



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

ORDERS RESERVED ON: 24.09.2018
ORDERS PRONOUNCED ON: 27.09.2018

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THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

CrIOP(MD)No.16450 of 2018 and
CrIMP(MD)No.7277 of 2018

M.Gopalakrishnan ... Petitioner/Petitioner/Accused No.1

Vs

The State,
represented by its
The Inspector of Police,
Melavalavu Police Station,
Melur Taluk,
Madurai District.

[Crime No. 238 of 2016] ... Respondent/Respondent/Complainant

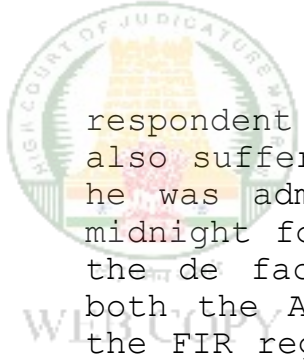
PRAYER:- Petition filed under Section 482 of Criminal Procedure Code, to call for the records relating to the orders passed by the learned I Additional Subordinate Judge, Madurai (Camp at Melur) dated 27.04.2018 in CrMP No.367 of 2017 in SC No.627 of 2017 and set aside the same and dismiss the said application.

For Petitioner :Mr.N.Dilip Kumar
For Respondent :Mr.K.Suyambulinga Bharathi,
Government Advocate (crIside)

ORDER

This petition has been filed, aggrieved by the order passed by the learned I Additional Sub Court, Madurai (Camp at Melur) in CrMP No.367 of 2017, which was filed by the petitioner under Section 91 of CrPC, for the production of the Accident Register from Melur Government Hospital, dated 10.07.2016, the Accident Register from Appollo Hospital and also for the production of the First Information Report in Crime No.288 of 2016, which was filed against the petitioner by Melavalavu Poilce Station on 05.09.2016.

2.The above petition was filed by the petitioner when the discharge petition was pending adjudication before the Court below. The petitioner has sought for the above said documents on the ground that the de facto complainant was admitted in the Melur Government Hospital on 10.07.2016, in the morning and later he was sent to the Melur Government Rajaji Government Hospital and the Accident Register of the Melur Government Hospital was not produced by the



respondent Police. It is the further case of the petitioner that he also suffered injuries at the hands of the de facto complainant and he was admitted in Appollo Hospital at Madurai on 10.07.2016 at midnight for which an FIR in Crime No.288 of 2016 was filed against the de facto complainant by the Melavalavu Police and therefore, both the Accident Register from the Appollo Hospital, Madurai and the FIR registered in Crime No.288 of 2016 are very essential while considering the discharge petition filed by the petitioner.

3.The Court below has dismissed the petition on the ground that the petitioner as an accused person cannot rely upon any other materials other than the one which has been filed by the Police along with the final report and the petitioner will have an opportunity to place all these materials during the course of trial. The Court below has also dismissed the petition on the ground that the petitioner is trying to protract the proceedings.

4.It is important for this Court to decide the question as to whether the accused person can invoke Section 91 of CrPC for the production of any document, at the stage of the Court considering the discharge petition filed by the petitioner. The normal Rule is that the Court at the time of considering the discharge petition is only supposed to look into the final report and the materials relied upon and filed by the prosecution and no more. All the materials which the accused person wants to rely upon, can be permitted to be done only in the course of trial.

5.There may be cases where certain documents which are very essential, ought to have been filed by the prosecution, is not filed before the Court along with the final report. Whether in such cases, the Court can order the production of those materials in exercise of its powers under Section 91 of CrPC, became a subject matter of discussion before the Hon'ble Apex Court in Nithya Dharmananda alias K.Lenin and another Vs. Gopal Sheelum Reddy also known as Nithya Bhaktananda and another reported in (2018) 2 SCC 93.

6.The relevant portions of the above said judgment are extracted hereunder.

"3. Contention raised on behalf of the appellants is that the view of the High Court is contrary to law laid down by this Court in State of Orissa versus Debendra Nath Padhi (2005) 1 SCC 568 and reiterated in the subsequent decisions. The defence could not be considered at the stage of framing of charge so as to avoid a mini trial.

4. Learned counsel for the defence, on the other hand, submitted that if the investigator is not fair and the material of sterling quality, though seized during investigation and available with him, is deliberately left out from the chargesheet, there is no bar for the court to summon the said material.



5. It is settled law that at the stage of framing of charge, the accused cannot ordinarily invoke Section 91. However, the court being under the obligation to impart justice and to uphold the law, is not debarred from exercising its power, if the interest of justice in a given case so require, even if the accused may have no right to invoke Section 91. To exercise this power, the court is to be satisfied that the material available with the investigator, not made part of the chargesheet, has crucial bearing on the issue of framing of charge.

6. In Debendra Nath Padhi, supra, it was observed:

"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."

7. In Hardeep Singh Etc. versus State of Punjab and ors. Etc. (2014) 3 SCC 92 a Bench of five-Judges observed:

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"19. The court is the sole repository of justice and a duty is cast upon it to uphold the rule of law and, therefore, it



will be inappropriate to deny the existence of such powers with the courts in our criminal justice system where it is not uncommon that the real accused, at times, get away by manipulating the investigating and/or the prosecuting agency. The desire to avoid trial is so strong that an accused makes efforts at times to get himself absolved even at the stage of investigation or inquiry even though he may be connected with the commission of the offence."

