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and to pay a fine of ₹1,000/- by judgment dated 14.11.2003 in S.C. No.231 of 2003 on the file of the learned Additional Sessions Judge, Fast Track Court No.V, Coimbatore are set aside and instead the Appellant is convicted for offence under Section 308 of I.P.C. and sentenced to undergo R.I. for a period of three years.

(ii) Fine, if any, paid by the Appellant shall be refunded to him.

(iii) The period of detention already undergone by the Appellant is ordered to be set off under Section 428 of the Code of Criminal Procedure.

(iv) The Appellant shall be set at liberty forthwith if his detention is not required in connection with any other case.

2012 (2) MWN (Cr.) 371

IN THE HIGH COURT OF MADRAS

T. Mathivanan, J.

CrI.O.P. No.1138 of 2012

26.3.2012

V. Rajendran

.....*Petitioner*

Vs.

State, rep. by the Inspector of Police, Gudiyatham Town Police Station, Vellore District. 2. The Additional Director General of Police, CB CID, Guindy, Chennai-600 032

.....*Respondents*

PSO, 577(2)

Inter-state gang and conspiracy case — To be investigated by CID — Investigation transferred accordingly to file of CB CID.

IDENTIFICATION OF PRISONERS ACT, 1920 (32 of 1920), Section 8 — Procedure for taking Finger Prints — Division Bench of High Court in *Thavaraj Pandian* directed State Government to frame appropriate Rules under Section 8 giving clear cut guidelines and procedures indicating prescribed manner as provided under Section 4 — Compliance of — State Government had already framed Rules in 1920 itself — However, said Rules being out of date due to major developments in scientific knowledge, Committee for Revision of Police and Prison Laws & Rules framed revised draft of Rules — Same accepted by State Government after certain modifications and notified as Tamil Nadu Identification of Prisoners Rules, 2007 in G.O. (Ms) No.1668, Home (Prison-I) Department, dated 13.11.2007 [reported in 2008 (1) CTAR 2.87]. (Paras 21 to 27)

POLICE STANDING ORDERS, P.S.O. 577(2) — INDIAN PENAL CODE, 1860 (45 of 1860), Sections 406 & 408 — CRIMINAL PROCEDURE CODE, 1973 (2 of 1974), Section 482 — Gangs and conspiracy cases — Investigation of — To be conducted by Criminal Investigation Department [CID] — Theft of 23 Tonnes of TMT bars valued at ₹9,86,000, laden on Lorry for transport to Goa — Occurrence taken place on 1.5.2011 and reported to Police/R-1 on 17.5.2011 — Complaint disclosing owners and drivers of vehicles hand in glove with organized and inter-state gangs engaged in committing theft of steel materials — In view of PSO 577(2), investigation sought to be transferred from file of First Respondent/Police to file of Second Respondent/CB CID with direction to nominate Officer not below rank of Assistant Commissioner of Police to investigate case and to file charge-sheet — High Court, considering nature of offence and PSO 577(2), ordered transfer of investigation accordingly, in interest of justice. (Paras 30 to 35)

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Abudu Kumar Rajaratnam for S. Ashok Kumar, Advocate for Petitioners.

C. Iyyapa Raj, Government Advocate (Crl. Side) for Respondent.

Finding — Cr.O.P. allowed.

Prayer : Petition is filed under Section 482, Cr.P.C., praying to transfer the investigation pending in Crime No.319 of 2011 on the file of the 1st Respondent to the file of the 2nd Respondent and consequently direct the 2nd Respondent to nominate an officer not below the rank of Assistant Commissioner of Police to investigate the above case and file the charge-sheet within a period of three months.

JUDGMENT

1. Invoking the inherent jurisdiction of this Court under Section 482 Cr.P.C., this Petition is filed seeking the relief of transferring the investigation relating to the case in Crime No.319 of 2011, from the file of the 1st Respondent *viz.*, The Inspector of Police, Gudiyatham Town Police Station, Vellore District to the file of the 2nd Respondent *viz.*, The Additional Director General of Police, CB CID, Guindy, Chennai-600 032 and consequently to direct the 2nd Respondent to nominate an officer not below the rank of Assistant Commissioner of Police to investigate the above case and file the charge-sheet within a period of three months.

