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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 24/04/2023

CORAM:

THE HON'BLE MR JUSTICE G.ILANGO VAN

Crl.OP(MD)Nos.7273 and 7298 of 2023

1.Crl.OP(MD)No.7273 of 2023:-

T.Arunkumar : Petitioner/Victim

Vs.

State of Tamil Nadu
Represented by the Inspector of Police,
VK Puram Police Station,
Ambasamudram Taluk,
Tirunelveli District.
(Crime No.65 of 2023) : Respondent/Complainant

Prayer: Criminal Original Petition has been filed under section 482 of the Criminal Procedure Code, to set aside the docket order, dated 06/04/2023 and consequently direct the Judicial Magistrate, Ambasamudram to issue a certificate copies of the available documents sought for by the petitioner in CA No.164 of 2023 and pass such further or other orders.

For Petitioner : Mr.Henri Tiphagne

For Respondent : Mr.T.Senthil Kumar
Additional Public Prosecutor



2

2.Cr1.OP(MD)No.7298 of 2023:-

T.Arunkumar

: Petitioner/Victim

Vs.

State of Tamil Nadu
Represented by the Inspector of Police,
VK Puram Police Station,
Ambasamudram Taluk,
Tirunelveli District.
(Crime No.65 of 2023)

: Respondent/Complainant

Prayer: Criminal Original Petition has been filed under section 482 of the Criminal Procedure Code, to set aside the docket order, dated 06/04/2023 and consequently direct the Judicial Magistrate, Ambasamudram to issue a certificate copies of the available documents sought for by the petitioner in CA No.163 of 2023 and pass such further or other orders.

For Petitioner : Mr.Henri Tiphagne

For Respondent : Mr.T.Senthil Kumar
Additional Public Prosecutor

COMMON ORDER

Both these criminal original petitions are filed to set aside the orders, dated 06/04/2023 passed by the Judicial Magistrate, Ambasamudram in the Copy Application Nos.163 and 164 of 2023 and for direction to the Judicial Magistrate, Ambasamudram to issue the certified copies of the available documents.



2.A simple copy application.

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But a lot of sensation, sensitivity and argument right from the Full Bench decision of this court reported in the case of **Selvanathan @ Raghavan and 9 others Vs. State by Inspector of Police, Madras and others [1989(1)MWN (Cr) 117]** and down to the recent judgment in the case of **Karthik Dasari, Deputy Director, Directorate of Enforcement, Government of India, Ministry of Finance, Department of Revenue, IV Floor, Shastri Bhavan, No.26, Haddows Road, Chennai-600 006 Vs. The State by the Inspector of Police, Central Crime Branch, Chennai and others (Cr1.OP Nos.5725 to 5727 of 2022, dated 30/03/2022)**.

3.At the time of hearing, this court found even the Senior Police Officers briefing the Additional Public Prosecutor in this matter. The reason for the above said unusual, this is yet another case of brutality alleged to have been exhibited by the Senior Police in the IPS rank, to the accused in both the matters.



4.No doubt, it has been widely published in the newspapers and now action has been initiated against the concerned officer Departmentally, an IAS Officer is appointed to conduct the enquiry. Apart from that, CBCID enquiry has also been ordered.

5.While moving these petitions, the learned counsel appearing for the petitioner would submit that without sensitivity to the issue involved and without prompt spirit, the copy applications that have been filed by the petitioner in both Crime numbers namely Crime Nos.49 and 65 of 2023 returned.

6.On going through the order, this court could not find the nature of the order.

7.So, report was called for from the concerned court and it submitted stating that both the petitions have been returned since the petitioner is not entitled for copies of the documents sought for since no final report has been filed in both matters.



8. Against which, these petitions have been filed.

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9. It is seen that without referring to the documents, which are available in the records and also the right of the petitioner to get copies of the documents, the above said return order has been made.

10. It is one thing to say that the above said order itself is *per se* illegal for the simple reason that the new Criminal Rules of Practice came into force in 2019 and elaborate procedures have been set out in it with regard to the entitlement of the parties and third parties to get the certified copies. So the trial court ought to have entertained the petitions and heard the petitioner as to the entitlement and the availability also. But nothing was done and a cryptic administrative order was passed by the trial returning the copy application. So the manner in which the above said matter has been dealt with the trial court, as mentioned earlier, is *per se* illegal.



