



2024:KER:63673

Cr1.M.C.No.1419/2022

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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A. BADHARUDEEN

FRIDAY, THE 16TH DAY OF AUGUST 2024 / 25TH SRAVANA, 1946

CRL.MC NO. 1419 OF 2022

CRIME NO.0080/2018 OF Kolathur Police Station, Malappuram

AGAINST THE ORDER DATED 15.01.2022 IN CMP NO.306 OF 2021 IN
S.C.NO.1042/2019 OF FAST TRACK SPECIAL COURT, PERINTHALMANNA

PETITIONER/1ST ACCUSED:

MUHAMMED RAMEES
AGED 23 YEARS
S/O ABOOBAKER, VELUTHANGADAN HOUSE, PAALUR NORTH,
PULAMANTHOLE P O, MALAPPURAM DISTRICT, PIN - 679323.

BY ADVS.
NIRMAL.S
VEENA HARI
RIA ELIZABETH JOSEPH
IRENE ELZA SOJI
K. REMIYA RAMACHANDRAN
ANJANA A.

RESPONDENT/COMPLAINANT

STATE OF KERALA, REPRESENTED BY PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM-682 031. (THROUGH
INSPECTOR OF POLICE KOLATHUR).

PUBLIC PROSECUTOR SRI M P PRASANTH

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON
05.08.2024, THE COURT ON 16.08.2024 PASSED THE FOLLOWING:

**“C.R”*****A. BADHARUDEEN, J.***

Crl.M.C.No.1419 of 2022-F

*Dated this the 16th day of August, 2024***ORDER**

In this Criminal Miscellaneous Case filed under Section 482 of the Code of Criminal Procedure, the petitioner, who is the accused in S.C.No.1042/2019 on the files of Fast Track Special Court, Perinthalmanna, assails Annexure-A2 order, whereby the learned Special Judge dismissed C.M.P.No.306/2021 in the above case filed by the petitioner seeking to furnish a copy of the pen drive seized by the investigating officer on 27.04.2018, still photos seized on the same day, voice messages and chattings in the WhatsApp through mobile phone seized on 11.05.2018 and 02.06.2018 on the allegation that the said documents were not furnished to him.

2. The prosecution side opposed the petition mainly contending that



the visual contents asked for contain physical evidence of commission of the crime and therefore, furnishing a copy of the said documents and the material objects to the petitioner would amount to further insult to the victim.

3. The trial court relied on the decisions, placed by both sides, of the Apex Court reported in [2019(4) KLT 853], **Gopalakrishnan @ Dileep v. State of Kerala**; [AIR 1996 SC 1393], **State of Punjab v. Gurmit Singh & Ors.**; [2004 (1) SCC 475], **State of Karnataka v. Puttaraja**; and [2019 (2) SCC 703], **Nipun Saxena & anr. v. Union of India & Ors.** and of this Court reported in [2019 (4) KLT 159], **Rasaq v. State of Kerala**, and held in paragraph 10 as under:

“10. Therefore, to balance the interests of the victim for securing her privacy and identity and the accused to have effectively defend himself during trial, instead of furnishing copy of the pen drive to the petitioner and other accused, permitting inspection of the contents of pen drive and other offensive pictures, if any, to the accused and their counsel will meet the ends of justice. Other documents in which the prosecution did not have objection, copies shall be furnished to the petitioner and also to the other accused, if not furnished already. Accordingly, the petition was allowed in part and the reliefs granted are as under:

a) directing the prosecution to furnish to the



petitioner the copy of the documents except the contents of the pen drive and other pictures of the victim involving her privacy and identity;

b) the petitioner or his counsel can inspect the contents of the pen drive and other such pictures, if necessary, with permission of the Court;

c) it is made clear that in the event of such permission to inspect the above said records, nobody shall be permitted to carry any devices including electronic device, camera and mobile phone which may have the capability of copying or transferring such record or the contents thereof or mutating its contents in any manner.”