2. The Petitioner herein is the Manager in Tulsyan Nec Ltd., Company which is in the business of manufacturing steel in India. In the course of business for supplying steel, the Petitioner's Company arranges vehicles

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from private persons. T.G. Logistics Pvt. Ltd. arranges vehicles on behalf of their Company.

3. That on 1.5.2011, 23 metric tones of TMT bars were sent to Goa in a Lorry bearing registration No.KA-07-7855 and the value of the materials sent was estimated to the tune of ₹9,86,000/-. The vehicle belongs to one K. Nagaraj and the name of the driver, who was on the steering wheel of the Lorry at the time of commission of theft was Ameer Husain. On 1.5.2011 at about 5.20 pm., the said vehicle had left the Petitioner's Company with 23 tones of loan to Goa. But the vehicle had not reached the destination and on enquiry, the Petitioner was put to understand that the said Lorry had been parking for about 4-5 days near the house of K. Nagaraj at Gudiyatham and thereafter the lorry went missing.

4. On the strength of a Complaint lodged by the Petitioner on 17.5.2011, a case in Crime No.319 of 2011 under Sections 406 & 508 of I.P.C. came to be registered by the 1st Respondent. Despite the fact that the crime was intimated to the 1st Respondent Police as early as on 17.5.2011, till date the 1st Respondent-Police has not evinced any interest to trace any evidence with regard to the missing of the steels materials. Hence, the Petitioner has come forward with this Petition seeking the relief as aforesated.

5. Mr. Abudu Kumar Rajaratnam, learned Counsel for the Petitioner has submitted that it is surprise to note that even though the missing vehicle was recovered, the steel materials of the Company which were laden on the vehicle were found missing. He has also added that the Petitioner's Company had got reliable information that the owner and the driver of the vehicle had committed theft of the materials belonging to the Company and that they are falsely claiming that the materials were stolen by some other persons. He has also adverted to that every time during the transportation of materials to other places in India, either a portion of materials or the entire materials belonging to the Company are lost in transport and on account of this, the Petitioner's Company used to suffer huge monetary loss. He would submit further that the Petitioner's Company was also put to understand that the owners and drivers of the vehicle are hand in glove with organized Criminals and inter-state gangs, who are engaged in committing theft of the steel materials belonging to the Company.

6. He has also maintained that the Lorry bearing registration No.KA-07-7855 was insured by the owner of the vehicle by giving Kolar address situated at Karnataka, whereas the owner's address is situated at Gudiyatham in Tamil Nadu, and on perusal of the other records of the vehicle it is very clear that everything had been pre-planned by the Accused persons to cause serious loss to the Company. He has also added that unless there is proper and fair investigation there may be of every chance for the culprits to escape from the webcob of law.

7. While advancing his arguments the learned Counsel for the Petitioner has drawn the attention of this Court to the Order 577, sub-clause (2) of Police Standing Order. It reads as follows:

“All gang cases and all important conspiracy cases whose ramifications extend to several Districts should be investigated by the Criminal Investigation Department. Whenever the Police propose to institute any charge of abetment by conspiracy, they should obtain the prior sanction of the Collector, who will decide whether it is of sufficient importance to demand investigation by the Criminal Investigation Department.”

8. In this regard the learned Counsel for the Petitioner has submitted that in order to peg the persons who are involved in committing the organized crime of stealing of steel materials during the transport, the investigation relating to the case in Crime No.319 of 2011 which is now pending on the file of the 1st Respondent has to be transferred to the file of Criminal Investigation Department *viz.*, CB CID Department as the 1st Respondent is lacking competency to take up the investigation as contemplated under sub-clause (2) to Order 577 of Police Standing Order.

9. He has also reiterated that since the owners and drivers of the vehicle are having hand in glove with the organized Criminals and inter-state gangs who are indulging in committing theft of the steel materials belonging to the Company, the investigation by the competent officer belonging to CB CID is *sine qua non*.

