



Crl.O.P.No.3761 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 27.03.2023

PRONOUNCED ON : 25.04.2023

CORAM

THE HON'BLE MR.JUSTICE G.CHANDRASEKHARAN

Crl.O.P.Nos.3761 & 2617 of 2023

and

Crl.M.P.Nos.2364 & 1526 of 2023

M.Siva @ Sivashanmugam @ Nettrikansiva ... Petitioner in both Crl.O.Ps

Vs.

The Deputy Superintendent of Police,
Perur Sub Division,
Coimbatore,
Alandurai Police Station,
(Crime No.311/2016)

...Respondent in both Crl.O.Ps

COMMON PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C. Praying to set aside the orders dated 12.12.2022 made in C.M.P.Nos.1962 & 5148 of 2022 in Spl.S.C.No.18 of 2017, on the file the Principal District and Sessions Judge, Coimbatore by allowing this Criminal Original Petition.

In both Crl.O.Ps.

For Petitioner : Mr.M.Purushothaman

For Respondent : Mr.Leonard Arul Joseph Selvam
Government Advocate (Crl.Side)



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COMMON ORDER

These Criminal Original Petitions have been filed to set aside the orders dated 12.12.2022, passed in C.M.P.Nos.1962 & 5148 of 2022 in Spl.S.C.No.18 of 2017, on the file the Principal District and Sessions Judge, Coimbatore.

2.The learned counsel for the petitioner submitted that petitioner filed C.M.P.No.1962 of 2022 in Spl.S.C.No.18 of 2017 under Section 91 Cr.P.C., praying to direct the Revenue Divisional Officer, Coimbatore, to produce the certified copies of the following proceedings.

(1) Roc.No.4688/2006(C2) dated 16.04.2007.

(2) Roc.No.A3/4327/2007

3.Petitioner also filed C.M.P.No.5148 of 2022 in Spl.S.C.No.18 of 2017 under Section 91 Cr.P.C., in the same case, seeking direction to the Deputy Superintendent of Police, Perur Sub Division, Coimbatore, to produce the documents mentioned in the petition for the period from 14.10.2016 to 23.10.2016, 24.11.2016 to 30.11.2016 and 16.01.2017 to 19.01.2017. Both petitions were dismissed by the Principal District and Sessions Judge,



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Coimbatore, on the ground that the case has not reached the defence stage.

As per the judgment of the Hon'ble Supreme Court in ***State of Orissa Vs. Debendra Nath Padhi*** reported in ***AIR 2003 SC 359***, petition under Section 91 Cr.P.C., has to be filed by the defence only at the stage of trial which has reached the defence stage. In this case, trial has not reached the defence and only pending for fixing of trial. Petition filed at this stage cannot be maintained and in this view of the matter, the learned the Principal District and Sessions Judge, dismissed the petition.

4. Challenging the order passed in C.M.P.Nos.1962 & 5148 of 2022 in Spl.S.C.No.18 of 2017, Crl.O.P.Nos.3761 & 2617 of 2023 are filed.

5. The learned counsel for the petitioner submitted that the allegations against the petitioner is that he received a sum of Rs.4,000/- from the defacto complainant under the guise of getting patta for the land situated at Mullankadu Check Post in the Semmedu Revenue Village, Ikkarai Boluvampatti Panchayat, Perur Taluk, Coimbatore District. The further allegation is that when the defacto complainant requested petitioner to return the said money, petitioner scolded her and outraged her modesty. It is the



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further submission of the learned counsel for the petitioner that petitioner already filed C.M.P.Nos.1963 of 2022 and 1962 of 2022 praying for a direction to produce the movement register and records of the then Inspector of Police, Alanthurai Police Station and the then Deputy Superintendent of Police, Perur Sub Division, Coimbatore District. In the counter filed, it was informed that all the records had been sent to the Superintendent of Police, Coimbatore. Therefore, C.M.P.No.5148 of 2022 was filed. The documents are necessary to prove the innocence of the petitioner. The reason is that the investigation could not have been conducted as projected by the prosecution. As per Rule 7 of the Schedule Caste and Schedule Tribes (Prevention of Atrocities) Rules, 1995, the Investigating Officer should be an officer not below the rank of Deputy Superintendent of Police. No proceedings is produced to show that the Deputy Superintendent of Police was appointed for investigating this case by the Superintendent of Police, Coimbatore. The FIR is stated to have been registered at 8.00 A.M. on 15.10.2016 and the investigating officer is said to have commenced his investigation at 9.00 A.M. This would not be possible for the reason that the distance between Alandurai Police Station and the Coimbatore District SP Office and from the Coimbatore District SP Office to the office of the DSP Perur Sub division at Vadavalli and



