

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE ANIL K.NARENDRAN

&

THE HONOURABLE MR. JUSTICE HARISANKAR V. MENON

Tuesday, the 18<sup>th</sup> day of June 2024 / 28th Jyaishta, 1946

UNNUMBERED IA 1/2024 IN CONT.CAS.(CRL.) NO. 6 OF 2023

APPLICANT/3RD PARTY:

YESHWANTH SHENOY, S/O

ADV.V.L.SHENOY, ADVOCATE, 'PRIYADARSHINI', VEEKSHANAM  
ROAD, ERNAKULAM-682018.

IN suo motu

RESPONDENTS/RESPONDENTS:

ADV. SOJAN PAVANIOS MEMBER AND OTHERS

Application praying that in the circumstances stated in the affidavit filed therewith the High Court to be pleased to direct the Registry to issue the Applicant the certified copy of the Notice, Petition and connected exhibits/annexures and the Affidavit filed by the Respondent No.23.ie.Adv.Ajithan Nampoothiri in the above proceedings failing which serious prejudice and irreparable injury will be caused to the Majesty of Justice.

This unnumbered application again coming for orders on 18/06/2024 upon perusing the application and the affidavit filed in support thereof, and this court's order dated 14/06/2024 and upon hearing the arguments of Applicant/3rd party and of Adv.SOJAN PAVANIOS(PARTY IN PERSON ),AJITH VISWANATHAN, BALRAM. S.A,ANIL ANANTHAKRISHNAN.A.KARTHA, T.KRISHNANUNNI(SR),K.GOPALAKRISHAN KURUP ,NISHA GEORGE,GEORGE POONTHOTTAM (SR), P.VIJAYA KUMAR(SR), P.M RAFIQ,M.REVIKRISHANAN, AJEESH K.SASI, SRUTHY N.BHAT, RAHUL SUNIL, SRUTHY K.K,NIKITA J.MENDEZ, P,VIJAYA BHANU(SR),JOSHEPH KODIANTHRA(SR),KAROL MATHEWS SEBASTAIN ALENCHERRY, ENOCH DAVID SIMON JOEL, S.SREEDEV, RONY JOSE, LEO LUKOSE, DERICK MATHAI SAJI, KARAN SCARIA ABRAHAM, TO SETHUMADHAVAN (SR), TOM JOSE, K.T.SEBASTIAN ,PAUL KURIAKOSE.K Advocates for the respondents, the court passed the following

(p.t.o)

“CR”

**ANIL K. NARENDRAN & HARISANKAR V. MENON, JJ.**

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**Cont. Case (Crl.) No.6 of 2023**  
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**Dated this the 18<sup>th</sup> day of June, 2024**

**ORDER**

Anil K. Narendran, J.

Un-numbered I.A.No.1 of 2024

Applicant, a third party to this contempt case, has filed this interlocutory application under Rule 132 of the Rules of the High Court of Kerala, 1971, for issuance of a certified copy of the notice, petition, connected exhibits/annexures and the affidavit filed by respondent No.23 in the contempt case. In the interlocutory application filed on 07.06.2024, the Registry noted certain defects. Therefore, the unnumbered interlocutory application is listed before the Bench.

2. Heard the applicant-third party, who appeared in person, the learned Senior Counsel for the 2<sup>nd</sup> respondent and the learned Senior Counsel for the 23<sup>rd</sup> respondent in the contempt case.

3. The applicant argued that the Registry treats lawyers differently. A third party application filed as I.A.No.1 of 2024 in Cont. Case (Crl.)No.2 of 2023, under Rule 132 of the Rules of

Un-numbered I.A.No.1 of 2024 in Cont.Case (Crl.)No.6 of 2023

the High Court of Kerala, which was captioned as a verified petition, which contained only an affidavit sworn to by the applicant, without a proper cause title, was numbered by the Registry. After the substitution of the Rules in Chapter X of the Rules of the High Court of Kerala, by the Rules of the High Court of Kerala (Amendment), 2021, such an application by a third party has to satisfy the requirements of Rule 132. Without noticing the same, that application was allowed by this Court on 19.03.2024. The applicant has made available for the perusal of this Court a copy of I.A.No.1 of 2024 in Cont. Case (Crl.)No.2 of 2023 and the order dated 19.03.2024. The applicant herein is the respondent in that contempt case. The applicant would argue that since procedure is considered to be the handmade of justice, this Court has ample power to grant the relief sought for in this interlocutory application, even when the application is defective in view of the provisions under Rule 132 of the Rules of the High Court of Kerala.

