

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE DR. JUSTICE KAUSER EDAPPAGATH

WEDNESDAY, THE 10<sup>TH</sup> DAY OF AUGUST 2022 / 19TH SRAVANA, 1944

CRL.MC NO. 4130 OF 2022

AGAINST CRL.M.P.NO.1572/2022 IN SC NO.610/2020

(ECIR/KCZO/31/2020)

PETITIONER/PETITIONER/3RD PARTY:

SARITHA S NAIR  
AGED 43 YEARS, OCC:-BUSINESS, D/O INDIRA NAIR,  
INDEEVARAM, VILAVOORKAL, MALAYIKEEZHU,  
THIUVANANTHAPURAM DISTRICT, PIN - 695571

BY ADVS.

BIJU ANTONY ALOOR, K.P.PRASANTH  
VISHNU DILEEP, T.S.KRISHNENDU  
ARCHANA SURESH, MOHAMED AMEER M.  
SHEHALLA M. BASHEER

RESPONDENT/RESPONDENT/COMPLAINANT:

- 1 UNION OF INDIA  
REPRESENTED ASSISTANT SOLICITOR GENERAL OF INDIA,  
HIGH COURT OF KERALA, ERNAKULAM, PIN - 682031
  
- 2 ASSISTANT DIRECTOR, DIRECTORATE OF ENFORCEMENT,  
COCHIN ZONAL OFFICE,  
ERNAKULAM- DISTRICT, PIN - 682011

BY ADV.JAISHANKAR V. NAIR, SC, ENFORCEMENT  
DIRECTORATE,  
SRI.K.K.DHEERENDRAKRISHNAN, AMICUS CURIAE

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION  
ON 25.07.2022, THE COURT ON 10.08.2022 PASSED THE FOLLOWING:

“C.R.”

**O R D E R**

Dated this the 10<sup>th</sup> day of August, 2022

Is a statement recorded under Section 164 of the Criminal Procedure Code a public document falling under Section 74(1) (iii) of the Indian Evidence Act?

Is a stranger to the proceedings entitled to a copy of the same under Section 76 of the Indian Evidence Act?

These are the important questions that fall for consideration in this Criminal Miscellaneous Case.

2. The Enforcement Directorate registered an Enforcement Crime Investigation Report as ECIR/KCZO/31/2020 against three accused on 13/07/2020 under Sections 16, 17 and 18 of the Unlawful Activities (Prevention) Act 1967. After investigation, a prosecution complaint under Sections 44 and 45 of the Prevention of Money Laundering Act, 2002 (for short 'PMLA') was filed at the Special Court (PMLA), Ernakulam on 6/10/2020 reserving the liberty to file a supplementary complaint, if any. The Special Court took cognizance of the offence and numbered the case as SC No.610/2020. After further

investigation, a supplementary prosecution complaint was filed against the accused No.4 reserving right to file additional supplementary complaint as provided under Section 44(1)(d)(ii) of PMLA. Further investigation is in progress. During its course, the accused No.2 gave a statement under Section 164 of Cr.P.C on 06/06/2022 and 07/06/2022 before the Chief Judicial Magistrate, Ernakulam.

3. The petitioner herein who is alleged to be a witness in the above case filed an application at the Special Court seeking a copy of the statement under Section 164 of Cr.P.C given by the accused No.2. According to the petitioner, the accused No.2, in her statement had made certain imputations against her for which she intends to pursue a legal remedy.

4. The Special Court vide Annexure 1 order turned down the prayer holding that the petitioner being a third party to the proceedings is not entitled to the copy at this stage. The said order is under challenge in this CrI. M.C.

5. Considering the importance of the question of law involved, Adv. Dheerendrakrishnan was appointed as *amicus curiae* to assist the court.

6. I have heard Sri. B.A. Aloor, the learned counsel for the petitioner, Sri.Jaishankar V.Nair, the learned counsel for the Directorate of Enforcement as well as Sri.K.K.Dheerendrakrishnan, the learned *amicus curiae*.

