Citation : CDJ 2015 MHC 4560

Court : High Court of Judicature at Madras

Case No : Crl. O.P. No. 2381 of 2015 & M.P. Nos. 1 & 2 of 2015

Judges : THE HONOURABLE MS. JUSTICE R. MALA

Parties : State rep. by Deputy Superintendent of Police, SPE:CBI:STF: New Delhi Versus S. Kannan & Others

Appearing Advocates : For the Appearing Parties: K. Srinivasan, A.R.L. Sundaresan, M. Sneha, Advocates.

Date of Judgment : 02-02-2015

Head Note :

Criminal Procedure Code - Section 167(2) -

Comparative Citation:
2015 (1) LW(Crl) 634,

Judgment :

R. Mala, J.

1. This petition is filed against the order dated 27.1.2015 passed by the learned principal Special Judge for CBI Cases (VIII-Additional City Civil Court), Chennai made in Crl.M.P. No. 454 of 2015. The case of the petitioner is as follows:

(a) Based on a source information the petitioner herein after conducting preliminary enquiry registered F.I.R. under Section 120Br/w 409, 420 IPC and Section 13(2) r/w 13(1)(c) and 13(1)(d) of Prevention of Corruption Act, 1988 against three persons viz., A-1 Mr. Dayanidhi Maran, A-2 Mr. K. Brahmadathan and A-3 Mr. M.P. Velusamy.

(b) the main allegation levelled against the accused persons is that A1 while he was functioning as Union Minister of Communication and Information Technology, during the period from 2004 to 2007 by abusing his official position and in collusion with the officials of BSNL, Chennai viz., Mr. K. Brahmadathan and Mr. M.P. Velusamy and other unknown officials and in furtherance of above conspiracy and with dishonest intention, got installed more then 300 telephone connections with ISDN-PRA and ISDN-BRA, Lease Circuit facilities etc., in his residence in the name of the accused Govt. servants to show these connections illegally under 'service category' thereby no payment was made for the installation and rentals.

(c) Further, by not generating any user bills during the period, misappropriated huge amount which was to be paid to the Government thereby caused huge wrongful loss to the Government to the tune

of Rs. 1,20,87,769/- and the corresponding gain to himself and others. However, in the said F.I.R. the names of the respondents herein have not been mentioned as accused persons.

(d) After the registration of the F.I.R., the petitioner after obtaining search warrants dated 07.08.2013, conducted searches in the residential places of A2 and A3 and seized certain documents which were placed before the court on 30.08.2013 and taken back for conducting further investigation. While so on 21.01.2015 at 17.30 hours, the petitioner arrested the respondents herein and produced them before the Trial court on 22.01.2015 at 02.00 P.M. At the time of producing the respondents/accused, the petitioner filed a memo for arraigning the respondents herein as A-4 to A-6 along with a petition seeking police custody. However, the Trial Court passed an order of remand dated 22.01.2015 remanding A-4 to A-6 to judicial custody until 04.02.2015.

(e) Thereafter, the Trial Court after hearing the arguments advanced by either sides dismissed the plea of the petitioner seeking police custody of the respondents herein holding that the custody of a person to the police cannot be given in a mechanical manner and that the petitioner is not entitled to seek custody of a person for conducting roving enquiry.

2. Challenging the impugned order passed in Crl. M.P. No. 454 of 2015 dated 27.01.2015 rejecting the application filed under Section 167(2) of Cr.P.C. seeking police custody the present Criminal Original Petition has been preferred.

The learned Special Public Prosecution (CBI Cases) would submit that the respondents herein who were arrayed as Accused 4 to 6 were arrested on 21.01.2015 in connection with the F.I.R. registered under Section 120B r/w 409, 420 IPC and section 13(2) r/w 13(1)(C) and 13(1)(d) of prevention of Corruption Act 1988. The application filed by the petitioner/investigation Agency before the Trial Court seeking custodial interrogation of the respondents were rejected and against the same, the present Criminal Original petition is preferred.