4. On the other hand, the learned Senior Counsel for the 2<sup>nd</sup> respondent and the learned Senior Counsel for the 23<sup>rd</sup> respondent in the contempt case contended that when the interlocutory application made by the applicant is not one as per

Un-numbered I.A.No.1 of 2024 in Cont.Case (Crl.)No.6 of 2023

the requirements of Rule 132 of the Rules of the High Court of Kerala, Registry cannot be found fault with in not numbering the same. The learned Senior Counsel for the 23<sup>rd</sup> respondent pointed out that the affidavit filed in support of this interlocutory application contains various allegations against the 23<sup>rd</sup> respondent, which cannot be made in an affidavit filed in support of an application filed under Rule 132 of the Rules of the High Court of Kerala.

5. The application is captioned as a verified petition under Rule 132 of the Rules of the High Court of Kerala. It is in the form of an affidavit sworn to by the applicant, which is attested by a lawyer. Registry noted defects, in view of the provisions under sub-rule (2) of Rule 132 of the Rules of the High Court of Kerala, as substituted by the Rules of the High Court of Kerala (Amendment), 2021, vide Notification No.DI-1/20613/2018 dated 08.12.2021 published in Kerala Gazette Vol.11 dated 11.01.2022.

6. Chapter X of the Rules of the High Court of Kerala deals with certified copies. Rules 128 to 138 in Chapter X were substituted by the Rules of High Court of Kerala (Amendment), 2021. Prior to that amendment, an application for copies by

Un-numbered I.A.No.1 of 2024 in Cont.Case (Crl.)No.6 of 2023

strangers was governed by the provisions under Rule 129, which reads thus;

“129. Application for copies by strangers.- Application for copies for records by persons not parties to the proceeding shall be allowed only by order of the court, obtained on a duly verified petition, setting forth the purpose for which the copy is required. But copies of judgments and decrees can be granted to all persons prepared to pay the prescribed fees for the supply of such copies.”

7. After the substitution of Rules 128 to 138 by the Rules of High Court of Kerala (Amendment), 2021, Rule 132 deals with application for copies by persons not parties to the proceedings, which reads thus;

“132. Application for copies by persons not parties to the proceedings.- (1) A person who is not a party to the proceedings is entitled to copies of judgments and decrees on presenting an application.

(2) A person who is not party to the proceedings is entitled to copies of other records of the proceedings of the case in the High Court, only on the orders of the Court. A person who requires such copies shall file an affidavit along with a duly verified petition in the Court stating the purpose for which the copy is required. On orders of the Court, certified copies shall be issued, on receipt of the application.”

8. In **Sophiamma Kurien v. Varghese [2007 (2) KLT 26]**, in the context of Rule 129 of the Rules of the High Court of

Un-numbered I.A.No.1 of 2024 in Cont.Case (Crl.)No.6 of 2023

Kerala, as it stood prior to the High Court of Kerala (Amendment), 2021, a learned Single Judge of this Court held that except in the case of judgments, a request made by a stranger for copies of documents can be allowed by the Court, if a petition to that effect is filed showing the purpose for which the documents are required.

9. In **Chief Information Commissioner v. High Court of Gujarat [(2020) 4 SCC 702]** a Three-Judge Bench of the Apex Court was considering the question as to whether Rule 151 of the Gujarat High Court Rules, 1993 is inconsistent with the provisions of the Right to Information Act, 2005. The Apex Court noticed that Rule 151 of the Rules requires the third party seeking copies of documents in any civil or criminal proceedings to file an application/affidavit stating the reasons for which those documents are required. As such, the High Court Rules do not obstruct a third party from obtaining copies of documents in any court proceedings or any document on the judicial side. It is not as if the information is denied or refused to the applicant. All that is required to be done is to apply for the certified copies with an application/affidavit stating the reasons for seeking the information. The reason insisting upon the third party for stating

Un-numbered I.A.No.1 of 2024 in Cont.Case (Crl.)No.6 of 2023

the grounds for obtaining certified copies is to satisfy the court that the information is sought for bona fide reasons or to effectuate public interest.

