

(2014) 08 MAD CK 0291

Madras High Court

Case No: Crl.O.P. No. 18997 of 2014

G. Subramanian

APPELLANT

Vs

State

RESPONDENT

Date of Decision: Aug. 11, 2014**Acts Referred:**

- Constitution of India, 1950 - Article 21, 22
- Criminal Procedure Code, 1973 (CrPC) - Section 154, 161, 164, 170(2), 173

Citation: (2014) 4 MLJ(Cri) 573**Hon'ble Judges:** M. Venugopal, J**Bench:** Single Bench

Judgement

@JUDGMENTTAG-ORDER

M. Venugopal, J.

The Petitioners/A.7 and A.8 have projected the present Criminal Original Petition praying for passing of an order by this Court in directing the Respondent/Complainant/Prosecution to produce the original complaints filed by the De facto Complainant for obtaining certified copies of the same. The Learned XI Additional City Civil & Sessions Judge, (CBI Cases Relating to Banks and Financial Institutions), Chennai, while passing the impugned order on 24.6.2014 in Crl.M.P. No. 1680 of 2014 in C.C. No. 22 of 1997 (filed by the Petitioners/A.7 and A.8), had inter alia, observed that. "The present petition has been filed without any bona fide. No purpose will be served by calling for documents, which are admittedly considered by the prosecution to the effect that they are not available in the Court records. This matter has already been decided by this Court in an earlier petition filed by A.1 and A.2 in Crl.M.P. No. 5021 of 2013 dated 8.1.2014 and this fact is well known to the Petitioners/Accused and the present Petition is filed only to protract the disposal of the case and the steps taken by the Petitioners frivolously with a mala fide intention has to be taken into consideration by the Court very seriously"

and resultantly dismissed the petition by ordering an exemplary cost of Rs. 10,000/- to be borne by the Petitioners equally, i.e., Rs. 5,000/- each to be deposited with the Tamil Nadu Legal Services Authority, Chennai.

2. Assailing the correctness of order of dismissal passed by the trial Court in Crl.M.P. No. 1680 of 2014 in C.C. No. 22 of 1997, the Learned Counsel for the Petitioners/A.7 and A.8 urges before this Court that the original complaints should have been sent along with the F.I. Rs to the Court and as such, it forms part of "Court Records" and as such, the said "Records" are to be maintained pending trial.

3. Advancing his arguments, the Learned Counsel for the Petitioners contends that the trial Court had categorically admitted that nine F.I. Rs. were registered on the basis of nine written complaints by the respective Managers. However, it had on an erroneous view rejected the Miscellaneous Petition (filed by the Petitioners) which had ultimately resulted in serious miscarriage of Justice.

4. The Learned Counsel for the Petitioners/A.7 and A.8 relies on the order of this Court reported in [K. Ramajeyam Vs. State](#), whereby and where under in paragraphs 6, 10 and 11, it is observed as under:

"6. The learned counsel for the petitioner would submit that copies of documents which ought to have been furnished to the accused by the committal Court under Section 207 Cr.P.C. since were not given, it can be sought for from the Sessions Court. The documents sought for are necessary for the accused to make effective defence. Such furnishing of copies of documents is right of the accused and it is part of principle of fair trial. In support of his submissions, the learned counsel also cited [V.K. Sasikala Vs. State rep. by Superintendent of Police](#), .

10. "No man shall be deprived of his life and liberty except by procedure established by law" is constitutionally guaranteed to everyone. (See Article 21, Constitution of India). Only after following a "fair, reasonable and equitable procedure", the liberty of a person can be curtailed in accordance with law (see [Mrs. Maneka Gandhi Vs. Union of India \(UOI\) and Another](#), . Right of the accused to defend himself as against the accusations made against him is constitutionally guaranteed (see Article 22, Constitution of India).

11. No one shall be condemned unheard. Before condemning a person, reasonable opportunity must be given to him. If only the basis of accusations, materials are revealed the indicted person can defend himself effectively. Without furnishing, disclosing him copies of the incriminating materials asking him to defend will be an empty formality. It is really not giving him opportunity much less a reasonable opportunity. It is as good as denying him opportunity. These are foundations of principles of justice and fair play. These are basis of principles of natural justice."

