

CENTRAL INFORMATION COMMISSION

(Room No.315, B-Wing, August Kranti Bhawan, Bhikaji Cama Place, New Delhi 110 066)

CIC/DS/A/2013/001754-SA

Appellant : Usha Kant Asiwal

Respondent : Directorate of Vigilance, GNCTD

Date of hearing : 19.8.2014

Date of decision : 3.11.2014

**Information Commissioner : Prof. M. Sridhar Acharyulu
(Madabhushi Sridhar)**

**Referred Sections : Section 3, 19(3) of the
RTI Act**

**Result : Appeal allowed /
Disposed of**

Summary

'The charge sheet is just like a file or record held by the investigating officer, or public authority or court of law. As per the RTI Act, any information held by the public authority can be accessed by the citizen subject to the exceptions provided under Section 8. Because the charge-sheet contains the evidence which need to be adduced in the court of law, there is a possibility of opening up many details which could be personal or private or confidential. If the allegation requires to be proved by call data, the charge sheet refers to sheets of call data, which surely contain call details unrelated to allegation. That could be private information need to be protected. Hence each charge sheet has to be separately examined and only after separating unnecessary and unrelated details of evidence, and only required and permissible information out of chargesheet should be disclosed. Thus Charge-sheet can neither be prohibited enbloc from disclosure nor disclosed totally. Charge-sheet is a document held by concerned authority, which has to

examine disclosable aspects vis-a-vis Section 8 and 9 of the RTI Act and then decide the case'.

As per the Criminal Procedure, the charge-sheet is the end product of investigation. With filing of charge-sheet, the investigation is closed and defense that investigation might get impeded does not stand at all. Whether revealing the information impedes apprehension or prosecution is the next question. The Respondent authority did not even raise this point and did nothing to explain the Commission about possibility of impeding apprehension/prosecution by disclosure. The Public Authority just mentioned the section number and did nothing else. The First Appellate Authority also did not apply the mind and chose not to give any reasons for upholding the denial by PIO. The exemption of larger public interest provided in Section 8(1) is not available to this clause (h). Thus it has to be decided on facts whether disclosure of charge-sheet will really obstruct investigation, apprehension or prosecution.

Considering the provisions of Cr.P.C., Evidence Act, RTI Act, erudite judicial pronouncements, certain transparency practices in CVC, facts and circumstances of the case and contentions raised, the Commission holds that the charge sheet is a public document and it shall be disclosed subject to other restrictions provided under RTI Act. There cannot be a general hard and fast rule that every charge-sheet could be disclosed or should not be. Each RTI request for copy of Charge-sheet required to be examined and only permissible part should be given. The Commission, hence, directed the respondent to examine the content of charge-sheet and to provide appellant/... the copy of those portions of charge-sheet, which would answer the queries raised by appellant in his RTI application, within 3 weeks from the date of receipt of the order.

1. Heard on 19.8.14. Appellant not present. The Respondent is represented by Shri Bir Singh and Shri Uday Singh Saini.

2. The Appellant filed an RTI application dt.20.4.13 with the PIO, Directorate of Vigilance, GNCTD seeking 22-point information regarding Complaint received by ACB Branch on 25-04-2001.

1. On 25-04-2001 A.C.B Branch had received a Complaint. An inquiry was ordered leading to registration of case against 13 persons under Prevention of Corruption Act, and prosecution is pending in Tis Hazari Court. The Complaint is

Annexure 1. In relation to this, when the Complaint of Vijay Shankar Tiwari was received by A.C.B branch- day, month and Year detail be given.

2. In A.C.B Branch how was the letter received? Was it received through Post or was it personally handed over by the Complainant (Vijay Shankar Tiwari).?

3. Whether the letter was received by Post, if so, Certified Copy of the envelope whereby there is P&T stamp be given. Also information be given if the letter was sent from Delhi and from which Zone of Delhi was it received from.

4. The above mentioned letter to A.C.B Branch, in which DAK register was it entered? Copy of that DAK Register be given.

5. Information as to whether the Complaint was of one page or it had any enclosures also be given. If it had any enclosures kindly provide a copy of it. Also intimate the number of pages of enclosure(s).

6. After the receipt of the Complaint letter, an enquiry was ordered, for the Purpose of it. The Complainant would have been called for enquiry. When was Vijay Shankar Tiwari called? Details of it be given.