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from the office of the DSP Perur Sub division at Vadavalli to the scene of occurrence is as follows:

FROM	TO	DISTANCE (SHORTEST)	TIME FOR NORMAL TRAVEL
Allandurai Police Station. (FIR Registered)	Superintendent of Police Coimbatore Office	22.6 KM	50 minutes
SP Office Coimbatore (For Proceedings of the SP for appointment of IO)	Office of the DSP Perur Sub Division at Vadavalli	11.6 KM	31 minutes
Office of the DSP Perur Sub Division at Vadavalli	Scene of Occurrence at Kulatheri, Semmedu in Ikkarapooluvampatti	22.5 KM	47 minutes
Total (assuming a person travelled without any stop at each point)		56.7 KM	128 minutes (more than 2 hours)

6.This time schedule indicates that it is not at all possible for the investigating officer to commence his investigation at 9.00 A.M. The letter alleged to have been sent by the officer, who registered the FIR, to the Deputy Superintendent of Police for appointing the Deputy Superintendent of Police



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as Investigating Officer is not produced. It is apparent that without proper appointment of Investigating Officer, it is claimed that investigation commenced at 9.00 A.M., which is highly impossible considering the distance indicated above. To elicit that investigation was not conducted as mandated by law and as projected by the prosecution, petitioner requires the documents mentioned in the petition. However, the learned Principal District and Sessions Judge dismissed the petition for the reason that documents can be produced only at the stage of defence. The reason given by the learned Principal District and Sessions Judge is not proper and legal for the reason that these documents are required by the petitioner for confronting the witnesses when they are cross examined. No purpose would be served by summoning these documents during the defence evidence.

7.It is his further submission that judgment relied by the learned Principal District and Sessions Judge was considered by the Hon'ble Supreme Court by a three member bench in the ***State of Orissa Vs. Debendra Nath Padhi*** reported in ***(2005) 1 SCC 568***. It was held in this judgment that when the jurisdiction under Section 91 of the Code is invoked by the accused, the necessity and desirability would have to be seen by the Court in the context of



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the purpose – investigation, inquiry, trial or other proceedings under the Code.

Thus, it is seen that in the facts and circumstances of this case, petitioner had made out a case of necessity and desirability for the production of these documents for establishing his case. Thus, the dismissal of the petition by the learned Principal District and Sessions Judge on the ground that trial has not reached the defence stage is not correct and therefore this petition.

8.In response the learned Government Advocate (Crl.Side) submitted that every document has a shelf life. The documents sought for by the petitioner are not required for the decision of this case. Petitions filed by petitioner under Section 91 Cr.P.C. in C.M.P.Nos.1963 of 2022 and 1962 of 2022 were dismissed by the Trial Court. Petitioner has not challenged the dismissal order, but filed fresh petition for the same relief and that cannot be maintained. A detailed chart has been given with regard to the availability and non availability of the documents sought for by petitioner. Certain documents had been destroyed. Those documents cannot be produced. Thus, he prayed for dismissal of these petitions.

9.Considered the rival submissions and perused the records.



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10.The allegations against the petitioner as registered in FIR No.311 of 2016 are as follows:

The defacto complainant alleged that petitioner informed defacto complainant that Government is going to give patta to Scheduled Tribes and if she pays Rs.5,000/-, she would get patta. 30 days prior to giving the complaint, she gave Rs.4,000/- to petitioner. Petitioner got the copy of the order, ration card and passport size photograph and informed her that patta would be given in respect of the land in Mullankadu Check Post. Thereafter, he had not taken any efforts to get the patta despite asking him for three or four times. On 02.10.2016, at about 2 p.m., she asked him when he would get patta, petitioner responded by using filthy words and asked her not to disturb him. When she again demanded atleast the return of Rs.4,000/-, he scolded her in filthy language using her community and pulled her saree and pushed her down. Therefore, FIR was registered for the aforesaid offences.

