



Crl.A.No.254 of 2018

Crl.A.No.254 of 2018

S.S.SUNDAR, J.
AND
SUNDER MOHAN, J.

When we wanted to peruse the record while hearing the instant appeal as well as the other appeals, we found that the original record of the case was not available. Instead, certified xerox copies of the original, were produced in lieu of the original record. We also noticed that in the printed paper-book prepared by the Registry, many documents are handwritten and illegible.

2. We were informed by the Registry that they had stopped the practice of sending for original record pursuant to the instructions given by the Registrar (Judicial) and certain other administrative orders. Hence, by order dated 30.11.2023, we directed the Registry to produce all the orders/circulars issued by the Registry in this regard.

3. (i) Since suitable directions had to be issued to the Registry, we sought the assistance of Mr.A.Ramesh, learned Senior Advocate and that of the learned Public Prosecutor in this matter.



Crl.A.No.254 of 2018

(ii) Mr.A.Ramesh, learned Senior Advocate has filed a notes as submissions besides taking us through the various relevant provisions indicating the necessity of calling for the original record of the case.

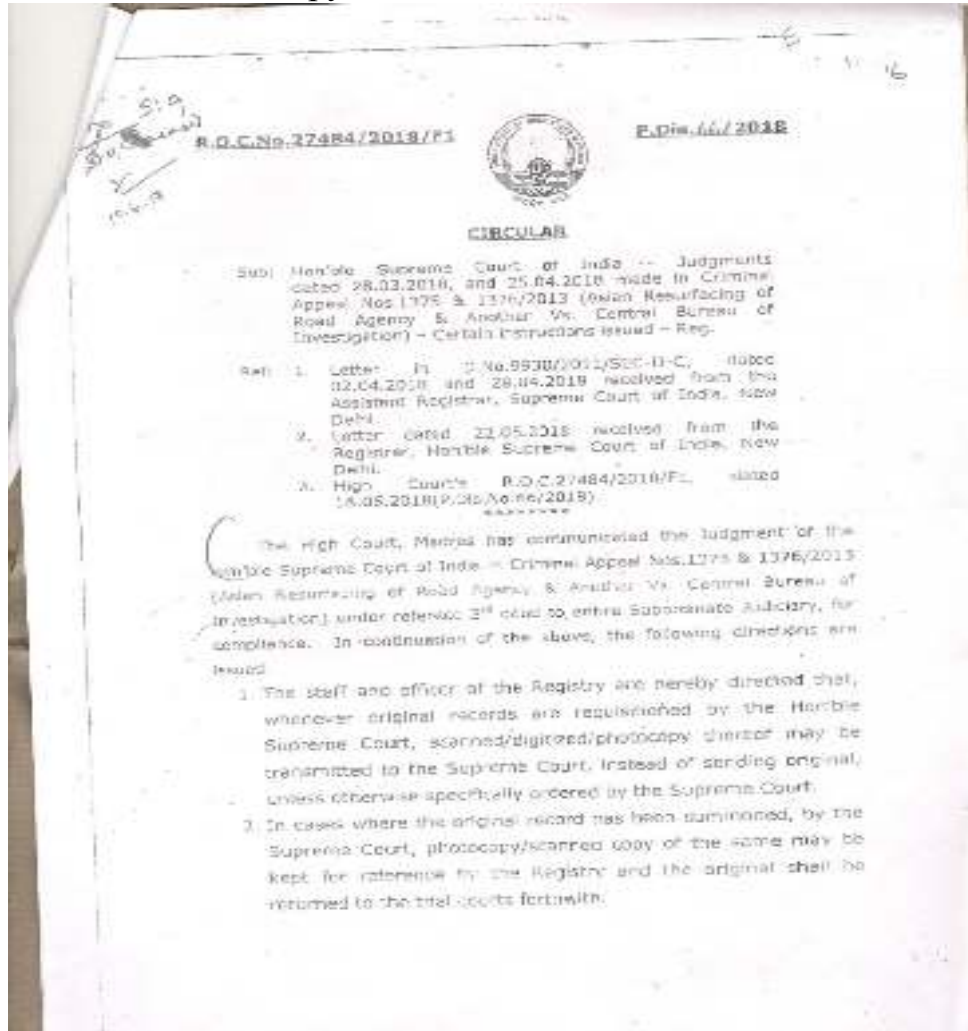
(iii) The learned Public Prosecutor also submitted his notes tracing the origin of the provision relating to the procedure for hearing the appeal, incorporated in various Criminal Procedure Codes from 1861 onwards. The learned Public Prosecutor also referred to Section 417 of the Criminal Procedure Code, 1861, which employed the word 'may' for calling for record of the lower Court, and as to how the subsequent Code in 1882, had employed the word 'shall' for calling for record.

