

IN THE COURT OF THE AGMM, MAGISTRATE, ESPLANADE, 3rd Court, MUMBAI

CRIMINAL _____ OF 2015

IN THE MATTER OF:

Teesta Setalvad & Ors. ... Petitioners
Versus
Central Bureau of Investigation ... Respondent

I N D E X

<u>Sr.No.</u>	<u>Particulars</u>	<u>Page No.</u>
1.	Urgent application.	
2.	<u>ANNEXURE – P/1</u> True copies of the orders passed by the Hon'ble Supreme Court of India in Criminal Appeal No. 338 of 2015 granting protection against arrest Of the two Applicants (19.2.2015 and 6.7.2015)	
3.	<u>ANNEXURE – P/2</u> A true copy of the letter dated 10.3.2015 of the Gujarat Home department To the MHA	
4.	<u>ANNEXURE – P/3</u> A true copy of the letter dated June 30, 2015 to the CBI by Applicants	
5.	<u>ANNEXURE – P/4</u> A true copy of the letter dated July 10, 2015 to CBI by Applicants	
6.	<u>ANNEXURE – P/5</u> Copies of the Two Search Seizure Panchnama Lists made by the CBI Team after conclusion of the Search on 14-7-2015 to 15-07-2015	
7.		
8.		
9.	Application for Directions	
22.	Vakalatnama.	

IN THE COURT OF THE AGMM, MAGISTRATE, ESPLANADE, 3rd Court, MUMBAI

CRIMINAL _____ OF 2015

IN THE MATTER OF:

1. Teesta Setalvad
Nirant, Juhu Tara Road,
Mumbai ...Petitioner No.1
2. Javed Anand
Nirant, Juhu Tara Road,
Mumbai ...Petitioner No. 2

VERSUS

Central Bureau of Investigation
Plot No 5-B,
10th Floor, B-Wing,
CGO Complex,
New Delhi-110003
Through the Director ...Respondent

APPLICATION FOR DIRECTIONS

That the present application is being made in connection with Search warrant obtained by the CBI from this Learned Court in RC 06/5/2015/EOW Mumbai u/section 120-B IPC r/w 35, 37 r/w Section 3, 11 & 19 of the FCRA 2010 corresponding to Section 23, 25 r/w Section 4, 6 and 13 of the FCRA 1976 from this Ld Court

That the Ld Court of AGMM, 3rd Court of Esplanade, Esplanade issued a Search Warrant vide O.W. Nos 470/2015 dated 13.07.2015 in the name of Shri Satchit Raut, PS, for conducting a Search on the premises of Sabrang Communications and Publishing private limited and the residential premises of Teesta Setalvad and Javed Anand, the Applicants herein;

That the Search was carried out for over 21 hours on 14-07-2015-15-07-2015 and began after the Applicants requested for the presence of their Advocates to ensure due process which was allowed

That Applicant Nos 1 two CISF personnel were also present during the search since she has been extended CISF protection by the Hon'ble Supreme Court of India since 21-4-2004 given threats to her life following legal aid and justice work connected to the Gujarat Carnage of 2002;

That the genesis of this coercive action is a baseless FIR filed by the Gujarat police in January 2014 regarding which the Hon'ble Supreme Court of India has granted and extended protection against arrest until September 6, 2015. Annexed hereto are Orders of the Hon'ble Supreme Court marked as **Annexure P/1 Colly**.

That when this coercive tactic of the Gujarat Police did not work, the Home Department of the Gujarat Government filed a Complaint with the MHA (Ministry of Home Affairs) FCRA department on March 10, 2015 and this in fact is the genesis of the CBI's current FIR. Annexed hereto is a copy of the letter of the Gujarat Government Home Department MHA to the MHA in March 2015 marked as **Annexure P/2**.

That the presence of independent witnesses was queried by the Applicant Nos 1 since they were not from the locality where the office and residential premises but from Nariman Point, SBI Branch but thereafter, after insistence upon by the Prosecuting Agency, the Respondent herein, the same independent witnesses that accompanied the CBI Search team remained present during the search

That the Applicant No 1 request for presence of; lawyers and also on the independent witnesses being from the locality arose from the matter of protection of her fundamental rights, arose out of a history of relentless persecution by the state and its agencies and thereafter, after these two issues were dealt with, *full and complete cooperation was extended for over 20 hours to the Search team of the CBI*

That the present application is being made in connection with the Search warrant issued by this Learned Court in connection with the abovementioned offence on 13-7-2015 to fully apprise this Ld Court of the background and circumstances of this case and to state that in fact the Search warrant was unnecessary and abuse of the process of law;

That it is the contention of the Applicants that the Search warrant is an extreme step warranted only and if only when non-cooperation is seen or observed and the correct and proper course of action would have been for the Respondent Prosecuting Agency to try the legal and tested methods for obtaining documents that were in fact already voluntarily given by the Applicants first to the Gujarat police and thereafter to the Ministry of Home Affairs (FCRA Division);

That the Applicants hereinabove, had written to Joint Director, CBI, Shri Rajeev Sharma on 30-6-2015 within four days of newspaper reports of the MHA handing over investigation in the matter to the CBI. A copy of this communication is attached. In this communication we had submitted details of documents submitted to the MHA (FCRA) division, offered ourselves for lawful investigation and requested notice of the same. Annexed hereto is a copy of the letter written to Joint Director Rajeev Sharma as **Annexure P/3**.

