



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 22.09.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

Crl.O.P.(MD)No.10064 of 2020

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Gomathi, W/o.Veeranan

... Petitioner

Vs.

1.The Superintendent of Police,
Theni District.

2.The Deputy Superintendent of Police,
Uthamapalayam Sub-Division,
Theni District.

3.The Inspector of Police,
Cumbum South Police Station,
Theni District.

... Respondents

PRAYER : Criminal Original Petition is filed under Section 482 of Cr.P.C, to direct the respondents to collect the footages of C.C.T.V. Camears as indicated by the petitioner in her representation dated 04.09.2020 forthwith and based on the videos so collected, the investigation of the case in Crime No.773 of 2020, pending on the file of the Inspector of Police, Cumbum South Police Station, Theni District, may be directed to proceed with.

For Petitioner : Mr.P.Rengaraju

For Respondents : Mr.R.Erottuchamy

Government Advocate(Criminal side)

O R D E R

This Criminal Original Petition has been filed seeking direction, to direct the respondents to collect the footages of C.C.T.V. Cameras as indicated by the petitioner in her representation dated 04.09.2020, forthwith, and based on the Videos so collected, the investigation of the case in Crime No.773 of 2020, pending on the file of the Inspector of Police, Cumbum South Police Station, Theni District, may be directed to proceed with.

2.The case of the petitioner is that her son Madhan was arrayed as an accused in Crime No.147 of 2020, pending on the file of the Uthamapalayam Police Station, Theni District. The said case has been registered for the offences punishable under Sections 147, 148, 149, 302, 120-B and 109 I.P.C. The averments found in the said F.I.R. would clearly disclose the fact that the petitioner had participated in the alleged conspiracy, which had

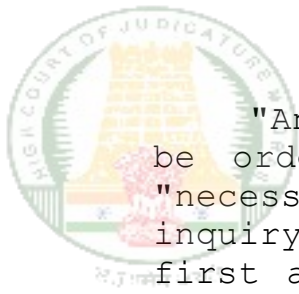


been arranged for killing one Advocate viz., Ranjith Kumar. In fact, the said conspiracy was enlightened only during the time of investigation made in Crime No.773 of 2020, pending on the file of the third respondent Police. In fact, when at the time of alleged conspiracy, the petitioner's son has gone to Uthamapalayam Court at Uthamapalayam, in order to appear before the Court and immediately, he had returned to his home, as his wife was not feeling well. One another allegation levelled against the petitioner's son is that, on 10.02.2020 at 02.00 p.m., the deceased Ranjith Kumar went to R.R.C. Bar, which is situated near Cumbum New Bus Stand, to meet his friend, at that time also, it is alleged that the petitioner's son and others had assaulted the said deceased Ranjith Kumar. In the said circumstances, in order to disprove the said allegation levelled by the third respondent Police and others, it is necessary to secure the C.C.T.V. Footages from the C.C.T.V., which is situated near to the Combined Court Campus at Uthamapalayam and in R.R.C. Bar, situated near to Cumbum New Bus Stand, Theni District.

3.Heard the learned counsel appearing for the petitioner and the learned Government Advocate (Criminal side) appearing for the respondents.

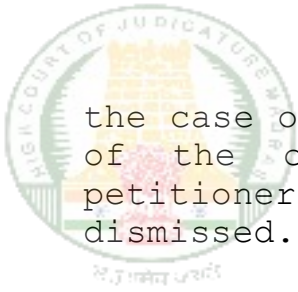
4.Upon considering the submissions made by the learned counsel appearing on either side, it is not in dispute that the petitioner, being the mother of the accused in Crime No.147 of 2020, on the file of the Uthamapalayam Police Station, Theni District, had attempted to collect evidence for defence for the purpose of disproving the case of the prosecution.

5.The first aspect which is necessary for disposing the Criminal Original Petition is that without filing any application before the concerned jurisdictional Magistrate, the petitioner has directly approached this Court, which is fundamentally found not correct. Secondly, it is not in dispute that the petitioner herself admits that the case in Crime No.773 of 2020, on the file of the Inspector of Police, Cumbum South Police Station, Theni District, is under investigation. Though the prayer sought for by the petitioner is in respect of a direction to the third respondent to conduct investigation in a particular manner, it is well settled proposition that this Court cannot direct the Investigation Officer to conduct the investigation in a particular manner as directed by this Court. Furthermore, since this Petition has been filed to send for the C.C.T.V. Footage, it is necessary and useful to see the judgment of our Hon'ble Apex Court in the case of **State of Orissa Vs. Debendra Nath Padhi** reported in **AIR 2005 SC 359**, wherein the three Judges Bench of our Hon'ble Apex Court has held as follows:-



"Any document or other thing envisaged under S.91 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 and 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 S.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 S.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 S. 227 what is necessary and relevant is only the record produced in terms of S.173 of the Code, the accused cannot at that stage invoke S.91 to seek production of any document to show his innocence, Under S.91 summons for production of document can be issued by Court and under a written order an officer-in-charge of 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. Jurisdiction under S.91 of the Code when invoked by accused the necessity and desirability would have to be seen by the Court in the context of the purpose - investigation, inquiry, trial or other proceedings under the Code. It would also have to be borne in mind that law does not permit a roving or fishing inquiry."

6. Accordingly, the above referred verdict is clear in respect of the prayer sought for by the petitioner. More than that the petitioner, being the third party, she is not at all having any *locus standi* to file this Petition. The proposition laid down by our Hon'ble Apex Court has made clear that these type of Petitions to send for the documents have to be filed only at the time when the case entered into defence and not before that and therefore, the attempt made by the accused through his mother, to disprove



the case of prosecution is unnecessary at this stage. Hence, I am of the considered opinion that the Petition filed by the petitioner, is devoid of merits and the same is liable to be dismissed. Accordingly, it is dismissed.

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Sd/-

Assistant Registrar (CO)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

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Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

- 1.The Superintendent of Police,
Theni District.
- 2.The Deputy Superintendent of Police,
Uthamapalayam Sub-Division,
Theni District.
- 3.The Inspector of Police,
Cumbum South Police Station,
Theni District.

Copy to

The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to Mr.P.RENGARAJU, Advocate (SR-17791[F] dated 23/09/2020)

Crl.O.P.[MD]No.10064 of 2020
22.09.2020

SRK(CO)

KM (30.09.2020) 4P 6C