



Crl.O.P.No.5272 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 08.03.2023

PRONOUNCED ON : 17.03.2023

CORAM

THE HON'BLE MR.JUSTICE G.CHANDRASEKHARAN

Crl.O.P.No.5272 of 2023

and

Crl.M.P.No.3323 of 2023

1.Saravanan
2.Aravinthan
3.Manikandan
4.R.Suthagar
5.Dilipkumar

...

Petitioners

Vs.

The State
Represented through the Inspector of Police,
Vaipoor Police Station,
Vaipoor.

...

Respondent

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C. praying to allow this Crl.O.P. to set aside the order in case Crl.M.P.No.1896 of 2022 in S.C.No.14 of 2022 dated on 05.01.2023 on the file of the learned Principal District and Sessions Judge, Thiruvarur and to allow the Crl.M.P. aforesaid.



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For Petitioner : Mr.R.Srinivas, Senior Counsel
for Mythili Srinivas

For Respondent : Mr.S.Santhosh
Government Advocate (Crl.Side)

ORDER

This Criminal Original Petition has been filed to set aside the order in Crl.M.P.No.1896 of 2022 in S.C.No.14 of 2022, dated on 05.01.2023, on the file of the Principal District and Sessions Judge, Thiruvarur and to allow this petition.

2.The learned counsel for the petitioners submitted that the petitioners filed Crl.M.P.No.1896 of 2022 in S.C.No.14 of 2022 under Section 91 (1) Cr.P.C., to submit the General Diary of Vaipoor police station for the year 2021 from January 1st to 31st day through one of the Investigation Officer Mr.Ramesh, Inspector of Police or Mr.Karunanithi, Inspector of Police.

3.It is the submission of the learned counsel for the petitioners that on 23.01.2021, one Vishnupriya preferred a complaint stating that her husband Maharajan was murdered in Pallivaramangalam. Based on the complaint, FIR in crime No.84 of 2021 was registered at about 2.00 a.m. on 24.01.2021. On



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the same date, another FIR came to be registered based on the complaint given by the Sub Inspector of of Police, Mr.Krishnakumar and that was destroyed on the basis of the advice given by the District Superintendent of Police, Thiruvarur. When PW18 was questioned about this, he denied. He deposed that the duty particulars of Sub Inspector of Police Mr.Krishnakumar on 23.01.2021 and 24.01.2021 were mentioned in the General Diary. Another reason why the Case Diary particulars are required is that in the accident register, it was mentioned that the body of the deceased Maharajan was brought to the hospital by the Sub Inspector of Police Mr.Krishnakumar of Vaipoor police station at about 10 p.m. on 23.01.2021. In the accident register, it was referred as Crime No.84 of 2021 under Section 302 IPC. It is obvious from the accident register that FIR was registered on the night of 23.01.2021 in Crime No.84 of 2021 for the offence under Section 302 IPC. But, the prosecution case now is that FIR in Crime No.84 of 2021 was registered on 24.01.2021 on the basis of the complaint given by Vishnupriya. There is a striking contradiction in the accident register and the FIR as to the date, time of registration of FIR and on whose complaint FIR was registered. This crucial aspect can be elicited only if General Diary is summoned. The Sub Inspector of Police Mr.Krishnakumar is not shown as witness. In the said



circumstances, it is necessary for the accused to summon the General Diary aforesaid.

4.The General Diary is not like a Case Diary and therefore, it can be summoned. In support of his submissions, he produced the judgment in ***Siva Vs. State reported in 2000 (3) MWN (Cr.)23***. The relevant portion of the order is extracted as follows:

3. The Police Officers are required to maintain two diaries, viz. (i) A diary where entries are made about the events which take place in the Police Station in Chronological order and it is ordinarily difficult to fabricate false entries in such diary and this diary has to be maintained day by day. This diary is known as general diary, (ii) Apart from general diary, the Police Officer who happens to be the investigating officer has to maintain a case diary. The case diary should set forth the proceedings day by day of the investigating officer and must record inter alia the time at which the information reached him, the time at which he began and closed his investigation, the place or places visited by him and circumstances ascertained through his investigation.



