

**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT**

**THE HONOURABLE MR.JUSTICE K. BABU**

**TUESDAY, THE 30<sup>TH</sup> DAY OF MAY 2023 / 9TH JYAISHTA, 1945**

**OP(CRL.) NO. 334 OF 2023**

**AGAINST JST 33/2018 OF JUVANILE JUSTICE BOARD, THODUPUZHA**

**PETITIONER:**

ELSAMMA, AGED 61 YEARS  
W/O.JOY, CHALAMANA HOUSE, PERUMPALLICHIRA P.O,  
KUMARAMANGALAM VILLAGE,  
THODUPUZHA, IDUKKI DISTRICT, PIN - 685581

BY ADV NIREESH MATHEW

**RESPONDENT:**

STATE OF KERALA  
REPRESENTED BY PUBLIC PROSECUTOR,  
HIGH COURT OF KERALA, PIN - 682031

BY SRI.G.SUDEER-PUBLIC PROSECUTOR

THIS OP (CRIMINAL) HAVING COME UP FOR ADMISSION ON  
30.05.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**'C.R'****JUDGMENT**

The prayers in this Original Petition (Crl.) are as follows:

"(i) Direct the Juvenile Justice Board, Thodupuzha to issue the copy of the 'B' diary in J.S.T.No.33/2018 mentioned in Ext.P1 application within a time frame to be fixed by this Hon'ble Court.

(ii) Grant such other and further reliefs as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case."

2. The petitioner is the defacto complainant in Crime No.1938/2017 of Thodupuzha Police Station. The above crime was registered against six persons. One among them is a Child in Conflict with Law.

3. The proceedings against the Child in Conflict with Law are pending before the Juvenile Justice Board, Thodupuzha.

4. The defacto complainant filed an application before the Juvenile Justice Board, Thodupuzha seeking a copy of the 'B' diary in

J.S.T.No.33/2018, which arose from the above said crime. It is submitted that the Juvenile Justice Board declined to grant the copy of the 'B' diary. Therefore, the petitioner seeks a direction to the Juvenile Justice Board to issue a copy of the 'B' diary in J.S.T No.33/2018.

5. Heard the learned counsel for the petitioner Sri.Nireesh Mathew, the learned Public Prosecutor Sri.G.Sudheer and the learned Amicus Curiae Sri.John S.Ralph.

6. The learned counsel for the petitioner contended that the Juvenile Justice Board is bound to issue a copy of the 'B' diary.

7. The learned Public Prosecutor submitted that the proceedings before the Juvenile Justice Board may contain the reports relating to the child, the confidentiality of which is to be maintained under Section 99 of the Juvenile Justice (Care and Protection of Children) Act, 2015 (for short 'the Act'), and therefore, the prayer of the petitioner cannot be allowed.

8. The learned Amicus Curiae brought to my attention the various provisions in the Criminal Rules of Practice and the Civil Rules of Practice and submitted that in criminal Courts, there is no practice of maintaining

'B' diary, and what is available is the 'Proceedings Paper' as contained in Rule 73 of the Criminal Rules of Practice and 'A' diary register as provided in Rule 72 of the Rules. The learned Amicus Curiae also submitted that 'B' diary is maintained only in Civil Courts as provided in Rule 383 of the Civil Rules of Practice. The learned Amicus Curiae further submitted that Rule 384 of the Civil Rules of Practice is a corresponding provision to Rule 73 of the Criminal Rules of Practice.

9. Rules 72 and 73 of the Criminal Rules of Practice are extracted below:

**"72. Diary-** Every Court shall maintain a diary in Administrative Form No.10. The entries shall be signed by the Presiding Officer on the day to which they relate.

(2) Every Court shall maintain a hearing book in Administrative Form No.11.

**73. Proceedings Paper-** (1) Every Judge or Magistrate shall maintain a proceedings paper on judicial Form No.61 furnishing therein full information as to the several judicial steps taken in the case such as reasons for adjournments, issue of warrants to the accused or witnesses, marking of documents, examination of witnesses, framing of charges, questioning of the accused, hearing arguments and pronouncing judgment or order. The entries shall be neatly written by the judge or Magistrate and initialled by him in open Court.

(2) When records are sent up to a Court of appeal or

revision or forwarded to a Court to which the case is transferred or committed, a typed or neatly written copy of the proceedings paper shall be placed with the records."

