

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 24.01.2018

DELIVERED ON : 22.01.2019

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

Crl.R.C.No.28 of 2018  
and  
Crl.M.P.No.165 of 2018

Roopesh .... Petitioner/Petitioner/Accused

Vs

State rep. by:  
The Deputy Superintendent of Police,  
"Q" Branch CID,  
Coimbatore Range,  
(Peelamedu Police Station)

... Respondents/Respondent/Accused

Prayer: Criminal Revision filed under Section 397 r/w 401 of Cr.P.C., against the impugned order in Crl.M.P.No.2054 of 2017 in S.C.No.121 of 2017 dated 25.10.2017 on the file of Principal Sessions Judge, Coimbatore (Special Court) under UAPA Act rejecting the plea of the petitioner to provide English Translation of the case and the said order is unjust and illegal.

For Petitioner : Mr.R.Sankarasubbu

For Respondent : Mr.T.Shanmugarajeswaran  
Government Advocate (Crl.Side)

ORDER

This criminal Revision Petition is preferred by the petitioner/accused against the order passed by the learned Principal District Judge, Coimbatore (Special Court) in Crl.M.P.No.2054 of 2017 in S.C.No.121 of 2017 dated 25.10.2017, wherein the learned trial Judge dismissed the application filed by the petitioner/accused for providing English Translated copy of the final report.

2. Brief case of the revision petitioner:

The revision petitioner has been arrayed as an accused in Crime No.87 of 2016 of Peelamedu Police Station for the offence under unlawful activities act along with the other offences under IPC. The final report was filed in the vernacular language (Tamil) under section 173(2) of Cr.P.C. The petitioner filed the application seeking English Translation copy of the final report since he could not understand Tamil language.

3. The application filed in CrI.M.P.No.2054 of 2017 was strongly resisted by the respondent police and counter was filed alleging that this Court has taken cognizance on the final report and taken on file in S.C.No.121 of 2017 on 12.06.2017 and the charge sheet with relevant documents were filed and copies of documents were supplied to the petitioner and the same was acknowledged on 19.07.2017 and this revision petitioner is also an accused in another case filed in Cr.No.1 of 2015 of Q Branch police for the offences under section 121A of IPC, sections 17(1) and 17(2) of the Criminal Law (amendment) act and during investigation, huge number of materials in Tamil language were also recovered from the petitioner. Hence, it is established that the petitioner/accused is capable of reading materials including the charge sheet in Tamil Language and the petition is filed only to drag the proceedings.

4. The case of the prosecution is that, based on the written complaint preferred by one Tr.Chandrumohan a case in Coimbatore City Peelamedu Police Station in Cr.No.87 of 2016 under section 419, 420, 468 and 471 of IPC has been registered against this petitioner/accused Roopehs @ Praveen @ Prakash @ Prasanth, for the offences that the accused fraudulently purchased the Tata Docomo Sim Card bearing Mobile No.8807675158 from S.M.Pharmacy, Pollachi by cheating and impersonating and forging the photograph and copy of voters identity card of the complainant and by producing duplicate voters Identity card copy in the name of the complainant duly affixing the photograph of the complainant by manipulating the name on the said duplicate as Chandra instead of Chandrumohan and the father name as Bala instead of Balasubramaniam and also manipulating the voters Identity card number as JRT 5072335 instead of JRT 5072830.

5. The investigation revealed that the petitioner/accused being active member of the banned CPI (Maoist) Organization, had fraudulently purchased the Tata Docomo Sim card bearing mobile No.8807675158 from S.M.Pharmacy, Pollachi by misusing the copy of voters identity card and forging the photograph of the complainant and knowingly abets the unlawful activities against