5. Also, the Learned Counsel for the Petitioners in the aforesaid decision refers to paragraphs 14 and 15 whereby and whereunder, it is observed as follows:

"14. Section 207 Cr.P.C., runs as under:

"207. Supply to the accused of copy of police report and other documents.--In any case where the proceeding has been instituted on a police report, the Magistrate shall, without delay, furnish to the accused, free of cost, a copy of each of the following:

(i) the police report;

(ii) the first information report recorded under Section 154;

(iii) the statements recorded under sub-section (3) of Section 161 of all persons whom the prosecution proposes to examine as its witnesses, excluding therefrom any part in regard to which a request for such exclusion has been made by police officer under sub-section (6) of Section 173;

(iv) the confessions and statements, if any, recorded under Section 164;

(v) any other document or relevant extract thereof forwarded to the Magistrate with the police report under sub-section (5) of Section 173:

Provided that the Magistrate may, after perusing any such part of a statement as is referred to in clause (iii) and considering the reasons given by the police officer for the request, direct that a copy of that part of the statement or of such portion thereof as the Magistrate thinks proper, shall be furnished to the accused:

Provided further that if the Magistrate is satisfied that any document referred to in clause (v) is voluminous, he shall, instead of furnishing the accused with a copy thereof, direct that he will only be allowed to inspect it either personally or through pleader in Court."

15. The said provisions are commonly applicable to all type of cases instituted upon police reports. In fact, only upon complying the requirement of Section 207 Cr.P.C., a Magistrate can commit the case to the Court of Sessions, (see Section 209 Cr.P.C). Section 208 Cr.P.C., is similar provision applicable to sessions cases instituted upon private complaints. Such compliance is condition precedent for commitment of the cases to the Court of Sessions. If the copies of the documents mentioned in Section 207 Cr.P.C., are not supplied to the accused either in full or in part, he cannot effectively defend himself before the trial Court, namely, Sessions Court."

6. The Learned Counsel for the Petitioners/A.7 and A.8 proceeds to submit that the right of the Accused to receive the "Documents/statements" submitted before the Court is absolute and it must be adhered to by the Complainant. Apart from that, it is the primordial duty of the Court of Law to ensure the supply of "Documents/statements" to the Accused in accordance with Law.

7. Expatiating his plea, the Learned Counsel for the Petitioners/A.7 and A.8 contends that to claim the documents within the ambit of Sections 207, 243 read with the

provisions of Section 173 in its entirety and the power of the Court under Section 91 of the Criminal Procedure Code to summon the documents signifies and provides precepts which would govern the right of the Accused to claim the copies of the statements and documents which the prosecution had collected during investigation and upon which they rely upon.

8. The Learned Counsel for the Petitioners/A.7 and A.8 strenuously submits that furnishing of copies of the documents is the duty of the Court and even documents which were forwarded to the Court and which are not relied upon by the prosecution may be of assistance to the Accused to prove his innocence.

9. Further, it is represented on behalf of the Petitioners/A.7 and A.8 that even if the requisite documents are not forwarded to the concerned competent Court by the prosecution/Police and the same are still with the Police, then, it becomes the duty of the Court to direct the Police to produce those documents to the Court and subsequently, it is for the Court to furnish the copies of the same to the Accused.

10. The Learned Counsel for the Petitioners/A.7 and A.8 seeks in aid of the Judgment reported in [Kamal Ahmed Mohammed Vakil Ansari and Others Vs. The State of Maharashtra at the instance of ATS, Mumbai vide their C.R. No. 5 of 2006](#), whereby and where under in paragraphs 52, 53 and 60, it is observed and held as under:

"52. The refusal of the trial court to direct the Nodal Officers to file affidavits in support of their claims that the relevant data was not available was improper and not in accordance with law. If the court did not want the Nodal Officers to file the affidavits, it could have itself questioned the Nodal Officers on oath in that regard and could have recorded their evidence with liberty to the prosecution and to the accused, to question them further in that regard. Infact, such a course would have been proper and would be rather inevitable if the court wanted to feel satisfied about Non-availability of such record.

