

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 25TH DAY OF OCTOBER, 2024



PRESENT

THE HON'BLE MR. N.V. ANJARIA, CHIEF JUSTICE

AND

THE HON'BLE MR. JUSTICE K.V. ARAVIND

WRIT APPEAL NO. 102 OF 2024 (GM-POLICE)

BETWEEN:

1 . MOHAMMED SHIYAB



... APPELLANT

(BY SRI MOHAMMED TAHIR, ADVOCATE)

AND:

1 . NATIONAL INVESTIGATING AGENCY
MINISTRY OF HOME AFFAIRS, (GOI)
HYDERABAD BRANCH
REP. BY ITS STANDING COUNSEL
SRI PRASANNA KUMAR
OFFICE AT HIGH COURT COMPLEX
OPP. VIDHAN SOUDHA
BANGALORE – 560 001

... RESPONDENT

(BY SRI P. PRASANNA KUMAR, ADVOCATE)

THIS WRIT APPEAL IS FILED UNDER SECTION 4 OF THE KARNATAKA HIGH COURT ACT, 1961, PRAYING TO ALLOW THE APPEAL BY SETTING ASIDE THE ORDER DATED 20.12.2023 IN WRIT PETITION No.1781/2023 PASSED BY THE HON'BLE HIGH COURT OF KARNATAKA, BENGALURU AND GRANT THE PRAYERS AS PRAYED FOR IN THE WRIT PETITION No.1781/2023.

THIS WRIT APPEAL HAVING BEEN HEARD AND RESERVED FOR JUDGMENT, COMING ON FOR PRONOUNCEMENT THIS DAY, JUDGMENT WAS PRONOUNCED AS UNDER:

CORAM: HON'BLE THE CHIEF JUSTICE MR. JUSTICE
N.V. ANJARIA
and
HON'BLE MR JUSTICE K.V. ARAVIND

C.A.V. JUDGMENT

(PER: HON'BLE THE CHIEF JUSTICE
MR. JUSTICE N.V. ANJARIA)

Heard learned Advocate Mr. Mohammed Tahir for the appellant and learned Advocate Mr. P. Prasanna Kumar for the respondent.

1.1 As learned Single Judge by judgment and order dated 20th December 2023 dismissed the petition, the appellant-original petitioner has preferred this appeal under Section 4 of the Karnataka High Court Act, 1964.

2. What was prayed in the writ petition was to direct the trial Court-49th Additional City Civil and Sessions Judge and Special

Court for Trial of NIA Cases at Bengaluru 'to sign or put initials to each page of case diary of RC-36/2022/NIA/DLI registered by the respondent under Sections 120B, 302 read with Section 34 of the Indian Penal Code, 1860 and Sections 16 and 18 of the Unlawful Activities (Prevention) Act, 1967, from page No.1 till the last page and continue this practice till filing of charge sheet'. It is next prayed to require the said court to observe the same practice in all the cases pending before it.

3. Noticing the facts from the pleadings of the petition, it appears that the petitioner was found to be involved in a murder incident which took place on 26th July 2022 at Sullia town, pursuant to which, Crime No.63 of 2022 was registered with the Police Station concerned and subsequently the case was transferred to the National Investigating Agency (NIA) invoking Sections 16 and 18 of the Unlawful Activities (Prevention) Act, 1967 and the case was registered as No.RC-36/2022/NIA/DLI. Petitioner is accused No.8 in the said criminal proceedings.

3.1 It appears that the court passed orders of remand and in connection with the orders, the case diary was summoned which

was taken back by the Investigating Officer. The appellant-accused had submitted a memo with the trial court to summon the case diary and further requested to put initial to authenticate the entries on each page of the diary, which application came to be rejected on 16th November 2022 by the Court, on the ground that there was no provision.

3.2 It was contended *inter alia* that in the investigation, the case diary is important piece of document which shows the progress of the investigation and the conduct of the Investigating Officer. The appellant-petitioner relied on Section 172 of the Code of Criminal Procedure in support of his case. It was the case that initial was necessary to be made on each page of the court diary when it is produced before the Court. It was contended that this practice of putting initials on each page was not mentioned in the Karnataka Criminal Rules of Practice, 1968, but in the Rules of other States, it was so provided. It was therefore, submitted that for preventing the tampering and fabrication, initial of the investigating officer on each page was desired and that this Court should make it mandatory.

4. Assailing the judgment and order of learned Single Judge rejecting the prayers, it was submitted that learned Single Judge failed to appreciate that maintenance of true entries in the case diary was part of fairness and transparency. It was contended that Section 167 of the Code of Criminal Procedure, 1907 (Cr.PC) mandate the production of case diary along with remand application and the satisfaction could be arrived at by the Magistrate on the basis of the entries made in the case diary as per Section 172 of Cr.PC. It was submitted that, signing diary on each page was an implied mandate though there was no provision in that regard in the Rules framed by the State. The Rules of other States were pressed into service to further submit that signature of the investigating officer on each page of the case diary would make it tamper-proof.

4.1 On the other hand, learned Advocate for the respondent supported the impugned judgment of learned Single Judge by submitting that the petitioner wants an order from this Court in the nature of legislative exercise, when there is no such provision available in the statute for the Rules to support the prayer made in the petition.