the Government, raised slogans against the Government, attempted to organize terrorist camp and recruit the members by misguiding the general public/witnesses for furthering the terrorist activities and hence the penal sections were altered into sections 13(1)(b) 18, 18-B, 20 and 38 (1) of the Unlawful Activities (Prevention) Act, 1967 and Final Report was filed on 25.05.2017 before the learned Principal District and Sessions Court, Coimbatore. As per the instructions given vide Memorandum C.3 No.1129/X/2017/C, dated 6.2.2017 of the Inspector General of Police, Intelligence (Internal security) the Deputy Superintendent of Police "Q" branch CID, Coimbatore Range received the CD file in the present case on 24.06.2017 for conducting trial. The learned Principal District and Sessions Court, Coimbatore has taken cognizance on the Final Report on 12.06.2017 and assigned the Sessions Case in SC No.121 of 2017. On 19.07.2017 copies of charge sheet and the case documents in this case were furnished to this Petitioner/accused as required under section 207 of Cr.P.C and the learned Principal District and Sessions Judge, Coimbatore posted the case to 11.08.2017 for framing of charges. The petitioner/accused on the very next hearing on 11.08.2017 filed a petition seeking English translated Final Report in this case.

6. During the course of investigation in prime case in Coimbatore District Q branch CID, Cr.No.1 of 2015 on the file the learned Principal District and Sessions Court in S.C.No.256 of 2015 it is unearthed that, this petitioner/accused and his four other co-accused already extended their criminal activities in and around of Coimbatore District and his four other co-accused already extended their criminal activities in and around of Coimbatore District for the purpose of furthering the activities of banned CPI (Maoist) organization and also for collection of funds for the above said organization for furthering their activities of terrorism. In the result 24 numbers of SIM card cases have been registered against all the said accused, Out of the 24 cases in 17 cases, the petitioner is accused. Except in 3 cases, the petitioner/accused with bad intention to prolong the trial proceedings wantonly not engaged the defence counsel. The petitioner/accused by maintaining his delaying tactics, has not engaged defence counsel in 14 cases and engaged in 3 cases which have been tried simultaneously on the same Courts and this petitioner/accused is appearing as party in person.

7. All the above stated cases are in the stage of framing of charges which were leveled for proving their criminal activities. During the course of conducting preliminary argument before this Court on 11.01.2018, the defence counsel raised the

point that, the prosecution had provided translated versions of documents to the accused, within the booklet served to him while detaining under National Security Act.

8.The said translation of very few pages from Tamil to Malayalam language was performed by the District Collector, Coimbatore District only, at Central Prison at the initial stage of Investigation to prevent the accused from indulging in activities which will be prejudicial to the security of the State and prejudicial to the maintenance of public order, considering the facts that the accused could not avail any legal assistance, inside the Prison for the appraisal of those documents, while he was in detention at Prison,. But, the above justification shall not suit to the present case, since the prosecution has collected more numbers of oral and documentary evidences and filed an exhaustive charge sheet. Purposely for using the privilege of filing such type of petitions seeking translated versions in order to prolong the trial process evading natural justice.

9.The said petition filed by this petitioner/accused was legitimately dismissed by the learned Principle District and Sessions Judge, Coimbatore on 28.06.2017. Such order was also challenged before this Hon'ble Court by filed HCP No. 2450 of 2017 and later on 22.12.2017 as per the strict instructions of this Court the said petition was withdrawn by the petitioner/accused. The accused/petitioner has aimed to subvert the proceedings and thereby drag the issue and valuable time of every quarter. Therefore the intension of claiming translated versions is also aimed to frustrate the prosecution and nothing else.

10.The learned counsel for the petitioner submits that the trial Court travelled a long way on illogical reasoning and rejected the plea without considering the fundamental fairness of criminal prosecution.

11.The learned counsel for the petitioner submits that the trial Court without any basis held that the petitioner is prolonging the trial procedures without considering the prolonged detention of the petitioner in jail since 04.05.2015 over 2½ years.

12.The learned counsel for the petitioner submits that the trial Court is oblivious of the fact that the petitioner is in

jail and he has to formulate his defense after fully knowing the contents of charge sheet and documents of the prosecution case.

13.The learned counsel for the petitioner submits that non supply of documents in the language known to the petitioner/accused is violative of Article 21 and 22 of the constitution of India.