53. The impugned orders are clearly wrong. The trial court should have considered the likelihood of the relevant CDRs being available with the investigating agency, and ought to have considered the application for issue of search warrants in the light of the various stands taken by the prosecution/investigating agency, in that regard, from time to time. It need not have been at once satisfied, that there exists no such record which the accused wanted to get produced. Similarly, accepting the contents of the letters brought by Nodal Officers, as true, without requiring them to state the material facts on oath, was also not proper. Further, whether it was possible to retrieve the data with the help of the Information Technology Department of the concerned Mobile Service Provider Companies, needed serious consideration, and the trial did not apply its mind to this aspect.

60. As regard the availability of the relevant documents with the investigating agency, though no conclusion at this stage can be arrived at by this court, the fact remains that the matter needs to be further considered by the trial court. If, on such

further consideration of the matter, the trial court comes to the conclusion that the investigating agency can be believed to be in possession of such records, then it should consider the prayer of the accused persons to issue a search warrant to search for the relevant records."

11. The Learned Counsel for the Petitioners/A. 7 and A. 8 invites the attention of this Court to the Judgment of the Hon"ble Supreme Court reported in [V.K. Sasikala Vs. State rep. by Superintendent of Police](#), wherein in paragraphs 217, 218, 219, 220 and 221, it is observed as follows:

"277. Further, Section 91 empowers the court to summon production of any document or thing which the court considers necessary or desirable for the purposes of any investigation, inquiry, trial or another proceeding under the provisions of the Code. Where Section 91 read with Section 243 says that if the accused is called upon to enter his defence and produce his evidence there he has also been given the right to apply to the court for issuance of process for compelling the attendance of any witness for the purpose of examination, cross-examination or the production of any document or other thing for which the court has to pass a reasoned order.

218. The liberty of an accused cannot be interfered with except under due process of law. The expression "due process of law" shall deem to include fairness in trial. The court (sic Code) gives a right to the accused to receive all documents and statements as well as to move an application for production of any record or witness in support of his case. This constitutional mandate and statutory rights given to the accused place an implied obligation upon the prosecution (prosecution and the Prosecutor) to make fair disclosure. The concept of fair disclosure would take in its ambit furnishing of a document which the prosecution relies upon whether filed in court or not. That document should essentially be furnished to the accused and even in the cases where during investigation a document is bona fide obtained by the investigating agency and in the opinion of the Prosecutor is relevant and would help in arriving at the truth, that document should also be disclosed to the accused.

219. The role and obligation of the Prosecutor particularly in relation to disclosure cannot be equated under our law to that prevalent under the English system as afore referred to. But at the same time, the demand for a fair trial cannot be ignored. It may be of different consequences where a document which has been obtained suspiciously, fraudulently or by causing undue advantage to the accused during investigation such document could be denied in the discretion of the Prosecutor to the accused whether the prosecution relies or not upon such documents, however in other cases the obligation to disclose would be more certain. As already noticed the provisions of Section 207 have a material bearing on this subject and make an interesting reading. This provision not only require or mandate that the court without delay and free of cost should furnish to the accused copies of the police report, first information report, statements, confessional

statements of the persons recorded under Section 161 whom the prosecution wishes to examine as witnesses, of course, excluding any part of a statement or document as contemplated under Section 173(6) of the Code, any other document or relevant extract thereof which has been submitted to the Magistrate by the police under sub-section (5) of Section 173. In contradistinction to the provisions of Section 173, where the legislature has used the expression "documents on which the prosecution relies" are not used under Section 207 of the Code. Therefore, the provisions of Section 207 of the Code will have to be given liberal and relevant meaning so as to achieve its object. Not only this, the documents submitted to the Magistrate along with the report under Section 173(5) would deem to include the documents which have to be sent to the Magistrate during the course of investigation as per the requirement of Section 170(2) of the Code.

220. The right of the accused with regard to disclosure of documents is a limited right but is codified and is the very foundation of a fair investigation and trial. On such matters, the accused cannot claim an indefeasible legal right to claim every document of the police file or even the portions which are permitted to be excluded from the documents annexed to the report under Section 173(2) as per orders of the court. But certain rights of the accused flow both from the codified law as well as from equitable concepts of the constitutional jurisdiction, as substantial variation to such procedure would frustrate the very basis of a fair trial. To claim documents within the purview of scope of Sections 207, 243 read with the provisions of Section 173 in its entirety and power of the court under Section 91 of the Code to summon documents signifies and provides precepts which will govern the right of the accused to claim copies of the statement and documents which the prosecution has collected during investigation and upon which they rely.