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11. When this court pointed out this to the learned counsel appearing for the petitioner, the learned Additional Public Prosecutor rose to argue matter on behalf of the prosecution. I put a question to him, whether he is entitled to be heard. He replied that some of the documents that have been sought for cannot be granted to the petitioner. On that score, he wanted to argue the matter to enlighten this court about the issue involved by citing the above judgement in the case of **Selvanathan @ Raghavan and 9 others Vs. State by Inspector of Police, Madras and others [1989(1)MWN (Cr) 117]**. So on that score, the petitioner was also heard about his entitlement.

12. At the initial stage, finding that the above said return is *per se* illegal, this court wanted to remit back the matter to the trial court to consider the application on its own merit by giving opportunity to the petitioner. But when objection has been raised by the prosecution, then this court wanted to go into the right.



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13.Now coming back to the facts, this petitioner is an accused in Crime No.65 of 2023. He was arrested and remanded to custody. Now he was released on bail, as per the information furnished by the petitioner. Crime No.65 of 2023, was registered for the offences punishable under sections 147, 148, 341, 294(b), 307, 324, 323 and 506(2) IPC. But he is a third party in Crime No.49 of 2023, wherein six persons have been shown as accused. So the purpose and relevancy of the documents that are available in Crime No.49 of 2023 must be satisfactorily explained by the petitioner as to his entitlement.

14.Now let us first take CrI.OP(MD)No.7298 of 2023 in respect of Crime No.49 of 2023. The documents sought for in the copy application are:-

- 1.First Information Report.
- 2.Remand Report.
- 3.Arrest Memo.
- 4.Arrest Card.
- 5.Medical Examination Report.

6.Footnotes of the Judicial Magistrate in the case documents and in the case.



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15.This also shows the defective manner in which the copy application has been filed. But the description of document, number of copies required are not mentioned. When this was pointed out to the learned counsel appearing for the petitioner, he would submit, had proper opportunity been given to him, he would have rectified the mistakes. But without seeking any clarification or rectification, the above said order of return has been made.

16.As to the entitlement, I put a question to him since he is not an accused in this matter, the purpose of the documents. He would submit that he was arrested in Crime No.65 of 2023 and taken to the police station where case in Crime No.49 of 2023 was registered, was brutally attacked and the teeth have been pulled out, sustained bleeding injuries. So he wants to prosecute the above said custodial torture matter. The accused in Crime No.49 of 2023 were also similarly brutally attacked and they have also sustained injuries. So according to him, in the very same place and room, where no CCTV camera was available, brutal attack happened. To support his case, he wants the above said documents.



17.As mentioned earlier, no proper description has been made with regard to the documents namely remand report of whom, medical examination report of whom, the above said copies are sought for. This got to be rectified by the petitioner properly before the trial court.

18.Now coming back to CrI.OP(MD)No.7273 of 2023, he is an accused in Crime No.65 of 2023. In the copy application also, he has not properly mentioned the description of documents required. He has simply stated as First Information Report, Remand Report, Arrest memo, Arrest card, Medical examination report. So here also, the description has also been not properly mentioned as to the number of the copies required, the persons, the remand report of whom, arrest memo, arrest card, medical report of whom, are not properly mentioned. So, that also got to be rectified by the petitioner before the trial Court.

19.This court would have simply remitted back the both the matters to the trial court for considering the copy application of its own merit, with regard to the



entitlement. But for the reasons stated above, I do want to discuss about the entitlement also. So the matter can be disposed of by this court finally.

20.The learned counsel appearing for the petitioner would submit that the main purpose for which the above said copies, as mentioned above, to pursue the matter since no other documents are available or can be collected from any other sources. On the face of it, this request is a genuine one. But the question, which arises for consideration Rules in granting the above said entitlement. This has been pointed out by the learned Additional Public Prosecutor, during his argument as mentioned earlier.

21.Before we go into the judgment, let us go the Rule 231 of Criminal Procedure Code, 2019, which would run thus:-

"231.Grant of certified copies of other documents,-(1)Certified copies of the following documents shall be given to the accused on payment of necessary charges,



before the filing of the final report (charge sheet) by the police:-

(i) Orders made on the remand report.

(ii) Affidavit filed by the police officer for police custody of the accused and the orders passed by the Magistrate thereon. Until the Magistrate passes the order for police custody, the accused is not entitled to a copy of that affidavit.