7. Sri. B.A. Aloor, the learned counsel for the petitioner, submitted that the statement of the accused No.2 recorded under Section 164 of Cr. P.C is a public document and therefore the petitioner is entitled to get a copy. He placed reliance on the decision of the Division Bench of the Allahabad High Court in ***Raju Janaki Yadav v. State of Uttar Pradesh and Others*** (2013 CrI LJ 78) and of the Division Bench of the Andhra Pradesh High Court in ***Guruvindapalli Anna Rao and Others v. State of A.P*** (2003 KHC 2656). Sri. Dheerendrakrishnan, the learned *amicus curiae*, submitted that the statement under Section 164 of Cr.P.C gets the status of a public document only after cognizance is taken by the court. The learned *amicus curiae* further submitted that only a person who can show that he has a substantial interest in the public document is entitled to a copy of the same. He relied on the decision of the Full Bench of the Madras High Court in ***State of Madras v. G. Krishnan*** (AIR

1961 Mad 92), of the Apex Court in **State of Karnataka by Nonavinakere Police v. Shivanna @ Tarkari Shivanna** (2014 KHC 4321) and in **Miss 'A' v. State of Uttar Pradesh and Another** (2020 (5) KHC 441), of the Division Bench of the Madras High Court in **Murugasami v. State and Another** (2017 KHC 5630), and of the Single Benches of this Court in **Shakkeer M.K v. State of Kerala** (2014 (3) KHC 759), **Varghese M.U v. CBI, Cochin** (2015 (3) KHC 417) and **Athulya v. State of Kerala** (2019 (5) KHC 920) in support of his submission. Sri. Jaishankar V.Nair, the learned counsel for the Directorate of Enforcement, submitted that the further investigation is in progress and as such, the statement of the accused No.2 recorded under Section 164 of Cr.P.C must be kept confidential till supplementary complaint is filed. He further submitted that the petitioner being a stranger to the proceeding is not entitled to the copy at all.

**Question No:1**

8. The petitioner's right to obtain certified copies has to be adjudged in terms of the provisions of Sections 74 and 76 of the Indian Evidence Act. "Document" means any matter expressed or described upon any substance by means of letters,

figures, or marks, or by more than one of those means, intended to be used, or which may be used, for the purpose of recording that matter (S.3 of the Evidence Act). Documents are divided into two categories: Private Documents and Public Documents. Public documents are (1) documents forming the acts or records of the acts (i) of the sovereign authority, (ii) of official bodies and tribunals, and (iii) of public officers, legislative, judicial, and executive, of India or of a commonwealth or of a foreign country, and (2) public records kept in any State of private documents (S.74 of the Evidence Act). Documents that do not fall within the above description are private documents (S.75 of the Evidence Act).

9. Documents which are records of acts of public officers, legislative, judicial, and executive are public documents going by Section 74(1)(iii). 'Public Officer' has been defined under Section 2(17) of the Code of Civil Procedure which includes every judge and every officer of a court of justice. To be a public document, it should be a record of the act of the court. The record itself would not be a public document. There is a distinction between the record of the court and the record of the acts of the court. It is

only the record of the acts of the court that is a public document. Thus, deposition of witnesses recorded by a judge/an officer of the court, judgment, and decree are public documents as they are records of acts of court. But pleadings, affidavits, and petitions filed in court, cannot be said to form such acts or records of acts, and are, therefore, not public documents.

10. Section 164 of Cr.P.C. confers power on Magistrates specified in Sub-section (1) thereto to record any statement or confession made to them during an investigation by the police before the commencement of the enquiry or trial. The statement may be made by an accused, or by one who may ultimately become an accused, or by a witness capable of giving useful information. Interests of justice require that such statements should be recorded in a manner which would be above cavil and not open to objection under Sections 25 and 20 of the Evidence Act. Section 164 Cr.P.C. provides the machinery for the record of such confessions and statements. The section prescribes the mode in which the confession or statement of an accused/person is to be recorded. Precautions should be taken to see that it is voluntarily made and that what he says is carefully recorded and

then read over to him to ensure accuracy. Recording of confession or statement is a solemn act and the Magistrate must see that the formalities prescribed in Sections 164 and 281 are strictly complied with. No doubt, the Magistrate recording it performs a duty imposed on him by statute, a public duty. It is a judicial act. The statement so recorded is the record of the act of a Magistrate discharging his judicial function.