221. It will be difficult for the Court to say that the accused has no right to claim copies of the documents or request the Court for production of a document which is part of the general diary subject to satisfying the basic ingredients of law stated therein. A document which has been obtained bona fide and has bearing on the case of the prosecution and in the opinion of the Public Prosecutor, the same should be disclosed to the accused in the interest of justice and fair investigation and trial should be furnished to the accused. Then that document should be disclosed to the accused giving him chance of fair defence, particularly when non-production or disclosure of such a document would affect administration of criminal justice and the defence of the accused prejudicially."

12. Also, in the aforesaid Judgment, at paragraphs 17, 19 and 20 it is observed as follows:

"17. The issue that has emerged before us is, therefore, somewhat larger than what has been projected by the State and what has been dealt with by the High Court. The question arising would no longer be one of compliance or non-compliance with the provisions of Section 207 Cr.P.C. and would travel beyond the confines of the

strict language of the provisions of the Cr.P.C. and touch upon the larger doctrine of a free and fair trial that has been painstakingly built up by the courts on a purposive interpretation of Article 21 of the Constitution. It is not the stage of making of the request; the efflux of time that has occurred or the prior conduct of the accused that is material. What is of significance is if in a given situation the accused comes to the court contending that some papers forwarded to the Court by the investigating agency have not been exhibited by the prosecution as the same favours the accused the court must concede a right to in the accused to have an access to the said documents, if so claimed. This, according to us, is the core issue in the case which must be answered affirmatively. In this regard, we would like to be specific in saying that we find it difficult to agree with the view taken by the High Court that the accused must be made to await the conclusion of the trial to test the plea of prejudice that he may have raised. Such a plea must be answered at the earliest and certainly before the conclusion of the trial, even though it may be raised by the accused belatedly . This is how the scales of justice in our Criminal Jurisprudence have to be balanced.

19. Any debate or discussion with regard to the purport and object of the examination of an accused under Section 313 Cr.P.C. is wholly unnecessary as the law in this regard is fairly well settled by a long line of the decisions of this Court. The examination of an accused under Section 313 Cr.P.C. not only provides the accused an opportunity to explain the incriminating circumstances appearing against him in the prosecution evidence but such examination also permits him to put forward his own version, if he so chooses, with regard to his involvement or otherwise in the crime alleged against him. Viewed from the latter point of view, the examination of an accused under Section 313 Cr.P.C. does have a fair nexus with the defence that he may choose to bring, if the need arises. Any failure on the part of the accused to put forward his version of the case in his examination under Section 313 Cr.P.C. may have the effect of curtailing his rights in the event the accused chooses to take up a specific defence and examine defence witnesses. Besides, the answers given by the accused in his examination, if incorrect or incomplete, may also jeopardise him as such incorrect or incomplete answers may have the effect of strengthening the prosecution case against the accused. In this connection it may be appropriate to refer to two paragraphs of the judgment of this Court in *Manu Sao v.. State of Bihar* 2010 (12) SCC 3100 which are extracted below:

"13. As already noticed, the object of recording the statement of the accused under Section 313 of the Code is to put all incriminating evidence against the accused so as to provide him an opportunity to explain such incriminating circumstances appearing against him in the evidence of the prosecution. At the same time, also to permit him to put forward his own version or reasons, if he so chooses, in relation to his involvement or otherwise in the crime. The court has been empowered to examine the accused but only after the prosecution evidence has been concluded. It is a mandatory obligation upon the court and besides ensuring the compliance

therewith the court has to keep in mind that the accused gets a fair chance to explain his conduct. The option lies with the accused to maintain silence coupled with simpliciter denial or in the alternative to explain his version and reasons for his alleged involvement in the commission of crime. This is the statement which the accused makes without fear or right of the other party to cross-examine him. However, if the statements made are false, the court is entitled to draw adverse inferences and pass consequential orders, as may be called for, in accordance with law. The primary purpose is to establish a direct dialogue between the court and the accused and to put to the accused every important incriminating piece of evidence and grant him an opportunity to answer and explain. Once such a statement is recorded, the next question that has to be considered by the court is to what extent and consequences such statement can be used during the enquiry and the trial. Over the period of time, the courts have explained this concept and now it has attained, more or less, certainty in the field of criminal jurisprudence.

