

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 11.02.2021

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THE HONOURABLE Mr.JUSTICE N. ANAND VENKATESH

CrI.O.P.No.555 of 2021
and CrI.MP.No.339 of 2021

V.Sulochana

.. Petitioner

Vs.

State rep. by
The Inspector of Police,
CBCID Thiruvallur.
Crime No.210 of 2009

.. Respondent

Prayer: Criminal Original Petition is filed under Section 482 of Criminal Procedure Code, to call for the records in CrI.MP.No.3271 of 2020 in CC.No.126 of 2012 on the file of the learned Judicial Magistrate-I, Thiruvallur and set aside the order of the learned Judicial Magistrate-I, Thiruvallur dated 14.12.2020 in CrI.MP.No.3271 of 2020 in CC.No.126 of 2012.

For Petitioner : Mr.T.K.Ravikumar

For Respondent : Mr.Mohamed Riyaz,
Additional Public Prosecutor

ORDER

This petition has been filed challenging the order passed by the Court below dismissing the application filed by the petitioner under Section 91 of Cr.P.C. wherein the petitioner had sought for the production of certain documents in order to effectively defend herself in the case pending against her in CC.No.126 of 2012.

2. The petitioner, who has been arrayed as A1, is facing trial before the Court below for the offences under Section 120B, 182, 201, 409, 424, 411, 454, 380, 477A of IPC read with 34 IPC. The prosecution has examined 36 witnesses and the case is now at the stage of cross examination of PW1. During this stage, the petitioner has filed an application under Section 91 of Cr.P.C. seeking for the production of the following documents:

1. The defacto complainant Mrs.K.S.Jaya Mangalam (PW1) to cause the production of the documents pertaining to the enquiry against her and the result of the enquiry by the High court.

2. *The Inspector of Police, Tiruvallur Town Police Station to cause the production of the General Diary of the Station for the dates 16.03.2009, 22.03.2009, 18.06.2009, 02.07.2009 & 06.10.2009.*

3. *The Inspector of Police, CBCID to cause the production of the General Diary of the Station dated 22.09.2009, 25.10.2009, 06.11.2009, 20.05.2010, 21.05.2010, 03.11.2020 and 28.01.2011.*

3. The Court below dismissed the application filed by the petitioner. Aggrieved by the same, the present petition has been filed before this Court.

4. The learned counsel for the petitioner submitted that departmental proceedings were initiated against PW1 by this Court and she was a Judicial Officer at the relevant point of time. The learned counsel further submitted that the enquiry conducted against PW1 and action taken against her by this Court has a lot of relevance for the

petitioner to defend herself effectively in this case. The learned counsel further submitted that the general diary maintained by the Tiruvallur Town Police station and CBCID on the relevant dates, also has a lot of significance to prove her innocence. The learned counsel submitted that the petitioner is entitled for the copy of the general diary on the relevant dates mentioned in the application. To substantiate his submissions, the learned counsel relied upon the judgment of this Court in ***P.Kalaiselvam Vs.State rep. By the Inspector of Police, Melapalayam Police Station, Tirunelveli District reported in 2019 (2) LW Crl. 161***. The learned counsel submitted that the Division Bench of this Court had over ruled the earlier judgment of this Court in ***Haji Mohammed and others Vs. the State rep. By the Inspector of Police, Koradacheri Police Station, Tiruvarur District reported in 2018 (2) LW Crl. 853*** wherein this Court has held that general diary also falls within the scope of Section 172 of Cr.P.C. The learned counsel submitted that in view of the Division Bench judgment of this Court,

the petitioner is entitled for call for general diary extracts for the relevant dates mentioned in the application.

5. The learned counsel for the petitioner concluded his arguments by submitting that the Court below went wrong in finding that an application under Section 91 of Cr.P.C. cannot be filed at the stage at which the prosecution witnesses are examined.

6. The learned Addition Public Prosecutor appearing on behalf of the respondent Police, on instructions, submitted that insofar as the general diary extract that is sought for from Tiruvallur Town Police Station is concerned, the same has been destroyed by virtue of the proceedings of the Superintendent of Police and they are no more available. The learned Additional Public Prosecutor further submitted that insofar as the general diary extract sought for from CBCID, the GD extract on 25.05.2010 and 21.05.2010 are available and the rest of the GD extracts will also be traced within a short period.

7. Mrs. Tiripurasundari, Inspector of Police, Tiruvallur Town Police Station was also present at the time of hearing and it was assured that the rest of the GD extracts will also be traced and produced before the Court. Insofar as the first document is concerned, the learned Additional Public Prosecutor submitted that he leaves the matter to the discretion of this Court.

8. This Court has carefully considered the submissions made on either side and the materials available on record.

9. The petitioner is facing trial before the Court below for a charge that the Court records maintained at Judicial Magistrate-II Tiruvallur was stolen and false entries were made in the property register. On this charge, the petitioner is facing trial for offences under Section 409, 182, 454, 380 and 381 of IPC.

