

2009 LW CRL 1 386 . 2009 MLJ CRI 2 436 . 2009 SCC ONLINE MAD 576 . 2009 MWN CRI 1 298 . 2009 MLJ CRL 2 436 .

Rev. Samuel D. Stephens And Others v. Pastor A. Samuel Ramasamy

Madras High Court (Feb 27, 2009)

CASE NO.

CrI.O.P No. 12743 of 2007andM.P No. 1 of 2007 and 1 of 200827.2.2009

ADVOCATES

Mr. Arokiaraj, Advocate for Petitioners;

Mr. S. Kanagasabai Moses, Advocate for Respondents; Mr. V. Karthik, Advocate as Amicus Curiae.

JUDGES

K. Mohan Ram, J.

Summary

1. C.A. Returned" by order, dated 29.12.2006.
2. In the decision, the question that came up for consideration was as to whether the accused is entitled to get certified copies of the complaint before his appearance in the court.
3. While considering the correctness of the order, the learned Judge, after referring to earlier decisions of this Court and other High Courts, has observed as under:-
4. 10. Countering the said submissions, the learned counsel for the respondent relied upon a decision of the Apex Court reported in AIR 1970 Supreme Court 962 (The Assistant Collector of Customs, Bombay and another v. L.R. Melwani and another).
5. The implied prohibition enacted by S. 173(4) would itself imply a repeal or an abrogation in part of the right under the former section.
6. 36. Our answer to the question can be stated : (1) The statements recorded under S.164 Cr.P.C., would

be public documents falling under S. 74(1)(iii) of the Indian Evidence Act.

7. 13. Mr.V. Karthik also brought to the notice of this Court a decision of the learned Single Judge of this Court reported in 1998 -1-L.W.(CrI.) 1 (Ramesh v. A. Ramanujam), wherein it has been held that in a case arising out of a private complaint, the accused, on his appearance, is entitled to get a copy of the complaint but not the documents.

8. On the said reasoning, the direction issued by the High Court directing the prosecution to furnish copies of the documents to the accused was set aside.

9. In such event, if the accused is not furnished with the first information report, he will not be in a position to approach the High Court under Section 482 Cr.P.c. for quashing the first information report.

10. Rule 339 of the Criminal Rules of Practice is in consonance with the provisions contained in Section 363(5) Cr.P.C.

11. But similar duty is not cast on the Magistrate to furnish copies of the documents free of cost if the case is not triable exclusively by the Court of Session.

JUDGMENT

Criminal Original Petition filed under Section 482 of the Criminal Procedure Code for a direction to set aside the Docket return dated 29.12.2006 in Copy Application No. 523 of 2006 and direct the Judicial Magistrate No. II, Poonamallee to grant certified copies or documents filed along with the Complaint in C.C No. 695 of 2006.

JUDGMENT:

1. The accused in C.C No. 695 of 2006 on the file of the Judicial Magistrate No. II, Poonamallee, are facing trial for the alleged offences under Sections 120-B, 420 and 465, I.P.C The said case has been taken on file on the basis of a Private Complaint filed by the respondent herein.

2. According to the Petitioners, on 8.12.2006, the accused 2 and 4 appeared in the Court on receipt of summons and their learned counsel entered appearance and filed an Application for furnishing certified

copies of the documents filed along with the Complaint. Though the said Application was numbered as C.A No. 523 of 2006 on 14.12.2006, the same was returned by the learned Judicial Magistrate with an endorsement Returned, Documents not marked. Hence, C.A Returned by order, dated 29.12.2006

3. Being aggrieved by that the Petitioners have filed the above CrI.O.P under Section 482, Cr.P.C seeking to set aside the Docket return, dated 29.12.2006 in Copy Application No. 523 of 2006 and for a direction to the learned Judicial Magistrate No. II, Poonamallee to grant certified copies of documents filed along with the Complaint in C.C No. 695 of 2006.

