



2024:KER:76155

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A. BADHARUDEEN

TUESDAY, THE 8TH DAY OF OCTOBER 2024 / 16TH ASWINA, 1946

CRL.MC NO. 6391 OF 2023

CRIME NO.231/2021 OF THENIPALAM POLICE STATION, MALAPPURAM

ORDER DATED 10.02.2023 IN CRL.M.P.NO.71/2023 IN SC
NO.1152 OF 2021 OF FAST TRACK SPECIAL COURT, PARAPPANANGADI

PETITIONER/ACCUSED:

SHARUN
AGED 21 YEARS,
S/O. RADHAKRISHNAN, ATHIPARAMPATH HOUSE,
CHUNDAMMOOLA, CHEERAL.P.O., SULTHANBATHERI,
WAYANAD., PIN - 673595

BY ADVS.SRI.K.K.DHEERENDRAKRISHNAN
SMT.N.P.ASHA

RESPONDENT/STATE:

STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM - 682031
(CRIME NO.231/2021 OF THENIPALAM POLICE STATION,
MALAPPURAM DISTRICT)

BY PUBLIC PROSECUTOR SRI.M.P.PRASANTH

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON
08.10.2024, ALONG WITH Cr1.M.C.No.6911/2023 AND Cr1.M.C.No.
10957/2023 THE COURT ON 08.10.2024 PASSED THE FOLLOWING:



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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A. BADHARUDEEN

TUESDAY, THE 8TH DAY OF OCTOBER 2024 / 16TH ASWINA, 1946

CRL.MC NO. 6911 OF 2023

CRIME NO.148/2023 OF EDAVANNA POLICE STATION, MALAPPURAM

ORDER DATED 04.08.2023 IN CRL.M.P.NO.222/2023 IN SC
NO.373 OF 2023 OF FAST TRACK SPECIAL COURT-II, MANJERI

PETITIONER/ACCUSED:

SANKARAN,
AGED 54 YEARS,
S/O. NEELANDAN, ASWAINI NIVAS, KOLAKKATTIRI,
THIRUVALI, MALAPPURAM, PIN - 676123

BY ADVS.SRI.K.K.DHEERENDRAKRISHNAN
SMT.N.P.ASHA

RESPONDENT/STATE:

STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM - 682031
(CRIME NO.148/2023 OF EDAVANA POLICE STATION,
MALAPPURAM DISTRICT)

BY PUBLIC PROSECUTOR SRI.M.P.PRASANTH

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 08.10.2024,
ALONG WITH CRL.M.C.NO.6391/2023 AND CRL.M.C.NO.10957/2023 THE COURT
ON THE SAME DAY PASSED THE FOLLOWING:



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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A. BADHARUDEEN

TUESDAY, THE 8TH DAY OF OCTOBER 2024 / 16TH ASWINA, 1946

CRL.MC NO. 10957 OF 2023

CRIME NO.711/2023 OF KONDOTTY POLICE STATION, MALAPPURAM

ORDER DATED 13.12.2023 IN CRL.M.P.NO.407/2023 IN SC NO.877 OF

2023 OF FAST TRACK SPECIAL COURT-II, MANJERI

PETITIONER/ACCUSED:

XXXXXX
AGEDXXYEARS
XXXXXXXXXX

BY ADV.SRI. P.C.MUHAMMED NOUSHIQ

RESPONDENTS/RESPONDENTS:

- 1 STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, PIN - 682031

- 2 THE SUB INSPECTOR OF POLICE
KONDOTY POLICE STATION, MALAPPURAM DISTRICT,
PIN - 673638

BY PUBLIC PROSECUTOR SRI M P PRASANTH

THIS CRIMINAL MISC.CASE HAVING BEEN FINALLY HEARD ON
08.10.2024, ALONG WITH Cr1.MC.NO.6391/2023 AND
Cr1.M.C.No.6911/2023, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:



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C.R.