10. In **Chief Information Commissioner [(2020) 4 SCC 702]** the Apex Court noticed that the information is held by the High Court as a trustee for the litigants in order to adjudicate upon the matter and administer justice. The same cannot be permitted by the third party to have access to such personal information of the parties or information given by the Government in the proceedings. Lest there would be a misuse of the process of the Court and the information and it would reach unmanageable levels. The Apex Court held that, if the High Court Rules framed under Article 225 of the Constitution of India provide a mechanism for invoking the said right in a particular manner, the said mechanism should be preserved and followed.

The said mechanism cannot be abandoned or discontinued merely because the general law - the Right to Information Act has been enacted. The object of the Right to Information Act itself recognises the need to protect the institutional interest, to make optimum use of limited fiscal resources and to preserve the confidentiality of sensitive information. The procedure to

Un-numbered I.A.No.1 of 2024 in Cont.Case (Crl.)No.6 of 2023

obtain certified copies under the High Court Rules is not cumbersome. The procedure is very simple - filing of an application/affidavit along with the requisite court fee stating the reasons for seeking the information. When the High Court Rules provide for a mechanism that the information/certified copies can be obtained by filing an application/affidavit, the provisions of the Right to Information Act are not to be resorted to.

11. In **Ushakumari v. Santhakumari [2023 (4) KHC 507]**, a learned Single Judge of this Court noticed that Rule 113 and Rule 240 of the Civil Rules of Practice, Kerala, Rule 226 of the Criminal Rules of Practice, Kerala, and Rule 129 of the Rules of the High Court of Kerala, 1971 [sic: Rule 129 as it stood prior to the High Court of Kerala (Amendment), 2021] enable even strangers to the proceedings to search for and obtain certified copy of the records and documents filed in Court, of course, subject to orders of the Court. This is in tune with Section 76 of the Evidence Act, 1872, which provides that certified copies of public documents are liable to be issued to any person who has a "right" to inspect such documents. As held in **Rasipuram Union Motor Service Ltd. v. Commissioner of Income Tax, Madras [AIR 1957 Mad. 151]**, it is the person who has a right



Un-numbered I.A.No.1 of 2024 in Cont.Case (Crl.)No.6 of 2023

to inspect, that is given the right to obtain a copy.

12. In **Pavunni v. Annam [2007 (3) KLT 1002]**, a Division Bench of this Court referred to the law laid down by the Apex Court that procedure, a handmade to justice, should never be made a tool to deny justice or perpetuate injustice, by any oppressive or punitive use. In that case, the Division Bench was dealing with a case in which A.S.No.17 of 1998 filed by the defendants in O.S.No.4 of 1978 on the file of the Additional District Court was accepted and an interim order of stay of execution of the decree was passed by a learned Single Judge of this Court. Later, the learned Single Judge dismissed that appeal as time barred on a preliminary objection raised by the respondents that the appellants failed to produce a copy of the decree along with the memorandum of appeal. In A.F.A.No.64 of 1997 filed by the appellants, the Division Bench noticed that, it was an admitted case that the appeal was accepted based on the copy of the last paragraph of the judgment and the certificate. At no point of time, any defect was pointed out, and the matters were allowed to stand. The appellants were never cautioned of any defect by Registry. Time was granted to produce a printed copy of the judgment. Apart from that, Section 148 of the Civil

Un-numbered I.A.No.1 of 2024 in Cont.Case (Crl.)No.6 of 2023

Procedure Code grants absolute discretion to the Court to enlarge the period prescribed or allowed by the Court even though the period originally fixed or granted may have expired. It is, therefore, clear that the Court have ample power to grant an extension of time to produce the decree since, at the time of filing the appeal, it was a competent one. It is clear from the facts that it was only a procedural defect which could have been cleared by the appellants, if put to notice. As held by the Apex Court, "procedure, a handmade to justice, should never be made a tool to deny justice or perpetuate injustice, by any oppressive or punitive use." The Division Bench found that it is not a case where this procedural defect is not rectified even after it is pointed out and due opportunity is given for rectifying it. There was no deliberate or mischievous act on the part of the appellants. There is nothing to show that the rectification of the defect would affect the case on merits or will affect the jurisdiction of the Court. The Division Bench noticed that, when the appeal was presented, it was a competent one and was accepted by this Court. It is not a case where any specific consequence has been provided for non-compliance. Even though sub-rule (2) of Rule 6A of Order XX of the Code provides

Un-numbered I.A.No.1 of 2024 in Cont.Case (Crl.)No.6 of 2023

that as soon as a decree is drawn, the last paragraph of the judgment shall cease to have the effect of a decree for the purpose of execution or for any other purpose. The Division Bench found that the appeal, i.e., A.S.No.17 of 1998 was filed before the decree was drawn up and, therefore, when the appeal was filed, it was a competent one.