10. The petitioner filed an application under Section 91 of Cr.P.C. for production of certain documents. The documents sought for by the petitioner has already been extracted supra. This application was filed at the stage of cross-examination of PW1.

11. The petitioner in the course of cross examination wanted to put certain questions to PW1 regarding the departmental proceedings initiated against the Judicial Officer for the very same incident. The Court below has rejected the request made by the petitioner on the ground that the petitioner did not mention for what purpose those records are called for and that apart, the Court below found that it involves the privacy of PW1.

12. This Court wanted to individually ascertain as to whether any departmental proceedings were conducted against PW1. On going through the records, this Court found that proceedings were initiated against PW1 in Roc.No.367/2009/C-1 and an order was also passed

through proceedings dated 01.11.2010. These proceedings also pertain to the same incident for which the petitioner is facing trial before the Court below. In view of the same, the petitioner must have an opportunity to atleast have access to the orders passed against PW1 by this Court and thereafter, put relevant questions to PW1. To that extent, the petitioner will be able to effectively defend herself before the Court below.

13. In view of the above, there shall be a direction to PW1 to cause the production of the proceedings dated 01.11.2010 and the Court below shall compare the copy with the original and hand over the original order to PW1 and furnish a copy of the same to the petitioner. The petitioner can make use of this document at the time of cross examination of PW1.

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14. Insofar as the GD extract that is sought for by the petitioner, the Division Bench Judgment of this Court referred supra

makes it very clear that the General Diary extract will not come within the scope of Section 172 of Cr.P.C. since it is maintained under Section 44 of the Police Act and the case diary and the general diary are two distinct documents. Therefore, the bar for production of a case diary will not apply in the case of a general diary.

15. The Court below has given a finding to the effect that the stage has not come for the petitioner to seek for the GD extract. The Court below lost sight of the fact that an effective defense in fact starts even at the time when the witnesses are cross examined on the side of the accused. An accused can defend himself/herself effectively, both by cross-examining the prosecution witnesses as well as by independently examining witnesses on the side of the defence. Therefore, even at the time of examination of prosecution witnesses, an application can be filed under section 91 of Cr.P.C. for furnishing or calling for documents to effectively defend the prosecution case.

16. In view of the above, the petitioner will be entitled to seek for the GD extract even at the stage of cross examination of the prosecution witnesses. The only test to be applied while considering an application under Section 91 of Cr.P.C., is to see if the documents that are sought to be summoned has any relevance or it is necessary for the accused to defend himself effectively. In other words, the main ingredient of Section 91 of Cr.P.C. is necessity and desirability.

17. The learned additional Public Prosecutor, on instructions, submitted that the GD extract that is sought for by the petitioner from the Tiruvallur Town Police Station for the relevant period has already been destroyed and it is not available. Insofar as the GD extract sought from from CBCID is concerned, some are available and the other extracts will be traced within a short time and it will be produced before the Court below.

18. In view of the specific stand taken by the respondent Police,

the Inspector of Police, CBCID shall cause the production of the GD extracts that are available and if any of the extracts are not available, a memo to that effect shall be filed before the Court below. Insofar as the GD extract sought for from the Tiruvallur Town Police is concerned, the proceedings of the Superintendent of Police, Tiruvallur shall also be filed before the Court below along with a memo.

19. In view of the above discussion, the order passed by the Court below in CMP.No.3271 of 2020, dated 14.12.2020 is hereby set aside and the following directions are issued:

a. The Court below shall fix a date for the physical appearance of PW1 along with the original and copy of the proceedings in Roc.No.367/2009/C-1, dated 01.11.2010. The Court shall verify the copy with the original and hand over the original to PW1 and furnish a copy to the petitioner. The copy can be marked as an exhibit in the course of cross-examination of PW1;

b. the respondent Police shall file a memo along with the proceedings of the Superintendent of Police, Tiruvallur assigning the reasons as to why the GD extract sought for from Tiruvallur Town Police station cannot be produced. The same shall be taken on file by the Court below;

c. the respondent Police shall produce the available GD extracts maintained by CBCID and if they are not able to produce any of the extracts, the reasons for the same shall also be mentioned in the memo. The copies of the GD extracts produced before the Court below shall be furnished to the petitioner. The memo along with extracts may also be taken on file by the Court below;

d. continuation of the cross-examination of PW1 shall be completed on the same day when PW1 appears before the Court below;
and

e. the Court below shall complete the proceedings in CC.No.126 of 2012 within a period of three months from the date of receipt of the copy of this order.

20. This Criminal Original Petition is allowed with the above directions. Consequently, connected miscellaneous petition is closed.

11.02.2021

Index :Yes/No
Internet:Yes/No
Speaking/Non speaking order
rli
Note: Issue order copy by 15.02.2021

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N. ANAND VENKATESH,J

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To

1. The Inspector of Police,
CBCID Thiruvallur.

2. The Public Prosecutor,
High Court, Madras.

CrI.O.P.No.555 of 2021
and CrI.MP.No.339 of 2021



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