8. Thus, it is clear that while ordinarily the Court has to proceed on the basis of material produced with the charge sheet for dealing with the issue of charge but if the court is satisfied that there is material of sterling quality which has been withheld by the investigator/prosecutor, the court is not debarred from summoning or relying upon the same even if such document is not a part of the charge sheet. It does not mean that the defence has a right to invoke Section 91 Cr.P.C. de hors the satisfaction of the court, at the stage of charge."

7. It is clear from the above judgment that the Court has been given ample powers, if it is satisfied that there is material of sterling quality, which has been withheld by the prosecution and in such cases, even if such document is not a part of the charge sheet, the Court can always summon the said document and even rely upon it and there is no provision in CrPC which debars the Court from doing so. The Hon'ble Apex Court has further stated that it does not mean that the defence has right to invoke Section 91 of CrPC de hors satisfaction of the Court, at the stage of charge.

8. The learned Government Advocate relied upon the judgment of the Rajasthan High Court in Tarachand Verma Vs. State of Rajasthan in SB Criminal Miscellaneous (Petition) No.2898 of 2017, wherein the judgment of the Hon'ble Apex Court, referred supra was relied upon. It will be useful to extract the relevant portion of the judgment hereunder:

"The learned Counsel for the petitioner has submitted that recently Supreme Court in Nitya Dharmananda @ K.Lenin & Another Vs Gopal Sheelum Reddy also known as Nithya Bhaktananda & Another reported as (2018) 2 SCC 93 wherein it has held that the Court is not debarred from exercising its power under Section 91 of CrPC. The Court, as rightly held in its discretion can consider the document which are sterling and unimpeachable quality but not the documents given by the petitioner during investigation since they contain story which on fact is contrary to the prosecution. Therefore, at time of framing the charges defence version cannot be considered. At the time of framing of charge, test which are to be applied at the time of conclusion of the trial, cannot be applied. The



judgment relied by the learned Counsel for the petitioner is Nitya Dharmananda (supra) specifically states that only those documents which are of sterling and unimpeachable quality can be considered".

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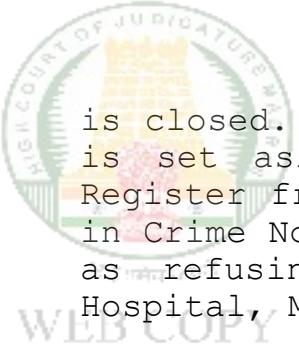
9. In the present case, there is a case and counter. The petitioner has also given a complaint against the de facto complainant and the same was registered in Crime No.288 of 2016 by the respondent Police. It is the specific case of the prosecution that the de facto complainant was initially taken to the Melur Government Hospital and the Accident Register has also been recorded in the said Hospital. This Accident Register has not been produced by the respondent Police along with the final report.

10. The Accident Register prepared at the Melur Government Hospital, where the de facto complainant was allegedly treated and the FIR registered in Crime No. 288 of 2016 are documents of sterling quality, which can be considered even at the time of deciding the discharge petition. These documents will further clarify the case of the prosecution and no prejudice will be caused to the prosecution, if these documents are summoned and considered by the Court below at the time of the deciding the discharge petition.

11. In fact, the respondent Police ought to have investigated the FIR registered by them in Crime No.288 of 2016 against the de facto complainant, while he was investigating the Crime No.238 of 2016, which was registered on the basis of the complaint given by the de facto complainant. For reasons best known to the Investigating Officer, this was not done in this case. The Investigating Officer has chosen to file a final report, without investigating and filing a final report in the counter case. Therefore, there is nothing wrong on the part of the Court below to take into account the FIR registered in Crime No.288 of 2016, while dealing with the discharge petition.

12. The only other document that is sought to be summoned by the petitioner is the Accident Register maintained at Appollo Hospital, Madurai. This Accident Register cannot be sought to be summoned at this stage, since the contents of the Accident Register would be based on the statement made by the petitioner and therefore the very document itself, namely Accident Register, will be subjected to appreciation of evidence in the Course of trial. It cannot be directly summoned by the Court at the stage of considering a discharge petition.

13. In fine, the Criminal Original Petition filed by the petitioner is partly allowed. Consequently, CrI MP(MD) No.7277 of 2018



is closed. The order of the Court below made in CrMP No.367 of 2017 is set aside to the extent, it refuses to summon the Accident Register from Melur Government Hospital and also the FIR registered in Crime No.288 of 2016. The order of the Court is sustained insofar as refusing to summon the Accident Register from the Appollo Hospital, Madurai.

14.The Court below is directed to summon the Accident Register from Melur Government Hospital maintained on 10.07.2016 and also the FIR registered by the respondent Police in Crime No.288 of 2016 and proceed to decide the discharge petition filed by the petitioner in accordance with law.

Sd/-

Assistant Registrar(AD-I)

/True Copy/

Sub Assistant Registrar(CS-I)

To

1. The I Additional Subordinate Judge,
Madurai (Camp at Melur)
- 2.The Inspector of Police,
Melavalavu Police Station,
Melur Taluk,
Madurai District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1CC to Mr.N.Dilip Kumar, Advocate, SR.No.87197

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CrIIMP(MD)No.7277 of 2018
27.09.2018

DSK

ES/PM/SAR 1/29.10.2018/6P/5C