3. The Trial Court had dismissed the application by stating that the petitioner/CBI had not given any particulars and the reason as to why the police custody is necessary. Furthermore, is was stated that the petitioner have already undergone interrogation by the petitioner/CBI on several days and since the respondents were only in the judicial custody. If any further interrogation is necessary, the petitioner can very well obtain appropriate permission from the court of law and interrogate the respondents in the presence of the jail authorities.

4. The learned Special Public Prosecutor should submit that in respect of the affidavit in paragraphs 6 to 8 and 10, it has been clearly narrated why police custody is necessary. But the said factum was not considered by the Trial Court. He further submitted that the rejection of police custody is an exception. To support his contention that the custodial interrogation of the accused persons is necessary, the learned Special Public Prosecutor (CBI Cases) would rely upon the following decisions:

1. : 1997 Supreme Court Cases (Cri.) 1039, State v. Anil Sharma

2. : (2012) 6 Supreme Court cases (Crl) 612, Assistant Director Directorate of Enforcement v. Hassan Ali Khan.

By relying on the above decisions, the learned Special Public Prosecutor appearing for the petitioner prayed the custodial interrogation of the respondents.

5. Resisting the same, the learned Senior Counsel appearing for respondents 1 and 2 would submit that the reasons averred in paragraph 10 of the affidavit is not sufficient to grant police custody as contemplated under Rule 76 of the Tamil Nadu Criminal Rules of Practice. The learned Senior

Counsel further submitted that the respondents 1 and 2 had appeared before the petitioner office at Chennai and at Delhi on various dates viz., 30.07.2014, 31.07.2014, 01.08.2014, 06.08.2014 and 29.08.2014 and subjected themselves for interrogation after the registration of the case, even though their names does not find place in the F.I.R. the Trial court has rightly considered the said factum and rejected the application filed by the petitioner.

6. The learned counsel further submitted that if the petitioner requires to interrogate the respondents further, the petitioner can very well file appropriate application seeking permission and interrogate the respondents in the presence of the jail authorities, since the respondents are only in the judicial custody. He would further submit that the decision relied on by the learned Special Public Prosecutor (CBI Cases) does not apply to the facts of the present case. In the decision reported in, 1997 Supreme Court Cases (Cri) 1039 State v. Anil Sharma, the matter relates to anticipatory bail application. However, in the present case, the custody of the respondents are sought for custodial interrogation and hence, the facts are entirely different. Thus, the learned Senior Counsel appearing for the respondents 1 and 2 prayed for the dismissal of the petition. The learned Senior Counsel appearing for the third respondent/A6 would submit that the affidavit itself is defective in nature and also the sworn statement is not given in accordance with law. After the registration of F.I.R., the third respondents A6 had subjected himself for interrogation on various dates viz., two days in the month of October 2013 at Chennai and 4 days in the month of January 2014 at Delhi. So, there is nothing more to be called out from this respondent. The learned Senior Counsel relied upon the decisions reported in

1. : AIR 1952 SC 317, State of Bombay v. Purushottam Jog Naik.

2. : AIR 1988 SC 1987 Savithramma v. Cecil Naronha and Another.

3. : (2011) 7 Supreme Court Cases 69, Amar Singh v. Union of India and Others.

4. : 1989 (1) Bom. CR 112, Nandakumar Shankar Mhatre v. Dayanand Mahadev Mhatre and others and submits that if the affidavit is not in consonance with the provisions of Rule 76 of the Tamil Nadu Criminal Rules of Practice, the police custody had to be denied. Even though the said argument was advanced before the trial court the trial court has not considered the same stating such technical question cannot be decided at that stage. The learned Counsel would further submit that police custody cannot be given as a matter of right and prayed for dismissal of the petition.

