

KADG010011412017



Presented on : 17-04-2017
Registered on : 17-04-2017
Decided on : 03-07-2023
Duration :

**IN THE COURT OF
I ADDL DISTRICT AND SESSIONS JUDGE
AT DAVANGERE, DAVANGERE
(Presided Over by Sri. J V VIJAYANANDA)**

CRL.A/33/2017

Dated this the 3rd day of July, 2023

APPELLANT :

1. Dr. J.S. Madhukumar

- V/s -

RESPONDENTS :

1. Killari Badayya and others

PARTIES TO IA

APPLICANT/APPELLANT :

1. Dr. J.S. Madhukumar

(Represented in person)

- V/s -

OPPONENTS/S : RESPONDENT/S :

1. Killari Badayya and another
2. Superintendent of Police, Davanagere
3. PSI, Jagaluru PS 2nd and 3rd

(By Sri. Sri. D.P.B. Advocate)

ORDER ON APPLICATIONS U/S. 91 OF CR.P.C.

The appellant/applicant has filed two applications under Section 91 of Cr.P.C. and prayed to summon the Police Diary (case diary) of this case dated 19-03-2013 and 20-03-2013 and further, appellant has prayed to summon the copies of E-mails sent through the mail ID of appellant/applicant to SP office Davanagere.

2. In the application it is contended that the appellant has prayed to summon the Police Diary (case diary) of this case of Jagaluru town police station dated 19-03-2013 and 20-03-2013. On 19-03-2013, during galata of the incident in Kalledevarapura village, Jagluru taluk, the Assistant Sub Inspector and police constable were present on the spot. The presence of these officials were admitted by himself as CW-1 in his deposition and cross examination. The same was evident in

the DVD, but the investigation officer Sri Sunil Kumar has not admitted the presence of those police officials on the spot. The trial court has extended benefit of doubt and has acquitted the accused. Hence, for the purpose of enquiry the said police diary dated 19-03-2013 and 20-03-2013 is required to be summoned.

3. In another application it is contended that the appellant had submitted the complaint copy through E-mail to SP Davanagere, on 19-03-2023 at 09-30 p.m. stating that, he is in need of said document to substantiate his complaint in CC No.750/2013. The delay caused in filing FIR in Jagalur police has been highlighted in the impugned order passed by the trial court. Since past 3 years he has submitted RTI application to the SP Davanagere through his mail ID dr.madhusannathammanna and the copy of said mails sent by the applicant are essential for this case. Hence, the applicant in person prayed to summon the E-mails sent by him to the SP office, Davanagere.

4. On the other hand, the learned PP has filed common objection and contended that, the said applications are not maintainable in the eye of law. During the trial, detailed enquiry has been conducted in respect of the documents sought to be summoned. Hence, the applications are liable to be rejected.

5. From the above facts following points that arise for my consideration are :

1. Whether the appellant has made out a ground to summon the documents as sought for in the applications under Section 91 of Cr.P.C. ?
2. What order ?

6. Heard both counsels and perused entire file.

7. The appellant has filed the following authorities for reference :

- (1) AIR 1999 SC 2161 in Crl. Appeal No.761/1993 dated 04-05-1999.
- (2) 2005 Crl. L.J.4621, Kanataka High Court in Crl. P.No.1268/2004 dated 22-09-2005
- (3) 2004 Crl. L.J.721, Madhya Pradesh High Court (Indore Bench) Crl. Rev.No.2010/2003 dated 08-07-2003.
- (4) KIC 14613 PTN 2010 Karnataka Information Commission No.14/3, Order dated 14-09-2011.

8. My findings to the above points are as follows :

Point No.1 : In the Negative

Point No.2 : As per final order for the following :

R E A S O N S

9. Point No.1: At the outset, the appellant Dr. J.S. Madhukumar has presented this appeal assailing the impugned judgment and order of acquittal, passed by the learned Civil

Judge and JMFC, at Jagaluru, in CC No.750/2013 dated 06-01-2017. After presenting this appeal, the respondent No.1 and 2 have appeared before the court through their counsel. At the initial stage, the respondent No.3 state was not impleaded. Subsequently, the state is also made as party and accordingly, the learned PP has represented the state. When the matter was listed for arguments on main appeal, the appellant in person has filed the above referred applications and prayed to direct the SHO of Jagaluru Town Police Station to produce the case diary dated 19-03-2013 and 20-03-2013, in order to prove the presence of Assistant Sub-Inspector and the police constable at the time of alleged incident on the spot. Further, the appellant in another application sought the relief to direct the S.P., Davanagere, to produce E-mail copy sent by him to the said SP, along with 65-B certificate. The respondents have seriously opposed the said applications. Now the question for consideration before the court is whether the appellant has made out a ground to direct the SHO, Jagaluru Town Police Station and SP to produce the above referred documents.