4. The Registry produced the circular issued by the Registrar (Judicial) dated 18.06.2018 bearing R.O.C.No.27484/2018/F1 P.Dis.66/2018. The circular refers to an order passed by the Hon'ble Supreme Court in Criminal Appeal Nos.1375 – 1376 of 2013 (*Asian Resurfacing of Road Agency P.Ltd., and Another Vs. Central Bureau of Investigation*). In the said circular, the Registry had instructed the officials



Crl.A.No.254 of 2018

of the Registry not to call for original record unless specifically ordered by the Courts. A scanned copy of the circular reads as follows:





Crl.A.No.254 of 2018

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3. The originals shall not be weeded out during pendency of the case(s) before Hon'ble Supreme Court and till a communication is received, regarding its disposal.
4. Whenever the records are called for by the Higher Courts from the Subordinate Courts, photocopy/scanned/digitized copies are sufficient. The original records need not be called for, unless otherwise specifically ordered by the Higher Courts.
5. The cases wherein the original records have already been requisitioned by this Registry, the same shall be transmitted back, after due verification and after having the same scanned/digitized/photo copied by the Registry, except in cases where it has been expressly ordered to call for the originals.
6. The above directions regarding transmission of original records shall, in future, form part of the communication requisitioning such records.

The aforesaid instructions shall be scrupulously adhered to.

HIGH COURT, MADRAS

DATED: 18/06/2018


REGISTRAR (JUDICIAL)