(iii) The accused, notwithstanding the communication of the full particulars in writing at the time of arrest or subsequent thereto, is entitled to a copy of the First Information Report even before the final report (charge sheet) is forwarded to the Magistrate under sub-section (2) of section 173 of the Code on application and on payment of charges. The accused is not entitled to certified copies of the inquest reports, statements recorded under section



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174 of the Code, postmortem certificates, requisition by the police officer to the Medical Officer for conducting postmortem and the medically treating the injured, wound certificate, rough sketch of the scene of occurrence and observation mahazar prepared by the investigating officer before the final report (charge sheet) is filed.

(2) On the same principle, the statements of witnesses recorded under section 161 of the Code and copies of wound certificates shall not be given to the accused until the final report (charge sheet) is filed by the police.

(3) Certified copies of photocopies of unmarked documents shall not be given.

22. Reading of the above said Rule shows that the orders on the remand report and FIR can be given to the petitioner. There can be no quarrel on that. There is no



problem with regard to the items 1 and 6 mentioned in the copy application, which he is entitled as a matter of right.

23. With regard to the remand report, it is not mentioned in Rule 231 Cr.P.C. Similarly, the arrest memo, arrest card and medical examination report of the accused are also not mentioned. So, the learned Additional Public Prosecutor would submit that even as per the present Rule, the accused is not entitled for remand report, arrest card, medical examination report. But careful reading of the above said Rule will show that it speaks about only some of the documents and not all the documents, which are available in the record of the criminal court. The Wound Certificate, which has been mentioned in section 231 Cr.P.C is certainly not the Wound Certificate of the accused. Now the petitioner has not sought Wound Certificate of the injured. He sought only his medical examination certificate. Now examination has to be done as per section 54 of the Criminal Procedure Code. So there is no prohibition for the above said four documents, which is also clarified in Full Bench decision.



24. Per contra, the learned Additional Public Prosecutor would submit that since these documents are not mentioned in section 231 Cr.P.C, certainly this petitioner is not entitled for such documents. But I am unable to subscribe to the argument, that was advanced by the learned Additional Public Prosecutor, the arrest memo, remand card and medical examination report can be granted to the petitioner, since there is no prohibition. These documents cannot be treated either as privileged or confidential documents. These are the documents pertaining to the petitioner. So he is entitled for those documents.

25. Now coming to the matter of remand report. Here comes the relevancy of the above said document, the learned counsel appearing for the petitioner would submit that there will be indication or mentioning regarding nature and the manner of sustaining injuries in the remand report, so he is entitled for the document to prosecute his grievance. So the question which arises for consideration is, whether on that account, he is entitled for copies.



26.The learned counsel appearing for the petitioner would straightaway rely upon the judgment of the Full Bench of this Court reported in the case of **Selvanathan @ Raghavan and other Vs. State by Inspector of Police, Madras and others [1981(1)MWN (Cr)117]** cited supra, this judgment is also relied upon by the learned Additional Public Prosecutor.

27.The learned counsel appearing for the petitioner would draw the attention of this court to the guidelines that have been issued by the Hon'ble Supreme Court in **D.K.Basu`s** case; would rely upon para 31 of the Full Bench judgment and would submit that it is his fundamental right guaranteed under Article 22(1) of the Constitution of India, when he was arrested, he got every right to know the reason for the arrest. So he wants to know the reason mentioned in the remand report for arrest and this is the second purpose.

28.But for this purpose, the petitioner is not entitled for the remand report. Because detailed guidelines have been imposed in **D.K.Basu** case to furnish the arrest memo indicating, the reason for the arrest, and



also duty cast upon the Remanding Magistrate to inform the accused about the ground of arrest, accusation. It is not stated by him that he was not furnished with arrest memo. More over, Judicial duty will take care of this requirement.

29.To ascertain other facts, the remand report along with the remand order was called from the trial court, in both the matters. Wherein, we find that the ground of arrest has been stated to be informed to the petitioner. Since this is a judicial act, nothing more is required. For the second purpose, the request has to fail.

30.With regard to the first purpose, it has its own genuine reason and meaning. The nature of the injuries are to be mentioned in the remand report if found on the body of the accused. So whether the above said injuries are mentioned in the report or not, it is his natural right to know.

31.Right to know, is a human right, need not be granted by the State in the form of legislation.



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32. With this in mind, let us go to the bar alleged to have been made in **Selvananthan's** case.

33. The learned Additional Public Prosecutor would draw the attention of this court to para 43. The discussion goes upto 47. The Hon'ble Full Bench of this court of the view that the remand report must be treated like the case diary. Even though, the remand report is a public document, the bar under section 172(3) of the Criminal Procedure Code, must be made applicable to the remand report also.