7. What was the medium by which the Complainant was called? Whether he was called through letter or through government messenger? If he was called through letter, then Copy of the register be given. If he was called through any other medium then its details be given. Copy of the letter through which the Complainant was called its copy be given and if through government messenger then details of him be given.

8. If any officer(s) from the department went to call Vijay Shankar Tiwari, then the details of the officer(s) who went to call the Complainant be given. What report was given by the officer? Certified Copy of the report be given. Did they meet the Complainant or not? Whether his address was correct or not?

9. Before the action was taken, when did the A.C.B branch call the Complainant at its level? Copy of the Order be given.

10. Did the Officer who went to bring the Complainant to A.C.B office bring the Complainant Via his Own Vehicle, Tempo or Taxi? On which date was he brought? What was the amount spent by the department in rent for the transportation?

11. On being summoned to the A.C.B office was he presented before the ACP or other senior officer, or was he only presented before the Inquiry Officer

of ACB O.P Arora, detail of it. Copy of the entry register of the day in which the Complainant visited the office.

12. How many times the Complainant has been called to the ACB branch. Did the Complainant visit the office in One summon or had to be called number of times.

13. When the Complainant had reached the office, then some record as Witness/complainant would have been recorded in some register, Copy of the register.

14. In the present case, how many people had been called by issue of Summon, copy of it. Whether summon was issued by DAK or through messenger. How many summon had been sent.

15. How many officers in different department of Delhi have been issued Summon with regard to the present case, copy of the summon and the details eg: to DDA, MCD etc

16. Copy of the statements of the summoned officers.

17. On what proof were the officers summoned and on what basis they were not held to be accused, whether any case are made on them or not and its reason.

18. The Officers who were called for enquiry to whom Challan was not issued for the purpose of Court, and they were called by issuance of summon, whether it is on I.O to decide on whom to register case and to whom chargesheet is to be issued, whether this was informed to the Senior officers or not.

19. On what basis where the officers were called, whether against them one or two fraud case where there and on what basis were they left. In this relation the senior officers would have been informed. Details of it.

20. During the investigation, while dropping, the officers, I.O O.P Arora would have informed the Senior Officers and on the senior officers instruction other people called would have been separated from the case. Copy of the permission taken from the senior officers.

21. Whether the I.O on his own called other officers without the permission of the Senior Officers and also left them without the permission. If yes, copy of the permission and if No, the reason for the same

22. Complainant by which medium and how many times had been called, how many times letter had been written to him. Whether the Complainant had come in one letter by the ACB or other letter was sent to him. Whether the Complainant used to live on the address provided by him or in some other address.

3. The PIO replied on 14.5.13 denying the information u/s 8(1)(h) of the RTI Act. Appellant filed an appeal dt.6.7.13 with the First Appellate Authority. The Appellate Authority vide order dt.30.7.13 upheld the decision of the PIO. Being aggrieved with the reply, the Appellant filed a second appeal dt.9.9.13 before CIC.

Question No. 1: Whether a charge-sheet is a public document? Can it be given to any person seeking it?

4. In criminal trials, state will prosecute the accused on the basis of charge sheet. The cause title will be State vs Mr X, unlike the cause title of civil dispute – Mr A vs Mr B. State in a democracy consists of people at large and the Police prosecutes the charge sheeted accused on behalf of people constituted into state. The FIR is in public domain and the trial is conducted in open and the judgments of conviction and acquittal are pronounced and discussed open. There is a huge public interest in openness of criminal trial.

5. The term “charge-sheet has no where been defined in the Criminal Procedure Code, 1973 and any other law. The report made by the police officer under section 173(2) of the Cr. P C is called a ‘completion report’. It is also known as “charge-sheet”

Section 173 Cr. P. C. and Right to access to charge-sheet

173. Report of police officer on completion of investigation.

[\(1\)](#) ...

[\(2\)](#) (i) As soon as it is completed, the officer in charge of the police station shall forward to a Magistrate empowered to take cognizance of the offence on a police report, a report in the form prescribed by the State Government, stating-

[\(a\)](#) the names of the parties;

[\(b\)](#) the nature of the information;

[\(c\)](#) the names of the persons who appear to be acquainted with the circumstances of the case;

[\(d\)](#) whether any offence appears to have been committed and, if so, by whom;

[\(e\)](#) whether the accused has been arrested;

[\(f\)](#) whether he has been released on his bond and, if so, whether with or without sureties;

[\(g\)](#) whether he has been forwarded in custody under section 170.

