38/2010, Gandhi Nagar PS. 15/01/2010	RC 16(S)/2011/CBI/TVPM	30/11/2012
12.	78/2010, Kottayam West PS. 12/01/2010	RC 17(S)/2011/CBI/TVPM	30/11/2012
13.	66/2010, Ettumanoor PS, dated 15.01.2010	RC 18(S)/2011/CBI/TVPM	22/11/2012
14.	67/2010, Ettumanoor Police Station, dated 15.01.2010	RC 19(S)/2011/CBI/TVPM	22/11/2012

15.	18/2010, Ayarkunnam PS, dated 15.01.2010	RC 20(S)/2011/CBI/TVPM	29/11/2012
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21. In the light of the above discussion, I am of the view that the alternate prayer in the petition to call for the records of the above crimes from the Chief Judicial Magistrate Court, Ernakulam can be allowed.

In the result, the petition is allowed, calling for the records of the above cases from the Chief Judicial Magistrate Court, Ernakulam. The Chief Judicial Magistrate, Ernakulam is required to forward the entire records in the above crimes for reference in this case.

Dictated to the Confidential Asst., transcribed and typewritten by her, corrected and pronounced by me in open court on this the 24th day of October, 2024.

Appendix: Nil

//True Copy//

Sd/-
P. K. Mohandas
Judge, Special Court for PMLA Cases

Id/-
Judge, Special Court for PMLA Cases
(By Order)

Sd/-
Sheristadar.