14.The learned counsel for the respondent supported the findings of the learned trial Court and seek for dismissal of the criminal revision.

15.A significant question of law that arises in this matter concerning the right of an accused facing trial under the UAPA offences to be provided with the copies of the documents relied upon by the prosecutions which are to be translated in the language known to the accused. That brings me to the principal issue raised in this petition concerning supply of those documents to the petitioner which according to the prosecution a delaying tactics. It is not disputed that the prosecution never filed any application in the trial Court claiming privilege in terms of Section 173(6) of Cr.P.C. That provision requires the police officer to give reasons in writing why he is objecting to giving copies of certain statements in a note to the trial Court. However, in the instant case, no such note was given and the objection was taken only during arguments. Without going into the question whether the prosecution would therefore be precluded from claiming privilege, this Court proposes to nevertheless examine the merits of the objection. In the first place the distinction between the two types of material, i.e. statements of witnesses recorded by the police under Section 161 of Cr.P.C. and the documents gathered during investigation, which are forwarded to the trial Court by the police along with the charge sheet, requires to be noticed. Sections 173 and 207 of Cr.P.C. are relevant in this context and they read as under:

173. Report of police officer on completion of investigation.

(1) Every investigation under this Chapter shall be completed without unnecessary delay.

(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 whom the information relating to the commission of the offence was first given.
- (3) Where a superior officer of police has been appointed under Section 158, the report shall, in any case in which the State Government by general or special order so directs, be submitted through that officer, and he may, pending the orders of the Magistrate, direct the officer in charge of the police station to make further investigation.
- (4) Whenever it appears from a report forwarded under this section that the accused has been released on his bond, the Magistrate shall make such order for the discharge of such bond or otherwise as he thinks fit.
- (5) When such report is in respect of a case to which Section 170 applies, the police officer shall forward to the Magistrate along with the report-
- (a) All documents or relevant extracts thereof on which the prosecution proposes to rely other than those already sent to the Magistrate during investigation;
- (b) The statements recorded under Section 161 of all the persons whom the prosecution proposes to examine as its witness.
- (6) If the police officer is of opinion that any part of any such statement is not relevant to the sub-matter of the proceeding 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 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) Notwithstanding 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-section (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).

207. Supply to the accused of copy of police report and other documents.

In any case where the proceeding has been instituted on a police report, the Magistrate shall without delay furnish to the accused, free of cost, a copy of each of the following:

- (i) the police report;
- (ii) the first information report recorded under Section 154;
- (iii) the statements recorded under Sub-section (3) of Section 161 of all persons whom the prosecution proposes to examine as its witnesses, excluding therefrom any part in regard to which a request for such exclusion has been made by the police officer under Sub-section (6) of Section 173.
- (iv) The confessions and statements, if any, recorded under Section 164;
- (v) Any other document or relevant extract thereof forwarded to the Magistrate with the police report under Sub-section (5) of Section 173:

Provided that the Magistrate may, after perusing any such part of a statement as is referred to in Clause (iii) and considering the reasons given by the police officer for the request, direct that a copy of that part of the statement or of such portion thereof as the Magistrate thinks proper, shall be furnished to the accused:

Provided further that if the Magistrate is satisfied that any document referred to in Clause (v) is

Voluminous, he shall, instead of furnishing the accused with a copy thereof', direct that he will only be allowed to inspect it either personally or through pleader in Court.

16. The scheme of the above two Sections indicates that the Legislature has intended to differentiate between documents forwarded to a Court by the police along with the charge sheet or sent to it earlier during the course of investigation on the one hand and the statements of prospective witnesses recorded by the police during investigation under Section 161 of Cr.P.C., copies of which are also forwarded to the Court along with the charge sheet, on the other. This is plain from the language of Section 173(5)(a) when compared with that of Section 173(5)(b) read with Section 173(6) and the first and second provisos to Section 207(v) of Cr.P.C. For instance, the reference in Section 173(6) to "any such statement" is to the statement of witnesses referred to in Section 173(5)(b) of Cr.P.C., i.e. statements recorded of prospective witnesses under Section 161 of Cr.P.C. In relation to these statements the police officer has a discretion under Section 173(6) of Cr.P.C. to withhold a part thereof if he forms an opinion that it is inexpedient in public interest to do so and inform the Magistrate accordingly. Further, the first proviso to Section 207(v) gives a discretion to the Magistrate to provide to the accused even those statements which "the Magistrate thinks appropriate" shall be furnished.