4. What is referred to under Section 172 (1) Cr.P.C. is the case diary. It has two parts, viz., (i) relating to the steps taken during investigation by the Police Officer with particular reference to the time at which the Police received the information, the time at which the Police Officer began and closed investigation, the place and places visited by him ; and (ii) a statement of circumstances ascertained through his investigation.

5. The Police Diary mentioned in sub-section (2) to Section 172 Cr.P.C. refers to the diary of the first category mentioned above. The entries in the diary prepared under Section 172 are only notes of secondary evidence of witnesses who can be examined in the first instance and whose evidence, if necessary, should be recorded in the open Court in the presence of the accused. Therefore, they do not assume the character of either the substantive evidence or the corroborative evidence. It therefore follows that neither the accused nor his agent is entitled to see the diary, though the Court may call for the diary and refer to it.

6. What has now been sought for by the petitioner is the copies of the entries in the general diary maintained by the Police Control Room and not the case diary maintained by the investigating officer or the general



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diary maintained by the concerned police. The Officials of the Police Control Room cannot be termed as investigating Officers. I feel, the diary maintained by the Police Control Room may not assume the character of a police diary adumbrated under Section 172 Cr.P.C.

5. In response, the learned Government Advocate (Crl.Side) submitted that General Diary cannot be summoned. There is a bar under Section 172 Cr.P.C. for summoning the General Diary. General Diary also falls within the scope of Section 172 Cr.P.C. and the bar equally applies to General Diary also. In support of his submission, he produced the order in ***Crl.O.P.No.26744 of 2018 dated 27.11.2018 in Haji Mohammed and Ors. Vs. The State***, wherein, it is observed as follows:

16. In view of the above, this Court is of the considered view that the limitations placed in relying upon the entries made in the Police Diaries as an evidence in the case, will equally apply to a General Diary also. It will also be relevant to point out that a General Diary will consist of entries with regard to complaints, charges preferred, names of all accused arrested, names of complainants, names of witnesses etc., pertaining to all the cases in a Police Station and the General Diary stands in a higher pedestal than a case Diary, since it contains details regarding all the cases registered in the



concerned Police Station and it will not be in public interest to summon the same for the purpose of a particular case.

.....

19. With all due respects to the learned Single Judge who had rendered the above said judgment, this Court is not in agreement with the above said judgment. Under normal circumstances, this Court would have referred this case to be placed before a Division Bench. However, in view of the later judgment of the Hon'ble Supreme Court, which has been referred supra, this Court falls in line with the judgment of the Hon'ble Supreme Court and holds that a General Diary also falls within the scope of [Section 172](#) of Cr.P.C, and the bar that has been provided under [Section 172](#) of Cr.P.C will equally apply to a General Diary also. The accused shall not be entitled to call for a General Diary, unless it falls within the scope of [Section 172](#) (3) of Cr.P.C. The questions raised by this Court are answered accordingly.

Thus, the learned Government Advocate (Crl.Side) submitted that petitioners are not entitled for General Diary.

6.In reply to this submission, the learned counsel for the petitioners submitted that the order passed in ***Crl.O.P.No.26744 of 2018 dated 27.11.2018*** in ***Haji Mohammed and Ors. Vs. The State*** was overruled by the



judgment of the Division Bench of this Court in **Crl.A.(MD) Nos.262, 263 of 2013, 33, 218 of 2014, 493 of 2017 dated 07.03.2019** in **P.Kalaiselvam and**

Ors. Vs. State. It is observed in this judgment as follows:

15. The police diary is only a record of day to day investigation made by the investigating officer. Neither the Accused nor his agent is entitled to call for such case diary and also are not entitled to see them during the course of inquiry or trial. The unfettered power conferred by the Statute Under Section 172(2) of Code of Criminal Procedure on the court to examine the entries of the police diary would not allow the Accused to claim similar unfettered right to inspect the case diary.

17. From the afore-mentioned, it is clear that the denial of right to the Accused to inspect the case diary cannot be characterized as unreasonable or arbitrary. The confidentiality is always kept in the matter of investigation and it is not desirable to make available the police diary to the Accused on his demand.

19. Since in the matter on hand, neither the police officer has refreshed his memory with reference to entries in the police diary nor has the trial court used the entries



in the diary for the purposes of contradicting the police officer (PW-15), it is not open for the Accused to produce certain pages of police diary obtained by him under the provisions of Right to Information Act for the purpose of contradicting the police officer."