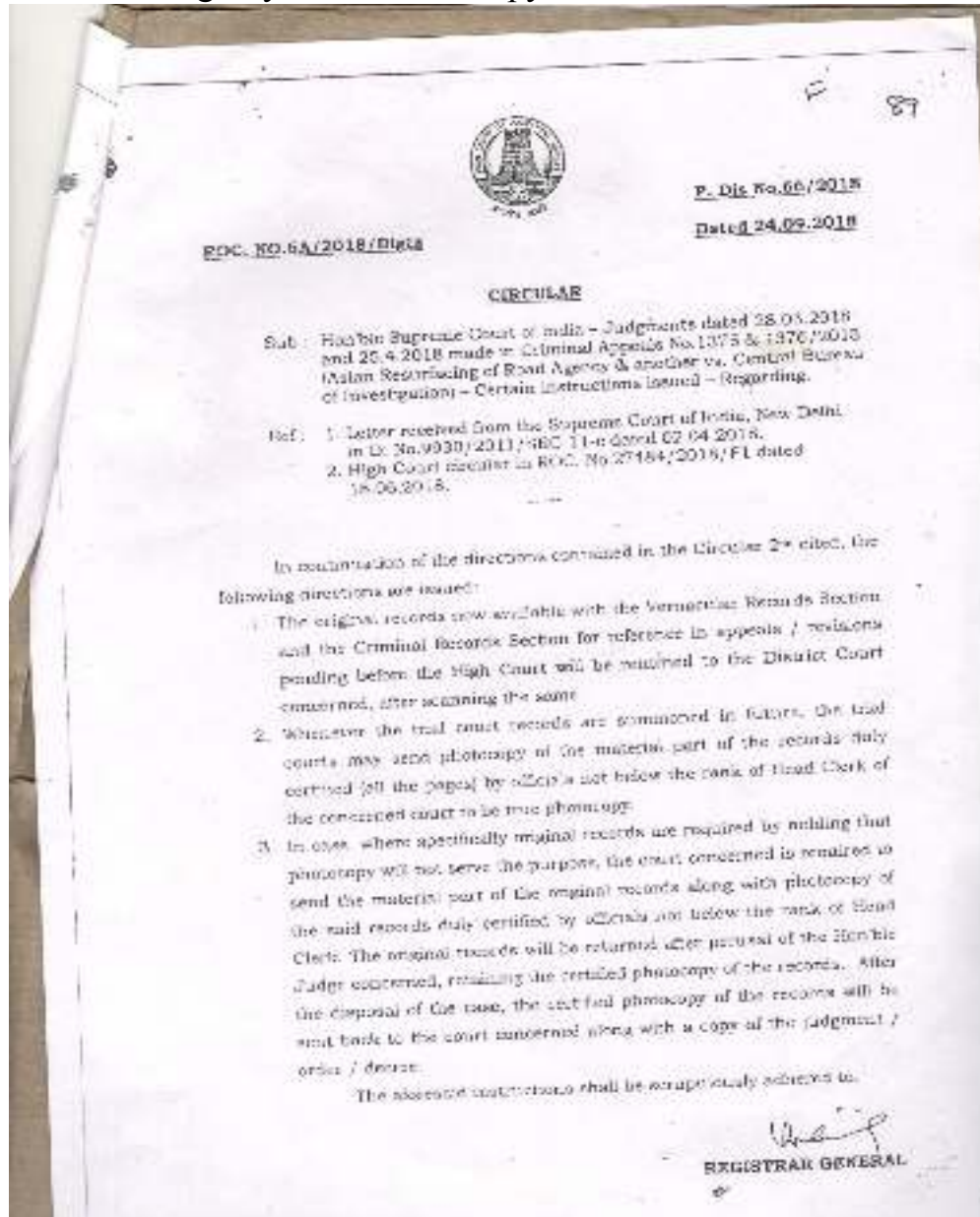
To

1. All the Registrars of the High Court, Madras and Madurai Bench of Madras High Court, Madurai.
2. All the Officers of the High Court, Madras and Madurai Bench of Madras High Court, Madurai.
3. All the Heads of Section, Madras and Madurai Bench of Madras High Court, Madurai.



Crl.A.No.254 of 2018

5. In continuation of the said circular, the Registrar (General) issued another circular dated 24.09.2018 bearing R.O.C.No.6A/2018/Digtz P.Dis.66/2018 to the subordinate Courts and Section Heads of all the Sections of the registry. A scanned copy of the circular reads as follows:

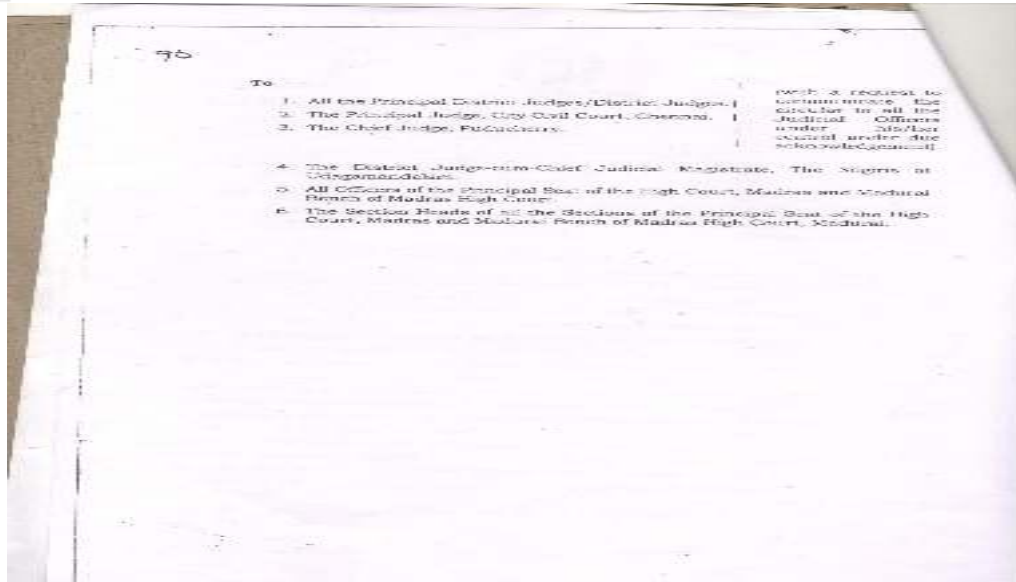




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Crl.A.No.254 of 2018



6. The first circular dated 18.06.2018 states that the original record need not be called for unless otherwise specifically ordered by the Higher Courts. The second circular dated 24.09.2018 states that the original record available with the High Court will be returned to the District Court concerned after scanning the same, and that where the original record is specifically required, the material part of the original record, shall be sent by the trial Court along with the photocopy of the said record. We are informed that the Registry has returned the original record wherever it was summoned, and the trial Courts are also sending scanned certified copies of