7. Considered the rival submissions made by both sides and perused the typed set of papers.

8. Admittedly, based on a source information that there was huge misappropriation, a preliminary enquiry was conducted and since a prima facie case was made out, the case has been registered on 23.07.2013 against three named persons. It is also an admitted fact that the name of the respondents does not find place in the F.I.R. During the course of the argument it has been fairly conceded by the learned Special Public Prosecutor (CBI cases) that other than the respondents 1 and 3, no other person has been arrested so far, in connection with the present case. It is further submitted that more than 60 witnesses were examined and more than 200 documents were seized. However, the custodial interrogation of the respondents is required to unearth the criminal conspiracy in the commission of the offence. The Learned Special Public Prosecutor would submit that since the Trial Court has rejected the contention/objection raised by the accused/respondents herein and held that the defective affidavit will not be a reason for rejecting the application for police custody. There is no necessity to consider the said aspect. But the above argument does not hold good. The police custody is concerned about the infringement of the right of the individual, more particularly the Fundamental Right guaranteed under Article 21 of the Constitution of India. So it is the duty of the Court while dealing with the application under Rule 76 of the Tamil Nadu Criminal Rules of Practice to ensure that the affidavit must be in the format prescribed under Order 19 Rule 3 C.P.C. At this juncture, it is

appropriate to incorporate Rule 76 of the Tamil Nadu Criminal Rules of Practice.

"76. Remands: (1) Magistrates shall not grant remands to police custody unless they are satisfied that there is good ground for doing so, and shall not accept a general statement made by the investigating or other police officer to the effect that the accused may be able to give further information. A request for remands to police custody shall be accompanied by an affidavit setting out briefly the prior history of the investigation and the likelihood of further clues which the police expect to derive by having accused in custody, sworn by the investigating or other police officer, not below the rank of sub-inspector of Police. Magistrates may decide after perusal of the affidavit. Magistrate shall personally see and satisfy themselves about the accused affidavit. Magistrate shall personally see and satisfy themselves about the accused being sound in mind and body before entrusting him to police custody and also at the end of the period of custody by questioning him whether he had any way been interfered with during the period of custody Where the object of a remand is verification of the statement of an accused, he shall, whenever possible, he remanded to the charge of a Magistrate; and the period of remand shall be as short as possible."

9. As per Rule 76 of the Tamil Nadu Criminal Rules of Practice, the following four ingredients is mandatory for granting custody of the accused:

(i) a request for remands to police custody shall be accompanied by an affidavit

(ii) setting out briefly the prior history of the investigation and

(iii) the likelihood of further clues which the police expect to derive by having accused in custody.

(iv) sworn by the investigating or other police officer, not below the rank of sub-Inspector of Police.

The above ingredients had to be satisfied by the petitioner/CBI.

10. As far as the affidavit is concerned, as already it must be in accordance with the provisions of Order 19 Rule 3 C.P.C. It is appropriate to incorporate the said provision.

"Matters to which affidavits shall be confined.

(1) Affidavits shall be confined to such facts as the deponent is able of his own knowledge to prove, except on interlocutory applications, on which statements of his beliefs may be admitted; provided that the grounds thereof are stated.

(2) The costs of every affidavit which shall unnecessary set forth matters of hearsay or argumentative matter, or copies of or extracts from documents, shall (unless the Court otherwise directs) be paid by the party filing the same."

At this juncture, it would also be appropriate to incorporate section 297 of Cr.P.C.

297. Authorities before whom affidavits may be sworn.

(1) Affidavits to be used before any Court under this code may be sworn or affirmed before.

(a) any Judge or any Judicial or Executive Magistrate, or

(b) any commissioner of Oaths appointed by a High Court or Court of Session, or

(c) any notary appointed under the Notaries Act, 1952.

(2) Affidavits shall be confined to, and shall state separately, such facts as the deponent is able to prove from his own knowledge and such facts as he has reasonable ground to believe to be true, and in the latter case, the deponent shall clearly state the grounds of such belief.

(3) The Court may order any scandalous and irrelevant matter in the affidavit to be struck out or amended.

11. This Court has called for the entire bundle from the Trial Court by special messenger and on perusal of the affidavit it is found to be stated as follows:

"solemnly affirmed and signed before me at Chennai on this 22nd day of January 2015."

12. Thus, there was nothing stated in the affidavit as to how they got the information, whether it is source information or they are personally aware of the fact or received from any records etc., In such circumstances, I am of the view that the affidavit filed by the Investigating officer is not in accordance with law. Now, it is appropriate to consider the decisions relied on by the learned Senior Counsel appearing for the third respondent.