5. Learned Single Judge considered the provisions of Section 172 of the Cr.PC, as also the Criminal Rules of Practice notified by the State of Karnataka in the year 1968, in particular the Rules in Chapter-V dealing with investigation and prosecution, to observe on that basis as under, extracting from paragraph 9 of the judgment,

“The Criminal Rules of Practice nowhere indicates that on every application for remand under Section 167 of the Cr.P.C., though the entries in the case diary maintained under Section 172(1) is to accompany the remand order, it nowhere indicates that the Magistrate has to affix his signature at every point when a remand order is passed or at every time the case diary is summoned to the Court. The Criminal Rules of Practice thus nowhere indicates that the Court can grant the prayer that is sought by the petitioner.”

5.1. The submission of the petitioner that since in the Rules of other States, such provision is mentioned, the direction should be issued by the Court in this case also, was negatived by stating that it amount to legislating by the Court.

5.1.1 Learned Single Judge observed in paragraph 10 in the above regard thus,

“That would not enure to the benefit of the petitioner to seek a direction that the same practice should be followed in the State of Karnataka, notwithstanding no such mandate existing in the Criminal Rules of Practice, 1968 of the State. If the prayer of the petitioner is granted contrary to what the Criminal Rules of Practice would mandate, it would amount to this Court legislating, as it is for the legislature to bring in such amendment if it deems fit. This Court in exercise of its jurisdiction under Article 226 of the Constitution of India would not legislate and direct a procedure to be followed in every case as is sought by the petitioner contrary to the Criminal Rules of Practice.”

5.1.2 Learned Single Judge elaborately discussed the decisions of the Supreme Court laying down the principle that it is not the function of the Court to enlarge the jurisdiction by entering into legislative task. It was rightly observed that the Court cannot read anything further when the language of the provision is unambiguous and that the Court cannot redirect or add something or read additional words in the statute.

5.1.3 The submission that the non-signing of case diary on each page by the investigating officer would lead to abuse and tampering, was not accepted by referring to the principle that there can't be presumption for abuse of power. The fairness in investigation is always a question of fact to be considered in the facts of each case.

5.2 While this Court is in agreement with the view taken by learned Single Judge, Section 172, Cr.PC may be noticed with relevance,

“172. Diary of proceedings in investigation.—

(1) Every police officer making an investigation under this Chapter shall day by day enter his proceedings in the investigation in a diary, setting forth the time at which the information reached him, the time at which he began and closed his investigation, the place or places visited by him, and a statement of the circumstances ascertained through his investigation.

(1A) The statements of witnesses recorded during the course of investigation under section 161 shall be inserted in the case diary.

(1B) The diary referred to in sub-section (1) shall be a volume and duly paginated.

(2) Any Criminal Court may send for the police diaries of a case under inquiry or trial in such Court, and may use such diaries, not as evidence in the case, but to aid it in such inquiry or trial.

(3) Neither the accused nor his agents shall be entitled to call for such diaries, nor shall he or they be entitled to see them merely because they are referred to by the Court; but, if they are used by the police officer who made them to refresh his memory, or if the Court uses them for the purpose of contradicting such police officer, the provisions of section 161 or section 145, as the case may be, of the Indian Evidence Act, 1872 (1 of 1872), shall apply.”

5.3 The aforesaid provision says that the police officer would enter his proceedings in the investigation day to day in the diary noting therein the time, places visited and the statement of circumstances ascertained through investigation. The statement of the witnesses recorded under Section 161 would be inserted in the case diary. Sub-Section (2) of Section 172 in terms provide that the police diaries may be called for by the Court, however the diary cannot be used as evidence in the case. It can be used only to aid the inquiry or trial. Sub-Section (3) contemplates that the accused or his agents are not entitled to call for such diaries nor they are entitled to see that.

5.4 It is therefore provided that the police diary is not to be treated as part of evidence, but the court takes the assistance and aid therefrom. The section does not contemplate anywhere that every page of such diary should be signed by the investigating officer. The Rules of Practice of the Karnataka State regarding investigation also do not contain any such providence.

5.5 Neither the statute nor the Rules anywhere provide that the diary should be signed at each page by the investigating officer.

Therefore, it is not possible to add words or such providence or read such requirement by supplying to the language. It is well settled principle of statutory interpretation and legal application that the court would act on the basis of plain words in the statute without adding anything to the language. Adding was supplying to the language would amount to legislating, which is not permissible. The court cannot cross the boundary to trench upon by creating what is not provided in the law. The function of the court ends where the realm of legislature starts. The task of the court is to interpret the law as it is, and not to enact law in the guise of interpretation. Supplying something more than what is mentioned in black and white is not permissible.

5.6 It is well settled parameters for issuance of writ of mandamus. The pre-requisite is that there must be a corresponding duty where the writ of mandamus is to be addressed. A writ of mandamus would not lie for doing something which is not contemplated in a statutory provision. Applicable statutory provision guides the course and path of mandamus. There has to be positive obligation cast, and available from or backed by a statutory provision to justify the

issuance of writ of mandamus to do some act or to omit from the doing.

5.7 Even otherwise, no factor circumstance could be demonstrated by the petitioner, or found to be existent to justify the grant of prayers made in the petition.

6. No error could be booked in the judgment and order of learned Single Judge dismissing the petition.

7. The challenge thereto fails. The present appeal is dismissed.

**Sd/-
(N.V. ANJARIA)
CHIEF JUSTICE**

**Sd/-
(K.V. ARAVIND)
JUDGE**

AHB