10. Mr. Abudu Kumar Rajaratnam learned Counsel for the Petitioner has also emphasized the necessity of taking finger prints from the suspected Criminals and also from Lorry when it was recovered. In this connection he has canvassed that the investigation authority should have taken finger prints which were available in the vehicle with the assistance of finger print experts and for the reasons best known to the Investigating Officer, this procedure was not followed in this case. In order to fortify his arguments he has placed reliance upon the decision of the Division Bench of this Court in *Thavaraj Pandian and other v. State*, 2003 Cr.LJ 2642.

11. In this case one Latha a young house wife was stabbed to death by the Appellants 1 to 4 when she refused to part with her jewels. When she died after receiving the stab injury on her person it was alleged that the Appellants 1 to 4 had taken away her jewels including Mangalya Sutra and fled away with the booty. They were tried for the offences under Sections 120-B, 302 r/w 34 & 394 of I.P.C. After the completion of the trial they were found guilty convicted and sentenced. Thereafter, challenging the order of conviction and sentence A1 to A4 had preferred an Appeal.

12. While advancing arguments before this Court a contention was urged with regard to A4 saying that the opinion given by PW12-Finger Print Expert that the chance prints MO13 found on the betel nut box recovered

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from the scene of occurrence would tally with MO14-Finger Prints of A-4, is not admissible, in view of the decisions rendered by the Supreme Court in *Mahmood v. State of U.P.*, 1976 Cr.L.J. 10 : AIR 1976 SC 69; and *Paramasivam and another v. State of Tamil Nadu*, 2002 (2) LW (CrI) 836 (SC), wherein, it is held that the order of the Magistrate concerned is mandatory before obtaining the finger print of the Accused as contained in Section 5 of the Identification of Prisoners Act.

13. Countering the arguments advanced on behalf of A4, the learned Additional Public Prosecutor had contended that Section 5 of the Act (Identification of Prisoners Act, 1920) would not affect the power of the Police Officer under Section 4 of the Act to take finger prints of the person arrested in connection with the case and as such, PW15 is competent to take the finger prints, and therefore, the evidence of PW12 & 15 is admissible. To substantiate his contention the learned Additional Public Prosecutor had cited a decision of the Supreme Court in *Shankaria v. State of Rajasthan*, 1978 Cr.L. 1251 : AIR 1978 SC 1248. In the above cited case an argument was advanced that in view of Section 5 of the Identification of Prisoners Act, it was incumbent on the Police to obtain the specimen thumb impression of the Appellant before a Magistrate, and since this was not done the opinion rendered by the Finger Print Expert-Mr. Tankha, by using those illegally obtained specimen finger impressions, must be ruled out of evidence.

14. After considering this argument the Apex Court has observed that—

“The contention appears to be misconceived because in the State of Rajasthan, the Police were competent under Section 4 of the Identification of Prisoners Act, to take the specimen finger-prints of the Accused, and this they did, in the instant case, before the Superintendent of Police, Shri K.P. Srivastava. It was not necessary for them to obtain an order from the Magistrate for obtaining such specimen finger-prints”

15. Keeping in view of the observation made by the Supreme Court in the above quoted decision the Division Bench of our High Court has observed that—

“Above said observations are made by the Supreme Court to hold that the said evidence is admissible in the light of the existence of relevant Rules framed by the Rajasthan Government under the powers conferred under Section 8 of the Identification of Prisoners Act.”

16. The Division Bench has also observed in paragraph No.41 as follows:

“41. Admittedly, no rules have been framed by Tamil Nadu State. Section 4 of the Identification of Prisoners Act would provide that any person, who has been arrested in connection with the offence punishable with Rigorous Imprisonment for a term of one year or upwards, shall, if so required by a Police Officer, allow his measurements to be taken in the prescribed manner.”