11. A Full Bench of the Madras High Court in **G. Krishnan** (supra) has elaborately considered the definition of 'public documents', and the question as to whether the statements recorded under Section 164 of Cr. P.C are public documents and finally the right to obtain the certified copy thereof. It was contended on behalf of the State that a confession or statement made under Section 164 Cr.P.C was in substance nothing more than a statement of the deponent, a private individual; the recording of the same under Section 164 is done with the object of perpetuating the testimony, so as to pin down the parties making statements from going behind them and thus the record of such confessions or statements cannot give what essentially is an individual's statement, the status of a public act. Repelling the



contention, it was held that a Magistrate recording a statement under Section 164 of Cr.P.C is performing a judicial act and therefore the record is a public document within the meaning of Section 74(1). A Division Bench of the Allahabad High Court in **Raju Janaki Yadav** (supra) held that recording statement under Section 164 of Cr. P.C indicates the performance of an official and judicial function by a Magistrate and, as such, the statement so recorded assumes the character of a public document. The same view was reiterated by the Division Bench of the Madras High Court in **Murugasami** (supra) and the Division Bench of the Andhra Pradesh High Court in **Guruvindapalli Anna Rao** (supra). This court in **Shakkeer M.K** (supra), **Varghese M.U** (supra) and **Athulya** (supra) considered the question whether the accused/victim is entitled to copies of the statement recorded under Section 164 of Cr. P.C on the premises that the said statement is a public document.

12. Thus, I answer the first question in the affirmative that the record of a statement recorded under Section 164 of Cr. P.C, being the record of an act of a public officer done in the discharge of his duty, is a public document falling under Section 74(1)(iii) of

the Indian Evidence Act.

**Question No:2**

13. The right to obtain a certified copy of a public document presupposes the right to inspect it. S.76 of the Indian Evidence Act clothes any person who has a right to inspect a public document in the custody of a public officer, with a right to obtain on demand a copy thereof on payment of the legal fee therefor. Every person has the right of inspecting public documents in which he is interested in the protection of such interest. This is a common law right and right created by the Evidence Act. The Evidence Act is silent as to the right of inspection. The extent of the right depends upon the interest which that person has in the document and on what is reasonably necessary for the protection of such interest.

14. The learned counsel for the petitioner heavily relied on the decision of the Full Bench of the Allahabad High Court in **Raju Janaki Yadav** (supra). It is true that in the said decision it was held that statement of the witnesses recorded under S.164 of the Code indicates the performance of the official and judicial function by a Magistrate as an official and as such, it is a public

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document and the accused is entitled to get the certified copy of the same. But prior to this, the Full Bench of the Madras High Court in **G. Krishnan** (supra) has held that though the statement recorded under S.164 of a witness is a public document, the accused would have no right to obtain copies of the same before a charge - sheet is filed, notwithstanding S.76 of the Indian Evidence Act. It has been observed that the accused will be entitled to copies of the statements under S.164 Cr.P.C as a person interested, but his right to obtain such copies, before the filing of the charge - sheet has been taken away by implication by the provisions of S.173(4) of Cr.P.C (S.207 of the present Code) and he will be entitled to the copies only in accordance therewith. In **Shivanna** (supra), the Apex Court has issued various directives in the form of mandamus to all police stations in the entire country. One of the directions was that a copy of the statement under S.164 of the Cr.P.C. should be handed over to the investigating officer immediately with a specific direction that the contents of such statement should not be disclosed to any person till the final report/charge sheet is filed under S.173 of the Cr.P.C. A Division Bench of the High Court of Bombay in **Maria Monica**

**Susairaj v. State of Maharashtra** (2009 KHC 5545) agreed with the view taken by the High Court of Madras in **G. Krishnan** (supra). It was held that an accused is not entitled to get a copy of even his own confession statement recorded under S.164 Cr.P.C before the final report is filed. The Division Bench of the Madras High Court in **Murugasamy** (supra) reiterated the same view and held that the statement or confession recorded under Section 164 of Cr.P.C, dying declaration, and test identification parade report are documents which cannot be shared with the accused until the final report is filed. A Single Bench of this Court in **Shakkeer** (supra) held that statement of a prosecutrix in a rape case recorded under Section 164 of Cr.P.C has to be kept secret till the final report is filed. Another Single Bench of this court in **Varghese M.U** (supra) held that the copy of the statement under Section 164 of Cr. P.C shall not be given to anyone other than the Investigating Officer, until and unless it is made public by him by making it part of the records of the case without any reservation. In **Athulya** (supra), a Single Bench of this Court considered the right of the victim to get a copy of her own statement recorded under Section 164 of Cr.P.C. Relying on

