



WEB COPY

CRL.R.C.(MD).No.785 of 2022



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 23.08.2022

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

CRL.R.C.(MD).No.785 of 2022

Maria Sajith

: Petitioner

Vs.

The Inspector of Police,
All Women Police Station,
Nagercoil,
Kanyakumari District.
Crime No.24 of 2022

: Respondent

PRAYER: Criminal Revision Petition has been filed under Section 397 r/w 401 of Cr.P.C, to set aside the returned docket order and to direct the learned Special Judge of POCSO Act Cases at Nagercoil, Kanyakumari District to issue a copy of the FIR in Crime No.24 of 2022 on the file of the respondent Police on the copy application in A.No.5048 of 2022 on his file.

For Petitioner : Mr.J.Jawahar,

For Respondent : Mr.S.Manikandan,
Government Advocate (Criminal Side)

ORDER

The Criminal Revision Case is directed against the order of returning copy application and to direct the learned Special Judge of POCSO Act Cases at



Nagercoil, Kanyakumari District to issue a copy of the FIR in Crime No.24 of 2022 on the file of the respondent Police on the copy application in A.No.5048 of 2022 on his file.

2. It is not in dispute that FIR came to be registered in Crime No.24 of 2022 by the respondent Police against the petitioner for the offence under Sections 3(b), 4, 9(m), 9(n), 10 of POCSO Act, 2012 and Sections 342, 506(ii) IPC.

3. The learned counsel for the petitioner would submit that the petitioner/accused has filed copy application seeking copies of the complaint as well as FIR before the Special Court for POCSO Act cases at Nagercoil, Kanyakumari and that the learned Sessions Judge has returned the copy application stating that the copy application itself is not maintainable and the “Return Endorsement” is extracted hereunder :

“The accused not arrested by the Police and not yet surrendered before this Court till date. As such how the copy application is maintainable for the purpose 'for reference'. Returned.”

4. The only ground or reason assigned by the learned Sessions Judge for returning the copy application is that the petitioner was not arrested and he has



not surrendered with respect to the above case. The petitioner has not sought for copy of any of the records and they have sought for only the copies of the FIR and the complaint.

5.The learned counsel for the petitioner has relied on the decision of the Hon'ble Supreme Court in **Youth Bar Association of India Vs. Union of India and others in Writ Petition (Criminal) No.68 of 2016**, wherein the Hon'ble Supreme Court has issued certain directions and the relevant portion is extracted hereunder :

“12. Having heard learned counsel for the parties, we think it appropriate to record the requisite conclusions and, thereafter, proceed to issue the directions:-

(a) An accused is entitled to get a copy of the First Information Report at an earlier stage than as prescribed under Section 207 of the Cr.P.C.

(b) An accused who has reasons to suspect that he has been roped in a criminal case and his name may be finding place in a First Information Report can submit an application through his representative/agent/parokar for grant of a certified copy before the concerned police officer or to the Superintendent of Police on payment of such fee which is payable for obtaining such a copy from



WEB COPY



the Court. On such application being made, the copy shall be supplied within twenty-four hours.

(c) Once the First Information Report is forwarded by the police station to the concerned Magistrate or any Special Judge, on an application being filed for certified copy on behalf of the accused, the same shall be given by the Court concerned within two working days.

The aforesaid direction has nothing to do with the statutory mandate inhered under [Section 207](#) of the Cr.P.C.

(d) The copies of the FIRs, unless the offence is sensitive in nature, like sexual offences, offences pertaining to insurgency, terrorism and of that category, offences under POCSO Act and such other offences, should be uploaded on the police website, and if there is no such website, on the official website of the State Government, within twenty-four hours of the registration of the First Information Report so that the accused or any person connected with the same can download the FIR and file appropriate application before the Court as per law for redressal of his grievances. It may be clarified here that in case there is connectivity problems due to geographical location or there is some other unavoidable difficulty, the time can be extended up to forty-eight



WEB COPY



hours. The said 48 hours can be extended maximum up to 72 hours and it is only relatable to connectivity problems due to geographical location.

(e) The decision not to upload the copy of the FIR on the website shall not be taken by an officer below the rank of Deputy Superintendent of Police or any person holding equivalent post. In case, the States where District Magistrate has a role, he may also assume the said authority. A decision taken by the concerned police officer or the District Magistrate shall be duly communicated to the concerned jurisdictional Magistrate.

(f) The word 'sensitive' apart from the other aspects which may be thought of being sensitive by the competent authority as stated hereinbefore would also include concept of privacy regard being had to the nature of the FIR. The examples given with regard to the sensitive cases are absolutely illustrative and are not exhaustive.

(g) If an FIR is not uploaded, needless to say, it shall not enure per se a ground to obtain the benefit under Section 438 of the Cr.P.C.

(h) In case a copy of the FIR is not provided on the ground of sensitive nature of the case, a person grieved by the said action, after disclosing his identity, can submit a representation to the



Superintendent of Police or any person holding the equivalent post in the State. The Superintendent of Police shall constitute a committee of three officers which shall deal with the said grievance. As far as the Metropolitan cities are concerned, where Commissioner is there, if a representation is submitted to the Commissioner of Police who shall constitute a committee of three officers. The committee so constituted shall deal with the grievance within three days from the date of receipt of the representation and communicate it to the grieved person.

(i) The competent authority referred to hereinabove shall constitute the committee, as directed herein-above, within eight weeks from today.

(j) In cases wherein decisions have been taken not to give copies of the FIR regard being had to the sensitive nature of the case, it will be open to the accused/his authorized representative/parokar to file an application for grant of certified copy before the Court to which the FIR has been sent and the same shall be provided in quite promptitude by the concerned Court not beyond three days of the submission of the application.

(k) The directions for uploading of FIR in the website of all the States shall be given effect from 15th November, 2016.”



WEB COPY

6. As rightly contended by the learned counsel for the petitioner, the failure of the Police to arrest the accused and the failure of the accused to surrender before the concerned Court is not a ground or reason for rejecting the copy application, seeking copies of the FIR.

7. Considering the above, the impugned order returning the copy application is not good in law and the same is liable to be set aside.

8. In the result, the Criminal Revision is allowed and the impugned order written endorsement is set aside. The petitioner is directed to file fresh copy application and on such filing, the learned Special Judge is directed consider the same and to issue the copies to the petitioner within the time stipulated by the Hon'ble Supreme Court.

23.08.2022

Index : Yes/No

Internet : Yes/No

das



WEB COPY

CRL.R.C.(MD).No.785 of 2022



K.MURALI SHANKAR, J.

das

To

- 1.The Special Judge of POCSO Act Cases
at Nagercoil, Kanyakumari District.
- 2.The Inspector of Police,
All Women Police Station,
Nagercoil, Kanyakumari District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
- 4.The Section Officer,
Criminal Section,
Madurai Bench of Madras High Court,
Madurai.

CRL.R.C.(MD).No.785 of 2022

23.08.2022