13. In the instant case, for obtaining a certified copy of the notice, petition, connected exhibits/annexures and the affidavit filed by respondent No.23 in Cont. Case (Crl.)No.6 of 2023, the applicant, who is a third party to that proceedings, has to comply with the requirements of sub-rule (2) of Rule 132 of the Rules of the High Court of Kerala, as substituted by the Rules of High Court of Kerala (Amendment), 2021. As per the requirements of sub-rule (2) of Rule 132, the applicant has to file an affidavit along with a duly verified petition stating the purpose for which the copy is required.

14. The affidavit filed along with the verified petition shall satisfy the requirements of Rules 72, 73 and 74 of the Rules, which deal with its heading, form and contents and also the requirements of Rules 76, 77, 78 and 79 regarding authentication of affidavit and identification of deponent. The

Un-numbered I.A.No.1 of 2024 in Cont.Case (Crl.)No.6 of 2023

cause title of the verified petition shall contain the name and address of the applicant-third party and that of the parties to that proceedings, who shall be arrayed as respondents. In case the application is filed in a suo motu proceedings, the cause title of the verified petition shall contain the name and address of the applicant-third party and that of the respondents in the suo motu proceedings.

15. In the instant case, the application, which is captioned as a verified petition, is an affidavit sworn to by the applicant. As per the requirements of sub-rule (2) of Rule 132 of the Rules of the High Court of Kerala, as substituted by the Rules of High Court of Kerala (Amendment), 2021, the applicant has to file an affidavit along with a duly verified petition stating the purpose for which the copy is required. The affidavit filed along with the verified petition shall satisfy the requirements of Rules 72, 73 and 74 of the Rules regarding heading, form and contents and also the requirements of Rules 76, 77, 78 and 79 regarding authentication of affidavit and identification of deponent. Since the application is filed in a suo motu proceedings, the cause title of the verified petition shall contain the name and address of the applicant-third party and that of the respondents in the suo motu

Un-numbered I.A.No.1 of 2024 in Cont.Case (Crl.)No.6 of 2023

proceedings.

16. As pointed out by the applicant, a third party application filed as I.A.No.1 of 2024 in Cont. Case (Crl.)No.2 of 2023, under Rule 132 of the Rules of the High Court of Kerala, which was captioned as a verified petition, which contained only an affidavit sworn to by the applicant, without a proper cause title, was numbered by the Registry. Without noticing the same, that application was allowed by this Court on 19.03.2024. The applicant herein, who is the respondent in Cont. Case (Crl.)No.2 of 2023, while appearing online on 19.03.2024, could not point out the above aspect, since he did not have with him a physical copy of that application. Therefore, on a query made by this Court, he reported no objection for allowing that application.

17. From the submissions made by the applicant, we notice that, on the numbering of that application, the Registry has already called for an explanation from the concerned Filing Scrutiny Officer. Since most of the interlocutory applications are filed as 'Bench Mark' and physical copies of such applications are incorporated in the Judges' papers and served to the counsel for the parties, just before the matter is taken up for consideration, the Registry shall ensure proper scrutiny of petitions and

Un-numbered I.A.No.1 of 2024 in Cont.Case (Crl.)No.6 of 2023

applications by the Filing Scrutiny Officers.

18. For the reasons stated hereinbefore, the defect noted by the Registry is sustained. It is for the applicant to re-present the application, as per the requirements of sub-rule (2) of Rule 132 of the Rules of the High Court of Kerala, as substituted by the Rules of High Court of Kerala (Amendment), 2021.

Cont. Case (Crl.)No.6 of 2023

List on 20.06.2024.

Sd/-



**ANIL K. NARENDRAN, JUDGE**

Sd/-

**HARISANKAR V. MENON, JUDGE**

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