In paragraph No. 42 it has been observed that—

“42. So, the prescribed manner for taking measurements of finger prints from the person arrested could be indicated either by the Rules framed under Section 8 of the Act or any other Rules and procedures framed by the State. The observation of the Supreme Court, as mentioned earlier, would indicate that if the Rules are not framed, then it is necessary for the Police Officer to obtain permission under Section 5 of the Act. In this State, as noted above, no rules have been framed under the Act giving the procedure denoting the “prescribed manner” for taking finger prints.”

17. A similar question was also raised before the Division Bench of this Court in *Ravanan v. State (Inspector of Police), Kumbakonam and another*, 1994 (1) LW (Crl.) 58. In this case it was argued that a Police Officer, during the course of investigation, after arresting a person, shall take him before the Magistrate concerned and obtain orders from the Magistrate before taking finger prints under Section 5 of the Act, as Section 4 of the Act would not confer power to the Police Officer for taking the finger prints. This argument was rejected by the Division Bench and quoted the following observations made in Crl.A. No.169 of 1986, dated 7.2.1992:

“The Act does not say that Section 5 refers to the prescribed manner spelt out in Section 4 of the Act. The power of the Magistrate under Section 5 of the Act does not seem to affect the power of a Police officer, to take finger prints or photographs of the persons arrested in connection with the various facts referred to under Section 4 of the Act.....

Section 8 confers power on the State Government to make rules for the purpose of carrying into effect the provisions of this Act. It was stated by the learned Public Prosecutor, that the State of Tamil Nadu had not framed any Rules for the purpose of carrying into effect the provisions of this Act. *After careful consideration of Sections 4 & 5 of the Act, we are unable to agree with Mr. N. Dhinakar that invariably during investigation a person arrested must be taken before a Magistrate and orders obtained before the finger prints of such persons could be taken by a Police officer. Sections 4 & 5 operate in different fields and obviously if the State Government had made any rules for the purpose of carrying into effect the provisions of this Act, the Investigating Officer, ought to have followed such Rules which would fall within the ambit of ‘Prescribed manner’ contemplated under Section 4 of the Act. If the State Government has not made any Rules under the Act, it will be the duty of the Investigating Officer, to follow Police Standing Order 836. Police Standing Orders are in the nature of instructions given to be followed by the Police Force*”

“Finger impressions shall be taken only by officers declared by a Superintendent or, in the City of Madras, by the Commissioner of Police, to be qualified to take clear and well-rolled impressions.”

“..... We think it necessary that the State Government must make Rules under S.8 of the Identification of Prisoners Act, 1920 for the purpose of carrying into effect the provisions of the Act. Some of the State Governments have made Rules. A proper procedure in obtaining finger prints from the Accused might be followed. Otherwise, the sanctity of scientific evidence not only gets obliterated but also becomes an exercise in futility

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18. The observations made by the Division Bench in the above cited case has been underlined in paragraph 44 of the decision *viz., Thavaraj Pandian and other v. State*, 2003 CrI.L.J. 2642.

“44. The above said decision of the Division Bench of this Court would show that even in the absence of Rules by the State under Section 8 of the Act, the Police Officer has to follow the Police Standing Orders, which gives the “prescribed manner” for taking the finger prints”.

19. In pursuant to the observations made by the Division Bench of this Court in *Ravanan v. State (Inspector of Police), Kumbakonam and another*, 1994 (1) LW (CrI.) 58, the Division Bench of this Court in paragraph No.61 has observed as follows:

“Thus, it is clear that by framing proper rules under Section 8 of the Act, giving the procedure for taking the finger prints, the sanctity of the scientific evidence adduced by the Finger Print Expert would certainly save the prosecution. Therefore, it is desirable for the State Government to frame appropriate rules under Section 8 of the Identification of Prisoners Act, giving clear-cut guidelines and procedures indicating the “prescribed manner” as provided under Section 4 of the Act for taking the finger prints of the Accused in custody.”

20. Keeping in view of the above fact the Division Bench of this Court has directed the learned State Public Prosecutor to get a copy of this judgment and send the same to the State Government with a covering letter, intimating the direction of the Division Bench of this Court to enable the Government to frame the Rules expeditiously.