17. This is in contrast to the position regarding documents. Section 173(5)(a) of Cr.P.C. refers to documents "on which the prosecution proposes to rely" other than "those already sent to the Magistrate during the investigation". These documents are to be forwarded to the Magistrate along with report. Therefore at the stage when the supply of documents has to be made in terms of Section 207(v) of Cr.P.C. what the Magistrate has with him are those documents which have already been sent to the Magistrate during the course of investigation and those documents that are forwarded by the police officer along with the charge sheet. Under Section 207(v), the Magistrate has no discretion in the matter of not supplying such documents. The only limited discretion that the Magistrate has in terms of the second proviso to Section 207(v) of Cr.P.C. is if the documents are so voluminous he can direct that the accused will be permitted only an inspection of the documents.

18. Prior to coming into force of the present Cr.P.C., the procedure earlier was provided vide Section 207 of Code of

Criminal Procedure, 1898 which dealt with committal of proceedings. It came to be considered in Pulikuri Kotayya v. Emperor, reported in AIR 1947 PC 67. The Privy Council held that it confers an invaluable right upon accused and non compliance thereof would vitiate the trial. In that case, there was a refusal to grant requisite documents to the accused. It was held to be a serious irregularity by the Privy Council. This decision was followed in Purshottam Jethanand vs. The State of Kutch reported in AIR 1954 SC 700. It was held that the right of accused to get copy of statements made by a witness after investigation is very valuable right and its non observation would be a serious illegality which may vitiate the entire trial.

19. There came to be an amendment by Criminal Law Amendment Act, 1955 whereby Section 207 was substituted by Sections 207 and 207(A).

20. It is evident from a plain reading of the provision which came in 1955 that an exhaustive procedure was enumerated prior to commitment of the case to the Court of Sessions. Ostensibly, if a case was initiated on Police report, Magistrate was obliged to hold enquiry, record satisfaction about various aspects, take evidence in regard to the actual commission of offence alleged and further possessed with the discretion to record evidence of one or more witnesses. The accused was at liberty to cross examine the witness and it was incumbent on the Magistrate to consider the document, and, if necessary, to examine the accused for the purpose of enabling him to explain any circumstance appearing in the evidence against him, and afford opportunity to the accused of being heard. If there was no ground to commit the accused person for trial, the Court was to record reasons and discharge him. The accused, thus, under the earlier provision, enjoyed a substantial right prior to commitment of the case and that was indeed a vital stage. It is this part of the procedure which has gone under a substantial change under new Cr.P.C. Now in the committal proceeding, the Magistrate is only required to see whether the offence is exclusively triable by Court of Sessions. The limited jurisdiction conferred upon the magistrate is only to verify the nature of offence. Thereafter, the statute mandates that he shall commit. The cases tried under special statute, before Special Court are governed by such special procedure, if any.

21. There is a sea change in the proceedings for commitment as existed under the old Code and the present one. Even other provisions of new Code, namely, Section 208 or 209 do not remotely suggest that any of the protection provided under old

Code has been retained in the present Code.

22.However, so far as the supply of documents is concerned, the Court however, has to ensure its substantial compliance. The purpose of supplying documents under Section 207 of Cr.P.C. is to give adequate notice to an accused, of the material to be used against him, so that he is not prejudiced during trial. It is to ensure just and fair trial and not to delay it or create a situation of holding of trial impracticable. It is true that a very strict compliance of the aforesaid provision, so much so, that unless observed to every dots and I's, the trial would stand vitiated, has not been held necessary in the context of 207, yet its compliance substantially and to the extent that no prejudice is caused to accused, has been held necessary.