4. Heard.

5. The learned counsel for the Petitioners submitted that the documents filed along with the Complaint being part of the case records, the Petitioners as accused are entitled to get certified copies of the same on payment of necessary charges. The learned counsel further submitted that unless the copies are furnished, the Petitioners will not be in a position to effectively defend themselves in the proceedings. In support of the said contention, the learned counsel relied upon Rule 339 of the Criminal Rules of Practice, which reads as follows:

339: Copies to be given parties. (1) Copies of any portion of the record of a Criminal case must be furnished to the parties concerned on payment of the proper stamp and the authorized fee for copying. Where the Judge's notes form the only of the evidence, copies of these notes be given.

6. In support of his contention, the learned counsel based reliance on a decision of C. Nagappan, J., reported in K. Ramaiah v. R. Sudhakara Naidu, 2006 (4) CTC 481, wherein after referring to some other decisions of this Court, the learned Judge has held that the Trial Court cannot refuse to receive the Copy Application and it is bound to follow Rule 339 in so far as copies to be given to the parties are concerned.

7. The learned counsel also relied upon a decision of the learned Judge of this Court in V.G.K. Murthy v. Vikas Plastic Electro Chemical (P) Ltd., represented by its Managing Director, No. 57, III Main Road, R.A Puram, Chennai-28, 2001 (1) CTC 24. In that decision, the question that came up for consideration was as to whether the accused is entitled to get certified copies of the Complaint before his appearance in the Court. Basing reliance on Rule 339 of the Criminal Rules of Practice, the learned Judge has held that the accused is entitled for certified copy of the Complaint even before entering appearance in the case.

8. The learned counsel relied upon a decision of mine in Subramanian @ Ravi Subramanian v. The State, represented by the Additional Superintendent of Police, Special Investigation Team, Kanjipuram, 2007 (5) CTC 873. In that decision, it has been held that though the accused granted pardon and taken as an approver, still he has to be considered as a party to the proceedings and as such the party is entitled to get the certified copies of the documents as per Rule 339 of the Criminal Rules of Practice.

9. The learned counsel also relied upon an order, dated 3.9.2007 passed in CrI.O.P No. 22929 of 2007 of S. Palanivelu, J. In the said case, which arose out of a Private Complaint, the Petitioner filed a copy Application for the issuance of xerox copies of documents filed along with the Complaint, but the same was returned by the learned Judicial Magistrate stating that since the documents were not marked and those documents are xerox copies, certified copies could not be issued. While considering the correctness of the order, the learned Judge, after referring to earlier decisions of this Court and other High Courts, has observed as under:

3. The learned counsel for the Petitioner placed reliance on the decision of this Court in Nagarajan v. K.S Ramasamy, 2003 (3) M.L.J 211, wherein a learned Single Judge of this Court has observed that a party has the right to obtain a copy of any document produced in Court even though it is not marked in evidence. In the said decision, the learned Single Judge referred to the judgment in Jagatbhai Punjabhai Palkhiwala v. Vikrambhai Punjabhai Palkhiwala, AIR 1985 Gujarat 112, and Rule 62 of Civil Rules of Practice and came to the conclusion that parties to the proceedings are entitled to get certified copies of documents, even though such copies are unmarked when they were produced before Court.

Having observed so, the learned Judge directed the issue of certified copies of the documents.

10. Countering the said submissions, the learned counsel for the respondent relied upon a decision of the Apex Court in The Assistant Collector of Customs, Bombay and another v. L.R Melwani and another, AIR 1970 SC 962. In that decision, the Hon'ble Apex Court has held that in a case instituted on a Private Complaint the documents mentioned in sub-clause (4) of Section 173 cannot be made available to the accused. The learned counsel based reliance on the following observation of the Apex Court, which is found at para-12 of the Judgment, which reads as under:

This Section does not empower a Magistrate to direct the prosecution to give copies of any documents to an accused person. That much appears to be plain from the language of that Section. It was

impermissible for the High Court to read into Section 94, Criminal Procedure Code the requirements of Section 173(4), Criminal Procedure Code. The High Court was not justified, in indirectly applying to cases instituted on Private Complaints the requirements of Section 173(4), Criminal Procedure Code.