21. In this connection, Mr. Abdu Kumar Rajaratnam, learned Counsel for the Petitioner while advancing his arguments has raised the following two questions:

- i. Whether the direction of the Division Bench of this Court in *Thavaraj Pandian and others v. State*, 2003 CrI.L.J. 2642, had been complied with by the Tamil Nadu Government ?
- ii. Whether appropriate Rules have been framed under Section 8 of the Identification of Prisoners Act (Central Act XXXIII of 1920) giving clear cut guidelines and procedures indicating the prescribed manner as provided under Section 4 of the Act for taking the finger prints of the Accused in custody ?

22. In pursuant to the questions raised by Mr. Abdudu Kumar Rajaratnam, learned Counsel for the Petitioner, this Court has directed the learned State Public Prosecutor to get a reply from the State Government with regard to the compliance of the directions issued by the Division Bench of this Court as aforesated.

23. Then the matter was directed to be adjourned so as to enable the learned State Public Prosecutor to get the reply from the Government.

24. Accordingly, on 26.3.2012 when the matter was taken up for hearing, the learned State Public Prosecutor has produced the Government Order in G.O.(Ms) No.1668, Home (Prison I) Department, dated 13.11.2007 in respect of Rules-Revision of Rules under Section 8 of Identification of Prisoners Act, 1920 (Central Act XXXIII of 1920). The first paragraph of the Government Order reads as follows:

“While delivering the judgment in CrI.A. No.810/98 dated 16.12.2002, Hon’ble Justice Thiru M. Karpagavinayagam and P. Thangavel, High Court, Madras have emphasized the necessity for framing of appropriate rules under Section 8 of the Identification of Prisoners Act, 1920 (Central Act XXXIII of 1920). The Public Prosecutor, High Court, Chennai, in his letter first read above, has therefore requested the Government to frame rules under Section 8 of the said Identification of Prisoners Act, 1920 and to bring them into force with immediate effect.”

25. It also appears from the Government Order that the Tamil Nadu Committee for Revision of Police and Prison laws and Rules had observed that the State Government had already framed Rules under the said Act in 1920 itself. However the above Rules are out of date since major developments have taken place in scientific knowledge in identification of Criminals. In these Rules even Finger Print Experts are not included in the list of Officers authorised to take finger impressions and therefore the Committee had suggested that the Rules under Section 8 of the said Identification of Prisoners Act 1920, actually require only Revision and not framing of Rules. Accordingly, the Committee had framed revised draft Tamil Nadu Identification of Prisoners Rules and forwarded the same to the Government.

26. The Government after careful examination of the revised draft Rules submitted by the Committee has decided to accept it with certain modifications and to notify the revised Tamil Nadu Identification of Prisoners Rules under Section 8 of the Identification of Prisoners Act, 1920 (Central Act XXXIII of 1920).

27. Accordingly, the revised rules *viz.*, the Tamil Nadu Identification of Prisoners Rules, 2007 has been published in the Government Gazette [see also 2008 (1) CTAR 2.87].

28. Mr. Abudu Kumar Rajaratnam has continued further that the main object of formation of Police Standing Orders is that it should be scrupulously followed by the concerned Police officials in particular the Investigating Officer while handling the investigation in respect of a crime. He has also submitted that the Police Standing Orders have given a clear cut tract to the Investigating Officer, who are responsible to take up the investigation in respect of a crime to identify the culprits and bring them to book.

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29. In this connection, he has placed reliance upon the decision of the Hon'ble Supreme Court of India in *Noor Aga v. State of Punjab and another*, 2008 (56) BLJR 2254. In this case, while speaking on behalf of the Division Bench, His Lordship the Hon'ble *Mr. Justice S.B. Sinha* has observed in paragraph Nos.119, 122, 123 & 124 in the following manner:

“119. We are not oblivious of a decision of this Court in *Chief Commercial Manager, South Central Railway, Secunderabad and others. v. G. Ratnam and others*, AIR 2007 SC 2976 relating to Disciplinary proceeding, wherein such guidelines were held not necessary to be complied with but therein also this Court stated:

In the cases on hand, no proceedings for commission of penal offences were proposed to be lodged against the Respondents by the Investigating Officers.

