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Crl.O.P.No.8419 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.08.2023

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Orders Reserved On 28.06.2023	Orders Pronounced On 18.08.2023
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Crl.O.P.No.8419 of 2022
and
Crl.M.P.Nos.4915 and 4916 of 2022

1.P.Muthu @ Saravanamuthu
2.S.Ramar

... Petitioners/Respondents/
17th & 18th Accused

Vs.

The State,
Through Deputy Superintendent of Police,
Vigilance and Anti-Corruption,
Dharmapuri.

... Respondent/Petitioner
Complainant

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to set aside the impugned order dated 10.02.2021, passed in C.M.P.No.225 of 2019 in Spl.C.C.No.18 of 2008, by the learned Special Judge-cum-Chief Judicial Magistrate, Dharmapuri.



Crl.O.P.No.841 of 2022

For Petitioners : Mr.Arun Anbumani
For Respondent : Mr.S.Udaya Kumar
Government Advocate (Crl. side)

ORDER

This petition has been filed to set aside the impugned order dated 10.02.2021, passed in C.M.P.No.225 of 2019 in Spl.C.C.No.18 of 2008, by the learned Special Judge-cum-Chief Judicial Magistrate, Dharmapuri.

2. The case of the prosecution is that the finger prints of the petitioners and the sample finger prints in 22 finger print slips were subjected for comparison by the expert. However, when the records were transmitted from the learned I Additional District Judge-cum-Chief Judicial Magistrate, Dharmapuri at Krishnagiri to the learned Special Judge-cum-Chief Judicial Magistrate, Dharmapuri, the finger print slips have been omitted to be transferred, later, found misplaced, not traceable, but, the report of the finger print expert is available before the Trial Court. Hence, the respondent Police filed C.M.P.No.225 of 2019 in Spl.C.C.No.18 of 2008 under Section 311(A) Cr.P.C. to obtain the left thumb impression of the petitioners before the learned Special Judge/Chief Judicial Magistrate, Dharmapuri, on the premise that the finger print report cannot be marked in the absence of finger print slips and therefore, the finger prints of



the petitioners have to be taken and records to be reconstructed.

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3. The grievance of the petitioners is that they cannot be asked to go through the process of giving finger prints again, which is in violation of fundamental rights and that Section 311(A) Cr.P.C. cannot be invoked during the trial of a criminal case. However, without considering the objection raised by the petitioners, the learned Special Judge-cum-Chief Judicial Magistrate, Dharmapuri, by order dated 10.02.2022, allowed the petition. Challenging the said order, the present Criminal Original Petition has been filed.

4. The learned counsel for the petitioners submitted that the respondent filed C.M.P. seeking reconstruction of records at the fag end of the trial and after nearly 30 witnesses were examined. Having filed the final report/charge sheet without the said alleged documents, namely, finger print slips and report and having not supplied any such documents to the petitioners before the commencement of trial, the respondents cannot now seek to fill up the lacunae in their case by resorting to such practice.

5. The learned counsel for the petitioners further submitted that the Trial Court



ought to have seen that if the respondent, during their investigation, had actually taken the finger prints of the petitioners, then copies of the same would be available with them in their file/records, and the same would have been produced before the Court, at least along with the C.M.P. However, no such copies were filed and no whisper in this regard was even made in their C.M.P.

6. The learned counsel further submitted that the C.M.P. filed under Section 311(A) Cr.P.C. was not maintainable in the present case for various reasons. Firstly, the said Section was not brought into force in the State of Tamil Nadu and was omitted. While so, entertaining a C.M.P. under Section 311(A) Cr.P.C. and allowing the same is unsustainable and untenable. Secondly, Section 311(A) Cr.P.C. was brought into force in the Code only in the year 2006. In the present case, the offences are alleged to have been committed during 1993-94 and 1994-95 and hence, a provision, which has come into existence in 2006 cannot be made applicable to offences alleged to have been committed much earlier. Hence, the petitioners cannot be compelled to furnish their left thumb impression/finger prints before the Trial Court.