4. Heard the learned counsel for the petitioner and the learned Public Prosecutor in detail. Perused the relevant documents.

5. Coming to the legal issue involved, furnishing of copies of prosecution records to the accused in compliance with Sections 207 and 208 of the Code of Criminal Procedure, is mandatory, subject to limited exceptions. In this context, the decision in ***Gopalakrishnan @ Dileep***'s case (*supra*) is relevant. In the said case, the Apex Court held that the contents of memory card/pen drive, being electronic record, must be regarded as a document. If the prosecution is relying on the same, ordinarily, the accused must be given a cloned copy thereof to enable him/her to present an effective defence during the trial. In the decision



reported in **Gopalakrishnan @ Dileep**'s case (*supra*), the Apex Court held as under in paragraphs 42 to 44 as under:

“42. Nevertheless, the Court cannot be oblivious to the nature of offence and the principle underlying the amendment to Section 327 of the 1973 Code, in particular sub-section (2) thereof and insertion of Section 228A of the 1860 Code, for securing the privacy of the victim and her identity. Thus understood, the Court is obliged to evolve a mechanism to enable the accused to reassure himself about the genuineness and credibility of the contents of the memory card/pen-drive from an independent agency referred to above, so as to effectively defend himself during the trial. Thus, balancing the rights of both parties is imperative, as has been held in [(2017) 4 SCC 397 : 2017 (1) KLT OnLine 2162 (SC) : (2017) 2 SCC (Cri) 376], **Asha Ranjan v. State of Bihar** and [2018 (3) KLT OnLine 2070 (SC) : (2018) 17 SCC 324], **Mazdoor Kisan Shakti Sangathan v. Union of India**. The Court is duty bound to issue suitable directions. Even the High Court, in exercise of inherent power under Section 482 of the 1973 Code, is competent to issue suitable directions to meet the ends of justice.

43. If the accused or his lawyer himself, additionally, intends to inspect the contents of the memory card/pen-drive in question, he can request the Magistrate to provide him inspection in Court, if necessary, even for more than once alongwith his lawyer and I.T. expert to enable him to effectively defend himself during the trial. If such an application is filed, the Magistrate must consider the same appropriately and exercise judicious discretion with objectivity while ensuring that it is not an



attempt by the accused to protract the trial. While allowing the accused and his lawyer or authorized I.T. expert, all care must be taken that they do not carry any devices much less electronic devices, including mobile phone which may have the capability of copying or transferring the electronic record thereof or mutating the contents of the memory card/pen-drive in any manner. Such multipronged approach may subserve the ends of justice and also effectuate the right of accused to a fair trial guaranteed under Article 21 of the Constitution.

44. *In conclusion, we hold that the contents of the memory card/pen drive being electronic record must be regarded as a document. If the prosecution is relying on the same, ordinarily, the accused must be given a cloned copy thereof to enable him/her to present an effective defence during the trial. However, in cases involving issues such as of privacy of the complainant/witness or his/her identity, the Court may be justified in providing only inspection thereof to the accused and his/her lawyer or expert for presenting effective defence during the trial. The court may issue suitable directions to balance the interests of both sides.”*

Further, the Court may issue suitable directions to balance the interests of both sides. In *Nipun Saxena & anr. v. Union of India & Ors.*'s case (*supra*), referred by the trial court, the Apex Court issued directions in paragraph 50 to ensure privacy of the victims of POCSO offences as under:

“50. *In view of the aforesaid discussion, we issue the following directions:*



50.1. *No person can print or publish in print, electronic, social media, etc. the name of the victim or even in a remote manner disclose any facts which can lead to the victim being identified and which should make her identity known to the public at large.*

50.2. *In cases where the victim is dead or of unsound mind the name of the victim or her identity should not be disclosed even under the authorisation of the next of kin, unless circumstances justifying the disclosure of her identity exist, which shall be decided by the competent authority, which at present is the Sessions Judge.*