.....
.....

122. Guidelines issued should not only be substantially complied, but also in a case involving penal proceedings, *vis-a-vis* a Departmental proceeding, rigours of such guidelines may be insisted upon. Another important factor which must be borne in mind is as to whether such directions have been issued in terms of the provisions of the statute or not. When directions are issued by an authority having the legal sanction granted there for, it becomes obligatory on the part of the subordinate authorities to comply therewith.

123. Recently, this Court in *State of Kerala and others v. Kurian Abraham (P) Ltd., and another*, 2008 (3031) ITR 284 (SC), following the earlier decision of this Court in *Union of India v. Azadi Bachao Andolan*, 2003 (263) ITR 707 (SC) held that statutory instructions are mandatory in nature.

124. Logical corollary of these discussions is that the guidelines such as those present in the Standing Order cannot be blatantly flouted and substantial compliance therewith must be insisted upon for so that sanctity of physical evidence in such cases remains intact. Clearly, there has been no substantial compliance of these guidelines by the Investigating Authority which leads to drawing of an adverse inference against them to the effect that had such evidence been produced, the same would have gone against the prosecution.”

30. On coming to the instant case on hand, the theft of 23 metric tonnes of TMT bars valued at ₹9,86,000/-, which were laden on the lorry bearing registration No.KA-07-7855 intended to be transported to Goa was reported to the First Respondent Police on 17.5.2011. The occurrence was taken place on 1.5.2011. The case in Crime No.319 of 2011 seems to have been registered under Sections 406 & 408, I.P.C.,

31. The Complaint discloses that the owners and drivers of the vehicle are hand in glove with organized Criminals and inter-state gangs, who are engaged in committing theft of the steel materials belonging to the Petitioner's Company.

32. As observed earlier, the Police Standing Order 577, deals with investigation into gang and conspiracy cases. Sub-clause (2) to the Police Standing Order 577, says that all gang cases and all important conspiracy cases whose ramifications extend to several districts should be investigated by the Criminal Investigation Department and therefore Mr. Abudu Kumar Rajaratnam has submitted that the guidelines issued under Police Standing Order 577(2), have not been followed in this case. Hence, he has urged that the investigation pertaining to the case in Crime No.319 of 2011 be withdrawn from the file of the First Respondent-Police and transferred to the file of the Second Respondent-Police and consequently the Second Respondent be directed to nominate an officer not below the rank of the Assistant Commissioner of Police to investigate the above case.

33. On the other hand, Mr. C. Iyyappa Raj, learned Government Advocate (Criminal Side) has vehemently objected to transfer the case from the file of the First Respondent and submitted that hitherto 47 witnesses were examined and the remaining witnesses are also scheduled to be examined and under this circumstance the investigation of the above said case need not be ordered to be withdrawn from the file of the First Respondent.

34. On meticulous analysis of the rigor nature of the offences reported in the Complaint and on considering the submissions made on either side and particularly taking note of Police Standing Order 577(2), this Court finds in the interest of justice that the case may be ordered to be withdrawn from the file of the First Respondent-Police and transferred to the file of the Second Respondent-Police directing him to nominate a competent Police Officer to take up the task of investigation and file the charge-sheet after due completion of the investigation.

35. Accordingly, this Criminal Original Petition is allowed. The investigation of the case in Crime No.319 of 2011 pending on the file of the First Respondent *viz.*, the Inspector of Police, Gudiyatham Town Police Station, Vellore District is ordered to be withdrawn from the file of the file of the First Respondent-Police and transferred to the file of the Second Respondent *viz.*, the Additional Director General of Police, CB CID, Guindy, Chennai and the Second Respondent is also directed to nominate a competent officer not below the rank of the Assistant Commissioner of Police to take up the investigation relating to the case in Crime No.319 of 2011 and to file the final report within a period of three weeks from the date of receipt of a copy of this Order without loss of further time. It is made clear that this direction shall be scrupulously followed without any deviation.