23.The insistence upon compliance of requirement of Section 207 of Cr.P.C has been stressed by the Hon'ble Apex Court in State of U.P. Vs. Lakshmi Brahman reported in AIR 1983 SC 439 in the context of duty of Magistrate at the stage of committal. The Court considered the nature of duty lying upon the magistrate with regard to observance of Section 207 of Cr.P.C. and it said that the duty cast on the Magistrate by Section 207 has to be performed in a judicial manner. The Magistrate has to enquire from the accused by recording his statement whether copies of the various documents set out in Section 207 have been supplied to him or not. The Court has gone to the extent of observing that no order committing accused to the Court of Sessions can be made under Section 209 unless the Magistrate fully complies with the provisions of Section 207. If it is shown that the copies of relevant documents or some of them are not supplied, the matter will have to be adjourned to get the copies prepared and supplied to the accused. This is implicit in Section 207 and Section 209 provides that on being satisfied that the requisite copies have been supplied to the accused, the Magistrate may proceed to commit the accused to the Court of Sessions to stand his trial. The statutory obligation imposed by Section 207 is a judicial obligation. It is not an administrative function. It is a judicial function which is to be discharged in a judicial manner. It is not an administrative function. The Court said that it is the obligation of prosecution to supply copies of documents under Section 207.

24.In Sidharth Vashisth Vs. State (NCT of Delhi), reported in AIR 2010 SC page 2352, the Hon'ble Apex Court said that Section 207 not only requires or mandates that the Court without delay and free of cost should furnish to accused, copies of police report, FIR, statement, confessional statement of persons

recorded etc. but the Legislature has deliberately not used words that documents which are relied on by the prosecution, only shall be supplied. Section 207 will, therefore, have to be given a liberal and relevant meaning so as to achieve its object. The right of accused with regard to disclosure of documents is limited right, but codified and constitutes the very foundation of fair trial.

25. Here the Court also said that the right of the accused to receive documents/statements submitted before the Court is absolute and must be adhered to by the prosecution. The Court must also ensure supply of documents/ statements to the accused in accordance with law before proceeding further.

26. In V.K. Sasikala Vs. State rep. by Superintendent of Police JT 2012 (9) SC 609, the Court observed:

"At the time of framing of the charge, Court is required to satisfy itself that all papers, documents and statements required to be furnished to the accused under Section 207 of Cr.P.C. have been so furnished."

27. In V.K. Sasikala (supra), the Court said that statement under Section 161 can be used for confronting the witness whose statement under Section 161 has been recorded. It is a statutory right under Section 162(1), allowed to the accused, enabling him to confront the witness with the statement recorded under Section 161 of Cr.P.C. Right of the accused, therefore, to receive the documents/ statements under Section 207 is absolute and must be adhered to by the prosecution. The Court must ensure supply of documents/ statements to the accused in accordance with law.

28. I need not burden this judgment with various earlier authorities also but suffice it to mention that it is incumbent upon the prosecution to comply with the requirement of Section 207 of Cr.P.C. substantially in words and spirit, so as to give an opportunity of fair trial to the accused which is basic foundation of criminal administration of justice.

29. There is no quarrel over the proposition that the petitioner/accused is entitled to fair investigation, fair trial and fair justice delivery system. These three fair procedures have to be maintained by the state as fundamental rights. Article 21 imposed a restriction upon the state where it prescribed a procedure for depriving a person of his life or

personal liberty.

30.It is true, this Court is having the duty to uphold the principal of natural justice in the case trying against the petitioner. There cannot be any second thought over the proposition that fair trial requires furnishing of copies of all incriminating materials proposed to be projected against the accused and only when he is made to understand those materials, he could not be able to defend himself effectively.

31.In a criminal case, the Court has to see whether any prejudice is caused to the accused by denying him opportunity such as non supply of documents, inclusive of non supply of translated version of copies of the documents. The objection raised by the respondent that huge numbers of Tamil materials were recovered from the petitioner and naturally he would aware of Tamil Language is not a material argument to counter the case of the petitioner.