50.3. *FIRs relating to offences under Sections 376, 376-A, 376-AB, 376-B, 376-C, 376-D, 376-DA, 376-DB or 376-E IPC and the offences under POCSO shall not be put in the public domain.*

50.4. *In case a victim files an appeal under Section 372 CrPC, it is not necessary for the victim to disclose his/her identity and the appeal shall be dealt with in the manner laid down by law.*

50.5. *The police officials should keep all the documents in which the name of the victim is disclosed, as far as possible, in a sealed cover and replace these documents by identical documents in which the name of the victim is removed in all records which may be scrutinised in the public domain.*

50.6. *All the authorities to which the name of the victim is disclosed by the investigating agency or the court are also duty-bound to keep the name and identity of the victim secret and not disclose it in any manner except in the report which should only be sent in a sealed cover to the investigating agency or the court.*

50.7. *An application by the next of kin to authorise disclosure of identity of a dead victim or of a victim of unsound mind under Section 228-A(2)(c) IPC should be made only to the Sessions Judge*



concerned until the Government acts under Section 228-A(1)(c) and lays down criteria as per our directions for identifying such social welfare institutions or organisations.

50.8. In case of minor victims under POCSO, disclosure of their identity can only be permitted by the Special Court, if such disclosure is in the interest of the child.

50.9. All the States/Union Territories are requested to set up at least one “One-Stop Centre” in every district within one year from today.”

6. Reading the ratio of the above decision, it is emphatically clear that the identity of the victims of sexual offences including POCSO Act cases is protected by the conditions laid down in ***Nipun Saxena & anr. v. Union of India & Ors.***’s case (*supra*).

7. Similarly in cases involving privacy of the victims or their identity, in order to avoid its disclosure, the court may be justified in providing only inspection thereof to the accused or his/her counsel or an expert for presenting effective defence during trial. In this regard, the courts have to issue suitable directions to balance the interest of both sides.

8. Here the learned counsel for the petitioner attempted to distinguish the ratio in ***Gopalakrishnan @ Dileep v. State of Kerala***’s case (*supra*) as well as ***Nipun Saxena & anr. v. Union of India & Ors.***’s case (*supra*) raising a contention that if at all the copy of the documents sought



for in the present case contain privacy of the victim, the same has no bearing in the instant case, since materials disclosing the privacy of the victim were already published in the website and the same are within the public domain.

9. In this context, the question raises for consideration is, whether disclosure of privacy of a victim of sexual offence, as against the prohibitions, by any agency, either in the internet or in social media platform or other medias, is a justifiable ground to provide copy of the documents which would affect the privacy of the victim and the alleged derogatory overture itself to the accused to defend himself ?

10. Going by the law settled, as discussed herein above, publication of anything which would affect the privacy of a victim is not permitted. If anybody violates the said prohibition by publishing the same in any mode, he is answerable for the same as per law and the same would require deletion from the domain of the public at the earliest opportunity on noticing the same. Further disclosing the identity of rape victims itself is an offence under Section 228-A of IPC. If so, it is difficult to lay down a proposition that since privacy has been disclosed by any other means of publication to have access to the public is a reason to provide the same to



the accused to add pepper on the wound of the victim and intimate upon the privacy of the victim.

11. In view of the discussion, it is found that Annexure-A2 order passed by the learned Special Judge following the decisions of the Apex Court is perfectly justified and for which no interference is called for.

12. Accordingly this Cr1.M.C stands dismissed.

13. Interim order, if any, granted shall stand vacated.

Registry shall forward a copy of this order to the jurisdictional court for information and further steps.

Sd/-

A. BADHARUDEEN, JUDGE

rtr/



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APPENDIX OF CRL.MC 1419/2022

PETITIONER'S ANNEXURES

Annexure A1 **TRUE COPY OF THE CMP 306/2021 DATED
09.11.2021.**

Annexure2 **CERTIFIED COPY OF THE ORDER DATED 15/1/2022
IN CMP.306/2021 IN SC.1042/2019.**