11. Considering the fact that such questions come up for consideration quiet often, this Court requested Mr. V. Kathik to assist the Court as Amicus Curiae and Mr. Karthik, has made a compilation of relevant judgments on this issue and has rendered valuable assistance to the Court in deciding the above CrI.O.P. Apart from the aforesaid decisions referred to by the learned counsel for the Petitioners, Mr. V. Karthik has brought to the notice of this Court the following decisions which have relevance for deciding the issue that arises for consideration in the above CrI.O.P.

a. AIR 1961 Madras 92 Full Bench (State of Madras, represented by the Public Prosecutor, Madras v. G. Krishnan). In that decision, on a reference the Full Bench dealt with the issue as to whether an accused is entitled to get copies of the statements recorded under Section 164, Cr.P.C, prior to the filing of the chargesheet. After considering a number of earlier decisions of various Courts and the provisions contained in the Evidence Act and the Cr.P.C, the Full Bench has held as follows:

Therefore, S. 173(4), Cr.P.C, should be construed as impliedly prohibiting the grant of copies earlier than the time prescribed by it. That prohibition will become ineffective if an unlimited right under S. 76 of the Indian Evidence Act is recognised. Therefore, the implied prohibition enacted by S. 173(4) would itself imply a repeal or an abrogation in part of the right under the former Section. This is no new principle. When two statutes though expressed in affirmative language are contrary in matter, the latter or special would abrogate the earlier or general.

In the very same decision, the Hon'ble Full Bench, while dealing with the scope of Rule 339 of the Criminal Rules of Practice, has held as under:

35. The learned counsel for the respondent relied on R. 339 of the Criminal Rules of Practice, as entitling the respondent to the grant of copies. That rule merely states that copies of records in Criminal cases must be furnished to the parties concerned on payment of proper stamp charges. That would not entitle the parties to copies of those documents which under the law could not be granted till after a particular stage is reached.

36. Our answer to the question therefore, can be stated thus: (1) The statements recorded under S. 164, Cr.P.C would be public documents falling under S. 74(1)(iii) of the Indian Evidence Act; (2) The accused will be entitled to copies of the same as a person interested; (3) but his right to obtain such copies before the filing of the chargesheet has been taken away by implication by the provisions of S. 173(4) of the Cr.P.C, and that he will be entitled to the copies of the documents only in accordance therewith. Reference answered.

b. 1988 L.W (Crl.) 503 Full Bench (Selvanathan alias Raghavan and 9 others v. State by Inspector of Police, G5 Police Station). In the above case, the Full Bench of this Court dealt with the issue as to whether the accused is entitled for certified copies of the First Information Report, remand report, etc., prior to the filing of the chargesheet. On an elaborate consideration of the case law on the subject, the Hon'ble Full Bench held that the accused is entitled for certified copy of the F.I.R even before the forwarding of the police report/charge sheet to the Magistrate under Section 173(5) Cr.P.C on payment of prescribed charges. But the Full Bench held that the accused is not entitled for certified copy of the remand report.

12. Mr. V. Karthik has also brought to the notice of the Court the following decisions in Jagatbhai Punjabhai Palkhiwala and others v. Vikrambhai Punjabhai Palkhiwala and others, AIR 1985 Gujarat 112; K. Nagarajan v. K.S Ramasamy, 2003 (3) M.L.J 211; and K.R. Sengottuvelu v. Karuppa Naicker, 2005 (5) CTC 91. The above decisions are relating to Civil cases, wherein it has been held that since the documents are in the custody of the Court, the parties cannot take xerox copies of the same without the permission of the Court, but that does not mean that the Court can refuse such permission only on the ground that they have not become part of the record of the Suit.

13. Mr. V. Karthik also brought to the notice of this Court a decision of the learned Single Judge of this Court in Ramesh v. A. Ramanujam, 1998 (1) L.W(Crl.) 1, wherein it has been held that in a case arising out of a Private Complaint, the accused, on his appearance, is entitled to get a copy of the Complaint but not the documents. But in that decision, there is no reference of Rule 339 of the Criminal Rules of Practice.

14. I have carefully considered the aforesaid submissions made by the respective counsel and perused the various decisions referred to above.