COMMON ORDER

Dated this the 8th day of October, 2024

Crl.M.C. No.6391/2023 has been filed under Section 482 of the Code of Criminal Procedure, 1973 to quash Annexure-III order dated 10.02.2023 in Crl.M.P.No.71/2023 in SC No. 1152/2021 pending before the Special Court for the trial of Protection of Children from Sexual Offences Act, 2012 (for short 'the POCSO Act' hereafter) Offences, Parappanangadi whereby the learned Special Judge dismissed an application filed by the petitioner to give unmasked copies of charge sheet and other records to contest the trial.

2. In Crl.M.C.No.6911/2023 also the challenge is the same and therein dismissal of Crl.M.P No.222/2023 in SC No.373/2023 on the files of Special Court-II for trial of POCSO Act offences, Manjeri, is under challenge.

3. In Crl.M.C.No.10957/2023 the order in Crl.M.P.No. 407/2023 in SC No.877/2023 on the files of Special Court-II



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for the trial of POCSO Act offences, Manjeri, is challenged on the ground of denial of issuance of unmasked copies of prosecution records.

4. Heard the learned counsel for the petitioners and the learned Public Prosecutor in detail. Perused the orders impugned and the relevant provisions interlinked.

5. The question posed for consideration herein is, whether the accused is entitled to get unmasked copies of prosecution records pertaining to POCSO Act offences where there is a protection of the identity of the victim envisaged under law?.

6. Addressing the arguments tendered by the respective counsel, it is relevant to refer Section 207 and 208 of Code of Criminal Procedure, 1973 (for short 'the Cr.P.C. '), Section 19 (4) of the Kerala Criminal Rules of Practice and Section 33(7) of the POCSO Act. The same read as under:

“Sec.207 of Cr.P.C.: Supply to the accused of copy of police report and other documents.—



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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 the 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



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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.

Sec.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 accused, 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.



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Sec.19(4) of the Kerala Criminal Rules of

Practice: Every accused shall be supplied with statement of witnesses recorded and a list of documents as are mentioned in Sections 173, 207 and 208 of the Code. In addition, every accused shall be supplied with a list of the material objects which the Investigation Officer relies upon. The list shall also specify those statements, documents and material objects that are not relied upon by the Investigating Officer.

Sec.33 of POCSO Act:Procedure and powers of Special Court.—

(1 to 6 omitted)

(7) The Special Court shall ensure that the identity of the child is not disclosed at any time during the course of investigation or trial:

Provided that for reasons to be recorded in writing, the Special Court may permit such disclosure, if in its opinion such disclosure is in the interest of the child.

7. It is argued by the learned counsel for the petitioners that in view of the mandate under Section 208 of Cr.P.C. and under Section 19(4) of Criminal Rules of Practice, the accused is entitled to get copies of statements and documents mentioned in the Final Report. In addition, the



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accused shall be supplied with a list of material objects which the investigating officer relies upon and also the list shall specify those statements, documents and material objects that are not relied upon by the investigating officer.

8. The learned counsel for the petitioner placed the decision of the Apex Court reported in **Nipun Saxena and Another v. Union of India and Others** [2019 (1) KHC 199:2019 (1)KLD 95:2018 (15)SCALE 769:2019 (2)SCC 703] to contend that even though in the above judgment in paragraph 43, the Apex Court while securing privacy of the victims of rape and POCSO Act offences, issued 9 guidelines, the same in no way dealt with an issue whereby the right of accused to get copies of the prosecution records has been taken away. He has also placed another decision of the Apex Court in **Waheed-Ur-Rehman Parra V. Union Territory of Jammu & Kashmir** [2022 KHC 6230: 2022 (2) KHC SN 16:2022 (1) KLD 660:2022 KHC Online 6230:2022 (4) SCALE 226:2022 (1) KLT online 1079] where the Apex Court



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considered the right of the accused to get all statements of the prosecution witnesses in paragraph No.11 and held as under:

“11. In the normal course of trial, all statements of prosecution witnesses would have to be disclosed to the accused. S.173(6) is an exception to the said provision. This is applicable in two eventualities, viz.,

a. Statement is not relevant to the subject matter of the proceedings.

b. Its disclosure to the accused is not essential in the interests of justice or expedient on the public interest.

