

IN THE COURT OF THE III ADDITIONAL DISTRICT COURT, SALEM.

Present: Tmt. L.Kalaivani, BA.,B.L.,

III Additional District Judge, Salem.

Thursday, the 20th day of March 2025.

I.A.3/2024

in

O.S.No.187/2017

Venkatachalapathy

... Petitioner/Plaintiff

/Vs/

1. M/s 7/24 Enterprises,
Partnership Firm rep by its Partner J.Gokila.

2. J.Gokila, Partner. M.s 7/24 Enterprises,

3. V.Kalaimani, Partner, M/s 7/24 Enterprises. ... Respondents/Defendants

This petition is coming on 06.03.2025 before me for final hearing in the presence of Thiru.K.R.R.Aiyappamani, learned counsel for the Petitioner/Plaintiff and Thiru.G.Mithun Chakravarthy learned counsel for the Respondents/Defendants. Upon hearing the arguments of both and having stood over for consideration till date, this court delivered the following:-

ORDER

This petition has been filed by the petitioners Under Order 16 Rule 1 (2) of CPC to seeking permission to summon the Inspector of police, Alagapuram and direct him to give evidence regarding Cr.No.302/2014 Alagapuram Police Station.

1. Brief case of the petitioner is as follows:-

The petitioner herein is the plaintiff in the suit and suit has been filed by the petitioner seeking the relief of recovery of money based on the cheque issued by the respondents for Rs.20,00,000/-. The respondents have stated in the written statement that they have lodged a complaint as against the petitioner that the petitioner has stolen the cheque from the 1st respondent and case has been registered against the petitioner in Cr.No.302/2014 on 02.09.2014 by Alagapuram police under section 381, 403, 406, 506(ii) of IPC. In fact, the false case has been registered against the petitioner and police officials have conducted investigation and the filed referred charge sheet and case has been dropped as mistake of fact. The respondents suppressed the above said facts and they have stated only registration of the case against the petitioner and misreading the court. Therefore, the case diary in Cr.No.302/2014 is necessary to prove claim of the petitioner it s under the custody of the Inspector of police Alagapuram. Hence, the petitioner has come-forward with the present petition to seeking permission for the examination of Inspector of Police, Alagapuram and to produce the case dairy in Cr.No.302/2014.

2. Nutshell of the counter filed by the 3rd respondent and adopted by the 1st and 2nd respondents are as follows:-

The respondents had denied the avernments stated in the petition except that those are specifically admitted by the respondents. So far as mistake of fact is concerned the respondents have not served any notice for closing the case as mistake of facts. Hence, the report if any filed same cannot be used against the respondents. Section 172 of Cr.P.C. mandates writing and maintenance of case diary of Investigation officer. A case diary is the record of

Investigation prescribed under section 172(1) of Cr.P.C. It enables the officers to guide and supervise the investigation besides providing a record for the investigation officers own reference. A trial court has the prerogative to utilize the case diary as a resource to facilitate its proceedings. There were judgments that hold that record of proceedings' would not include statements recorded under section 161 Cr.P.C. for the reason that the said statements are not protected, whereas the case diaries are made available to the accused only when pre-conditions are satisfied.

Under Section 172(2) of the Cr.P.C. a criminal court is empowered to send for the case diary and the diary can be used by the court not as evidence in the case. But, to aid it in such inquiry or trial. Under sub-section (3) to Section 172, neither the accused nor his agents are entitled to call for diaries or nor they entitled to see them But, where the police officer makes use of the case diary to refresh his memory or the court uses them for purposes of contradicting the police officer, provisions of section 161 or 145 of the Evidence Act apply. The documents which is not a part of the proceedings has no evidentiary value and the same cannot be used for or against the defendant in the present civil proceedings.