7. The learned counsel further submitted that the case was transferred from the I Additional District Judge-cum-Chief Judicial Magistrate, Dharmapuri at Krishnagiri to the learned Special Judge-cum-Chief Judicial Magistrate, Dharmapuri, more than a decade ago. If really the alleged finger print slips were filed by the respondent Police



along with their charge sheet before the Court, the same would have definitely been part of the records and would have been sent to the present Trial Court. Moreover, from a perusal of the C.M.P., filed by the respondent, it appears that around May, 2017, itself the respondent knew that the alleged finger print slips were missing. However, the C.M.P. came to be filed only in May, 2019. There is no explanation whatsoever on the part of the prosecution/respondent for such a huge delay in taking steps. The only plausible inference or conclusion one can safely arrive at is that no such finger print slips were at all available, as no such impressions were taken from the petitioners in the present case. To overcome their shortcomings and the *lacunae* in the case, the respondent is adopting such techniques.

8. In support of his submissions, the learned counsel for the petitioners relied on the following judgments:-

(i) **S.Sundari vs. The State, Rep. by the Inspector of Police, District Crime Branch, Tirunelveli District** reported in **2013 (1) LW (CrI.) 164**, wherein this Court recorded that the new Section 311(A) Cr.P.C. conferring power on the learned Magistrate to order person to give specimen signatures or handwriting, introduced by means of Cr.P.C. Amendment Act, 2005 (25/2005) though has come into force from 23.06.2006, as far as the State of Tamil Nadu is concerned, the said Section 311(A) Cr.P.C., has been omitted as per Indian Penal Code and Code of Criminal Procedure



(Tamil Nadu Amendment Act, 2006) and hence, the learned counsel for the petitioners submitted that the impugned order passed in the case on hand under Section 311(A) Cr.P.C. is not sustainable and liable to be set aside.

(ii) **Sukh Ram vs. State of Himachal Pradesh** reported in **2016 (14) SCC 183**, wherein the Hon'ble Apex Court held that Section 311-A Cr.P.C. is prospective in nature and not retrospective.

9. The learned Government Advocate (Criminal side) for the respondent submitted that the aforesaid case was initially taken on file by the learned Additional District Judge-cum-Chief Judicial Magistrate, Dharmapuri at Krishnagiri as C.C.No.123 of 2006 and subsequently, transferred to the Court of the learned Special Judge/Chief Judicial Magistrate, Dharmapuri, and renumbered as Spl.C.C.No.18 of 2008. In this case, 22 finger prints received from the Special Finger Print Bureau, earlier submitted by the Vigilance and Anti-Corruption Department, was handed over to the learned I Additional District Judge-cum-Chief Judicial Magistrate, Dharmapuri at Krishnagiri on 30.10.2002 by one Shajakan, Head Constable attached to the Vigilance and Anticorruption Department, Dharmapuri. The said 22 finger print slips, which are necessary for disposal of the case, were not sent by the learned I Additional District Judge-cum-Chief Judicial Magistrate, Dharmapuri at Krishnagiri when the bundle and records were transferred to the learned Special Judge/Chief Judicial Magistrate,



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10. The learned Government Advocate (Criminal side) further submitted that the finger print expert report available before the learned Special Judge/Chief Judicial Magistrate, Dharmapuri, cannot be marked as acceptable evidence without the finger prints of the petitioners. As per the finger print expert report, the finger print impression of the first petitioner/A17 was found in 184 Loan Bond Forms, 7 Loan Bond Forms and 2 Mortgage Deeds, which amounts to the offence of forgery and impersonation. Similarly, as per the finger print expert report, the finger print impression of the second petitioner/A18 was found in 5 Mortgage Deeds and 9 Receipts, which also amounts to the offence of forgery and impersonation. The prosecution is unable to prove the above said offences against the petitioners due to loss of finger print slips, which were already submitted by the respondent for comparison. Under the said circumstances, steps have to be taken for reconstruction of the lost finger print slips, which is very much essential for the proper conclusion of the case. There is no prohibition for reconstruction of records, which was lost in the Court and no prejudice would be caused to the petitioners. The learned Special Judge/Chief Judicial Magistrate, Dharmapuri, rightly allowed the C.M.P. filed by the respondent and prayed for dismissal of the Criminal Original Petition.