Crl.A.No.254 of 2018

the original record, whenever it is summoned. Apparently, the two circulars have been issued on the basis of the directions issued by the Hon'ble Supreme Court in the *Asian Resurfacing of Road Agency's* case [cited supra]. We find that the Registry, while issuing the circulars has not appreciated the order of the Hon'ble Supreme Court from the correct perspective.

7. In that case, the Hon'ble Supreme Court held that whenever an appellate or revisional Court summons the original record, the trial Courts shall send photocopies / scanned copies of the record and retain the original so that the proceedings are not held up. However, the said procedure cannot be adopted when the matter has been finally disposed of by the trial Court and a judgment of conviction or acquittal is challenged in an appeal before this Court. The direction issued by the Hon'ble Supreme Court ought to have been read in the context in which it was passed. The Hon'ble Supreme Court had made such a direction so that the pending proceedings would not be delayed in the trial Court. Once that is terminated, the holding up of proceedings does not arise. The very same issue came up before the



Crl.A.No.254 of 2018

Allahabad High Court and a learned single Judge of the Allahabad High

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Court passed the following orders in ***National Highways Authority of***

India Vs. Smt.Sudha & 3 Others [Appeal under Sec.37 of Arbitration and Conciliation Act, 1996 No.378/2023 decided on 28.11.2023].

“The intent of the order dated 25.04.2018 rendered by the Supreme Court in Asian Resurfacing of Road Agency P. Ltd., and Anr. Vs. Central Bureau of Investigation (Criminal Appeal Nos.1375-1376 of 2013) is clearly to ensure that cases in which proceedings are pending before the trial courts do not come to a stand still after original records are transmitted to the High Court. However, in cases where the proceedings before the trial courts have concluded, and the order of the trial court is taken in appeal to the High Court, the same directions are not intended to apply. It is settled law that appeal is a continuation of the original proceedings. To decide second appeals, first appeals, FAFO’s and other like proceedings where the lis before the trial court has terminated and the appeal or the proceeding has been instituted before the High Court, the original records are essential for adjudication of such proceedings before the High Court. In such matters, after termination of the lis before the trial court, the entire proceedings are transmitted to the higher forum. The High Court cannot decide such matters in the absence of original records. Appeals under Section 37 of the Arbitration and Conciliation Act, 1996 is one such category of appeals where proceedings before the trial courts have terminated. Hence, original records are liable to be summoned from the court below. The interpretation given by the Registry to the order of the Supreme Court dated 25.04.2018 is erroneous. Registry is accordingly directed to



summon the original records of the trial courts in all those matters where proceedings before the trial court have terminated and the final order passed by the trial court is assailed before the High Court.”

We agree with the views expressed by the learned single Judge of the Allahabad High Court in the above mentioned order.

8. Be that as it may. The appellate Court is governed by the procedure prescribed in Cr.P.C., for hearing the appeals, which are not dismissed summarily. Section 385 of the Cr.P.C., provides for the said procedure. Section 385(2) reads as follows:

“The Appellate Court shall then send for the record of the case, if such record is not already available in that Court, and hear the parties:

Provided that if the appeal is only as to the extent or the legality of the sentence, the Court may dispose of the appeal without sending for the record.”

9. The Hon'ble Supreme Court reiterated the importance of calling for the record in the latest judgment reported in ***Jitendra Kumar Rode Vs. Union of India***, reported in **2023 LiveLaw (SC) 347**. The relevant portion reads as follows:



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Crl.A.No.254 of 2018

“35. Protection of the rights under Article 21 entails protection of liberty from any restriction thereupon in the absence of fair legal procedure. Fair legal procedure includes the opportunity for the person filing an appeal to question the conclusions drawn by the trial court. The same can only be done when the record is available with the Court of Appeal. That is the mandate of Section 385 of the Cr.P.C. Therefore, in the considered view of this Court, it is not within prudence to lay down a straightjacket formula, we hold that non-compliance with the mandate of the section, in certain cases contingent upon specific facts and circumstances of the case, would result in a violation of Article 21 of the Constitution of India, which we find it to be so in the instant case.