18.1. In the decision reported in : AIR 1952 SC 317, State of Bombay, v. Purushottam Jog Naik, it was observed that the verification of the affidavits produced therein is defective and that it cannot be taken as it is. In paragraph 15 of the said decision, it was held that slipshod verifications lead to a rejection of the affidavit. It is appropriate to incorporate paragraph 15 of the said decision:

"15. We wish, however, to observe that the verification of the affidavit produced here is defective. "The body of the affidavit discloses that certain matters were known to the Secretary who made the affidavit personally. The verification however states that everything was true to the best of his information and belief. We point this out as slipshod verifications of this type might well in a given case lead to a rejection of the affidavit. Verifications should invariably be modelled on the lines of Order XIX, rule 3, of the Civil Procedure Code, whether the Code applies in terms or not. And when the matter deposed to is not based on personal knowledge the sources of information should be clearly disclosed.

18.2. In the decision reported in : AIR 1988 Supreme Court 1988, Savithramma v. Cecil Naronhs and Another, it was observed that the verification of the complainant's affidavit is defective and it would not be safe to proceed on the allegations mentioned in the petition. Even though the said matter pertains to contempt petition and in the instant case, it is the petition seeking for custodial interrogation, since it will affect the personal liberty, the Investigating Agency must be very careful enough to file an affidavit as contemplated under Rule 76 of the Tamil Nadu Criminal rules of Practice. It is appropriate to incorporate paragraph 3 of the said decision.

"3. We are constrained to observe that of late affidavit are being filed in this Court in a slipshod manner without having any regard to the Rules. Affidavits are being filed by person who could have no affidavit. Deponents of affidavits pay no attention to verification, although this court laid stress on this aspect as early as 1952. In State of Bombay v. Purushottam Jog Naik, : (1952) SCK 674, a Constitution Bench considering the importance of verification of an affidavit observed:

"We wish, however, to observe that the verification of the affidavits produced here is defective. The body of the affidavit discloses that certain matters were know to the Secretary who made the affidavit personally. The verification however states that everything was true to the best of his PG No. 565 information and belief. We point this out as slipshod verification of this type might in a given case lead to a rejection of the affidavit. Verification should invariably be modelled on the lines of Order XIX, Rule 3, of the Civil Procedure Code, whether the Code applies in terms or not. And when the

matter deposed to is not based on personal knowledge the sources of information should be clearly disclosed".

18.3 In the decision reported in : (2011) 7 Supreme Court Cases 69, Amar Singh v. Union of India and Others, in paragraph 65, it was held as follows:-

"65. This Court wants to make one thing clear i.e. perfunctory and slipshod affidavits which are not consistent either with Order XIX Rule 3 of the Code of Civil Procedure or with Order XI Rule 5 and 13 of this Supreme Court Rules should not be entertained by this Court."

18.4. In the decision reported in : 1989 (1) BOM CR 112, Nandakumar Shankar Mhatre v. Dayanand Mahadev Mhatre and others, it was held that the application for cancellation of bail has been verified to knowledge and belief of the petitioner, without stating what portion thereof was to his knowledge and belief of the petitioner, without stating what portion thereof was to his knowledge and what portion was on the information received by him and believed to be true. Hence, the Court had rejected the affidavit filed by the petitioner therein. It is appropriate to incorporate paragraph 4 and 6 of the said decision:

"4. At the re-hearing of the matter I noticed that the petitioner's application for cancellation of bail has been verified to his knowledge and belief without stating what portion was on the information received by him and believed to be true. The source of information is also not mentioned. It is also noticed during the hearing that averments regarding filing of application for cancellation of bail in the Sessions Court on 23-8-1988 and the averment that the application though registered was not being taken up and disposed of by the learned Sessions Judge are not true and correct. No such application has been made to the Sessions Court. It appears that the care required for preparing affidavit has not been taken and the verification has also not been done as required by law. Same is the case with the affidavit-in-reply filed on behalf of the respondents. That affidavit is not at all verified. It is nothing but written argument. All sorts of arguments have been made and it has been contended therein what is the law on the point of cancellation of bail. Affidavits are not meant for submitting arguments. They are meant for stating facts relating to the subject matter in question. The affidavits are required to be verified as per para 5 of Chap. VII page 141 of Criminal Manual. 11th Edition as revised by this Court. Para 5 reads thus:-

"5.(1) Every affidavit should clearly specify what portion of the statement is made on the declarant's knowledge and what portion of the statement is made on his information or belief.