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11. In support of his submissions, the learned Government Advocate (Criminal side) relied on the following judgments:-

(i) In **State of Bombay vs. Kathi Kalu Oghad** reported in **AIR 1961 SC 1808**, a Constitutional Bench of the Hon'ble Apex Court considered the issue whether is a person compelled to be a witnesses against himself within the meaning of Article 20(3) of the Constitution, when he is compelled to give his specimen handwriting or signature, or impression of his fingers, palm or foot to the Investigating Officer? After elaborate deliberation, the Constitutional Bench of the Hon'ble Apex Court had given seven answers, in which, Answer No.4 reads as follows:-

"16.

4. Giving thumb impressions or impressions of foot or palm or fingers or specimen writings or showing parts of the body by way of identification are not included in the expression "to be a witness".

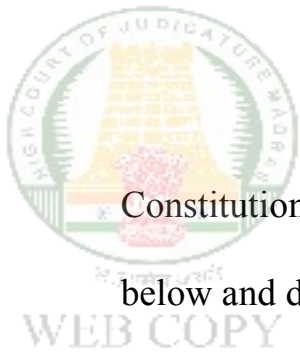
(ii) In **State of Maharashtra vs. Dr. Praful B. Desai** reported in **2003 (4) SCC 601**, the Hon'ble Apex Court considered the issue whether recording of evidence by way of video conferencing is in violation of Section 273 Cr.P.C. or not and observed that the Criminal Procedure Code is an ongoing statute and an enactment of former days is thus to be read today, in the light of dynamic processing received over the years, with such modification of the current meaning of its language as will now give effect to the



original legislative intention. The reality and effect of dynamic processing provides the gradual adjustment. It is constituted by judicial interpretation, year in and year out. It also comprises processing by executive officials. Thus, recording of such evidence would be as per the procedure established by law.

(iii) In **A.S.Subin vs. State of Kerala and others** [Crl.M.C.No.3723 of 2011, dated 24.11.2011] reported in MANU/KE/1777/2011, the Kerala High Court observed that Section 311(A) Cr.P.C. was inserted in the Code as per Act 25 of 2005 following the suggestion made by the Hon'ble Apex Court in **State of U.P. vs. Ram Babu Misra** reported in **AIR 1980 SC 791**. Further, in the said decision, it is held that the Magistrates are invested with the power to issue directions to any person including an accused person to give specimen signatures and writings, in any proceeding under the Code which would include inquiry and trial also.

(iv) In **Sri Maruthi Processors and two others vs. R.Subramaniam** [Crl.R.C.Nos.654 to 657 of 2012, dated 05.10.2012], this Court following the decision of the Hon'ble Apex Court in the case of **State of U.P. vs. Ram Babu Misra** [cited supra], held that the Court below was empowered to call upon the accused to give the thumb impression, which cannot be said to be in violation of Article 20(3) of the



Constitution of India. Therefore, this Court confirmed the order passed by the Court below and dismissed the Criminal Revisions.

12. The learned Government Advocate (Criminal side) further submitted that the above case was originally pending before the Additional District Judge-cum-Chief Judicial Magistrate Court, Dharmapuri at Krishnagiri as C.C.No.123 of 2006 and later, transferred to the Court of Special Judge/Chief Judicial Magistrate, Dharmapuri, and renumbered as Spl.C.C.No.18 of 2008. So far nearly 30 witnesses were examined and the case is now at the advanced stage, but for the reconstruction of 22 finger print slips, the case could not reach its logical end and hence, prayed for a direction to dispose the case within a specified time.