It goes on to further state that such part of the statement be appended in a note requesting the Magistrate to exclude “that part from the copies” to be granted to the accused and disclose the reasons for making such a request.”

9. The learned counsel placed decision of this Court reported in **Chandra Mouli V. State of Kerala** [2024 (4) KHC 131] wherein this Court considered the provisions under Section 228 A of IPC and 23 (1) and 33 (7) of POCSO Act. While holding that the proceedings issued by the Special Judge directing the petitioner/lawyer concerned to file an



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affidavit stating that the copy of the statement recorded under Section 164 Cr.P.C. would not be misused was unwarranted and accordingly the same was quashed.

10. The learned Public Prosecutor has placed reliance on **Subhash Chandra Rai V. State of Sikkim** reported in 2018 KHC 4271 which was referred to in paragraph No.37 of **Nipun Saxena** (supra), holding the view that court must ensure that identity of child is not disclosed at any time during the course of investigation or trial, including the identity of the child's family, school, relatives, neighbourhood or any other information by which identity of child could be revealed. The learned Public Prosecutor has placed on record the guidelines issued by the Central Government dated 16.01.2019 after the decision in **Nipun Saxena** (supra) referring guidelines 5 and 6 which read as under:

“ 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



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the victim is removed in all records which may be scrutinised in the public domain.

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.”

11. Going by the orders impugned the learned Special Judges concerned disallowed prayer to issue unmasked copies of prosecution records to the accused on the ground that the courts have the duty to protect the privacy and the identity of the victim in POCSO cases without being disclosed. Therefore it was found that the copies given to the accused also must be masked one.

12. In this connection it is apposite to refer the principles of fair trial. Fair trial enshrined under the Constitution of India cannot be taken away by any means. So the right of the



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accused to defend a case and to prove his innocence is a constitutional right and for which he should get all the prosecution records before trial to point out the flaw in the prosecution case and also to establish his innocence in a befitting manner. This is the reason why as per Section 207 of Cr.P.C., Magistrates are empowered to furnish copies of Police report and other documents while dealing with the same and Sessions Courts are empowered to do the said exercise under Section 208 of Cr.P.C. As per Section 228A of IPC incorporated with effect from 25.12.1983, subsequently amended with effect from 03.02.2013 and 21.04.2018, prohibits printing or publishing the name or any matter which make known the identity of any person against whom an offence under Section 376, 376A, 376AB, 376B, 376C, 376D, 376DA and 376DB or Section 376E is alleged or found to have been committed. Similarly, Section 23(1) of POCSO Act penalizes making any report or presenting comments on any child or any form of media or studio or photographic facilities



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without having complete and authentic information which may have the effect of lowering the reputation or infringing upon the privacy of a POCSO victim by any person. Thus, going by Section 228A of IPC and under Section 23(1) of POCSO Act, disclosing the identity by way of reporting, commenting, or by printing or publishing the same are offences covered by Section 23 (1) of POCSO Act and under Section 228A of IPC. So contravention of the above provisions would make the person an offender under the said provisions.

13. When reading Section 207 and 208 of Cr.P.C. in juxtaposition with Section 19(4) of the Kerala Criminal Rules of Practice, brought into in view of the verdict of the Apex Court the right of the accused to get all documents which form part of the prosecution records to defend his case is well protected. At the same time, Section 33(7) of POCSO Act imposes restrictions so as to ensure that the identity of the child is not disclosed. So the courts should consider a balance between the privacy of the victims of rape and POCSO



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offences with that of the right of the accused to defend his case and also give effect to all the above provisions, without making any of the provisions as redundant or superfluous. Therefore, when prosecution records are given to the accused in compliance with Section 207 and 208 of Cr.P.C and under Section 19(4) of the Kerala Criminal Rules of Practice vis-a-vis provision under Section 33 (7) of POCSO Act, it is not fair to hold that the accused is not entitled to get prosecution records without being masked to defend the case, since if the statements are masked it is difficult to use the statements for contradicting the witness/witnesses properly in terms of Section 145 of the Indian Evidence Act, 1872 and under Section 162 of the Cr.P.C. At the same time, on getting copies of the documents the accused and the counsel appearing for the accused are duty-bound to ensure the privacy of the victim without being disclosed by printing, publishing, reporting and commenting which would have the effect of infringing upon the privacy of the victims in any manner.