[\(ii\)](#) The officer shall also communicate, in such manner as may be prescribed by the State Government, the action taken by him, to the person, if any, by whom the information relating to the commission of the offence was first given.

[\(3\)](#) ...

[\(4\)](#) ...

[\(5\)](#) ...

[\(6\)](#) If the police officer is of opinion that any part of any such statement is not relevant to the subject-matter of the proceedings or that its disclosure to the accused is not essential in the interests of justice and is inexpedient in the public interest, he shall indicate that part of the statement and append a note requesting the Magistrate to exclude that part from the copies to be granted to the accused and stating his reasons for making such request.

[\(7\)](#) Where the police officer investigating the case finds it convenient so to do, he may furnish to the accused copies of all or any of the documents referred to in sub- section (5).

[\(8\)](#) Nothing in this section shall be deemed to preclude further investigation in respect of an offence after a report under sub- section (2) has been forwarded to the Magistrate and, where upon such investigation, the officer in charge of the police station obtains further evidence, oral or documentary, he shall forward to the Magistrate a further report or reports regarding such evidence in the form prescribed; and the provisions of sub- sections (2) to (6) shall, as far as may be, apply in relation to such report or reports as they apply in relation to a report forwarded under sub- section (2).

6. This section in a way provides 'right to information' and 'duty to report'. The moment investigation is completed a 'report' has to be given to concerned Magistrate [s.173(2)], a public authority who has to prosecute the accused against who the report of completed investigation i.e., charge sheet is filed. S 173(8) mandates the investigating officer to forward further evidence, report or reports regarding evidence etc. which means supplementary or additional charge sheets to the Magistrate.

7. It also provides to give the report to the person who informed about offence. That means a complainant or informant has to be provided with a copy of charge sheet. In a criminal prosecution, complainant/informant is not a party to trial. He need not be an aggrieved party as he should in civil suits. Anybody can complain or any person can inform the police about happening of an offence. Importantly, once the charge-sheet is sent to Magistrate, the trial will be set in motion, which is supposed to be an open trial, which again means any person can

have access to the contents of charge-sheet and see the prosecution being present in the court room where trial is going on.

8. Section 173 also deals with the right of accused to information about the charge-sheet. Subsection (6) explains the limitation on this right. If the police officer finds that its disclosure to the accused is not essential in the interests of justice and is inexpedient in the public interest, he shall indicate that part of the statement and append a note requesting the Magistrate to exclude that part from the copies to be granted to the accused and stating his reasons for making such request. Thus the accused, informant or complainant, any person who is interested in, or any person who is present in the open court during trial is entitled to access to the charge-sheet.

Public Document:

9. Indian Evidence Act incorporated the list of documents to be called as public document under section 74 and also laid down the special rules relating to the proof of public document.

Evidence Act, 1872, Section 74 explains which are public documents –

The following documents are public documents – (1) documents forming the acts or records of the acts - (i) of the sovereign authority, (ii) of official bodies and tribunals, and (iii) of public officers, legislative, judicial and executive of any part of India or of the Common Wealth or of a foreign country; (2) public records kept in any State of Private Documents.

10. As the charge-sheet (report) is sent to Magistrate under Section 173(2) of Cr P C for next step in prosecution, it forms part of record of public authority-judiciary under Section 74(iii) of Evidence Act. Hence the Charge-sheet is a public document.

11. Judgment order of a court in criminal prosecution is a public document. As every person will be affected by law he has a right to know. Also because every person is presumed to have known the law, which include judgments, every person should have right to inspect the judgments. Dealing with this question, Allahabad High Court Judge Young said in 1931 (*Ladli Prasad Zutshi v. Emperor* AIR 1931 All 364).

The words, "any person affected by a judgment or order" in section 548 of the Criminal Procedure Code should not be construed narrowly; they cannot be confined to a person who is a party to the judgment or order, for the rights of the

accused to a copy of the judgment are dealt with elsewhere in the Code. The public as a whole cannot fail to be affected by every judgment of a criminal court. For example, as in the present case, the judgment in a criminal case dealing with sedition affects the general public. It is a rule of law that every member of the public is presumed to know the law; it follows that the public must have a right of access to the judgments of the courts which express that law.