As per sub-section (2) of section 172 of the Criminal Procedure Code (CrPC), the case diary holds a privileged status. Access to this document is restricted for the accused, except in instances where a police officer employs it to recall details while providing testimony, or when the court employs it to challenge the officer's statements. The present inspector of police also does not have any privity except holding the case diary and hence without the author the same cannot be marked as an exhibit even for formal purpose is the humble submission made. The plaintiff who is the accused has no right to see the case diary even if it is used by the Court. Case diary may also be used by the criminal court to contradict the police officer who wrote it. But, the

portion of it which is so used partially loses its privilege and must be shown to the defense to enable it to cross-examine the police officer within the meaning of section 145 Indian Evidence Act, 1872.

What cannot be done directly cannot be done indirectly. Section.172 of the Code of Criminal Procedure is only for the trial court to summon to act as an aid and nothing more. Further the case diary is only a secondary evidence and not a primary evidence. When the primary evidence is lost or is not traceable, only then secondary evidence can be given, as per section 65 of the Indian Evidence Act, 1872. The case diary which is not exhibited even in trial court cannot be called before this Honourable court as the same has no evidentiary value and used for any purpose is the humble submission made. There are no merits in this petition. Hence, it is prayed for dismissal.

3. Point for consideration is:

Whether this petition is liable to be allowed or not?

4. Answer to the Point:-

This petition has been filed by the petitioner who is the plaintiff in the suit seeking permission to examine the Inspector of police Alagapuram police station and also direct the Inspector of police to produce the case diary in Cr.NO.302/2014. The petitioner would contend that he has filed suit for recovery of money as against the respondents based on the cheque issued by them. While so, the respondents have filed written statement and they would contend that a criminal complaint as lodged against the petitioner stating that he had stolen the cheque of the 1st respondent and based on that a case in Cr.No.302/2014 under section 381, 403, 406, 506(ii) of IPC was registered. In fact, after completing investigation the Inspector of police Alagapuram has filed a final report as mistake of fact. However, the respondents have not stated about the report filed by the Alagapuram police. Therefore, it is necessary for the petitioner to examine the Inspector police and mark the case

diary in Cr.No.302/2014.

5. Per contra, the respondents would contend that the petitioner sought direction to the Inspector of police Alagapuram to produce the case diary and the case diary is the record of investigation prescribed under section 172(1) of CrPC and the criminal court is empowered to verify the case diary and it can be used by the court not as evidence. But, it can be used to aid it in such enquiry or trial. Therefore, the petitioner is not entitled to get direction to produce the case diary.

6. Having regard to the rival submissions it is noted that the suit has been filed by the petitioner seeking the relief of recovery of money based on the cheque and the suit is stands posted for examination of further witness by the petitioner. While so, the petitioner has come-forward with the present petition and seeking permission to examine the Inspector of police and also seeking direction to the Inspector of police to produce the case diary. As rightly pointed out by the respondents the case diary can be used by the court and neither the accused nor his agent are entitled to call for the case diary. Unless it is used by the police officer to refer their memory.

7. While such being the settle proposition of law, the learned counsel for the petitioner fairly conceded the above settle proposition and he requested the court to direct the Inspector of police to bring the report filed by them in Cr.No.302/2014. This court has perused the written statement filed by the respondents and they have stated that they lodged a complaint before the Alagapuram police as against the petitioner stating that the cheque of the 1st respondent was stolen and based on that the case has been registered as against the petitioner.

8. While such being the stand taken by the respondents the petitioner in order to prove the fact that the criminal action as against the petitioner was dropped by the police seeking permission to examine the Inspector of police.

Considering the above said facts and circumstances of the case this court is of the view that it is appropriate to summon the Inspector of police Alagapuram to bring the report filed by them in Cr.No.302/2014 and give an evidence in that aspect. Consequently, this court is inclined to allow this petition in certain extent.

In the result, this petition is allowed. It is order to summon the Inspector of police Alagapuram to bring the report filed in Cr.No.302/2014 before court and give evidence in that regard. No cost.

Dictated to the steno-typist, transcribed and computerized by her corrected and pronounced by me in the open court on 20th day of March, 2025.

(Sd/-L.Kalaivani)
III Additional District Judge,
Salem.

Fair/draft Order in
I.A.No.3/2024 in
O.S.No.187/2017
Dt. 20.03.2025