(2) When a particular portion is not within the declarant's own knowledge but it is stated from information obtained from others, the declarant must use the expression "I am informed" and, if it is made on belief, should add "I verily believe it to be true.". He must also state the source or ground of the information or belief and give the name and address of, and sufficiently describe for the purpose of identification, the person or persons from whom he had received such information.

(3) When the statement rests on facts disclosed in documents or copies of documents procured from any Court or other person, this declarant shall state the source from which they were procured and his information, or belief, as to the truth of the facts disclosed is such documents".

...

6. The learned Counsel for the petitioner orally applies for amendment of the petition and thereby wants to correct the verification of the petition. I am unable to see how a party can be allowed to amend the affidavit which has been already made by him. The affidavit once made cannot be allowed to be changed by amending the same. Consequently, the prayer of the learned counsel for the petitioner for permission to amend the petition cannot be granted."

13. Thus, the principle laid down by the Constitutional Bench of the Hon'ble Apex Court would denote that an affidavit must be in consonance with Order XIX Rule 3 C.P.C. But as stated already, the affidavit filed by the petitioner is not in the prescribed format. So, I am of the view that the affidavit is defective in nature. So, the affidavit filed by the petitioner seeking for custodial interrogation of the respondents cannot be construed as the one contemplated under Section 76 of the Tamil Nadu Criminal Rules of Practice.

14. Now this Court has to consider the fact whether all the necessary particulars had been given in the sworn statement. In the sworn statement it has been fairly conceded that the respondents herein had appeared for interrogation, however they did not cooperate with the investigating agency. Even after their arrest, they are not cooperating with the petitioner and hence, their custodial interrogation is necessary. Now this Court has to decide whether in the sworn statement, it has been mentioned about the likelihood of further clues which the police expect to derive by having the accused in custody. However, on perusal of the sworn statement, it was found that the petitioner has not mentioned anything about the purpose for which they require the custodial interrogation of the respondents. It was only stated in the sworn statement that the respondents herein were also involved in the criminal conspiracy and to cull out the conspiracy, custodial interrogation is necessary. But admittedly, the respondents were not arrayed as accused and that they have appeared before the petitioner and subjected themselves to interrogation after the registration of the case.

In such circumstances, the application for custodial interrogation to cull out the clues in respect of criminal conspiracy between the main accused/respondents herein cannot be entertained because in the FIR it has been specifically mentioned that during the period between 2004 and 2007, Shri K. Brahmadathan, the then Chief General Manager, Chennai Telephones during the period 2004-2006 and Shri M.P. Velusamy, the then Chief General Manager, BSNL, Chennai during the period 2006-2007, along with other unknown public servants of BSNL, Chennai, by abusing their official position and in violation of rules/regulations installed a number of high end telecommunication facilities at the residence of the then Union Minister of Communication and Information Technology and by treating these telecommunication facilities as service category, they did not raise bills for the same for the period from 2004 to 2007 and thereby caused huge wrong full loss to the revenue to the Govt. of India. Admittedly, neither the public servants working in the BSNL has been arrested so far, nor the accused A-1 to A-3 were arrested and there is no evidence to show that they were interrogated. In such circumstances, I am of the view that the reasons mentioned in the affidavit is not sufficient to order custodial interrogation. So, the second ingredient of Rule 76 of the Tamil Nadu Criminal Rules of Practice has not been made out.

15. The next point to be considered is that the affidavit does not contain prior history of the investigation. On perusal of the affidavit, it could be seen that it is a mere reproduction of the averments made in the F.I.R. and no prior history of investigation has been mentioned. So, the third ingredient of Rule 76 of the Tamil Nadu Criminal Rules of Practice has not been made out.