12. In *Queen-Empress Vs. Arumugam and Ors* (1897) ILR 20 Mad 189. Shephard, J. explained the right of inspection of private persons:

10. Neither in the Criminal Procedure Code nor in the Evidence Act is there any provision declaring or limiting the right of private persons interested in criminal proceedings to inspect documents in the hands of third parties. A right to inspect public documents is, however, assumed in Section 76 of the Evidence Act; and, having regard to the authorities cited in the order of reference, I think it may be inferred that the Legislature intended to recognize the right generally for all persons who can show that they have an interest for the protection of which it is necessary that liberty to inspect such documents should be given. Within that limit the right appears to be recognized according to the English authorities.

Charge-sheet: A Public Document.

13. There is no specific provision under any law which state that charge-sheet is a public document, but there are several judgment of the Supreme court and High court which clarify that charge sheet is a public document. Few of them are discussed below:

14. In the High Court of Kerala in the case of *V.J.Thomas Vs. State of kerala* 1970 Cri.L.J. 1499 held that:-

*“6. The police is expected to file either a charge-sheet or a refer charge-sheet, as the case may be, in respect of every investigation which they took up and the police has to forward such charge-sheet to the Magistrate empowered to take cognizance of the offence on a police report. The police was also required to furnish copies of the documents relied upon by them during the investigation **to the accused concerned** under Sub-section (4) of Section 173. There was a decision reported in **Queen Empress v. Arumugham** ILR (1897) Mad 189 which was made before the amendment to the Criminal Procedure Code of 1955. There was a finding by two of the 4 learned Judges of the Madras High Court in the above ruling that the reports made by a police officer in compliance of Section 173, Criminal Procedure Code **are public documents** within the meaning of **Section 74 of the Indian Evidence Act** and consequently an accused person being a person in respect of such document is entitled by virtue of Section 76 of the Indian Evidence Act to have copies of such reports before trial. The said decision was found to be in other respects no longer a good law though regarding the particular aspect of the question referred to above had not been strictly overruled by later decisions. The Madras High Court in a later Full Bench decision reported in *State of Madras v. Krishnan* MANU/TN/0163/1961 : AIR1961Mad92 (FB) held that Section 76 of the Evidence Act has no unlimited right to ride over S. 173 (1) of the Criminal Procedure Code.”*

15. In **L.S Raju vs. Government of Mysore** (Criminal Revn. Petn. No. 358 of 1950-51) of High Court of Mysore it was explained:

“2.The report Under Section 173, Cr. P. C. is enjoined on the officer under that section. It is, therefore, a public document within the meaning of Section 74, Evidence Act, according to which documents which form the acts or records of the acts of public officers, whether legislative, judicial or executive are public documents.

Evidence Act Section 76. Certified copies of public documents.—Every public officer having the custody of a public document, which any person has a right to inspect, shall give that person on demand a copy of it on payment of the legal fees therefore, together with a certificate written at the foot of such copy that it is a true copy of such document or part thereof, as the case may be, and such certificate shall be dated and subscribed by such officer with his name and his official title, and shall be sealed, whenever such officer is authorized by law to make use of a seal; and such copies so certified shall be called certified copies. etc "

"Explanation.—Any officer who, by the ordinary course of official duty, is authorized to deliver such copies, shall be deemed to have the custody of such documents within the meaning of this section."

16. The crucial question under section 76 is that a certified copy can be given only to a person who has a 'right to inspect'. There was no provision in Indian Law which confers the right to inspect a public document.

17. As observed by Lord Justice Lindly in the case of *Rex v. Justices of Staffordshire*(6 Ad & E 84, at p 99):

'when a right to inspect and to take a copy is not expressly conferred, the extent of such right depends on the interest which the applicant has in what he want to copy, and on what is reasonably necessary for the protection of such interest.'

18. But after Right to Information Act, 2005, such right to inspect is provided with limitations. Though several restrictions were prescribed in Section 8(1),

subsection (2) provided: *Notwithstanding anything in the Official Secrets Act, 1923 or any of the exemptions permissible in accordance with sub section (1), a public authority may allow access to information, if public interest in disclosure outweighs the harm to the protected interest.*

19. The Police Officer is a Public Officer. The report Under Section 173, Cr. P. C. is enjoined on the officer under that section. It is, therefore, a public document within the meaning of Section 74, Evidence Act, according to which documents which form the acts or records of the acts of public officers, whether legislative, judicial or executive are public documents.

