



Crl.OP.No.19339 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.08.2024

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Crl.OP.No.19339 of 2024

and

Crl.MP.No.11357 of 2024

Surender

... Petitioner

Vs.

State Rep by
The Inspector of Police,
N-2, Kasimedu Traffic Investigation
Police Station, Kasimedu,
Chennai-600 013.
(Cr.No.45/2021)

... Respondent

Prayer: Criminal Original Petition is filed under Section 482 of Cr.P.C to set aside the order passed by the learned III Metropolitan Magistrate, George Town, Chennai in Crl.MP.No.6463 of 2023, dated 25.06.2024.

For Petitioner : Mr.J.R.Solomon Peter Kamaldoss

For Respondent : Mr.K.M.D.Muhila
Government Advocate (Crl. Side)



Crl.OP.No.19339 of 2024

ORDER

WEB COPY

The petitioner herein is the sole accused in C.C.No.1769 of 2021 for the offence under Sections 279, 338 of IPC and Section 134(a), 134(b), 181(3) and 196 of Motor Vehicle Act. Pending trial, the petitioner has filed an application under Section 91 of Cr.P.C for production of the following documents from the custody of Investigating Officer:

a) General Section Diary for the period of 15.10.2021 to 18.10.2021 of the respondent.

b) General Diary for the period of 15.10.2021 to 18.10.2021 of the respondent.

c) PSR for the period of 15.10.2021 to 18.10.2021 of the respondent which are under the custody of the respondent. (The Inspector of Police, N-2, Kasimedu Traffic Investigation Police Station, Kasimedu, Chennai-600 013.

2. The said application was supposed by the prosecution on the ground that the documents sought by the petitioner being the general dairy and PSR maintained by the respondent police in the course of their



Crl.OP.No.19339 of 2024

discharge of duty, there is a bar under Section 172(3) of Cr.P.C to part away the copy of the documents to the accused.

3. The learned III Metropolitan Magistrate, George Town, Chennai District on considering the submissions made by the respective parties and the law had dismissed the application relying upon judgment of this Court rendered in *Haji Mohammed and three others /vs/ State represented by the Inspector of Police, Koradacheri Police Station, Tiruvarur District* and also relying upon the judgement of the Hon'ble Supreme Court rendered in *Hardeep Singh /vs/ State of Punjab and others reported* in (2014) 3 SCC 92 .

4. The Judgement rendered in *Haji Mohammed and three others /vs/ State represented by the Inspector of Police, Koradacheri Police Station, Tiruvarur District* judgement referred by the learned counsel appearing for the petitioner has been overruled by the Hon'ble Supreme Court in *Malkiat Singh and Others -Vs-State of Punjab/MANU/SC/0622/1991*. In *Mohammed Zoha -Vs-State in Crl.OP.No.452 of 2024 dated 11.01.2024*, the Single Judge has held that the right of the accused filing an application under Section 91 of Cr.P.C is not restricted to any time or stage of the trial, it can be



Crl.OP.No.19339 of 2024

done at any stage and there can be no fixed formula for such a request.

WEB COPY

5. The learned counsel therefore being aggrieved by the dismissal of the application filed under Section 91 of Cr.P.C calling for general diary and PSR maintained by the Police is before this Court to set aside the order of the trial Court and allow the application under Section 91 of Cr.P.C.

6. The learned Government Advocate (Crl.Side) appearing for the State submits that the law on this point is well settled. Neither the Division Bench Judgement cited by the learned Judge nor the Single Judge Judgement regarding the right of the accused filing petition under Section 91 of Cr.P.C at any stage of the trial does not lend any support to the case of the petitioner to set aside the order passed by the trial Court. He further submits that Section 91 of Cr.P.C, can be exercised by the accused at any stage, but, what are the documents he is entitled to call for under Section 91 is subject to Section 172 (3) of Cr.P.C. The Courts had time and again held that the general diary maintained by the police is the confidential record and if any thing referred by the witness in the course of examination from the general diary while refreshing his



Crl.OP.No.19339 of 2024

memory then the accused will have a right of cross examining the witness pertaining to the entry made in the general diary. Even at that stage, it is for the Court to examine the general diary and it cannot be shared with the accused persons.

7. The contention of the learned counsel that the trial Court reference to Haji Mohammed case which has been overruled by the Division Bench also appears to be not correct, since the Division while discussing Haji Mohammed case has not considered whether under Section 91 of Cr.P.C the general diary of the police can be summoned by the accused. The judgement of the Division Bench only clarifies the position that the prosecution case cannot be thrown out merely on the ground of discrepancy in the general diary and entry in the general diary which is not a substantive evidence what is referred under Section 172 of Cr.P.C is only the case diary this is because the general diary is maintained under Section 44 of the Police Act and case diary is maintained as per the provisions of the Court. Hence, as far as police diary is concerned Section 172(3) clearly lays down neither the accused nor his agent shall be entitled to call for such diaries nor he or they may be entitled to see them merely because they are referred to by the Court,



Crl.OP.No.19339 of 2024

but in case police use the entries in the diaries to refresh his memory or if the Court uses them for the purpose of contradicting such police officer, then in exercise of Sections 145 and 161 of Evidence Act, Court has to act upon.

8. This issue as pointed out by the learned Government Advocate (Crl.Side) been given quite long back by the Hon'ble Supreme Court in its Judgement *Mukunthlal /vs/ Union of India and Others* reported in (1989) 1 SCC 622. In this Judgement, the Hon'ble Supreme Court has concurred the view of the High Court conclusion that the provisions embodied in Section 172 (3) of Cr.P.C cannot be characterized as unreasonable or arbitrariness. While under Sub Section (2) of 172 of Cr.P.C the Court itself has unfetter power to examine the diaries which is with a view of safeguarding the content of the diaries. The legislatures have imposed complete trust in the Court which is conducting the enquiry or the trial. However to examine the entries of the police dairy maintained during the enquiry or investigation is vested only with the Court and not to the accused. This Court following the Judgement of Hon'ble Supreme Court rendered in *Mohindar Singh /vs/ Emperor* 1932 Law Book 103 equivalent to 1935 Indian Cases 205 has held that



CrI.OP.No.19339 of 2024

the accused has no right to insist upon a police witness referring to his diary in order to elicitate information which is privileged. The content of the diary or not at the disposal of the defence. He cannot be used except strictly in accordance with the provisions of Section 162 and 172 of Cr.P.C.

9. Under Section 161 of the Evidence Act witnesses may refresh his memory by reference to them, but such right is at the discretion of the witness and Judge, whose duty it is to ensure that the privilege attached to them by statute is strictly enforced. Thus the pronouncement of the Supreme Court makes clear that the diary maintained by the police a privilege document cannot be shared with the accused. Therefore, the order of the learned Magistrate is in tune with the law and pronouncement of the Supreme Court. Haji Mohammed case which has been discussed by the Division Bench in a Criminal Appeal for different purpose cannot be construed as overruled.

10. With the above observation, this Criminal Original Petition is dismissed. Consequently, the connected miscellaneous petition is closed.

Vv

12.08.2024



Crl.OP.No.19339 of 2024

To
WEB COPY

1. The III Metropolitan Magistrate,
George Town, Chennai
2. The Inspector of Police,
N-2, Kasimedu Traffic Investigation
Police Station, Kasimedu,
Chennai-600 013.
3. The Public Prosecutor,
High Court of Madras.



WEB COPY



Crl.OP.No.19339 of 2024

Dr.G.JAYACHANDRAN,J.

Vv

Crl.OP.No.19339 of 2024

12.08.2024