That it is the contention of the Applicants that instead of responding to the said communication, out of political pressure, and in a bid to trample the fundamental rights to life, dignity and free movement of the Applicants, the prosecuting Agency, under the behest

of political masters has, instead chosen the path of a search of the office and residential premises of the Applicants only with a desire to victimize and intimidate them.

That again, when nothing was heard from the Prosecuting Agency and the press reported again on 8-7-2015 that an FIR had been registered against the Applicants, again, the Applicants wrote to the CBI on 10-7-2015 requesting a copy of the FIR. Attached hereto as **Annexure P/4** is this communication dated 10-7-2015 send by email and fax to the Joint Director, Rajeev Sharma CBI.

91. Summons to produce document or other thing.

(1) Whenever any Court or any officer in charge of a police station considers that the production of any document or other thing is necessary or desirable for the purposes of any investigation, inquiry, trial or other proceeding under this Code by or before such Court or officer, such Court may issue a summons, or such officer a written order, to the person in whose possession or power such document or thing is believed to be, requiring him to attend and produce it, or to produce it, at the time and place stated in the summons or order.

(2) Any person required under this section merely to produce a document or other thing shall be deemed to have complied with the requisition if he causes such document or thing to be produced instead of attending personally to produce the same.

(3) Nothing in this section shall be deemed-

(a) to affect sections 123 and 124 of the Indian Evidence Act, 1872 (1 of 1872), or the Bankers' Books Evidence Act, 1891 (13 of 1891) or

(b) to apply to a letter, postcard, telegram or other document or any parcel or thing in the custody of the postal or telegraph authority.

93. When search warrant may be issued.

(1) (a) where any court has reason to believe that a person to whom a summons or order under section 91 or a requisition under sub-section (1) of section 92 has been, or might be, addressed, will not or would not produce the document or thing as required by such summons or requisition, or

(b) where such document or thing is not known to the Court to be in the possession of any person, or

(c) where the court considers that the purposes of any inquiry, trial or other proceeding under this Code will be served by a general search or inspection,

it may issue a search-warrant; and the person to whom such warrant is directed, may search or inspect in accordance therewith and the provisions hereinafter contained.

(2) The court may, if it thinks fit, specify in the warrant the particular place or part thereof to which only the search or inspection shall extend; and the person charged with the execution of such warrant shall then search or inspect only the place or part so specified.

(3) Nothing contained in this section shall authorize any Magistrate other than a District Magistrate or Chief Judicial Magistrate to grant a warrant to search for a document, parcel or other thing in the custody of the postal or telegraph authority.

That, under Section 93 of the CRPC, a Search Warrant is primarily meant to succeed a S91 process which is or is likely to be unheeded. This was not the case in this case. The Applicants were never asked to produce anything so what was the need of the Search? Secondly, the pertinent nexus between what is sought, the search and the criminal proceeding that is mandated by S.93 needs to be noted by the Ld Court....

That the Applicants felt it proper and following due process to apprise this Ld Court of these facts since it is more than likely that the Ld Court was misled by the Prosecuting agency at the time of obtaining of the Search Warrant on 13-7-2015

That the Applicants would also like to pray for obtaining a certified copy of documents seized by the prosecuting agency as and when these are submitted to this Ld Court

That the Applicants fear that such an act of the Prosecuting agency in hastily rushing for the path of a seizure warrant when full cooperation was assured is likely to be repeated, again and again, during the proceedings of the case and therefore the Applicants are appealing to this Ld Court to protect their fundamental rights and dignity, including the Right to Life, Right to Free Movement and Association

That the Applicants are highly respected members of society, known for committed to their work and have won accolades for their work. That despite the genesis of vendetta first from the Gujarat police that is now being replicated by the Central agencies under the new political dispensation in Delhi, since January 2014 onwards, when first a FIR that the Applicants believe to be mischievous and motivated was filed, over 25,000 pages of documentary evidence has been supplied by them to the Gujarat police

That the genesis of this round of victimization was a complaint of the Gujarat Government Home department that wrote to the Ministry of Home Affairs (MHA) Government of India, instigating this investigation

That despite this coercive genesis, the applicants fully cooperated with the MHA Inspection team and supplied all documents required by them when they visited the offices in April