Case Law on Right to Inspect a Charge-sheet:

20. Full Bench of Madras high court in the case of ***Queen-Empress v. Arumugan and Ors*** (1897) ILR 20 Mad 189) has held that any person has an interest in criminal proceeding has a right to inspect under section 76 of the Indian Evidence Act. Relevant para is extracted as under:

10. ...A right to inspect public documents is, however, assumed in Section 76 of the Evidence Act; and, having regard to the authorities cited in the order of reference, I think it may be inferred that the Legislature intended to recognize the right generally for all persons who can show that they have an interest for the protection of which it is necessary that liberty to inspect such documents should be given. Within that limit the right appears to be recognized according to the English authorities. It is plain that a person charged with an offence is legitimately interested in knowing beforehand the particulars of the charge made against him, and the names of the witnesses who are going to support it. His interest is none the less a legitimate one, because some persons might make

improper use of the information so obtained. If, therefore, the documents sought to be inspected are public documents, and if they are unprotected by special privilege, it follows that the claim to inspection must be allowed.... There is the report which the officer in charge of a Police station is bound, under the provisions of Section 157 of the Code, to send to the Magistrate. There is the report which a subordinate officer is under Section 168 bound to send to the officer in charge of the station, and there is the final report which under Section 173 the officer in charge of the station has, on completing his investigation, to send to the Magistrate. Section 74 of the Evidence Act defines public documents, and if any of these reports is a public document, it must be because it forms the act or the record of the act of a public officer. Now, taking the first of them commonly called the occurrence report and applying the language of the Evidence Act, I cannot see how it can possibly be called a public document. In obeying the provisions of Section 157 of the Criminal Procedure Code, the Police officer, as far as regards the Magistrate, does no act except the act of writing and dispatching a report founded on information received by him. It is clear that this report does not form an act of the station-house officer within the meaning of the Section, and it cannot be the record of an act, because there has been no act on his part to record. In popular language any report which a subordinate officer is bound to send in to his superior officer and which is not confidential may be called a public document; but the Evidence Act lends no support to this view.

Voters' right to know criminal charges against contestants

21. Right to information is provided in Representation of People's Act, 1956, after it was amended to add Section 33A.

A candidate shall, apart from any information, which he is required to furnish, under this Act or the rules made there-under, in his nomination paper delivered under sub-section(1) of Section 33, also furnish information as to whether: (i) he is accused of any offence punishable with imprisonment for two years or more in

a pending case in which a charge has been framed by the court of competent jurisdiction.

22. This provision is forced into the law by the public interest litigation filed by Association for Democratic Reforms seeking right to information about the background of contesting candidates about their education, criminality and financial status, which Supreme Court has upheld in ***Union of India v Association of Democratic Reforms*** [(2002) 5 SCC 294]. All political parties and Parliament had to accept the new norm and bring legislation after their effort to stall it was failed. This law further reinforced the principle that there is public interest in keeping the information about criminal charges in public domain though in a limited way.

23. The Central Vigilance Commission during January 2000 designed a website and has published the names of officers from the elite administrative and revenue service's against whom investigations have been ordered or penalties imposed for corruption. Details of convictions of public servants by the courts are also presented, along with Information on officers from the All India Services against whom an enquiry has been initiated or a penalty imposed. This section also highlights the performance of various departments responsible for conducting investigations. One of the IAS Associations passed a resolution against the CVC stating that publication of a name on the site could bias the process of departmental inquiry/action. Under the law, no defamation has been caused by publicizing the names of the charged officers; yet the general perception seemed to be that the CVC website exposed a kind of a rogues gallery.

24. In response to these criticisms the CVC argued that all it had done was to extend to the departmental inquiries a practice that is as old as the Indian Penal Code in criminal cases. Under criminal law, when a person is accused he is legally

innocent until proven guilty; but the name of the accused enters the public domain. A poll by the Economic Times, a leading business paper of India, reported that 83 percent of respondents believed that publishing the names of charged officers on the CVC website will have a deterrent effect. (**author:** Subhash Bhatnagar, **Information used to develop the case:** This case has been developed from a presentation by the Central Vigilance Commissioner in the India States Forum 2000, held in New Delhi, 23-25 November 2000, and from newspaper reports on CVC website. **Date submitted:** Sept. 14, 2001, <http://web.worldbank.org/WBSITE/EXTERNAL/TOPICS/EXTINFORMATIONANDCOMMUNICATION/NDTECHNOLOGIES/EXTEGOVERNMENT/0,,contentMDK:20485999~menuPK:1767268~pagePK:210058~piPK:210062~theSitePK:702586,00.html>)

However, right to know the charges does not mean that every candidate has to give copy of charge-sheet along with nomination paper. Right to know charges against the contestant is different from having a copy of entire charge-sheet.