34. The Hon'ble Full Bench is of the view that so many confidential facts, evidences collected, secret informations used to be mentioned in the case diary, which may be reflected in the remand report also. If the copy is given to the accused, there is every likelihood of him tampering the evidence and hampering the investigating process by making interference. The sanctity of the investigation must be maintained to safeguard the interest of the society at large. According to the Full Bench, it is not desirable to issue copy.



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35. So the ground on which, the remand report copy can be rejected is that it may cause serious prejudice to the investigating process. So the question, which arises for consideration is whether it can be construed as total bar or ban in all situations. Now the present case expressed different situation, than one that has been dealt in the above said Full Bench decision. The situation like the present one, was not even in the contemplation. Here comes the judicial balancing of rights, on one side the larger interest of the society as pointed out by the Full Bench, and the right of the accused to know the contents of the remand report regarding his injuries as raised here.

36. An judicial act should do no violence to both rights. This court is duty bound to find out a way out.

37. An extraordinary situation requires extraordinary remedy.

38. So I am of the considered view that that portion of the report which contains nature, manner of injuries found on the body of the accused may be made available to



42.Now coming to the third party, a separate rule has been provided in Rule 210 Cr.P.C.

43.Rule 210 Cr.P.C reads as follows:-

"210.Application for copies by third parties.-Application for the grant of copies of judgment or order or any proceeding or document in the custody of a Court by a third party to the proceeding shall be allowed only by order of the Court obtained on a petition supported by an affidavit setting forth the purpose for which the copy is required.

44.With regard to the entitlement, the Division Bench of this court in the case of **Karthik Dasari Vs. The State (Crl.OP (MD) Nos.5725 to 5727 of 2022, dated 30/03/2022)** laid down the following procedure:-

"9.Mr.Sankaranarayanan placed strong reliance upon this rule and contended that this rule gives a substantive right to a third party to obtain certified copies of



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documents from a Criminal Court. We are unable to subscribe to the above submission of the learned Additional Solicitor General for the simple reason that a complete reading of Rule 210, *ibid.*, shows that it lays down only the procedure for making a third party copy application, in that, it says that a third party copy application shall be allowed only by an order of the Court obtained on a petition supported by an affidavit setting forth the purpose for which the copy is required. Just because the affidavit discloses the purpose for which the copy is required, it does not mean that the third party would be automatically entitled to the certified copy of the document sought by him. The expression? shall be allowed only by an order of the Court? qualifies the subsequent requirement, viz., obtained on a petition supported by an affidavit setting for the purpose for which the copy



is required. A fortiori, if a person makes a third party copy application, he is required to file an affidavit setting forth the purpose for which the copy is required. On that affidavit and petition, the judicial officer is required to pass a judicial order whether to grant or refuse to grant the certified copy. In a given case, the judicial officer can refuse to grant the certified copy, bearing in mind, the privacy rights of the victim and the accused and other factors. Sometimes, the bona fides of the third party may also be in a cloud. Therefore, the judicial officer is not required to mechanically grant certified copy of documents available in his Court to a third party, but is expected to adopt a judicious approach on a case-to-case basis and pass a judicial order. If a person is aggrieved by the order, the same can be subjected to judicial review by the superior Court.



45. So, as mentioned above, the purpose is to prosecute the grievance or relief of the custodial torture. Subject to the rectification of the defects, these applications can be entertained.

46. In the result, by setting the order of return in both matters, the following directions are issued:-

Instead representing the above said defective copy applications, fresh copy applications must be filed by the petitioner, setting out the correct description of the documents, number of copies required. The above said copy application may be filed immediately. On filing of such copy application, the trial court is directed to supply the copies of the following documents subject of course to availability:-

1. FIR copy in Crime Nos. 49 and 65 of 2023)
2. Portion of remand reports which contains the particulars of injuries of the accused, as noted above.
3. Remand Orders
4. Arrest Cards



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5. Medical examination reports of the accused.

6. Foot Note order the Judicial Magistrate in the case documents and in both cases.

47. With the above said direction, these two petitions are **allowed** to the extent indicated above.

24/04/2023

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- 1.The Judicial Magistrate,
Ambasamudram,
Tirunelveli District.
- 2.The Inspector of Police,
VK Puram Police Station,
Ambasamudram Taluk,
Tirunelveli District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madras.



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26

G. ILANGO VAN, J

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Cr1.OP(MD)Nos.7273 and 7298 of 2023

24/04/2023



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