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Crl.O.P.No.3577 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 06.03.2025
PRONOUNCED ON: 14.03.2025

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.O.P.No.3577 of 2025

P.K.Karthikeyan

... Petitioner

Vs.

The Inspector of Police (V&AC),
Dharmapuri,
Dharmapuri District.

... Respondent

PRAYER: Criminal Original Petition is filed under Section 528 of BNSS, to set aside the order passed in Crl.M.P.No.5451 of 2024 in Spl.C.C.No.4 of 2019 dated 28.01.2025, on the file of the learned Chief Judicial Magistrate, Dharmapuri.

For Petitioner : Mr.Naveenkumar Murthi
for Mr.C.Palanisamy

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



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ORDER

Read this in conjunction with and in continuation of proceedings made in the previous listing on 18.02.2025, which read as follows:

“The petitioner/accused facing trial in Spl.C.C.No.4 of 2019 filed a petition under Section 91 Cr.P.C./Section 94 of BNSS in Crl.M.P.No.5451 of 2024 seeking to summon (1) The Medical Officer, Primary Health Care, Karimangalam, Karimangalam Taluk, Dharmapuri District to produce the admission report and treatment medical report of the petitioner on 03.01.2018, (2) The Chief Doctor, Dharmapuri Medical College Hospital, Dharmapuri, Dharmapuri District to produce the admission report, treatment report, all medical reports and discharge summary of the petitioner on 03.01.2018, (3) The Inspector of Police, Vigilance and Anti Corruption Wing, Dharmapuri District to produce the general diary for the months of December 2017 and January 2018 and the Trap Laying Officer’s letter sent to the Karimangalam Tahsildar on 08.01.2018. The Lower Court dismissed the said petition by order dated 28.01.2025. Against which, the present petition is filed.



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2.The contention of the learned counsel for the petitioner is that in this case the alleged trap is said to have been taken place on 03.01.2018 between 05.10 p.m. and 05.55 p.m., the scene of occurrence is at the defacto complainant's farm land and the arrest of the petitioner was shown at about 08.15 p.m. on the same day. But the petitioner was unable to be produced for remand since the petitioner was not in a good health due to the assault and force exerted on him by the respondent. The Magistrate visited the Government Medical College Hospital, Dharmapuri, examined the petitioner in the presence of Dr.Ganesamoorthy and found that the petitioner/accused is unable to communicate to the oral comments and he was suffering with pain. Hence, the learned Magistrate directed the Deputy Superintendent of Police to report after the petitioner/accused starts communicating. Later again the Magistrate visited the petitioner/accused in the Government Medical College Hospital, Dharmapuri on 04.01.2018 at about 01.40 p.m. in the presence of Dr.Ganesamoorthy, remanded the petitioner till 18.01.2018. The petitioner's contention is that since the trap could not be laid as planned, the petitioner was forced to act as per the directions of the respondent police and the petitioner was physically assaulted. Initially the petitioner was taken to Government Hospital, Karimangalam and



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thereafter he was taken to Government Medical College Hospital, Dharmapuri for further treatment. Therefore, the treatment given to the petitioner would reveal that the petitioner was manhandled and hence, summoning of those documents are necessary. But the Trial Court had given a finding that during the remand there was no complaint of physical assault by the police and hence, the petition is filed only to protract the case, which is not proper.

3.The learned Government Advocate (Crl. Side) submitted that the petitioner due to anxiety and hypertension, developed palpitation and hence, to bring him to normalcy the petitioner was taken to Primary Health Care, Karimangalam and thereafter to Government Medical College Hospital, Dharmapuri. He would submit that the respondent police had not committed any physical assault and that is the reason the respondent immediately took the Remanding Magistrate to the Government Medical College Hospital, Dharmapuri, who visited the petitioner in the presence of Dr.Ganesamoorthy, found him not in a position to communicate and therefore, instructed the Deputy Superintendent of Police to report after the petitioner starts communicating. Later again the Magistrate visited the petitioner in the presence of Dr.Ganesamoorthy and remanded him till 18.01.2018. He



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further submitted that during the remand, the petitioner had not complained against the Police regarding physical assault and hence, the physical impairment developed by the petitioner on his own cannot be shifted against the Police.

4.In any event, the learned Government Advocate (Crl. Side) seeks small accommodation to file a counter.

5.Post the matter on 24.02.2025.”

2.The learned counsel for the petitioner further advanced his arguments by relying upon the following decisions:

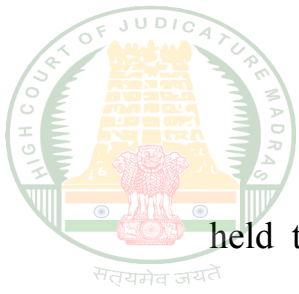
- 1) *Shiju P.T. vs. State of Kerala, rep. By the Public Prosecutor, High Court of Kerala, Ernakulam – 682 031 reported in 2016 SCC Online Ker 29959;*
- 2) *Mohammed Zoha vs. State rep. By The Inspector of Police, Pallikaranai Police Station, Chennai District and another [Crl.O.P.No.452 of 2024 dated 11.01.2024];*
- 3) *P.Kalaiselvam and others vs. State reported in 2019 (2) LW(Crl.) 161*
- 4) *Saravanan and others vs. The State rep. Through the Inspector of Police, Vaipoort Police Station, Vaipoor [Crl.O.P.No.5272 of 2023 dated 17.03.2023]*



