



2024:KER:67144

CRL.MC No. 7372 of 2024

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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A. BADHARUDEEN

WEDNESDAY, THE 4<sup>TH</sup> DAY OF SEPTEMBER 2024 / 13TH BHADRA, 1946

CRL.MC NO. 7372 OF 2024

CRIME NO.824/2022 OF PANANGAD POLICE STATION

AGAINST THE ORDER DATED 22.01.2024 IN CMP NO.144/2022 IN SC NO.62 OF 2023 OF ADDITIONAL DISTRICT COURT & SESSIONS COURT (VIOLENCE AGAINST WOMEN & CHILDREN), ERNAKULAM

PETITIONER/ACCUSED NO.2:

XXXXX  
AGED XXXXX YEARS  
XXXXX

BY ADVS.  
PRASOON SUNNY  
RAJI S.  
RITTY K.REJI  
SHAMEEL N.

RESPONDENT:

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

SRI.RENJIT GEORGE, SENIOR PUBLIC PROSECUTOR

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 04.09.2024, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:



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**'C.R.'**

**ORDER**

**Dated this the 4<sup>th</sup> day of September, 2024**

This petition has been filed under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023, challenging Annexure A3 order in CMP No.144/2022 in S.C.No.62/2023 dated 22.01.2024 whereby the learned Special Judge under the Protection of Children from Sexual Offences Act, Ernakulam negated the prayer for getting legible copy of 164 statement filed along with the final report, since illegible copy of the same was served upon the accused. The petitioner is the accused in this case.

2. Heard the learned counsel for the petitioner and the learned Public Prosecutor in detail.

3. On perusal of the copy of the 164 statement produced along with the Crl.M.C. and the order impugned, it is



discernible that there is difficulty to read and understand the contents in the copy of 164 statement properly.

4. A bare perusal of the order dated 22.01.2024, whereby the learned Special Judge dismissed the application for issuance of legible copy of 164 statement of the victim, would show that the learned Special Judge found on fact that it was difficult to read and understand each and every sentence properly. The learned Special Judge further observed that in such circumstances, the only course open to the court was to summon the JFCM at the time of trial to explain what was written, if any clarification required. Holding so, the petition was dismissed.

5. Reading the observations made by the Special Judge, the same is not justifiable. Asking the accused to wait to get clarification from the Magistrate, after his appearance on summons to read and understand 164 statement, which can



be used for contradicting the maker is injustice and the same is denial of fair trial guaranteed by the Constitution of India, Indubitably, accused has a statutory right to use 164 statement for contradicting the maker, during cross examination of the maker, with a view to shake the version. In order to enable the said purpose, the statement must be readable and legible. Therefore, legible copy of the same shall be made available before start of trial and and the said mandate should not be deferred till the examination by the Magistrate, who recorded the 164 statement. If the prosecution gives up the Magistrate without being examined, the plight of the accused is more vulnerable. Therefore, the grievance of the petitioner herein is having force and the same must be addressed.

6. In view of the matter, the order in CMP No.144/2022 assailed herein, stands set aside and the learned



Special Judge is directed to issue a readable copy of the 164 statement, as per law, within a period of 15 days from the date of receipt of copy of this order and to proceed with the trial.

7. It is observed that for writing the readable copy of the same, the learned Special Judge is at liberty to seek assistance of the staff of the Magistrate Court concerned, if the staff in the Special Court face difficulty in doing the said exercise.

This Crl.M.C. stands disposed of accordingly.

Sd/-  
**A. BADHARUDEEN**  
**JUDGE**

bpr



APPENDIX OF CRL.MC 7372/2024

PETITIONER'S ANNEXURES

- Annexure A1                    TRUE COPY OF THE 164 STATEMENT DATED  
31.07.2024 RECORDED BY THE HON'BLE  
JUDICIAL FIRST CLASS MAGISTRATE COURT  
IX, ERNAKULAM.
- Annexure A2                    TRUE COPY OF THE PETITION FILED BY THE  
PETITIONER BEFORE HON'BLE ADDITIONAL  
DISTRICT AND SESSIONS COURT FOR CASES  
INVOLVING ATROCITIES AND SEXUAL VIOLENCE  
AGAINST WOMEN AND CHILDREN, ERNAKULAM  
DATED 19.01.2024.
- Annexure A3                    CERTIFIED COPY OF THE ORDER IN CMP  
NO.144/2022 IN S.C.NO.62/2023 ISSUED  
BY THE HON'BLE ADDITIONAL DISTRICT AND  
SESSIONS COURT FOR CASES INVOLVING  
ATROCITIES AND SEXUAL VIOLENCE AGAINST  
WOMEN AND CHILDREN, ERNAKULAM DATED  
22.01.2024.