25. Supreme Court in **Vineet Narain & Others vs Union Of India & Another** on 18 December, 1997, Bench: S.P. Bharucha, S.C. Sen, directed:

A document on CBI's functioning should be published within three months to provide the general public with a feedback on investigations and information for redress of genuine grievances in a manner which does not compromise with the operational requirements of the CBI. (Direction No. 14)

26. In almost all police websites the FIRs (First Information Report) are made available to any person. Section 154 of Cr P C deals with 'First Information Report' based on the complaint or report filed with police by any person. It is an important document which puts the law in motion. If investigation proved the complaint in FIR is true, it would lead to filing of charge-sheet. FIR in fact is a complaint registered in police station. It may contain serious allegations which might turn out to be frivolous and not even become charge sheet. Mere filing of FIR also will not make accused out of suspect. During pendency of investigation or even before start of investigation, the FIR or complaint by any person is put in public domain which can

be verified by anybody. Compared to FIR, the charge-sheet is a document prepared after investigation which prima facie established truth of allegations contained in FIR and a public document based on which apprehension and prosecution is possible. While FIR is an unverified, not-investigated allegations which could be described as 'wild', the Charge-sheet makes a person accused based on collected evidence. Filing a charge sheet is an important phase in criminal trial which leads to 'framing of charges' by the court and then after prosecution might result in either conviction or acquittal. Charge sheet is more authentic and legally strong document than a primary complaint called FIR. It is argued that if FIR can be in public domain, why charge-sheet should not be.

27. Charge-sheet is a report of completion of investigation which contain within it details of evidence that prosecution wants to rely upon. Evidence added to charge-sheet might contain relevant and things which are not relevant also. Some apprehensions were raised saying the charge sheet may contain certain aspects which might not be proved at the end and that might cause invasion of privacy or defamation attracting Section 8(1)(j) restriction on ground of privacy. The charge sheet is a very significant phase in trial, which gets altered or remain same at 'framing of charges' by the court and only after open trial it could be proved or not proved.

In case of criminal charge neither the private citizen nor the public servant can claim right of privacy. The public interest and rule of law demands open trial of a charge where there is no scope for privacy etc. The right to reputation and defamation are similarly not capable of holding the criminal trial when charges are framed after due investigation. Hence charge sheet is public document, after it reaches from investigating officer to Judicial Magistrate it is available both at Executive and Judiciary. The charge-sheet is accessible in open court, and FIR is

accessible in public domain of police department. When public servants or high profile public personalities like MPs, MLAs, Chief Ministers and former Chief Ministers becoming accused and charge-sheets are being filed against them, it is all the more important that those charge sheets should be in public domain. It is also in the public interest that anybody from any corner of the world can come forward to inform the police or judiciary or political executive about the evidence or information he has with regard to charge.

Question No. 2: Is there any restriction against disclosure of charge sheet under RTI?

Section 8(1) says...

There shall be no obligation to give any citizen.. (h) information which would impede the process of investigation or apprehension or prosecution of offenders; ..

28. During the hearing before Commission the respondent authority and appellant agreed that the information sought is part and parcel of the information contained in a Charge-sheet and its disclosure would answer all the questions. As per the Criminal Procedure, the charge-sheet is the end product of investigation. With filing of charge-sheet, the investigation is closed and defense that investigation might get impeded does not stand at all.

CIC Decisions on 8(1)(h)

29. In **Mr. A. L. Motwani v. ITI Limited** (CIC/MA/A/2008/1233/AD, 5 August 2008) issues were “Do the documents, sought by the Appellant, and which are related to his case pending prosecution in a CBI Court since 1998 as a result of a CBI investigation and charge sheeting of the Appellant, have the potential to

impede the process of investigation, apprehension or prosecution of offenders, as maintained by the CBI and the Public Authority?”