16. Furthermore, in the earlier paragraphs, it was held that the affidavit itself is defective in nature and in the sworn statement, the reason for seeking custodial interrogation of the respondents has not been given. In such circumstances, the act of the Trial Court in overruling the objections raised by the learned Senior Counsels appearing for the respondents stating that the defective affidavit is not a ground for rejection of police custody is unsustainable.

In the decision reported in : 2008 Cri.L.J. 898, State by Deputy Superintendent of Police "Q" Branch CID v. Sundaramoorthy relied on by the learned Senior Counsel appearing for the third respondent, it was held that the police custody is concerned about the infringement of right of an individual, more particularly fundamental right guaranteed under Article 21 of the Constitution of India. There are certain exceptions by way of reasonable restrictions and one such restriction is the grant of police

custody while the investigation is pending. Therefore, any application for grant of police custody must be strictly considered on materials as it involves the fundamental right and personal liberty of an individual. So, the provisions are to be strictly understood and complied with.

17. In the instant case, as already stated, it involves the fundamental right of the individual. In such circumstances, the investigating agency must file the affidavit in consonance with Rule 76 of the Tamilnadu Criminal Rules of Practice, putting forth the prior history of the investigation and the further clues that are likely to be culled out from the accused. However, nothing has been given in the affidavit.

18. The next decision relied on by the learned Senior Counsel is the unreported decision of this Court made in Crl. O.P. No. 19963 if 2010, dated 2.9.2010, wherein the Trial Court had granted time to comply with the defects pointed out by the learned counsel for the petitioner. But the above citation is not applicable to the facts of the present case because in the instant case, no such time has been granted to rectify the defects. The other decision relied on by the learned Senior Counsel appearing for the third respondent is reported in : 2012 MLJ (Crl). 567, State rep by the Inspector of Police v. B. Ranganathan and Another, wherein the learned Senior Counsel drawn my attention to paragraphs 21, 22, 25 and submitted that custodial interrogation cannot be sought for obtaining particulars in respect of other co-accused and for obtaining voluntary confessional statement of the accused. It is appropriate to incorporate paragraphs 21, 22 and 25 of the said decision:

“21. It is well laid down principle of law regarding the police custody is concerned that it amounts to infringement of right of an individual more particularly fundamental right guaranteed under Article 21 of the Constitution of India. However, there are certain exceptions by way of reasonable restrictions and on such restriction is the grant of police custody and on such restriction is the grant of police custody, while investigation is pending. The Division Bench of our High Court in the judgment in State by Deputy Superintendent of Police Q Branch CID, Dharmapuri v. Sunderamoorthy, 2007 (2) MWN (Cr.) 414 while dealing with the mode of disposal of the application for grant of police custody and the factors for consideration in the same, observed that any application for grant of police custody must be strictly considered on materials as it involves the fundamental right and personal liberty of an individual and the provisions are to be strictly understood and complied with.

22. It was observed so, in the earlier judgment of the Division Bench of the High Court in G.K. Moopanar and others v. The State of Tamil Nadu . The single Judge of our High Court has in para 8 of the judgment in S. Mahaveer v. State rep. by the Inspector of Police CCB, Chennai (supra) reproduced Rule 76 of the Criminal rules of practice and Circular Order, 1958 dealing with remands, which reads as follows:

...

25. As rightly argued by the learned counsel for the respondents, custodial interrogation cannot be sought for obtaining particulars in respect of other co-accused and for obtaining voluntary confessional statement of the accused and for drawing sample signature and hand writing of the accused. The grounds so raised seeking police custody does not observe any merits and acceptance."

19. Now, it would be appropriate to consider the decisions relied on by the learned public prosecutor appearing for the petitioner.

28.1 In the decision reported in, 1997-1-L.W. (Crl.) 380 : 1997 SCC (Cri) 1039 State v. Sharma, it was held that the Court must keep in view the advantage in custodial interrogation of eliciting more useful information. It is appropriate to incorporate paragraph 6 of the said decision.