11.It is the submission of the learned counsel for the petitioner that though FIR was registered at 8 A.M. on 15.10.2016, observation mahazar shows that the Investigating officer visited the scene of occurrence on



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15.10.2016 at 9.00A.M. It is not possible for the reason that the distance between Allandurai Police Station to the office of the Superintendent of police, Coimbatore is 22.6 km and the travel time required is 50 minutes. The distance between the office of the Superintendent of police, Coimbatore to the office of the Deputy Superintendent of police, Perur Sub division at Vadavalli is 11.6 km and the travel time required is 31 minutes. The distance between the office of the Deputy Superintendent of police, Perur Sub division at Vadavalli to the scene of occurrence is 22.5 km and the travel time required is 47 minutes. Therefore, the distance of 56.7 km could not have been covered within a period of 1 hour. It requires atleast 128 minutes. Therefore, the claim of the investigating officer that he started the investigation at 9.00 A.M. by visiting the scene of occurrence is highly improbable and impossible. These facts can be elicited if the documents requested by the petitioner are produced. It is not that the petitioner's request has no force in it. Unless these documents are produced, it is no doubt, the concerned witnesses cannot be effectively cross examined. Thus, petitioner has made out the necessity and desirability, as observed in **(2005) 1 SCC 568 State of Orissa Vs. Debendra Nath Padhi**, of production of the documents required by him or eliciting certain vital information, which goes to the root



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of the very commencement of the investigation and its validity. Petitioner requires the following documents.

(1) Roc.No.4688/2006(C2) dated 16.04.2007.

(2) Roc.No.A3/4327/2007

(1) Alanthurai Police Station Inspector's Daily Diary.

(2) Alanthurai Police Station Inspector's Vehicle Diary.

(3) Alanthurai Police Station Inspector's Travel Allowance Bill.

(4) Alanthurai Police Station House Report.

(5) Alanthurai Police Station General Diary.

(6) Daily Diary of Deputy Superintendent of Police, Perur Sub- Division, Coimbatore District.

(7) Vehicle diary of Deputy Superintendent of Police, Perur Sub-Division, Coimbatore District.

(8) Travel Allowance Bill of Deputy Superintendent of Police, Perur Sub-Division, Coimbatore District.

(9) Name and details of constable entrusted to deliver express FIR in Crime No.311/2016, on the file of Alanthurai Police Station.

(10) Copy of duty passport issued to the constable for deliver of express FIR



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in Crime No.311/2016 on the file of Alanthurai Police Station.

(11) Copy of Thapal Dispatch Register pertaining to delivery of express FIR in Crime No.311/2016, on the file of Alanthurai Police Station.

(12) Copy of DTO (Date and Time) Message.

(13) Following copies of the Driver of the then Inspector of Police, Alanthur Police Station namely,

i. Note book.

ii. T.A.Bill

iii. GD Entry

iv. Duty Passport

(14) Following copies of of the Driver of the then Deputy Superintendent of Police, Perur Sub-Division, Coimbatore District namely,

i. Note book.

ii. T.A.Bill

iii. GD Entry

iv. Duty Passport

(15). The copy of the proceedings informing the registration of the case in Crime No.311/2016, on the file of the Alanthurai Police Station to the Deputy Superintendent of Police, Perur.



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(16). The copy of the proceedings informing the registration of the case in Crime No.311/2016, on the file of the Alanthurai Police Station to the Deputy Superintendent of Police, Coimbatore.

(17). The copy of the proceedings passed by the Superintendent of Police, Coimbatore entrusting the investigation in Crime No.311/2016 on the file of the Alanthurai Police Station.

12.From the status report, it is seen that some of the documents are available and some are not available.

<i>S.No.</i>	<i>Required Document</i>	<i>Reason</i>
1.	Roc.No.4688/2006(C2), dt.16.04.2007.	Not available
2.	Roc.No.A3/4327/2007	Not available

<i>S.No.</i>	<i>Required Document</i>	<i>Reason</i>
1.	Alanthurai Police Station Inspector's Daily Diary.	As per Section 224 Police Standing Order Daily Diary should be maintained for 3 years.
2.	Alanthurai Police Station Inspector's Vehicle Diary.	As per Section 224 Police Standing Order Daily Diary should be maintained for 3 years.
3.	Alanthurai Police Station Inspector's Travel Allowance Bill.	As per Section 224 Police Standing Order Travel Allowance Bill should be maintained for 3 years.



