

HIGH COURT OF KERALA

Bench: JUSTICE N. NAGARESH and JUSTICE P.M. MANOJ

Date of Decision: 16 APRIL 2024

W.A. NO. 581 OF 2024

**P. GOPALAKRISHNAN @ DILEEP, AGED 55 YEARS, S/O. LATE
PADMANABHAN PILLAI, ...APPELLANT/7TH RESPONDENT**

VERSUS

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**STATE OF KERALA, REPRESENTED BY THE CHIEF SECRETARY,
GOVERNMENT OF KERALA, THIRUVANANTHAPURAM-695001.**

**SECRETARY TO GOVERNMENT, HOME DEPARTMENT, GOVERNMENT
OF KERALA, THIRUVANANTHAPURAM.**

DIRECTOR GENERAL OF POLICE, KERALA, THIRUVANANTHAPURAM.

**ADDITIONAL DIRECTOR GENERAL OF POLICE (CRIMES),
THIRUVANANTHAPURAM.**

**INVESTIGATING OFFICER, DEPUTY SUPERINTENDENT OF POLICE,
CRIME BRANCH, ALAPPUZHA.**

**STATE FORENSIC SCIENCE LABORATORY, REPRESENTED BY ITS
DIRECTOR, THIRUVANANTHAPURAM. ...RESPONDENTS**

Subject:

Challenge against the order dated 12.04.2024 in IA.3/2024 in W.P.(CrI.) No.445/2022 concerning directives for issuing certified copies of statements from a disposed writ petition's proceedings, implicating issues of judicial procedural propriety and reopening of concluded matters.

Headnotes:

Procedural Appropriateness of Issuing Certified Copies Post-Disposition – Writ Appeal against order in Interim Application – 7th respondent/appellant challenges the High Court’s decision allowing the issuance of certified copies from a disposed writ petition (W.P.(CrI) No. 445/2022) under IA No.3/2024 – High Court holds that such issuance does not constitute a revival of disposed proceedings, deeming the relief ancillary – Appeal dismissed on grounds that interim application is legally permissible and aligns with ensuring a comprehensive prosecution by providing necessary documents to the de facto complainant – Apex Court precedents discussed to substantiate the decision. [Paras 3-14]

Issuance of Certified Copies – Judicial Directions – Held, the issuance of certified copies to 1st respondent for effective prosecution does not amount to reopening of disposed writ petition – Directed as ancillary relief, essential for substantiating the 1st respondent's case by ensuring access to inquiry statements – Upholds the need for transparency and procedural justice in ongoing criminal proceedings against the backdrop of unauthorized access and potential tampering of crucial digital evidence. [Paras 10-14]

Dismissal of Writ Appeal – Judgment Analysis – High Court finds no merit in the writ appeal, affirming the lower court’s order in IA No.3/2024 – Concludes that issuance of certified copies to the 1st respondent is a rightful exercise of judicial discretion aimed at supporting the factual foundation of the de facto complainant’s case without reviving the original disposed proceedings – Emphasizes protection of constitutional rights and procedural fairness. [Para 14]

Referred Cases:

- **State of Uttar Pradesh v. Brahm Datt Sharma and another [(1987) 2 SCC 179].**
- **Hari Singh Mann v. Harbhajan Bajwa and others [(2001) 1 SCC 169].**
- **Nazma v. Javed alias Anjum [(2013) 1 SCC 376].**

J U D G M E N T ~ ~ ~ ~ ~

Nagaresh, J.

Additional 7th respondent in W.P.(CrI.) No.445/2022 has filed this writ appeal against the order dated 12.04.2024 in IA No.3/2024 in W.P.(CrI.) No.445/2022.

2.W.P.(CrI.) No.445/2022 was filed by the 1st respondent who is a film actress by profession and de facto complainant in Crime No.297/2017 of Nedumbassery Police Station in Ernakulam District and also in SC. No.118/2018 of the Additional Special Sessions Court (CBI/SPE-III),Ernakulam. The 1st respondent sought to direct respondents 4 and 5 to do a free, fair and complete further investigation in Crime No.297/2017 pending trial as SC No.118/2018 before the Additional Special Sessions Court inclusive of the illegal access, tampering and transmission of the contents of the memory card while it was in the safe custody of the trial court and also tampering made in the mobile phones surrendered by the 8th accused and to monitor the said investigation without any illegal interference by calling upon periodical reports regarding the progress of the investigation till further Final Report is submitted before the court below.

3. The said W.P.(CrI.) No.445/2022 was disposed of by this Court as per judgment dated 07.12.2023 with various directions to ensure authentic and impartial investigation. The 1st respondent thereafter filed IA No.3/2024 in the disposed writ petition seeking for direction to the District and Sessions Judge, Ernakulam to issue certified copies of the statements of the persons who were examined in the inquiry.