10. The appellant, who is practicing Advocate, in person, has submitted that on 19-03-2013 and on 20-03-2013 at the time of quarrel in Kalladevarapur village Jagaluru taluk, the Asst. Sub-Inspector and police constables were present on the spot. The Asst. Sub-Inspector has admitted his presence in his evidence given before the trial court and also in the cross examination. The said defence was evident in the DVD, but the

investigation officer Sri. Sunil Kumar has not admitted the presence of the said ASI and police constable. The learned Magistrate considering the say of investigation officer has extended benefit of doubt and has acquitted the accused. Therefore, the case diary dated 19-03-2013 and 20-03-2013 is necessary to submit arguments.

11. He further submits that, on 19-03-2013, he had sent the complaint to the S.P, Davanagere through email. The said document is necessary to produce before the court before submitting the arguments on main appeal. In the deposition before the trial court, he has explained the reason regarding the delay in lodging the FIR. The trial court has highlighted the delay caused in lodging the complaint. For the last 3 years, he had submitted maximum RTI applications to the S.P., Davanagere, to get certified copy of E-mail sent by him.

12. The learned PP has submitted that the documents sought to be produced are not part and parcel of investigation papers. When the documents to be summoned are not part and parcel of investigation papers, the accused has no right to summon those documents. The contents of case diary is the document of the police station and it is not a public document to be given to any person. However, court can summon the case diary. The copy of complaint sent through e-mail also not a part and parcel of investigation papers. If at all the appellant wants above referred documents, particularly, the email copy

he can produce his copy, as according to him, he had sent complaint to the SP from his mail address. Moreover, the said documents are not necessary to decide the present appeal.

13. So also, the counsel for respondent No.1 and 2 has submitted that the documents to be summoned are not necessary for adjudication of this appeal. Said applications are filed just to drag the proceedings.

14. It is to be noted here that, the appellant not arrayed the state as one of the respondents. In fact, this court on several hearing dates, directed the appellant to implead the state as one of the respondents. Even the appellant has accepted and prayed time to implead the state as party. However, the learned PP knowingly or unknowingly represented the case and has also filed objection to above referred 2 documents.

15. As stated above, this appeal is presented assailing the judgment of acquittal passed by the trial court. According to appellant, on 19-03-2013 and 20-03-2013, the ASI and police constable of Jagaluru town police station were present on the spot, at the time of incident. In fact, he has admitted in his chief evidence and cross examination and the same was evident in the DVD produced by him. But the investigation officer has extended benefit of doubt to the accused persons. Further, according to the appellant, he has produced DVD to show the presence of said police officials. On perusal of impugned judgment of acquittal, no doubt, the learned

Magistrate has taken note of admission of investigation officer, only on the basis of said admission not extended benefit of doubt to the accused persons. The learned trial court taking note of all the aspects of the case on hand, has extended benefit of doubt. The DVD produced by the appellant is sufficient to appreciate his contention. Whether the presence of ASI and police constable noted in the case diary dated 19-03-2013 and 20-03-2013 or not, is a matter of consideration after hearing the appeal on merits. The DVD produced by the appellant is sufficient to appreciate his contention. In the opinion of this court, CD dated 19-03-2013 and 20-03-2013 at present is not relevant to appreciate the case of appellant. If this court feels that CD of above referred dates is necessary, the same would be summoned after hearing arguments on merits. Therefore, at this stage, summoning of the said CD is not necessary. No material is placed to show that SHO on 19-03-2013 and 20-03-2013 has noted the presence of ASI and police constable on the alleged place of offence.

16. In respect of summoning of e-mail copy, according to appellant, he had sent complaint to SP through e-mail. The appellant has already filed copy of e-mail along with application. In the opinion of this court, the copy of e-mail produced by the appellant is sufficient to appreciate his contention and no need to direct the SP to produce e-mail copy.

17. The appellant has placed reliance on above referred decisions. With great respect, the facts and circumstances of above said decisions are not identical to the facts and circumstances of the case on hand to apply the principles laid down in the said decisions to the case on hand. Hence, I answered point No.1 in the 'Negative'.

18. Point No.3 : In view of my findings on above point, I proceed to pass the following :

: O R D E R :

The applications filed by the appellant U/s. 91 of Cr.P.C are rejected.

(Dictated to the Stenographer, transcribed by her, transcript corrected, signed and then pronounced by me in the open court on this the 03rd day of July 2023).

(J.V.VIJAYANANDA)
I ADDL. DISTRICT & SESSIONS JUDGE,
DAVANAGERE.