14. The statement of the accused can be used to test the veracity of the exculpatory nature of the admission, if any, made by the accused. It can be taken into consideration in any enquiry or trial but still it is not strictly evidence in the case. The provisions of Section 313(4) explicitly provides that the answers given by the accused may be taken into consideration in such enquiry or trial and put in evidence against the accused in any other enquiry or trial for any other offence for which such answers may tend to show he has committed. In other words, the use is permissible as per the provisions of the Code but has its own limitations. The courts may rely on a portion of the statement of the accused and find him guilty in consideration of the other evidence against him led by the prosecution, however, such statements made under this section should not be considered in isolation but in conjunction with evidence adduced by the prosecution.

20. If the above is the avowed purport and object of the examination of an accused under Section 313 Cr.P.C., we do not see as to how the appellant (second accused) can be denied an access to the documents in respect of which prayers have been made in the applications dated 29.3.2012 (for certified copies of the unmarked documents) and dated 18.4.2012 (for inspection) before the learned trial Court. While the anxiety to bring the trial to its earliest conclusion has to be shared it is fundamental that in the process none of the well entrenched principles of law that have been laboriously built by illuminating judicial precedents is sacrificed or compromised. In no circumstance, the cause of justice can be made to suffer, though, undoubtedly, it is highly desirable that the finality of any trial is achieved in the quickest possible time. In view of what has been stated above and to balance the need to bring the prosecution in the present case to its earliest conclusion and at the same time to protect and preserve the right of the accused to a fair trial we are of the view that the following directions would take care of the conflicting interests that have surfaced in the present case:

(1) The accused No. 2, i.e. the appellant herein, be allowed an inspection of the unmarked and unexhibited documents referred to by her in the application dated 29.3.2012, i.e., I.A. No. 711 of 2012 in CC No. 2008/2004 filed in the Court of XXXVI Additional City Civil & Sessions Judge, Bangalore;

(2) Such inspection will be completed within a period of 21 days from the date of receipt of this order by the learned trial court. The venue of such inspection and also the persons who will be permitted to be present at the time of inspection will be decided by the learned trial court.

(3) The right of inspection conferred by this order will not affect the validity of any part of the trial till date, including, the examination of the accused No. 1 under Section 313 Cr.P.C. which has since been completed or any part of such examination of the second accused that may have been completed in the meantime.

(4) In the event the third and the fourth accused also desire inspection of the unmarked and unexhibited documents such inspection will be allowed by the learned trial court. In such an event the process of inspection will also be simultaneously carried out and completed within the period of 21 days stipulated in the present order."

13. Conversely, the Learned Counsel for the Respondent/Complainant contends that the original complaints relating to the F.I. Rs. in the case are at present not available in the original records of the case and also that the original F.I. Rs in the case were already marked as Exhibits P.1289 to P.1297 without any objection from the side of the Petitioners.

14. The Learned Counsel for the Respondent/Complainant projects his argument that the main case is about 27 years old and in this case, the arguments on the side of the Prosecution were completed and written arguments were also submitted on 10.1.2013. Furthermore, on 28.1.2013, the argument on the side of A.20 was completed and on 29.1.2013, the argument on the side of A. 14 was completed. Added further, on 30.1.2013, the arguments on the side of A.5, A. 15 and A. 18 were completed. In fact, on 1.2.2013, the argument of A.22 was completed and 4.2.2013, the argument of A. 13 and A. 19 were completed.

15. It is not in dispute that the Petitioners/A.7 and A.8 filed CrI.M.P. No. 1680 of 2014 in C.C. No. 22 of 1997 on the file of the trial Court under Section 91 of the Criminal Procedure Code, which speaks of "Summons to produce document or other thing".

16. It cannot be gainsaid that the powers conferred under Section 91 of the Criminal Procedure Code are enabling in character and aimed at arming the Court of any Officer-in-charge of the Police Station to enforce and to ensure the production of any document or other things, "necessary or desirable", for the purpose of any investigation, inquiry, trial or other proceeding under the Code, by issuing a summon or a written order to those in possession of such material.