13. I have heard the learned counsel for the petitioners and the learned Government Advocate (Criminal side) for the respondent and perused the materials on record.

14. Considering the aforesaid submissions and on perusal of the materials, it is not in dispute that a Constitutional Bench of the Hon'ble Apex Court as early as in 1961 held that giving thumb impression would not violate Article 20(3) of the Constitution of



India. In the case on hand, the contention of the learned counsel for the petitioners that Section 311(A) Cr.P.C. is only prospective in nature and not retrospective as per **Sukh Ram's case** [cited supra], would not gain credence on the facts of the above case and also the contention that Section 311(A) Cr.P.C. was brought into force in the Code only in the year 2006 by virtue of Tamil Nadu Amendment Act 25/2005 will also not hold good.

15. In this case, as regards obtaining of finger prints of the petitioners/A17 and A18, it is seen that the Deputy Superintendent of Police, Vigilance and Anti Corruption at Dharmapuri, by letter dated 21.08.2002, had forwarded the specimen thumb impression of 22 accused persons in connection with Dharmapuri V & AC Crime No.08/AC/2000/DP to the I Additional District Judge-cum-Chief Judicial Magistrate at Krishnagiri, who in turn, by letter dated 22.08.2002, forwarded the same to the Additional Superintendent of Police, Special Finger Print Bureau, Vigilance and Anti Corruption, Chennai, for comparison and report. Thereafter, on 25.10.2002, the Additional Superintendent of Police (Finger Print), Special Finger Print Bureau, Vigilance and Anti Corruption, Chennai, vide his proceedings in C.No.6/Spl.FPB/Doc/2002, forwarded a report to the learned I Additional District Judge-cum-Chief Judicial Magistrate, Dharmapuri at Krishnagiri, stating that a



specimen finger print of 22 persons, including the finger print of the petitioners/A17 and A18 have been received by them and compared with the disputed finger prints and gave an opinion with regard to the finger prints of the petitioners/A17 and A18, which reads as follows:-

"184 questioned finger prints concerned in the inter se-identical group-3 as detailed in Annexure-2 are identical with one another and are identical with the Right thumb finger print of Muthu @ Saravanamuthu, S/o.Periyannan, marked as A6a on his specimen Finger print slip, dated 09.01.2002.

49 questioned finger prints concerned in the inter se-identical group-6 as detailed in Annexure-2 are identical with one another and are identical with the left thumb finger print of Ramar, S/o.Suramuthu, marked as S19 on his specimen finger print slip, dated 19.06.2002.

3 questioned finger prints concerned in the inter se-identical group-7 as detailed in Annexure-2 are identical with one another and are identical with the Right thumb finger print of Ramar, S/o.Suramuthu marked as S19b on his specimen finger print slip, dated 19.06.2002.

2 questioned finger prints concerned in the inter se-identical group-16 as detailed in Annexure-2 are identical with one another and are identical with the left thumb finger print of Muthu @ Saravanamuthu, S/o.Periyannan, marked as A6 on his specimen finger print slip, dated 09.01.2002.

7 questioned finger prints concerned in the inter se-identical group-26 as detailed in Annexure-2 are identical with one another and are identical with the Right index finger print of Muthu Saravanamuthu, S/o.Periyannan, marked as A6b on his specimen



finger print slips, dated 09.01.2002.

4 questioned finger prints concerned in the inter se-identical group-64 as detailed in Annexure-2 are identical with one another and are identical with the left index finger print of Ramar, S/o.Suramuthu, marked as S19a on his specimen finger print slip, dated 19.06.2002."