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S.No.	Required Document	Reason
4.	Alanthurai Police Station House Report.	As per Section 224 Police Standing Order House Report should be maintained for 3 years.
5.	Alanthurai Police Station General Diary.	As per Section 224 Police Standing Order General Diary should be maintained for 1 year.
6.	Daily Diary of Deputy Superintendent of Police, Perur Sub- Division, Coimbatore District.	As per Section 224 Police Standing Order House Report should be maintained for 3 years.
7.	Vehicle diary of Deputy Superintendent of Police, Perur Sub-Division, Coimbatore District.	As per Section 224 Police Standing Order Vehicle diary should be maintained for 3 years.
8.	Travel Allowance Bill of Deputy Superintendent of Police, Perur Sub-Division, Coimbatore District.	As per Section 224 Police Standing Order Travel Allowance Bill should be maintained for 3 years.
9.	Name and details of constable entrusted to deliver express FIR in Crime No.311/2016, on the file of Alanthurai Police Station.	Available
10.	Copy of duty passport issued to the constable for deliver of express FIR in Crime No.311/2016 on the file of Alanthurai Police Station.	Available
11.	Copy of Thapal Dispatch Register pertaining to delivery of express FIR in Crime No.311/2016, on the file of Alanthurai Police Station.	As per Section 224 Police Standing Order Travel Allowance Bill should be maintained for 3 years.
12.	Copy of DTO (Date and Time) Message.	Not available
13.	Following copies of the Driver of the	1)As per Section 224 Police Standing Order Note Book,



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S.No.	Required Document	Reason
	then Inspector of Police, Alanthur Police Station namely, i. Note book. ii. T.A.Bill iii. GD Entry iv. Duty Passport	GD Entry and Duty passport should be maintained for 1 year. 2)As per Section 224 Police Standing Order T.A.Bill should be maintained for 3 years.
14.	Following copies of of the Driver of the then Deputy Superintendent of Police, Perur Sub-Division, Coimbatore District namely, i. Note book. ii. T.A.Bill iii. GD Entry iv. Duty Passport	1)As per Section 224 Police Standing Order Note Book, GD Entry and Duty passport should be maintained for 1 year. 2) As per police standing order T.A.Bill should be maintained for 3 year.
15.	The copy of the proceedings informing the registration of the case in Crime No.311/2016, on the file of the Alanthurai Police Station to the Deputy Superintendent of Police, Perur.	Not available
16.	The copy of the proceedings informing the registration of the case in Crime No.311/2016, on the file of the Alanthurai Police Station to the Deputy Superintendent of Police, Coimbatore.	Not available
17.	The copy of the proceedings passed by the Superintendent of Police, Coimbatore entrusting the investigation in Crime No.311/2016 on the file of the Alanthurai Police Station.	Not available

13.In the light of the materials produced before this Court and also the legal position with regard to the summoning of documents under Section 91



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Cr.P.C. by the defence, this Court is of the view that petitioner has made out a ground, for the necessity and desirability to produce all these documents, if available with the respondent.

14.In this view of the matter, this Court set asides the order of the learned Principal District and Sessions Judge, Coimbatore, passed in C.M.P.Nos.1962 & 5148 of 2022 in Spl.S.C.No.18 of 2017 and allows these petitions with a direction to produce the documents in the custody of the Revenue Divisional Officer, Coimbatore and Deputy Superintendent of Police, Perur Sub Division, Alandurai Police Station, Coimbatore. If the documents are destroyed or not available that should be specifically indicated in the proceedings issued therefor.

15.Accordingly, these Criminal Original Petitions are allowed.
Consequently, connected miscellaneous petitions are closed.

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Internet:Yes
Index:Yes/No
Speaking/Non speaking order

25.04.2023



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To:

- 1.The Principal District and Sessions Judge,
Coimbatore.
- 2.The Deputy Superintendent of Police,
Perur Sub Division, Coimbatore,
Alandurai Police Station,
(Crime No.311/2016)
- 3.The Public Prosecutor,
High Court of Madras.



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G.CHANDRASEKHARAN, J.
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Pre-delivery Order in
Crl.O.P.Nos.3761 & 2617 of 2023
and
Crl.M.P.Nos.2364 & 1526 of 2023

25.04.2023