4. The appellant herein submits that such an interim application filed seeking new and further reliefs in a writ petition that had been disposed, could not even have been numbered by the Registry. The appellant states that on 12.04.2024, IA No.3/2024 was allowed and the Single Judge directed the Sessions Judge, Ernakulam to issue certified copies of the statements of persons examined during the inquiry to the 1st respondent. The objections raised by the appellant were held to be not tenable. The learned Single Judge held that the admission of interim application would not amount to revival of the proceedings and that the relief sought for in the IA is ancillary.

5. The appellant is aggrieved by the order allowing IA No.3/2024. The Senior Counsel representing the appellant submits that the passing of the interim directions in a disposed writ petition is impermissible and evidently a revival of the disposed proceedings. It is settled law that finally disposed proceedings cannot be reopened by filing interim application seeking fresh direction. The Hon'ble Apex Court in ***State of Uttar Pradesh v. Brahm Datt Sharma and another*** [(1987) 2 SCC 179] has deprecated such practice in the strongest terms.

6. The Senior Counsel pointed out that the Hon'ble Apex Court in ***Hari Singh Mann v. Harbhajan Bajwa and others*** [(2001) 1 SCC 169] has held that the practice of filing miscellaneous petitions after the disposal of the main case and issuance of fresh directions in such miscellaneous petitions by the High Court are unwarranted, not referable to any statutory provision and in substance, abuse of the process of the court.

7. In ***Nazma v. Javed alias Anjum*** [(2013) 1 SCC 376], the Hon'ble Apex Court has held that once the criminal writ petition has been disposed of, the High Court has become functus officio and cannot entertain review petitions or miscellaneous applications except for carrying out typographical or clerical errors. The Senior Counsel urged that the reliefs sought in the interim application is not ancillary and it would amount to revival of the proceedings.

8. The counsel for the 1st respondent (writ petitioner) urged that Writ Appeal No.581/2024 has been filed without any *bona fide*. The learned Single Judge has ordered in IA No.3/2024 only to provide certified copies of the statements of persons examined during the inquiry to the petitioner. The order dated 12.04.2024 in IA No.3/2024 does not amount to reopening of the proceedings. It does not in any manner revive the proceedings. The writ appeal is therefore liable to be dismissed.

9. I have heard the learned counsel for the petitioner, the learned counsel appearing for the 1st respondent and the learned Government Pleader representing respondents 2 to 7.

10. W.P.(CrI.) No.445/2022 was filed by the 1st respondent herein seeking for various directions to ensure a free and fair investigation in respect of a case in which the 1st respondent is the de facto complainant and victim in the crime. The said W.P.(CrI.) was considered by the learned Single Judge

and disposed of giving elaborate directions so as to ensure unbiased investigation/trial and privacy of the victim.

11. In order to effectively aid prosecution of the case, the 1st respondent filed IA No.3/2024 in the W.P.(Crl.) seeking to direct the District and Sessions Judge, Ernakulam to issue certified copies of the statements of persons who were examined in the inquiry and whose statements were recorded in the inquiry, to the 1st respondent for verifying the same, in the light of the statements and findings in the inquiry reports. As per judgment dated 07.12.2023, the learned Single Judge had directed the District and Sessions Judge, Ernakulam to conduct a fact finding inquiry on the allegations of unauthorised access to the memory card and copying and transmitting its contents.

12. The learned Single Judge found that the admission of IA No.3/2024 would not amount to revival of the proceedings. The relief sought for is ancillary in nature. The 1st respondent has a right to know the statements given by various persons in the course of inquiry. The Sessions Judge therefore directed to issue certified copies of the statements of persons examined during the inquiry to the appellant.

13. The learned Single Judge has held that the memory card which is a material in the crime, was connected to computer systems installed with devices capable of copying or transferring the electronic record or mutating the contents. The victim's interest has not been protected and it has resulted in violation of victim's fundamental constitutional rights. The emotional and psychological harm being suffered by the victim is beyond imagination. The learned Single Judge therefore directed the District and Sessions Judge, Ernakulam to conduct a fact finding inquiry on the allegations of unauthorised access to the memory card and copying and transmitting its contents. The 1st respondent was granted liberty to present written submissions before the District and Sessions Judge.

14. It is to effectively prosecute the case that the 1st respondent has sought for certified copies of the statements of persons examined during the inquiry. In the facts of the case, we are of the firm view that the conclusion arrived at by the learned Single Judge that issuance of certified copies of the statements would not amount to revival of the proceedings and that relief granted in IA No.3/2024 is ancillary, is legally correct and sustainable. We do

not find any merit in the writ appeal warranting interference in the order in IA No.3/2024. The writ appeal is therefore dismissed.

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