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Subject to the above restrictions, unmasked copies of prosecution records shall be served to the accused to ensure fair trial. At the same time, when copies of the contents of the pendrive/memory card/CD/DVD in the form of digital evidence which would contain the chats or visuals of the victim detrimental to her privacy shall not be given to the accused and in such cases the ratio of the decisions of the Apex Court, in **Gopalakrishnan @ Dileep v. State of Kerala** [2019 (4) KLT 853] and subsequent decisions following the same ratio will have to be applied.

14. Therefore, the view taken by the Special Courts in the orders impugned not to provide unmasked copies of prosecution records under the guise of protecting privacy of the victim, could not be justified and the same is not within the orbit of fair trial or part of the fair trial. Therefore, the orders impugned are set aside. Consequently, these criminal M.C.s stand allowed, with direction to the respective Special Courts to serve unmasked copies of the prosecution records to



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the accused or his counsel after directing them to ensure the privacy without disclosing in the public domain or otherwise in printing, publishing or making in any way so as to affect the privacy of the victim.

Interim orders stand vacated. Registry is directed to forward a copy of this Common Order to the jurisdictional courts concerned. Registry is further directed to forward a copy of this Common Order to the learned Special Judges under the POCSO Act, for information and implementation.

Sd/-
A.BADHARAUDEN
JUDGE

MJL



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APPENDIX OF CRL.MC 6391/2023

PETITIONER'S ANNEXURES:

Annexure-I TRUE COPY OF THE FINAL REPORT IN CRIME NO.231/2021 OF THENIPALAM POLICE STATION, MALAPPURAM DISTRICT

Annexure-II A TRUE COPY OF THE CMP NO.71/2023 IN SC NO. 1152/2021

Annexure-III THE CERTIFIED COPY OF THE ORDER DATED 10.02.2023 IN CRL MP NO. 71/2023 IN SC NO. 1152/2021 PASSED BY THE SPECIAL COURT, FAST TRACK, PARAPPANANGADI

RESPONDENT'S ANNEXURES: NIL

/TRUE COPY/

PA TO JUDGE



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APPENDIX OF CRL.MC 6911/2023

PETITIONER'S ANNEXURES:

Annexure-II A TRUE COPY OF THE CMP NO. 222/2023 IN SC
NO. 373/2023

Annexure-III THE CERTIFIED COPY OF THE ORDER DATED
04.08.2023 IN CRL MP NO. 222/2023 IN SC
NO.373/2023 PASSED BY THE FAST TRACK
SPECIAL COURT-II, MANJERI

RESPONDENT'S ANNEXURES: NIL

/TRUE COPY/

PA TO JUDGE



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APPENDIX OF CRL.MC 10957/2023

PETITIONER'S ANNEXURES:

Annexure-A1 (SEALED TRUE COPY OF THE IN CRIME NO.711 OF 2023
COVER) OF KONDOTTY POLICE STATION.

Annexure-A2 (SEALED TRUE COPY OF THE CRL.M.P.NO.407/2023 ON
COVER) THE FILES OF FAST TRACK SPECIAL COURT-II,
MANJERI DATED 12.12.2023

Annexure-A3 (SEALED TRUE COPY OF THE ORDER DATED 13.12.2023
COVER) IN CRL.M.P.NO.407/2023 ON THE FILES OF
FAST TRACK SPECIAL COURT-II, MANJERI

RESPONDENT'S ANNEXURES: NIL

/TRUE COPY/

PA TO JUDGE