15. In the decision reported in 2006(4) CTC 481, C. Nagappan, J., on a consideration of Rule 339 of the Criminal Rules of Practice and some other earlier decisions, has held that the said rule provides for issuance of copies to parties and it stipulates that copies of any portion of the record of a Criminal case must be furnished to the parties concerned. But in that decision, the question as to whether the certified copies of unmarked documents could be furnished or not has not been directly considered. But in the order, dated 3.9.2007, passed in CrI.O.P No. 22929 of 2007 by S. Palanivelu, J., that question has also been considered and ultimately it has been held that though the documents have not been marked, certified copies of the unmarked documents could be issued. But the said decision was rendered mainly based on the decisions rendered in Civil cases. But M. Karpagavinayagam, J., as His Lordship then was, in 1998 (1) L.W (CrI.) 1, has made an observation to the effect that the accused though entitled to be served with a copy of the Complaint along with the summons, is not entitled to the documents but in the said decision, it has not been considered as to whether the accused is entitled or not to get certified copies of the documents if the same is sought for by him under Rule 339 of the Criminal Rules of Practice as that issue did not arise for consideration.

16. The main objection raised by the learned counsel for the respondent is that since the documents filed along with the Complaint have not been marked, the accused, at this stage, are not entitled to get certified copies of the same. In support of the said contention, the learned counsel relied upon the decision of the Apex Court reported in AIR 1970 SC 962, cited supra. It has to be pointed out that in the said decision, the Hon'ble Apex Court has held that the High Court was not justified, in indirectly applying to cases instituted on Private Complaints the requirements of Section 173(4), Cr.P.C In the said decision what the Hon'ble Court has held is that it was impermissible for the High Court to read into Section 94, Cr.P.C, the requirements of Section 173(4), Cr.P.C on the ground that Section 173(4), Cr.P.C is not applicable to Private Complaints. On the said reasoning, the direction issued by the High Court directing the prosecution to furnish copies of the documents to the accused was set aside. But it has to be pointed out that in that decision, the question as to whether the accused is entitled to get certified copies of the documents filed along with the Private Complaint did not come up for consideration and hence, the said decision is not of any help to the respondent.

17. In the Full Bench decision reported in AIR 1961 Madras 92, only in the light of the embargo contained in Section 173(4), Cr.P.C, it was held that the accused is not entitled to get statement recorded under

Section 164, Cr.P.C, before the filing of the charge sheet. In that decision, on behalf of the respondent reliance was placed on Rule 339 of the Criminal Rules of Practice and a submission was made that the accused was entitled to the grant of copies. While considering the said Rule, it has been observed that the said rule merely states that copies of the records in Criminal cases must be furnished to the parties concerned on payment of proper stamp charges and that would not entitle the parties to copies of those documents which under the law could not be granted till after a particular stage is reached.

18. In this context, it is pertinent to point out that the learned counsel for the respondent has not referred to any provision in the Criminal Procedure Code containing any prohibition to furnish certified copies of the documents filed along with the Private Complaint. The prohibition like the one contained under Section 173(4), Cr.P.C is not there as far as the documents filed along with the Private Complaint are concerned. Therefore, unless there is a statutory prohibition, it cannot be said that the accused is not entitled to get certified copies of the documents filed along with the Private Complaint.

19. In the Full Bench decision reported in 1988 L.W (Cr.) 503, it has been held that in a police reported case, the accused is entitled for certified copy of the First Information Report even before the filing of the chargesheet/final report. It is pertinent to point out that as laid down by the Apex Court in Surinder Singh v. Central Government, AIR 1986 S.C 2166; and State Of West Bengal v. Swapan Kumar Senapati., 1982 M.L.J (Cr.) 359, that if the first information report does not disclose the commission of a cognizable offence, the Court would be justified in quashing the investigation on the basis of the information as laid or received and in a case where the first information report does not disclose the commission of a cognizable offence, if the accused approaches the Court for quashing the proceedings by invoking the inherent jurisdiction of the High Court under Section 482 of the Code, he has to file a copy of the First Information Report. Therefore, in such event, if the accused is not furnished with the first information report, he will not be in a position to approach the High Court under Section 482, Cr.P.C for quashing the First Information Report.