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**Shivanna** (supra) it was held that the victim is not entitled to the copy till the final report is filed under Section 173 of Cr.P.C. Finally, the Apex Court in **Miss 'A'** (supra) held that filing of the charge - sheet by itself, does not entitle an accused to copies of any of the relevant documents including a statement under S.164 of Cr. P.C and it is only after taking of the cognizance and issuance of the process that the accused is entitled, in terms of S.207 and S.208 of the Code, to copies of the documents referred to in said provisions. It was specifically observed in para 17 of the judgment thus:

*"As a logical extension of the directions passed by this Court in **Shivanna** (supra), no person is entitled to a copy of the statement recorded under S.164 of the Code till the appropriate orders are passed by the Court after the charge - sheet is filed. The right to receive a copy of such a statement will arise only after cognizance is taken and at the stage contemplated by S.207 and S.208 of the Code and not before."*

All the decisions stated above deal with the right of the accused and the victim to get the statement recorded under S.164 of Cr.P.C. None of the decisions deal with the right of a third party/stranger to the proceedings. As stated already, the right to obtain copies of public documents depends on the applicant's

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right to inspect them. The legislature intended to recognise the right generally (i. e, the right to inspect) for all persons who can show that they have an interest for the protection of which it is necessary that liberty to inspect such document should be given. (vide **R v. Arumugam**, 20 Mad. 189). In the eye of the law, every person has a right to inspect public documents, provided he shows that he is individually interested in them. No doubt, an accused or a victim is a person interested in the statement recorded under Section 164 of Cr. P.C and as such, they would be entitled to inspect and have copies of the same. But so far as a third party/stranger is concerned, he would be entitled to inspect and have the certified copy of the statement under Section 164 of Cr.P.C only if he has made out sufficient interest showing that such inspection is reasonable and necessary for the protection of his interests. Thus, applying the reasoning in **G. Krishnan** (supra) that the right of the accused to obtain copies of the statement under S.164, before the filing of the charge - sheet has been taken away by implication by the provisions of S.173(4) Cr.P.C and the dictum laid down in **Miss 'A'** (supra), it can safely be concluded that no person (be it accused, victim or a third

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party) is entitled to a copy of the statement recorded under S.164 of the Code till the final report is filed and cognizance is taken. In the case of a third party/stranger, he must additionally show that he has a genuine interest in the document. The said interest should be direct and tangible. An interest which is illusory, or imaginary is no interest whatsoever. The second question is answered accordingly.

### **Conclusions and Relief**

15. Coming to the merits, the petitioner alleges that the accused No.2 in SC No.610/2020, in her statement under Section 164 of Cr.P.C, might have made certain imputations against her. The learned counsel for the petitioner submitted that the petitioner has compelling reasons to believe that the accused No.2 in the statement has alleged her of having conspired with the Chief Minister and others to trap the accused No.2 after her remarks against the Government. These are only mere apprehensions of the petitioner. The petitioner could not show any factual basis for the said apprehensions. The petitioner could not say how did she come to know that there were imputations against her in the statement. She could not show any real or

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substantial interest in the document. The interest projected is speculative and conjectural. That apart, further investigation is still going on. The supplementary complaint is yet to be filed. Therefore, the petitioner is not entitled to get the copies of the statement sought. The impugned order, thus, does not warrant any interference.

16. I place on record my appreciation for the extensive research done and able presentation made by the learned *amicus curiae*, Sri. Dheerendrakrishnan.

In the light of the above findings, the CrI.M.C stands dismissed.

Sd/-

**DR. KAUSER EDAPPAGATH**

**JUDGE**

Rp



Cr1.M.C.No.4130/2022

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**APPENDIX OF CRL.MC 4130/2022**

PETITIONER ANNEXURES

Annexure1

TRUE COPY OF ORDER IN CRL.MP  
NO.1572/2022 BEFORE THE HONB'LE  
DISTRICT AND SESSIONS COUT ERNAKULAM  
WAS DISMISSED ON 18.06.22