17. The jurisdiction under Section 91 of the Criminal Procedure Code when invoked by the Accused, the desirability and necessity of the same will have to be looked into by a Court of Law mainly in the context of the purpose, i.e., 1. investigation, 2. inquiry, 3. trial or other proceedings under the Code.

18. In fact, the ingredients of Section 91 of the Criminal Procedure Code clearly enjoin that it concerns with documents forming the subject of a criminal offence, as also with the documents, which can be pressed into service in evidence to assist or support prosecution.

19. It is true that the Court of Law is bound to consider whether there is a prima facie case for summoning whether these documents are relevant and whether they do have a bearing in a given case. If the Court thinks they are, then, it can order production. Also that a Court may also consider whether the documents etc., are being suppressed or may be tampered with or destroyed by a litigant in whose possession it is or may be entirely lost.

20. Whether certain documents ought to be summoned or not is essentially in the discretion of trial Court. Indeed, except for very good reasons, the High Court should not interfere with that discretion as per the decision of the Hon"ble Supreme Court reported in [Assistant Collector of Customs and Another Vs. L.R. Malwani and Another,](#) .

21. Where the documents have no relevance to the case on hand, nor it is desirable for the Court to summon, the Court is quite competent enough to negative the relief sought for in the petition, as opined by this Court.

22. As far as the present case is concerned that even though the Petitioners/A.7 and A.8 filed the Crl.M.P. No. 1680 of 2014 in C.C. No. 22 of 1997 under Section 91 of the Criminal Procedure Code, the very fact that they are not available in the "Court Records" and also in view of the fact that the Respondent/Complainant has averred in the counter before this Court in Crl.O.P. No. 18997 of 2014 to the effect that, the then Public Prosecutor had also filed a memo before the trial Court that it was difficult to trace the original complaints and the same was part of Court records, this Court is of the considered view that the Petitioners/A. 7 and A. 8 can take advantage of the said fact before the trial Court at the time of the arguments of the main case in C.C. No. 22 of 1997 and to seek the appropriate remedy in the manner known to law and in accordance with law, if they so desire/advised. That apart, since the said original nine F.I. Rs. are not available and also that the F.I. Rs. were marked as Exhibits P. 1289 to P. 1297 before the trial Court on behalf of the Respondent/Complainant, then this Court is of the considered view the Petitioners/A.7 and A.8 can take advantage of the same and to seek appropriate remedy thereto.

23. Although it would have been desirable on the part of the Respondent/Complainant to mark the original complaints, yet in view of the

established fact as on date the said nine complainants are not available, then this Court is of the considered view that no useful purpose would be served in allowing the CrI.M.P. No. 1680 of 2014 filed by the Petitioners/A.7 and A.8. Per contra, the same would result in an otiose one. Viewed in that perspective, the Criminal Original Petition fails.

24. Insofar as the direction issued by the trial Court in CrI.M.P. No. 1680 of 2014 in C.C. No. 22 of 1997 through its order dated 24.6.2014 that the Petitioners/A.7 and A.8 should deposit a sum of Rs. 5,000/- each to the Tamil Nadu Legal Services Authority, Chennai as an exemplary cost, this Court, taking note of overall conspectus and attendant facts and circumstances of the present case in an encircling fashion, comes to an irresistible conclusion that the ends of justice would be met, if this Court orders the Petitioners/A.7 and A.8 each of them to pay Rs. 2,500/- to the Tamil Nadu Legal Services Authority, Chennai, within two weeks from the date of receipt of a copy of this order and accordingly, directs them to pay a sum of Rs. 2,500/- each to the Tamil Nadu Legal Services Authority, Chennai, within fourteen days from the date of receipt of a copy of this order.

25. It is made clear that the dismissal of the present Criminal Original Petition by this Court will not preclude the Petitioners/A.7 and A.8 to raise all the factual and legal pleas before the trial Court at the time of the arguments of the main case in C.C. No. 22 of 1997 (including non marking of the original complaints) and to seek appropriate remedy in accordance with law, if they so desire/advised. In the result, the criminal original petition is dismissed. Connected M.P. No. 1 of 2014 is closed.