36. The language of Section 385 shows that the Court sitting in appeal governed thereby is required to call for the records of the case from the concerned Court below. The same is an obligation, power coupled with a duty, and only after the perusal of such records would an appeal be decided.”

10. In fact, this Court, while issuing the Criminal Rules of Practice, reiterated this position and framed the following Rule.

“252. Records to be submitted to the High Court.— (1) The following records shall be submitted to the High Court in all cases of appeals or revisions against the judgment of a Sessions Court, other than judgment on appeal to the Court of Session:-

(i) The entire Sessions record; and

(ii) The entire Magisterial record.

(2) In cases of appeals not already provided for and in cases of revision –



(i) The material part of case record including an extract from the diary;

(ii) The material part of the appellate case record, if any.

(3) The words “entire Sessions record” include the charge, plea of the accused, the evidence (oral and documentary), the statement of the accused under section 313 of the Code and the judgment.

(4) The words "entire Magisterial record" include an extract from the diary, Register of Preliminary Enquiry, Police occurrence Reports, mahazars and Village Administrative Officer's reports, and Proceedings (if any) before any Magistrate other than the Committing Magistrate who may have dealt with the case, but do not include so much of the Magisterial Record as may have been incorporated in the record of the Court of Session.

(5) The covering letter for all records shall be sent separately from them by post. Any delay in submitting the records shall be explained in the covering letter advising despatch of records. It shall state when and how and in how many separate files, the records are despatched.

(6) In every case sent up to the High Court,?

(i) the records in English and in the regional language, - the English part of Sessions record, if any, including translations,

(ii) the part of the Sessions record in the regional language, if any;

(iii) the English part of the Magisterial record including translation;

and

(iv) the part of the Magisterial record in the regional language shall be bound and indexed separately. The indexing in respect of records specified in clauses (i) and (ii) of sub-rule (6), shall be made in **Judicial Form Nos.63 and 65**, respectively.

(7) Eight spare copies of judgment in cases referred under section 366 of the Code and six copies in other Sessions trials should be sent with the



record. They should not be paged and entered in the index, but should be kept separate from the record.

(8) The docket on the fly-leaf of all records and the covering letter should specify the number of the case on the lower Court's file and the number of the appeal or revision case or petition on High Court's file.

NOTE: The fly-leaf shall be of sufficient thickness and of foolscap size.

(9) The calendar, translations, copies, notes of evidence, etc., shall, wherever possible, be written on foolscap paper of sufficient substance.

(10) (i) Every record shall, before despatch to the High Court, be examined and certified as complete in accordance with the foregoing rules by the Head Ministerial Officer of the Court forwarding it.

(ii) Where copies of depositions, verified as to accuracy or not, are made out for the use of the Judge or for any other purpose and are available, they shall be submitted to the High Court with the records to facilitate printing or typing of the evidence, if necessary. Indication shall, however, be given in the covering letter or in some prominent place in the copies themselves to show whether the copies are accurate or whether they require to be compared with original.

(11) When an accused files a written statement at the time of his examination under section 313 of the Code, it shall be stitched along with the statement and kept in the bundle.

(12) While sending the records to the High Court for reference in appeals, the statement under section 313 of the Code and the written statement shall also be submitted. 98 The Criminal Rules of Practice, 2019 98

(13) While submitting records to the High Court, the Presiding Officers shall pay more attention to submit all important material records such as First Information Report, charge sheet, statement of accused, charges framed by Courts, deposition of prosecution side and connected exhibits,



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Crl.A.No.254 of 2018

deposition of defence side and exhibits, judgments of the trial Court and any other relevant records.

(14) Whenever the case records for appeals/revisions are submitted to the High Court by the Sessions Judges or the Chief Judicial Magistrates, the consolidated period of detention undergone by the accused in such cases before them as also before the Magistrates, both as under-trial prisoner and as convict, shall be furnished as a separate annexure to the judgment in the Sessions Cases or appeals.

