

IN THE SPECIAL COURT FOR THE TRIAL OF NIA CASES, ERNAKULAM

Present: Sri. P.K. Mohandas, Judge for NIA Cases

Wednesday the 17th day of April, 2024/28th Chaithra, 1946

Crl.M.P. 147/2024

In

SC.01/2020/NIA

Complainant/Petitioner

Union of India represented by National Investigation Agency, Kochi.

**By Sri. Arjun Ambalappatta
Senior Public Prosecutor, NIA**

**Respondent/ Accused No.
1 to 4**

1. Allan Shuaib @ Mamu @ Mammu (A1), age 20 years, S/o. Mohammed Shuaib, Manipoori House, Palattu Nagar, Thiruvannur, Kozhikode.
2. Thwaha Fasal (A2), age 24 years, S/o. Abubacker, Kottummal House, Moorkanad, Pantheerankavu, Kozhikode.
3. M. Usman (A3), Aged 42 years, S/o Aboobacker, Melethil House, Odampatta, Chembrassery, Pandikkad, Malappuram.(Now remanded at High Security Prison ,Viyyur.
4. Vijith Vijayan @ Pachha @ Balu @ Musafir @ Ajay (A4), aged 27 years, S/o. Vijayan V.K., Chaithram House, Puzhamudi Post, Kalpetta, Wayanad District, Kerala.

A1 and A2 by Adv. Sri. Isaac Sanjay.

A3 and A4 By Adv. Sri. Thushar Nirmal Sarathy

This Criminal M.P coming on for hearing before me on 17.04.2024 and the Court on the same day passed the following:-

ORDER

This application is filed by the Senior Public Prosecutor, NIA for issuing direction to CW88 to produce his mobile phone with a copy of the video of the search at the house of 2nd accused.

2. As per the prosecution allegations, the accused persons have associated with the proscribed terrorist organization CPI (Maoist), with the intention of furthering its objectives and also attempted to radicalize and recruit other persons into the CPI (Maoist) party. The accused persons also conspired amongst themselves besides other members of CPI (Maoist) and conducted clandestine meetings at various places in Kozhikode and Kannur with the intention of furthering the activities of the proscribed terrorist organization CPI (Maoist) in Kerala.

3. On 02.11.2019, CW88, Shri. Baiju K Jose conducted a search at the house of A2 and seized certain objects and documents. The search list is produced before the Court as D14. While conducting the search, CW 88 Shri.Baiju K Jose video recorded the process of the search using his mobile phone. The said video needs to be played in the open court while the witness CW3, the officer who assisted CW88 is being examined before the

Court on 23.04.2024.

4. It is reported that after recording the video by CW88 on 02.11.2019, the same was copied to a DVD and same was seized as per D33 seizure mahazar dated 04.11.2019. The same was produced before the Court as MO2 along with a certificate under Sec. 65B of the IE Act. However, there is no DVD player available in the Court for viewing the said video, which casts serious prejudice to the prosecution.

5. The said mobile phone which was used to record the video is a primary evidence and is still in the safe custody of CW88, Shri Baiju K Jose and that needs to be produced before the Court and the contents played and exhibited for the just decision of this case. However, it may not be possible to play the said video from the phone for the viewership of all parties present in the court as the video is only in the phone and cannot be connected to a display device available in the court.

6. Hence, the petitioner prays that a direction may be issued to CW88 to produce the mobile phone having IMEI number 862943044446480, used to record the video of the search conducted at the house of A2 and to produce a further copy of the said video in a pen drive with a certificate under Section 65B.

7. I have heard the Public Prosecutor and the counsel for the accused. The public Prosecutor submitted that production of the mobile phone containing the video recording is necessary to prove the prosecution

case. The learned defence counsel opposed the application stating that such a direction cannot be given u/s.91 of the CrPC. Relying on the decision of the Hon'ble High Court in Sarath Kumar v. State of Kerala and Another (2019 (5) KHC 298) he argued that the witness cannot be asked to prepare a document and produce the same before the court. According to him, this court has no power to issue direction to the witnesses to prepare and produce a copy of the video with certificate under Section 65B of the Evidence Act.

8. In this petition the prosecution wants to issue a direction to CW88 to produce the mobile phone in which he recorded the video of the search conducted in the house of the 2nd accused and a copy of the same duly certified u/s.65B of the Evidence Act. Making a copy of the video file available in the internal memory of the mobile cannot be termed as 'preparation of a document'. As rightly submitted by the Public Prosecutor, it may not be feasible to play the video available in the internal memory of the mobile phone while recording the evidence. Moreover, if a copy is not made available, the mobile phone is to be detained by the Court till the conclusion of the trial and that may cause inconvenience to the witness. If the witness could not produce copy of the file with certificate as required, he can produce the mobile phone and copy can be obtained through an expert. So, there is nothing wrong in giving a direction to the witness to produce a copy of the relevant video file along with the mobile phone. Moreover the

prosecution had already produced copy of the video file in DVD and it is submitted that the same could not be played now.

9. Hence the petition is allowed. CW88 is directed to produce the mobile phone having IMEI No.862943044446480, used by him to record the video of the search conducted at the house of the 2nd accused. He may also produce a copy of the same in a pendrive with certificate under Section 65B of the Evidence Act, ensuring the integrity of the file. The witness shall produce the same on or before 22-04-2024.

Dictated to the Confidential Asst., transcribed and typewritten by her, corrected and pronounced by me in open court on this the 17th day of April, 2024.

Sd/-
P. K. Mohandas
Judge, Special Court for NIA Cases

Appendix: Nil

Id/-
Judge, Special Court for NIA Cases
(By Order)

// True Copy//

Sd/-
Sheristadar