

HIGH COURT FOR THE STATE OF TELANGANA  
AT HYDERABAD

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Criminal Petition No.1069 OF 2023

Between:

Mohammad Mahaboob Ali @ Mapasha Ali  
@ Akram and others

... Petitioners

And

The State of Telangana,  
Rep. by its Public Prosecutor,  
High Court for the State of Telangana.

... Respondent

DATE OF JUDGMENT PRONOUNCED: 06.02.2023  
Submitted for approval.

**THE HON'BLE SRI JUSTICE K.SURENDER**

- 1 Whether Reporters of Local newspapers may be allowed to see the Judgments? Yes/No
- 2 Whether the copies of judgment may be marked to Law Reporters/Journals Yes/No
- 3 Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment? Yes/No

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**K.SURENDER, J**

\* THE HON'BLE SRI JUSTICE K. SURENDER

+ CRL.P. No. 1069 of 2023

% Dated 06.02.2023

# Mohammad Mahaboob Ali @ Mapasha Ali  
@ Akram and others

... Petitioner

And

\$ The State of Telangana,  
Rep. by its Public Prosecutor,  
High Court for the State of Telangana

... Respondent

! **Counsel for the Petitioner:** Sri D.Bhaskar Reddy

^ **Counsel for the Respondents:** Sri S.Sudershan  
Additional Public Prosecutor

> **HEAD NOTE:**

? **Cases referred**

**THE HONOURABLE SRI JUSTICE K.SURENDER****CRIMINAL PETITION No.1069 OF 2023****ORDER:**

The petitioners are aggrieved by the order of the Junior Civil Judge-cum-Judicial Magistrate of First Class at Vemulawada in CrI.M.P.No.298 of 2022 in Cr.No.224 of 2019 directing the petitioners/A1 to A3 herein to appear before the concerned police for the purpose of capturing photographs and video-graph.

2. The case of the prosecution is that these petitioners along with others are liable for committing murder. During the course of investigation certain CCTV footage was collected by the investigating agency and deposited before the learned Magistrate. A request was made by the police by filing a petition, seeking orders of the Court to direct the accused to be present for the purpose of taking photographs and video of the petitioners/A1 to A3 for the purpose of comparison with the persons found in the CCTV footage that was collected during the course of investigation.

3. Learned counsel appearing for the petitioners would submit that a similar application was made by the police in CrI.M.P.No.880 of 2019 seeking direction by the Magistrate to allow taking of photographs and video of the accused. The said CrI.M.P.No.880 of

2019 was dismissed by order dated 23.03.2021 and the very same prayer cannot be permitted again. For the said reasons, directions in the said impugned order have to be quashed.

4. On the other hand, Sri S.Sudershan, learned Additional Public Prosecutor submits that there is no error that is committed by the learned Magistrate in giving directions. Further, the case is serious in nature and the investigation should go on and accordingly, prayed to dismiss the petition.

5. As seen from the record, there was a prayer made by the prosecution in CrI.M.P.No.880 of 2019. However, the learned Magistrate has passed orders refusing the prayer and the operative portion of the said order is as under:

“6. After going through the averments and hearing arguments on both sides, this Court has observed the petitioner has filed the petition without any specific provision. As such the petition is not maintainable in the absence of specific provision. Hence this Court is inclined to dismiss the petition.

7. In the result, this petition is dismissed.”

6. The said petition was dismissed when the learned Magistrate found that there is no provision that was mentioned by the investigating agency for giving such directions.

7. Criminal Procedure (Identification) Act, 2022 came into force from 18.04.2022. Sections 2 (1)(b) and 5 of Criminal Procedure (Identification) Act, 2022 reads as follows:

“2(1) In this Act, unless the context otherwise requires,-

(a)....

(b) “measurements’ includes finger-impressions, palm-print impressions, foot-print impressions, photographs, iris and retina scan, physical, biological samples and their analysis, behavioural attributes including signatures, handwriting or any other examination referred to in section 53 or section 53A of the Code of Criminal Procedure, 1973.

5. Where the Magistrate is satisfied that, for the purpose of any investigation or proceeding under the Code of Criminal Procedure, 1973 or any other law for the time being in force, it is expedient to direct any person to give measurements under this Act, the Magistrate may make an order to that effect and in that case, the person to whom the order relates shall allow the measurements to be taken in conformity with such directions.”

8. Under Section 5 of the Act of 2022, when the Magistrate is satisfied that for the purpose of any investigation or proceeding, it is expedient to direct any person to give measurement, Magistrate can make an order to that effect.

9. The order passed in CrI.M.P.No.880 of 2019 was not made on facts but the Court found that there was no provision that was mentioned. Mentioning or mentioning of wrong provision in a petition is of no consequence, if the prayer made in the application can be adjudicated by the concerned court or has the power to pass orders in such an application. Though the earlier application for taking photographs and video of the accused was denied, the same will not bar the court from allowing the application second time, when

admittedly earlier petition was dismissed only on the ground of not mentioning provision of law and not on facts or law.

10. Learned counsel for the petitioners argued that the trial Court should have resorted to Section 54-A of Cr.P.C and not the present proceedings by directing the accused to give photographs and video, cannot be accepted.

11. Under Section 54-A of Cr.P.C, when a person is arrested on an allegation of committing an offence and his test identification is considered necessary, the concerned court can direct to hold test identification of such person. The present case is that the police collected CCTV footage during investigation and for the purpose of comparing and knowing whether the persons seen in the said CCTV footage are the accused or not, police had sought the photographs and video of the accused. Such course can be adopted by the police and the test identification parade under Section 54-A of Cr.P.C is different from what is sought to be investigated by the police by taking photographs and video.

12. Such course of investigation seeking an expert's help would resolve the issues to know whether the persons found in the CCTV footage are the petitioners/ accused or not. Either way the investigation would be completed in the said aspect. For the said reason, I do not find any infirmity in the order of the learned Magistrate and the accused are directed to appear before the police as directed by the learned Magistrate for the purpose of giving photograph and video.

13. With the above direction, the Criminal Petition is disposed off. Miscellaneous applications pending, if any, shall stand closed.

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**K.SURENDER, J**

Date: 06.02.2023

Note: LR copy to be marked.

B/o.kvs

**THE HON'BLE SRI JUSTICE K.SURENDER**

**CRIMINAL PETITION No.1069 OF 2023**

**Dt. 06.02.2023**

kvs