(15) The Registry of High Court shall call for records from the subordinate Courts in Judicial Form No.76 in case of Criminal Appeals and in Judicial Form No.77 in case of Criminal Revision Cases. While sending the original case records, the Courts shall also send all the documents like charges, deposition of witnesses, statement under section 313 of the Code and judgment, if available, as soft copy by email to the High Court. The Courts may send photocopy of the material records duly certified in all pages by an official not below the rank of Head Clerk of the Court concerned to be true photocopy. In a case where the original record has been specifically called for, the Court concerned shall send the same along with a photocopy of it duly certified by an official not below the rank of Head Clerk. The original record shall be returned after perusal by the Judge concerned, retaining the certified photocopy of it.”

11. The certified scanned / xerox copy of the record cannot be equated with the original record of the case, which is absolutely essential



Crl.A.No.254 of 2018

for deciding an appeal. The reason is not far to seek. For instance, a particular line may be inserted in an important document in a different ink.

A line or a portion of the document may be erased by a whitener or other means and another line could be inserted. This may not be visible in a scanned or xerox copy. There are various other obvious advantages when the original record is before the Court hearing the appeal. Therefore, we are of the view that, by default, the original record of the case has to be summoned by the Registry and retained till the appeal is finally heard. The original record may also be required in a case of revision where proceedings in the trial Court or appellate Court are finally terminated. However, the above circulars may be valid in so far as calling for record where the proceedings are pending before the trial Court.

12. Another aspect we noticed in the printed paper-book is that many documents were handwritten and the statements of the accused under Section 313 of Cr.P.C., were not printed. To a specific query, the Registry officials produced before us a note by four Hon'ble Judges of this Court to the Hon'ble Chief Justice dated 25.01.2017, which reads as follows:



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Crl.A.No.254 of 2018

NOTE

25.01.2017

It is in practice, as per the Appellate side Rules that in Criminal Appeals, typed set of papers are prepared by the Registry and on referring to the same, arguments are advanced and judgments are delivered. We feel that when depositions were recorded in handwriting by the Trial Court Judges and the documents were also hand written, there was a necessity to type out these documents to form part of the typed set of papers for reference during hearing of appeals.

2. Now, the depositions are either typed out or recorded through computer and most of the documents are also either type written or computer generated. Therefore, we are of the view that it is enough if xerox copies of the depositions and documents are prepared and supplied to the parties as well as placed before the Hon'ble Judges for reference during the hearing of appeals.

3. Noticing this, we issued instructions to the Registry to prepare only xerox copies of the depositions and documents and to place the same for reference. Similarly, the statements of the accused under Section 313 Cr.P.C. need not be typed out and even xerox copies need not be prepared, the reason being that if need be, the original could be referred to by the Court as well as the parties. Preparation of either xerox copies or typed set of the statements made by the accused under Section 313 Cr.P.C. runs to several volumes.



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Crl.A.No.254 of 2018

4. Considering the above ground realities, we instructed the Registry not to prepare either the type copies or take xerox copies of the statement of the accused recorded under Section 313 Cr.P.C. which in turn has considerably reduced the work burden of the Registry. Similarly, preparing the xerox copies of the depositions and documents has also reduced the work burden of the Registry. But we are also informed by the Registry that some of the Hon'ble Judges insist for the typed written copies of all the depositions and the documents which consume lot of time, manpower and adds to the work burden of the Registry. Thus, there is no uniformity.

5. Therefore, we request the Hon'ble The Chief Justice to consider to issue orders to the Registry to dispense with the preparation of type written or computer generated copies of the depositions and documents of the Trial Court for the purpose of hearing of appeals or revisions and instead to prepare xerox copies of the depositions and documents and to supply the same to the parties and also keep the same for reference by the Hon'ble Judges. We also further request the Hon'ble the Chief Justice to consider issuing an order to the Registry to dispense with the preparation of either type written or computer generated copies of the statements of the accused under Section 313 Cr.P.C.”