30. The judgment of the Delhi High Court in W.P.(C) No.3114/2007 – **Shri Bhagat Singh Vs. Chief Information Commissioner & Ors** on this aspect is of relevance, since it deals with the applicability of the Section 8(1)(h) of the RTI Act 2005: S Ravinder Bhat J specifically notes, *“As held in the preceding part of the judgment, without a disclosure as to how the investigation process would be hampered by sharing the materials collected till the notices were issued to the assessee, the respondents could not have rejected the request for granting information. ...”*

31. In **N David Vijay Kumar v The Pallavan Gram Bank, Indian Bank** in File No. CIC/SG/A/2012/000189 CIC Mr Shailesh Gandhi ordered disclosure of Charge sheet ruling out the contention of exemption under Section 8(1)(j).

The Respondent authority in present case did not address this point and did nothing to explain the Commission about possibility of impeding apprehension/prosecution by disclosure. The Public Authority just mentioned the Section number and did nothing else. The First Appellate Authority also did not apply the mind and chose not to give any reasons for upholding the denial by PIO. The exemption of larger public interest provided in Section 8(1) is not available to this clause (h). Section 8(2) mandates to consider ‘public interest’ either in disclosure or denial. Thus it has to be decided on facts whether disclosure of charge-sheet will really obstruct investigation, apprehension or prosecution. It can be inferred that there is no specific provision anywhere prohibiting the

disclosure of charge-sheet and if there disclosure does not affect investigation or prosecution it can be permitted under RTI, unless there is a public interest against disclosure. The charge-sheets containing charges under Prevention of Corruption Act, especially against public servants, need to be in public domain, in public interest.

32. The charge sheet is just like a file or record held by the investigating officer, or public authority or court of law. As per the RTI Act, any information held by the public authority can be accessed by the citizen subject to the exceptions provided under Section 8. Because the charge-sheet contains the evidence which need to be adduced in the court of law, there is a possibility of opening up many details which could be personal or private or confidential. If the allegation requires to be proved by call data, the charge sheet refers to sheets of call data, which surely contain call details unrelated to allegation. That could be private information need to be protected. Hence each charge sheet has to be separately examined and only after separating unnecessary and unrelated details of evidence, and only required and permissible information out of charge-sheet should be disclosed. Thus Charge-sheet can neither be prohibited enbloc from disclosure nor disclosed totally. Charge-sheet is a document held by concerned authority, which has to examine disclosable aspects vis-a-vis Section 8 and 9 of the RTI Act and then decide the case.

33. On the perusal of the RTI application, the Commission has found that the information sought by the applicant are the part and parcel of the information contain in the charge-sheet prepared after the completion of the investigation under section 173 of Cr. P. C. The purpose of the appellant will be served if the copy of the same would be provided to the appellant. The respondent authority also agreed to provide the copy of charge sheet. Although the prosecution is still

going on but the respondent authority has failed to prove that how the disclosure of charge sheet will impede the process of prosecution, the copy of charge sheet is not hit by exemption Section 8(1)(j). Even assuming that it might warrant invocation of this exemption, general overriding condition of public interest as prescribed under Section 8(2) as discussed above mandates disclosure. The public character of charge-sheet as a public document is further strengthened by the Right to Information Act, 2005. The citizen of this country has a right to know about how and what kind of accusation was made by the state against an individual by charge sheet.

34. Considering the provisions of Cr.P.C., Evidence Act, RTI Act, erudite judicial pronouncements, certain transparency practices in CVC, facts and circumstances of the case and contentions raised, the Commission holds that the charge sheet is a public document and it shall be disclosed subject to other restrictions provided under RTI Act. There cannot be a general hard and fast rule that every charge-sheet could be disclosed or should not be. Each RTI request for copy of Charge-sheet required to be examined and only permissible part should be given. The Commission, hence, directs the respondent to examine the content of charge-sheet and to provide appellant the copy of those portions of charge-sheet, which would answer the queries raised by appellant in his RTI application, within 3 weeks from the date of receipt of the order.

35. The appeal is disposed with the above direction.

Sd/-

(M. Sridhar Acharyulu)
Information Commissioner

(The Commission acknowledge the research inputs from Professor R Venkat Rao, Vice Chancellor of National Law School of India University, Bengaluru, Sri Basanth Seth, Central Information Commissioner, Mr U. Rammohan, SP, Cyber Crimes, Hyderabad, Prof. K V K Santhy, Faculty (Criminal Law), NALSAR University of Law, Hyderabad, Legal Consultants Mr. Srikanth and Ms Sonali Varshney)

Authenticated true copy

(Babu Lal)
Dy. Registrar