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3.The learned counsel for the petitioner submitted that the petitioner filed a petition under Section 91 Cr.P.C. to summon Medical Officer, Primary Health Care, Karimangalam, Dharmapuri District, the Chief Doctor, Dharmapuri Medical College Hospital, Dharmapuri District, the Inspector of Police, V&AC Wing, Dharmapuri District and to produce the general diary for the months of December 2017 and January 2018 and the Trap Laying Officer's letter sent to Karimangalam Tahsildar on 08.01.2018. The Trial Court had given a finding that the petitioner is not entitled to peruse the general diary. Further, the Trial Court held that the letter of the TLO to Tahsildar, Karimangalam had been marked as exhibit by the prosecution and the High Court by order dated 10.12.2021 in Crl.O.P.No.17559 of 2021 directed the Trial Court to dispose the case within one year. He would submit that the period had been further extended for six months by this Court by order dated 09.11.2013 which was weighed heavily on the Trial Court in dismissing the petition which is not proper. He would further submit that the Trial Court failed to understand the difference between the case diary and general diary. The Division Bench of this Court in the case of **Kalaiselvam** and the Kerala High Court in the case of **Shiju P.T.** had clearly



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held the difference between the Police Station diary and the case diary.

Hence, summoning of general diary cannot be denied. Further, the petitioner filing a petition at the time of defence is a statutory right which cannot be denied. The petitioner during the cross examination of the relevant witness made a ground for summoning the documents which had been completely overlooked. Hence, sought for setting aside the impugned order.

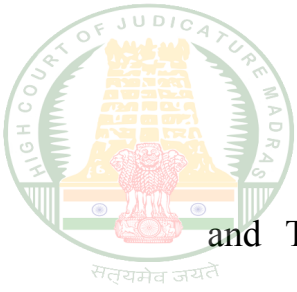
4.The learned Government Advocate (Crl. Side) reiterated his earlier contention and referring to the Remand Order submitted that the Trial Judge while remanding the accused on 04.01.2018 visited the petitioner in the Government Medical College Hospital, Dharmapuri in the presence of Dr.Ganesamoorthy and since the accused was unable to communicate orally, the Deputy Superintendent of Police was directed to report after the petitioner starts communicating. Thereafter when the petitioner's health condition improved and fit for remand, the Magistrate again visited the petitioner in the Hospital in the presence of Dr.Ganesamoorthy, the petitioner was enquired but at that time, the petitioner had not made any complaint against the Police and after explaining the grounds for arrest, he was remanded till 18.01.2018. On the same day, bail application was filed



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but in the bail application, initially there was no complaint of physical assault. But later the counsel with his intelligence had hand written about the physical assault as *“The petitioner was severely beaten up by the V&AC Police and was admitted to GH, Dharmapuri”* which is a clear after thought for the purpose of bail and to create a defence. He further submitted that the documents which was sought for by the petitioner is almost seven years now and the general diary is not available. He would further submit that the petitioner was taken to Primary Health Care Centre, Karimangalam and thereafter, he was taken to Dharmapuri Medical College Hospital, Dharmapuri where he took treatment, all recorded in the remand requisition and remand order and there is no other medical documents. Hence, prayed for dismissal of the petition.

5.Considering the submissions made and on perusal of the materials, it is seen that the petitioner filed a petition under Section 91 Cr.P.C. seeking summoning o,f admission and medical reports of the petitioner at Primary Health Care, Karimangalam and Dharmapuri Medical College Hospital, Dharmapuri District, production of general diary maintained in V&AC Office at Dharmapuri for the months of December 2017 and January 2018



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and TLO's letter to Tahsildar, Karimangalam dated 08.01.2018. The

summoning of medical records is to show that the petitioner was beaten badly by the respondent police. In the impugned order, it is recorded that the petitioner was caught red handed and due to sudden shock, the petitioner lost his conscious and he was referred to Hospital. There is no material for the respondent police to have beaten the petitioner. With regard to TLO's letter to Tahsildar, Karimangalam, the Tahsildar was examined as P.W.11 who had stated that on 03.01.2018 at about 7.00 p.m., the petitioner was caught red handed in the defacto complainant's field and P.W.11 went there along with the files as sought for by the TLO. Thus, explanation given as to how the Tahsildar had come to the spot. As regards the general diary, the Trial Court held that the petitioner is not entitled for the general which is not proper. The general diary is of the year 2017-2018 and the petitioner filed the petition eight years thereafter but no reason given for such a delay in filing the petition. Further, the Trial Court misunderstood the difference between the general diary and the case diary. There is a prohibition for entitlement of Police diaries under Section 172(3) Cr.P.C., which is in common parlance called as Case diary but there is no restriction for summoning general diary. In this case, the general diary is summoned after



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seven years and it is not available now. As regards the medical records, in the remand requisition it is recorded that the petitioner suddenly felt giddiness, he was taken to Government Community Health Centre, Karimangalam for treatment and thereafter, he was taken to Dharmapuri Government Medical College Hospital, Dharmapuri on 04.01.2018 at 00.30 hours for further treatment and the Remanding Magistrate was requested to visit the Hospital. Thereafter, the Magistrate went to the Hospital and finding that the petitioner was not in a position to communicate not remanded him and advised for further medical treatment. Thereafter, at about 1.40 p.m. on receipt of request from TLO along with Dr.Ganesamoorthy, verified the health condition of the petitioner and thereafter, remanded him to judicial custody till 18.01.2018. It is also recorded in the remand order that there is no complaint against the Police. Since the health condition and medical treatment particulars of the petitioner recorded in the remand requisition and the remand order, summoning of medical records is not required. In view of the above, this Court finds no reason to interfere with the order of the Trial Court.

6.Accordingly, the Criminal Original Petition stands dismissed.



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To

- 1.The Inspector of Police (V&AC),
Dharmapuri,
Dharmapuri District.
- 2.The Chief Judicial Magistrate,
Dharmapuri.
- 3.The Public Prosecutor,
High Court, Madras.



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M.NIRMAL KUMAR, J.

cse

Pre-delivery order made in

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