13. By virtue of the above note sent by the Hon'ble Judges, the



Crl.A.No.254 of 2018

statement under 313 of the Code does not form part of the printed paper-book furnished by the Registry. The printing of a statement under Section 313 Cr.P.C., can be dispensed with only if there are a number of accused, as per Rule 168(2)(iii) of the Criminal Rules of Practice, 2019. Rule 168 of the said Rules, reads as follows:

“168. Cases in which Court printing is done.— (1) The following classes of cases will be printed by the Registry without special orders of Court:-

- (i) Reference under section 395 of the Code.
- (ii) Appeal under the Code.

(2) (i) It will not ordinarily be necessary to print inquest reports and prior statements which are filed merely to prove omissions or motive.

(ii) Where parts of a document are relied on, those parts alone need be printed, as indicated by the trial Court in the judgment or the list of exhibits annexed.

(iii) In cases where there are a number of accused, such as cases involving offences like rioting, the printing of statements of the accused under section 313 of the Code may be dispensed with:

Provided that three copies of such statements are typed, one for the Court, one for the use of the Public Prosecutor and one for joint reference by all the counsel for the accused persons.”

14. The Criminal Rules of Practice would necessarily override the



Crl.A.No.254 of 2018

administrative instructions issued by this Court at the instance of the learned Judges.

15. On the very same issue, another Division Bench of this Court observed as follows in Crl.A.(MD) Nos.89 of 2020 & 313 of 2021 [decided on 07.12.2023]

“M.SUNDAR, J.

I had the benefit of perusing the common judgment penned by brother Hon'ble R.Sakthivel.J. I am in absolute agreement. Besides concurring with brother, I deem it appropriate to add the following:

(a)In this case, in the course of hearing captioned Criminal Appeals, a need arose to peruse the answers of the accused explaining the circumstances appearing in evidence against them and for this purpose, this Court had to take recourse to trial Court records and peruse the questioning under Section 313 of 'The Code of Criminal Procedure, 1973 (2 of 1974)' [hereinafter 'Cr.PC' for the sake of brevity]. This would be evident from paragraphs 11.3 and 11.4 of common judgment penned by brother Hon'ble R.Sakthivel.J,. In this view of the matter, I am not delving into how and why the need arose to peruse the section 313 Cr.PC questioning and the answers of the accused as paragraphs 11.3 and 11.4 of brother's Judgement articulates how and why the need arose. Therefore, it will suffice to say that paragraphs 11.3 and 11.4 shall be



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Crl.A.No.254 of 2018

referred to in this regard (without setting out the same again). We had to ferret out the Section 313 Cr.PC questioning and peruse the answers of the accused/appellants wherein the accused/appellants have explained the circumstances appearing in the evidence against them. Notwithstanding this position, in the typed set of papers that is being indexed and prepared by the Registry (to be noted, typed set containing charges, deposition of witnesses, exhibits, list of material objects, trial Court judgment, grounds of appeal, etc.), the questions and answers in the legal drill under Section 313 Cr.PC is not included. This is causing difficulty to the Counsel and Court as the typed set prepared by the Registry serves as the convenience set and functions as the fulcrum of a criminal appeal hearing. This is only an illustration, as it comes to light from past experience, in most cases, the Court is required to look into the questioning under section 313 Cr.PC and the answers of the accused. Therefore, this Bench is of the considered view that it is imperative that this questions and answers in Section 313 Cr.PC drill in the trial Court is also included in the typed set which serves as a convenience set and functions as fulcrum of a criminal appeal hearing irrespective of whether hard copies are placed before the Bench or the same is placed before the Court by way of soft copies i.e., in digital form. In this regard, it is to be noted that inconvenience caused to the Bar is much more qua Bench. The reason is the entire lower court records are transmitted to the Bench when a criminal appeal is taken up for hearing and this lower court records contain the section 313 Cr.PC questioning and answers



but as regards the counsel and learned Prosecutor arguing the criminal appeal if they want to peruse the section 313 Cr.PC questioning and answers of the accused, they have to apply for the certified copies and obtain the same either physically or online.

(b)Therefore, this Bench is of the considered view that a suitable direction should be given to the Registry for issuing an appropriate circular inter-alia directing the Registry of this Court to henceforth include in all Criminal Appeals the questions and answers in Section 313 Cr.PC legal drill (subject only to Rule 168(2)(iii) and proviso thereof of The Criminal Rules of Practice, 2019) in the typed set to be prepared (either hard copies or digitally) preferably from 01.01.2024.