"6. We find force in the submission of the CBI that custodial interrogation is qualitatively more

elicitation oriented that questioning a suspect who is will ensconced with a favorable order under Section 438 if the code. In a case like this effective interrogation of suspected person is of tremendous advantage in disinterring many useful informations and also materials which would have been concealed. Succession such interrogation would elude if the suspected person knows that he is well protected and insulted by a pre arrest bail during the time he interrogated. Very often interrogation in such a condition would reduce to a mere ritual. The argument that the custodial interrogation is fraught with the danger of the person being subjected to third degree methods need not be countenanced, for such an argument can be advanced by all accused in all criminal cases. The court has to presume that responsible Police Officers would conduct themselves in task of disinterring offences would not conduct themselves as offenders."

But the above citation does not apply to the facts of the present case, since it relates to the anticipatory bail application. Furthermore, in the given case the respondents were interrogated on various dates even before their arrest. Even after their arrest, the respondents were subjected to interrogation hence, I am of the view that the above citation is not applicable.

28.2 In the decision reported in, (2012) 6 Supreme Court Cases (Cri). 612, Assistant Director, Directorate of Enforcement v. Hassan Ali Khan, it was held that the order passed by the learned Principal Judge creates an extraordinary situation if allowed to stand even for a moment may ultimately result in frustration of the very investigation. An extraordinary solution. It is for that reason we propose to interfere paragraphs 3 and 4 of the said decision.

"3. The order passed by the learned Principal Judge creates an extraordinary situation if allowed to stand even for a moment may ultimately result in frustration of the very investigation. An extraordinary situation requires an equally effective extraordinary solution. It is for that reason we propose to interfere with the order even at this stage.

4. Having regard to the extraordinary circumstances and complexity of the issues involved and the magnitude of the case we consider it appropriate to authorise the detention of the respondent accused herein for his custodial interrogation. We, accordingly authorizes the detention of the respondent accused in the custody of the authorities of the enforcement directorate he shall accordingly remain in the custody of the authorities of the Enforcement Directorate for a period of four days."

The above citation also does not apply to the facts of the present case because no such extraordinary situation as referred to in the above citation exists in the present case, in the instant case based on a source information a preliminary enquiry was conducted and since a prime facie case was made out, the cause has been registered on 23.07.2013 and the respondents were subjected to interrogation before and after their arrest Hence I am of the view that the above citation is also not applicable.

20. Considering the facts of the present case in the light of the above decisions as per the sworn statement the petitioner has stated that police custody of the respondents is necessary since the respondents are involved in the criminal conspiracy for committing the offence. But, as already stated, the affidavit itself is defective in nature and the petitioner/CBI have not furnished any requisite particulars. Even though the learned special public prosecutor appearing for the petitioner relied upon paragraphs 6, 7, 8 and 10 the Trial Court has incorporated paragraph 10 and come to a correct conclusion. Furthermore, the reasoning started in paragraph 10 is not sufficient to grant police custody. It is also pertinent to note that the respondents were subjected to interrogation even prior to their arrest and now, they were arrested and remanded to judicial custody. So, any further interrogation can be made in the presence of the jail authorities, after obtaining necessary permission.

Thus, considering the fact that the respondents herein had subjected themselves for interrogation both at Chennai and at Delhi prior to their arrest and after arrest they were remanded to Judicial Custody, I am of the view that impugned order does not warrant interference by this Court and the Criminal

Original Petition stands dismissed. Consequently, connected miscellaneous petition is also closed. However, the petitioner and has every right to obtain permission from the court to examine the respondents herein in the presence of the jail authorities.

At this juncture, Mr. A. Ramesh, learned Senior Counsel appear in for the third respondent requested the Court to circulate the order passed by this Court to all the lower Courts as well as to the Investigating Agencies to articulate the fact that while entertaining the petition under Rule 76 of the Criminal Rules of Practice, the affidavit must adhere to the provisions contemplated under Order XIX Rule 3 C.P.C. and Section 297 Cr.P.C. Registry is directed to circulate the order, after obtaining necessary orders from my Lord the Hon'ble the Chief Justice.