In view of the analysis of the aforementioned cases and the relevant statutory provisions, we hold that the decision reported in MANU/TN/7087/2018 : 2018 (2) LW (Criminal) 853 (Haji Mohammed vs. The State rep. by the Inspector of Police, Koradacheri P.S., Thiruvarur District) has been wrongly decided and we overrule the same.

7.Considered the rival submissions and perused the records.

8.From the narration of facts above, petitioners want the production of General Diary to project before the Court that FIR in Crime No.84 of 2021, registered on 24.01.2021, is not the first FIR, but, the FIR was already registered on 23.01.2021 in Crime No.84 of 2021 for the offence under Section 302 IPC. The copy of the accident register produced by petitioners supports this version of petitioners. The reason is that there is a specific mention about Crime No.84 of 2021 under Section 302 IPC in the accident



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register when the deceased Maharajan's body was produced at the hospital.

The body was produced by the Sub Inspector of Police Mr.Krishnakumar. It is informed by the learned counsel for the petitioners that Sub Inspector of Police Mr.Krishnakumar is not shown as a witness. It is also claimed that the Doctor, who gave the copy of the accident register, is also not shown as a witness. If FIR was registered on 23.01.2021 and that was suppressed, certainly this fact has to be elicited before the Court for it to reach the correct conclusion.

9.It can be gathered from these precedents that in Case Diary, the police officer making investigation of the case is required to enter the day to day proceedings starting from the time at which the information reached him, the time at which he began and closed the investigation, place and places visited by him and the statement of the circumstances ascertained through his investigation. The Case Diary cannot be summoned by the accused, or his agent normally. Only if the Case Diary is used by the police officer to refresh his memory or if the Court uses it for the purpose of contradicting the police officer, then the provisions of Section 161 or Section 145 of the Indian Evidence Act, 1872 shall apply. On the other hand, the general diary is record



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of all important transactions, events taking place in a police station including departure and arrival of the police staff, handing over or taking over of charge, arrest of a person, details of law and order duties, visit of senior officers etc., Gist or substance of each FIR being registered in the police station is also mentioned in the General Diary. Therefore, General Diary cannot be equated with the Case Diary as per the judgment in ***Crl.A.(MD) Nos.262, 263 of 2013, 33, 218 of 2014, 493 of 2017 dated 07.03.2019*** in ***P.Kalaiselvam and Ors. Vs. State***. The Police Standing Order Nos.706 and 707 of the Tamil Nadu Police Standing Orders deal with the contents of the General Diary. General Diary is referred as a public document in hundreds of reported decisions. There are reference to the entries made in the General Diary and reliance placed thereon.

10.As already discussed, in the facts and circumstances of the case, this Court is of the considered view that the production of General Diary maintained in the Vaipoor Police Station on 23.01.2021 and 24.01.2021 is necessary to establish whether the FIR registered in Crime No.84 of 2021 on 23.01.2021 is suppressed and another FIR was registered on 24.01.2021 in Crime No.84 of 2021.



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11.In this view of the matter, the order passed by the learned Principal District and Sessions Judge, Thiruvavarur, in Crl.M.P.No.1896 of 2022 in S.C.No.14 of 2022 dated on 05.01.2023 is liable to be set aside and accordingly set aside.

12.In fine, this Criminal Original Petition is allowed. The respondent is directed to produce the attested true copy of the General Diary maintained at the respondent police station for the period from 23.01.2021 and 24.01.2021 along with the original. After comparing the copy with the original on the date of hearing, the original shall be returned to the respondent. Consequently, connected miscellaneous petition is also closed.

17.03.2023

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



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To:

WEB COPY

- 1.The Principal District and Sessions Judge,
Thiruvavarur.
- 2.The Inspector of Police,
Vaipoor Police Station,
Vaipoor.
- 3.The Public Prosecutor,
High Court of Madras.



WEB COPY



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G.CHANDRASEKHARAN, J.
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Pre-delivery Order in
Crl.O.P.No.5272 of 2023
and
Crl.M.P.No.3323 of 2023

17.03.2023