20. Similarly, in a Criminal case taken cognizance on the basis of the Private Complaint also if the allegations contained in the Complaint and the documents accompanied with the Complaint do not prima facie reveal the commission of any offence and the ingredients of the offence are not made out, it is always open to the accused to approach the High Court under Section 482, Cr.P.C seeking for quashing of the proceedings. For taking recourse under Section 482, Cr.P.C, it is necessary for the accused to

produce before the Court a copy of the Complaint as well as the documents filed along with the Complaint. Since before taking cognizance, the learned Judicial Magistrate is bound to apply his judicial mind not only to the allegations contained in the Complaint but also to the documents accompanying the same and an order taking cognizance is a judicial order and as such the accused is entitled to challenge the cognizance taken in the case. As per Section 363(5), Cr.P.C, Save as otherwise provided in subsection (2), any person affected by an order passed by the Court on an Application made in this behalf and on payment of the prescribed charges be given a copy of such order or of any deposition or other part of the record. If the question is considered in the light of Section 363(5), Cr.P.C, it could be held that since, as pointed out above, an order taking cognizance is a judicial order, Section 363(5) is attracted and on that ground also the accused is entitled to get a copy of the part of the record of a Criminal case to enable him to seek appropriate remedy before the higher forum. In my considered view, Rule 339 of the Criminal Rules of Practice is in consonance with the provisions contained in Section 363(5), Cr.P.C It is also to be pointed out that by furnishing of certified copies of the documents filed along with the Private Complaint, no prejudice whatsoever is going to be caused to the complainant, whereas, if the request of the accused is rejected, it will definitely prejudice the right of the accused in seeking appropriate legal remedy before the higher Courts.

21. This issue can also be considered in the light of the provisions contained in Section 208, Cr.P.C, which reads as follows:

208. Supply of copies of statements and documents to accused in other cases triable by Court of Session
Where, in a case instituted otherwise than on a police report, it appears to the Magistrate issuing process under Section 204 that the offence is triable exclusively by the Court of Session, the Magistrate shall without delay furnish to the accuse, free of cost, a copy of each of the following:

- (i) the statements recorded under Section 200 or Section 202, of all persons examined by the Magistrate;
- (ii) the statements and confessions, if any, recorded under Section 161 or Section 164;
- (iii) any documents produced before the Magistrate on which the prosecution proposes to rely;

Provided that if the Magistrate is satisfied that any such document 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.

22. A reading of the aforesaid provision shows that in a case instituted otherwise than on a police report, if it appears to the Magistrate issuing process under Section 204, Cr.P.C, that the offence is triable exclusively by the Court of Session, he shall furnish to the accused a copy of each of the documents filed along with the Complaint. That Sections casts duty on the Court to furnish the said documents free of cost. But similar duty is not cast on the Magistrate to furnish copies of the documents free of cost if the case is not triable exclusively by the Court of Session. It would mean that it is not incumbent on the part of the learned Judicial Magistrate to furnish copies of the documents free of cost either at the time of sending the process or on the appearance of the accused. There is no other provision which prohibits the accused from applying for certified copies of those documents filed along with the Complaint. As pointed out above, in the absence of any specific prohibition in the Cr.P.C either expressly or impliedly, in the considered view of this Court, the accused cannot be deprived of his right to get certified copies of the documents filed along with the Complaint so as to defend himself in the case as long as such furnishing of certified copies would not prejudice the case of the respondent.

23. For the aforesaid reasons, I am of the considered view that the order passed by the learned Judicial Magistrate returning the Copy Application filed by the Petitioners cannot be sustained and the same is set aside. The Petitioners are at liberty to file a fresh Copy Application under Rule 339 of the Criminal Rules of Practice seeking for certified copies of the documents filed along with the Complaint in C.C No. 695 of 2006 and on such filing, the Judicial Magistrate No. II, Poonamallee is hereby directed to furnish the certified copies of the same to the Petitioners on payment of required fees within ten days therefrom.

For the reasons stated above, the above Crl.O.P is allowed. Connected M.Ps are closed.