(c)This Court makes it clear that this is a suggestion (though made as part of this judicial order, i.e., judgment) and therefore, implementation of this suggestion will be subject to orders of Hon'ble Chief Justice on the administrative side.

2 Registry to place a copy of this judgment before Hon'ble Chief Justice (on the administrative side) and seek suitable orders.”



Crl.A.No.254 of 2018

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16. We are in respectful agreement with the above observations made in the said judgment. Since there is already a direction to print the questions and answers under Section 313 Cr.P.C., in the aforesaid order, no further direction is required.

17. Another aspect, that we found in the paper-book is that, as stated earlier, certain documents are handwritten and illegible. The Registry relied on the aforesaid note for placing the xerox copies of the documents without typing. There is no doubt that wherever the evidence and documents were typewritten or computer-generated, it would be sufficient if legible xerox copies of the depositions and documents are prepared and supplied to parties as well as to the Hon'ble Judges for reference. However, we find that many documents, such as complaint, contents of the printed FIR, Seizure Mahazars, contents of the Accident Register, contents of the Wound Certificate and the contents of the Postmortem Certificate are handwritten. When these documents are handwritten and illegible, it is needless to say that they cannot be appreciated in a proper manner, which may result in



Crl.A.No.254 of 2018

injustice.

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18. Therefore, we are of the view that the handwritten and illegible documents that are relevant in a criminal appeal against judgment of conviction under Section 302 IPC., such as the complaint, contents of the printed FIR, Seizure Mahazars, contents of the Accident Register, contents of the Wound Certificate and the contents of the Postmortem Certificate, have to be necessarily typed. There may be several such relevant documents in other types of appeals as well, which have to be typed. This cannot be dispensed with, in our view. Therefore, we are of the view that the Registry has to necessarily type the handwritten, illegible documents stated above.

19. Thus, we direct the Registry,

(a) to call for the original record in all cases where the original proceedings are terminated before the Court from which the record is summoned and retain the same till the appeal is finally disposed of.



Crl.A.No.254 of 2018

The Registry may place this order before the Hon'ble Chief Justice to obtain suitable orders to issue appropriate instructions to the other appellate Courts as well.

(b) As regards the printing of questions and answers under Section 313 Cr.P.C., in view of the order passed by the Division Bench of this Court in Crl.A.(MD) Nos.89 of 2020 & 313 of 2021 suggesting the inclusion of the questions and answers under Section 313 of Cr.P.C., in the typed set/paper-book, we do not propose to issue any further direction while reiterating the desirability of printing and supplying the statements to all concerned.

(c) As regards the requirement of typing vital documents such as complaint, the contents of the printed FIR, Seizure Mahazars, contents of the Accident Register, contents of the Wound Certificate and the contents of the Postmortem Certificate, which are handwritten, the Registry may now issue appropriate circular in tune with the decision in this regard. It will be



Crl.A.No.254 of 2018

more convenient and desirable to have typed copies of all the documents which are handwritten. The Registry is directed to get all the documents which are handwritten, typed and the typed copies should be duly compared and verified by the Registry by engaging sufficient staffs. However in appropriate cases, this Court may by order dispense with typing of all or selected documents for reasons. The Registry is directed to issue necessary circulars to Subordinate Courts to type out the handwritten portions of documents during trial after a process of comparison and send them along with original with effect from a date that may be fixed by Hon'ble Administrative Committee considering the requirement of additional staff and other factors which are relevant.

21. We place on record our appreciation for the valuable assistance rendered by Mr.A.Ramesh, learned Senior Advocate, Mr.Hasan Mohammed Jinnah, learned Public Prosecutor and Mr.A.Gokulakrishnan, learned Additional Public Prosecutor, in the above matter.

[S.S.S.R., J] [S.M., J]



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Crl.A.No.254 of 2018

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Crl.A.No.254 of 2018

S.S.SUNDAR, J.

AND

SUNDER MOHAN, J.

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Crl.A.No.254 of 2018
(Registry Matter)

05.01.2024