

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 10.12.2019

PRONOUNCED ON :16.12.2019

CORAM:

THE HONOURABLE Mr.JUSTICE P.RAJAMANICKAM

Crl.OP.No.30706 of 2019

P.Manikandan @ C.D.Mani .... Petitioner/Accused

Vs.

The State Rep by,  
The Inspector of Police,  
J-12, Kanathur Police Station,  
Chennai. .... Respondent/Complainant  
(Crime No.437 of 2018)

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C, to direct the learned Judicial Magistrate, Alandur, Chennai to issue the copy of the documents applied in P.R.C.No.20 of 2019 dated 31.10.2019, pending committal.

For Petitioner : Mr.C.D.Johnson

For Respondent : Mr.M.Mohamed Riyaz  
Additional Public Prosecutor

ORDER

This petition has been filed by the petitioner/accused under Section 482 of Cr.P.C. to direct the Judicial Magistrate, Alandur, to issue copy of the documents applied in P.R.C.No.20 of 2019 dated 31.10.2019.

2. The learned Counsel for the petitioner has submitted that the petitioner has been arrayed as accused in Crime No.437 of 2018 for the alleged offences under Sections 148, 353, 307, and 506 (2) of I.P.C and under Section 25(1)(B) (a) and 3 of the ARMS Act. He further submitted that the respondent police after investigation has filed a final report and based on the same, the learned Judicial Magistrate, Alandur has taken the case on file in P.R.C.No.20 of 2019 and the case is pending for committal. He further submitted that the petitioner has applied for copy of the charge sheet and other records which were filed

under Section 173 of Cr.P.C., on 06.06.2019 and the same was returned stating that when the petitioner is evading service of summons, how copy application is maintainable. Subsequently, on 31.10.2019, the petitioner has filed another copy application and the learned Judicial Magistrate has returned the said application also on the same reason. He further submitted that as per Rule 339 of Criminal Rules of Practice, the petitioner is entitled to get a copy for the aforesaid documents, but, the learned Judicial Magistrate without considering the same has returned the copy applications mechanically and hence, he requests to direct the learned Judicial Magistrate, Alandur to entertain the copy application of the petitioner and issue copy of the documents which are mentioned in the said copy application. The learned counsel for the petitioner, in support of his aforesaid contentions, relied upon the decision of this Court, in K.Ramaiah Vs. R.Sudhakara Naidu in CrI.OP.No.16006 of 2006 dated 04.07.2006.

3. Per contra, the learned Additional Public Prosecutor has submitted that since the petitioner is evading service of summons, the learned Judicial Magistrate could not commit the case to the Court of Sessions and the said case is unnecessarily pending before him. He further submitted that if the petitioner appears before the concerned Magistrate, he will furnish copies to the petitioner free of costs as per the provisions of Section 207 of Cr.P.C and hence, he requests to direct the petitioner to appear before the concerned Magistrate and co-operate for early committal of the case and thereafter, if necessary, he can file copy application and get certified copies.

4. In the copy application dated 31.10.2019, the petitioner has asked xerox certified copies for the following documents:

1) F.I.R and complaint, 2) 161 Statement, 3) Charge Sheet, 4) Evidence List, 5) Rough Sketch, 6) Arrest Report and 7) Confession Statement.

5. Since already final report has been filed, it seems that there is no bar for the petitioner/accused for getting certified copies of the aforesaid documents, but, at the same time, the conduct of the petitioner also to be taken into consideration.

6. In this case, the petitioner has filed first copy application on 06.06.2019. The learned Judicial Magistrate has returned the said copy application with the following endorsement:

" The case is posted for service of summon and it is posted on 06.06.2019. As the petitioner evaded service of summon, if could not be served. At this

stage, how, this petition is maintainable. Hence, returned".

7. From the aforesaid endorsement, it is clear that the petitioner is evading service of summon and in such a case, the Magistrate, by invoking the provisions of Section 87 of Cr.P.C could have issued warrant, but the Magistrate has not issued warrant. He took a lenient view and simply returned the first copy application on 06.06.2019 expressing his anguish. As per Rule 87 (ii) of Criminal Rules of Practice, the Magistrate has to commit the PRC case within six weeks. Even though the Judicial Magistrate has returned the copy applications filed by the petitioner/accused twice i.e., on 06.06.2019 and also on 31.10.2019 stating that the petitioner is evading service of summons, the petitioner has not appeared before the Court. It shows that the petitioner is not having intention to co-operate for committal proceedings for the past six months

8. The case in K.Ramaiah Vs. R.Sudhakra Naidu (cited supra) is relating to the private complaint filed under Section 138 of the Negotiable Instruments Act. In respect of private complaint, as per Section 204(3) of Cr.P.C, every summons or warrant shall be accompanied by a copy of such complaint. The same procedure can be applied in respect of the case, taken on file based on the police report. Further, in this case, the alleged offences are exclusively triable by the Court of Session. Hence, the Magistrate shall take all efforts to commit the case to the Court of Sessions without unnecessary delay. Keeping the same in his mind, it appears that the Magistrate has returned the copy applications. This Court does not find any malafide intention in the said orders. Further, the petitioner has not stated in his petition that he is not evading the service of summons. The purpose of service of summons is to bring to the knowledge of a person that he should appear before the court. Once he got knowledge about the same, he should appear. But in this case, despite the Magistrate has returned the copy applications twice stating that the petitioner is evading service of summons, the petitioner has not appeared before the court.

9. For the aforesaid reasons, this court is of the view that the petitioner has to be directed to appear before the Judicial Magistrate, Alandur and thereafter, if he finds any delay in getting free copies under Section 207 of Cr.P.C, he can very well file copy application and seek certified copies on payment of charges.

10. In the result, this petition is disposed of with the directions that the petitioner shall appear before the Judicial Magistrate, Alandur, on the next hearing date and on such

appearance, the Magistrate has to furnish copies under Section 207 of Cr.P.C. If the petitioner finds any delay in getting copies as aforesaid, it is open to him to file a copy application seeking certified copies of aforesaid documents on payment of charges. If any such copy application is filed, the Magistrate has to consider the said application and dispose of the same as per the guidelines issued by the Hon'ble Full Bench of this Court in Selvanathan alias Raghavan Vs. State by Inspector of Police, 1988 LW (Cr1) 503.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Inspector of Police,  
J-12, Kanathur Police Station,  
Chennai.
2. The Judicial Magistrate,  
Alandur, Chennai
3. The Public Prosecutor,  
Madras High Court,  
Chennai.

Cr1.O.P.No.30706 of 2019

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