2015 and again in June 2015. Hence the need for this coercive action of search was not needed and done with a view to simply humiliate and intimidate the Applicants

That the Applicants would like to List that was contained in the Search warrant were all documents supplied to the MHA (FCRA) Team that would have been available with the Prosecuting Agency anyway since it is the MHA Deputy Secretary who is the Complainant in the FIR registered against the Applicants

That the Applicants are attaching a Seizure Panchnama List (of office and residence) given by the Prosecuting Agency to the Applicants at the end of the 21 hour long Search Operation on 14-7-2015-15-07-2015 as evidence of the fact that documents listed in the Search Warrant have been obtained and these could have been obtained anyway without this kind of action. These Search List Panchnamas are being annexed hereto as **Annexure P/5**.

The Brief Facts of the Background of the present Case is as Under:-

In January 2014, the Gujarat police filed an FIR accusing Teesta Setalvad and her colleague and husband Javed Anand of having embezzled funds collected for construction of Memorial against Communal Violence when the total amount of Rs 4.6 lakhs collected for the purpose still lies unutilised in th account of the Sabrang trust, when the project had to be abandoned due to rising land prices. The FIR is under sections 406, 420 of the IPC and one section of the IT Act. In response, over the past 18 months, the Applicants have submitted over 25,000 documents to the Investigating Officer, Ahmedabad city Crime branch rebutting each and every one of the bogus allegations with facts and figures and documents..

Having thus failed in uncovering any evidence to support their embezzlement claim, in March 2015, the Home Secretary, Gujarat Govt. wrote to the Union Home Ministry asking for an FCRA inquiry into the foreign funds received by CJP and Sabrang Trust both of which have FCRA registration.

Accordingly, a 4-member FCRA inspection team visited Mumbai to inspect the accounts of CJP (April 6-8, 2017) and Sabrang Trust (April 9-11). Both trusts extended full cooperation to the Inspection team, produced all original documents and submitted hundreds of pages of photocopies as asked for by the inspection team.

In mid-June, both CJP and Sabrang Trust received communications from the FCRA dept. alleging a number of FCRA violations both by CJP and Sabrang Trust. The main allegation against both trusts is that Teesta and Javed who are editors of *Communalism Combat* magazine published by Sabrang Communications and Publishing Pvt Ltd (SCPPL) of

which both Applicants, Teesta Setalvad and Javed Anand are directors are also trustees/office bearers of CJP and Sabrang Trust. This, it is alleged, is a violation of FCRA Act 2010.

In these circumstances, when the Applicants had subjected themselves to coercive and intrusive investigations, even when all allegations were baseless, there was absolutely no need to raid the house or office of the Applicants.

No civilised or bonafide method such as a summons to produce any particular document was served upon the Applicants despite the applicants' express offer to cooperate on June 30, 2015.

The only reason for the failure to resort to S.91 CrPC could be that the CBI/State is unable to or unwilling to specify what documents or matter it requires. This is so for many reasons. First, that they have no relevant documents that they can legitimately seek. Next, they want an opportunity to make a roving search into all manner of documents, especially those relating to Gujarat riot prosecutions. Third they want to make the tactics as intimidatory as possible and make an example of this for ulterior purposes. There are several levels of malafides involved here.

The power to issue a search warrant is a statutory power and must subserve and not override the constitutional right to privacy and dignity and due process (which is substantive and procedural due process).

Therefore the Applicants wish this Court to note that the Applicants are happy to comply with any relevant request for material, and if a notice is given to us we would accordingly comply with all relevant requests. This Court may please not permit extraneous and malafide requests for search warrants, moreover those sought in deliberate suppression of the complete facts

That the Applicants are relying upon the following Judgements:-

- (i) Queen v. Syed Hossain Ali Chowdhury 8 WR 74 and Prankhang v Emperor (13 Cr LJ 764) that holds *inter alia* that the intention of the legislature is not to make harassing domiciliary visits to inquire minutely into the private concerns of

individuals on the bare chance that something might therein be found tending to the conviction of any accused parties.

- (ii) AIR 1968 SC 59, Comm of Commerical Taxes v Ramkishan Srikishan Jhaveri, a decision of the Supreme Court where the inf infirmities in the search warrant have been taken seriously.

Prayer:

- a) For a Certified Copy of all the documents seized by the prosecuting agency as and when these are submitted to this Ld Court during the search (Search Warrant vide O.W. Nos 470/2015 dated 13.07.2015)
- b) For directions that before any further such coercive steps are taken due notice is given to the Applicants as they travel widely in connection with their work and hence need adequate time to respond.
- c) Any other orders as this Hon'ble Court may deem fit and proper in the interest of justice.

And for this act of kindness the Applicants as duty bound shall ever pray.

Mumbai

Date

Vijay Hiremath