16. The facts of the case are that, the Government of India have taken a policy decision to provide loan assistance through the Government of Tamil Nadu for housing and employment assistance to the Srilankan Repatriates, who had completed 10 years stay in Tamil Nadu as a welfare scheme, prescribing certain norms and procedures governing such loan assistance. The loan was distributed through the Revenue Divisional Officer, Tahsildar and other revenue officials. The petitioners/A17 and A18 are private individuals, who had actively taken part, abetted and assisted in the commission of the offences. In view of the same, the missing specimen thumb impression of the petitioners has become necessary and imperative. The finger print slips have been misplaced during the bifurcation of the Districts, for which, now vigilance enquiry is in progress, which, this Court on the Administrative side is taking action.

17. The Deputy Secretary to Government, vide his Letter No.3086/S/P/LA/2022, dated 26.09.2022, informed that the Bill, viz., L.A.Bill No.33 of 2006 regarding omission of Section 311(A) Cr.P.C. was reserved for the consideration of His



Excelsency the President of India and subsequently, the same has been withheld on 27.12.2014. Thus, Section 311(A) Cr.P.C. exists in the Code of Criminal Procedure, 1973, insofar as the State of Tamil Nadu is concerned. Hence, the contention of the petitioners that Section 311(A) Cr.P.C., is omitted in the State of Tamil Nadu and cannot be used to fill up the *lacuna*, has no force. The Hon'ble Apex Court's observation in **Sukh Ram's case** [cited supra] that Act 25 of 2005 has come into effect from 23.06.2006 and the said amendment is prospective in nature and not retrospective, will not be applicable to the facts and circumstances of this case. In this case, the finger print of the petitioners already available, got misplaced, required only for the purpose of reconstruction of records.

18. Further, the High Court of Kerala in the case of **A.S.Subin** [cited supra], held that no right vested on the accused shall be taken away by invoking Section 311(A) Cr.P.C. and it is in the realm of procedure, to aid the Court or the Investigating Officer.

19. This Court, on the facts and circumstances of the case, in the interest of justice, finds that getting thumb impression of the petitioners/A17 and A18 is only imperative for arriving at a just decision of the case. Further, it is only a procedural requirement.



20. It is seen that it is not for the first time, the petitioners' thumb impression are obtained afresh. It is clear from the report of the Finger Print Expert that the thumb impression of the petitioners are already available with him. It is well settled that the thumb impression does not change its unique characteristics. The available thumb impressions are used for comparison in the cases, be it during investigation, trial is common. There have been occasions, where habitual offenders' thumb impression retained for later comparison study. In this case, admittedly, the thumb impression of the petitioners/A17 and A18 are available. The finger print thumb impression slip is found missing. For that reason, now the petitioners' thumb impressions are required for reconstruction of records.

21. In view of the above, this Court finds no reason to interfere with the findings of the Trial Court. Hence, this Criminal Original Petition is dismissed. Finding that Spl.C.C.No.18 of 2008 has been kept finding for more than 30 years, the Trial Court to complete the procedure for obtaining the finger print of the petitioners/A17 and A18, forward the same to the Finger Print Bureau and get a report without delay, preferably, within a period of one month from the date of receipt of a copy of this order and to complete the trial as expeditiously as possible, preferably, within a period of three months thereafter and bring the case to its logical end without further delay.



Crl.O.P.No.841/2022

Consequently, connected Miscellaneous Petitions are closed.

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18.08.2023

Index : Yes/No
Internet: Yes/No
Neutral Citation: Yes/No
smn2/vv2

To

- 1.The Special Judge/Chief Judicial Magistrate,
Dharmapuri.
- 2.The Deputy Superintendent of Police,
Vigilance and Anti-Corruption,
Dharmapuri.
- 3.The Public Prosecutor,
High Court, Madras.



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Crl.O.P.No.8419 of 2022

M.NIRMAL KUMAR, J.

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Pre-delivery order made in

Crl.O.P.No.8419 of 2022

18.08.2023