32.The recovery of huge Tamil documents from the petitioner leads to an inference that he knew the tamil language is a matter for trial and the same have to be proved only by examining the relevant witnesses during the course of trial. But in this case, the learned trial Court dismissed the application filed by the petitioner on the ground that the petitioner engaged one counsel in one case and not engaging counsel in another case creates a doubt about the bonafide intention of the accused.

33.In my view, the doubt raised by the learned trial judge cannot be sustained on the ground that the free and fair trial is embodied in the constitution and bonafide intention of the accused cannot be weighed at this stage. Even the offering of a free legal aid by the trial Court cannot be ground to proceed further since it is the right of the accused to avail the offer or to decline and the right to have his choice of counsel shall be the fundamental right protected by the Constitution.

34.The rights of the accused cannot be denied in a criminal trial and the yardstick should be followed to the every citizen of the country even he branded as a "terrorist." The constitution guarantee the fundamental fairness in the criminal prosecution and any violation is against article 21 and 22 of the constitution of India. Once the accused raises his voice that he cannot understand the language of the Court, it shall be

the duty of the Court to appoint a translator and provide adequate machinery in the language of the accused for conducting fair trial.

35.The combined reading of Section 207 of Cr.P.C. with the provisos, would go to show that the duty of the Court is to furnish the copy of the documents in whatever language they are found. But it cannot be interpreted that the section does not say that accused is entitled to be furnished with translated copies in his mother tongue. Further the trial Courts cannot close their eyes and shut their mouths by saying that furnishing of the translated copies to the accused is not their duty and furnishing of the copies alone is the prime duty as per section 207 of Cr.P.C. To cut short the delay and in its endeavour to find the truth and to do speedy justice, there is nothing wrong if the learned Trial Court itself supplies deficient copies, if any, at any stage of trial, if request to this effect is made by the accused or defence counsel.

36.It is clear that the language of the High Court and the Criminal Courts in Tamil Nadu is English and Tamil. If that be so, there can be no legitimate ground to deny the request of an accused for being furnished with the investigation papers in English. As contrasted with the provisions of the old Code which cast a duty upon the Investigating Officer to furnish copies of the investigation papers, the new Code casts that duty on the Court. If the language of the Criminal Courts is in English and Tamil, I see no reason why an accused person is not entitled to be furnished with the copies of the investigation papers in the language of the Court i.e. in English. It may be that the investigation may have been conducted in Tamil. That, however, would not justify denying to the accused the true translations of the investigation papers in English. I am not laying down as a proposition of law that in all cases the accused who is facing trial in the Criminal Courts in Tamil Nadu should be furnished with the copies of the investigation papers in English. This would entail a lot of time and expense. However, if an accused makes a request as in the present case, in my view, he would be entitled as of right to be furnished with the copies of the investigation papers translated in English.

37.In this case, the revision petitioner has not pointed out the specific documents seeking translation of the copies from the final report. The application filed by the petitioner is vague and without any specific details of the statements and the exhibits needs to be translated.

38.In the result:

(a) this criminal revision is dismissed with liberty to the revision petitioner to specify the documents to be translated from Tamil to English by filing an appropriate application within a period of two weeks from the date of receipt of a copy of this order;

(b) if any application is filed, the same shall be decided afresh by the learned trial Court in the interest of Justice on the principles abovesaid within a period of six weeks from the date of filing the application. Consequently, connected miscellaneous petition is closed.

Sd/-  
Assistant Registrar

//True Copy//

Sub Assistant Registrar

vs

To

1.The Principal Sessions Judge (Special Court),  
Coimbatore.

2.The Principal District Judge,  
Coimbatore.

3. The Public Prosecutor,  
High Court, Madras.

+1cc to Mr.R.Sankarasubbu, Advocate, S.R.No. 4516

सत्यमेव जयते

Cr1.R.C.No.28 of 2018  
and

Cr1.M.P.No.165 of 2018

SR(CO)  
GN(12/02/2019)

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