10. Rules 382, 383 and 384 of Civil Rules of Practice are extracted below:

**382.A.Diary-** In all suits, appeals and miscellaneous proceedings, a general diary shall be maintained setting out only the judicial work done in each case. Entries such as filing of suits, appeals, petitions and issue and return of processes etc., which are only ministerial, shall be omitted. The A diary shall be signed by the Judge himself.

**383. B Diary-** For showing the dates and the nature of the proceedings in the several stages of a suit, appeal, miscellaneous or execution petition, a B Diary in loose sheets in Form No.72, 73, 74 or 75 as the case may be, shall be maintained to be kept with the records of the case. Every step, including ministerial steps, taken in the suit or other proceedings has to be minuted consecutively in the B Diary. The B Diary shall be maintained in both contested and uncontested cases and shall be signed by the Chief Ministerial Officer.

**384. Proceedings Paper-** A proceedings paper for each suit, appeal or miscellaneous matter in Form No.76 shall be maintained furnishing therein full information as to the several judicial steps taken in the proceedings, such as adjournments with reasons, documents filed, witnesses examined, further steps ordered to be taken in the case of absent witnesses etc. The proceedings paper shall be written and signed or initialled by the Judge himself in open Court."

11. Rule 72 of the Criminal Rules of Practice refers to

Administrative Form No.10 ('A' Diary Register). It also refers to Form No.11 in which only the posting dates need be recorded. Rule 73 of the Rules deals with Proceedings Paper. Rule 73 of the Rules mandates the presiding officer to maintain a Proceedings Paper furnishing therein full information as to the several judicial steps taken in the case such as reasons for adjournments, issue of warrants to the accused or witnesses, marking of documents, examination of witnesses, framing of charges, questioning of the accused, hearing arguments and pronouncing judgment or order. Both these forms have to be signed by the presiding officer.

12. 'A' Diary Register as provided in Rule 72 of the Criminal Rules of Practice is prepared by the ministerial staff of the Court, and the same is signed by the presiding officer concerned. The Proceedings Paper under Rule 73 of the Rules has to be written by the presiding officer and initialled by him in open Court. Judicial Form No.61 refers to the Proceedings Paper on which the presiding officer has to write the proceedings of the case from the first hearing till the disposal.

13. Rule 382 of the Civil Rules of Practice deals with 'A' Diary

which mandates the keeping of a general diary setting out the judicial work done, and this diary shall be signed by the Judge. Rule 383 of the Civil Rules of Practice refers to 'B' Diary in which dates and nature of the proceedings have to be recorded. 'B' Diary is loose sheets in form Nos.72 to 75 of the Civil Rules of Practice to be kept with the records of the case. It is to be signed by the Chief Ministerial Officer and not by the judicial officer concerned.

14. The Criminal Rules of Practice do not mandate maintenance of a 'B' Diary by the Criminal Courts. 'B' Diary is maintained only in Civil Courts. However, in the Case Information System, there is an option for 'B' diary.

15. Juvenile Justice (Care and Protection of Children) Act, 2015 and the Juvenile Justice (Care and Protection of Children) Model Rules, 2016, do not speak about maintenance of proceedings papers or diaries. Rule 77 of the Juvenile Justice (Care and Protection of Children) Model Rules speaks about the maintenance of registers which do not include 'A' Diary or 'B' Diary.

16. Section 4 of the Act deals with 'Juvenile Justice Board'. Sub-section (2) of Section 4 of the Act says that the Board shall consist of a Metropolitan Magistrate or a Judicial Magistrate of First Class not being Chief Metropolitan Magistrate or Chief Judicial Magistrate (Principal Magistrate) with at least three years experience and two social workers selected in such manner as may be prescribed, of whom at least one shall be a woman, forming a Bench and every such Bench shall have the powers conferred by the Code of Criminal Procedure, 1973 on a Metropolitan Magistrate or, as the case may be, a Judicial Magistrate of First Class.

17. Section 14(5)(e) of the Act says that inquiry of serious offences shall be conducted by the Board, by following the procedure, for trial in summons cases under the Code of Criminal Procedure, 1973. Sub-section (2) of Section 15 of the Act also says that for disposal of the matter, the Board shall follow the procedures, as far as may be, for trial in summons cases under the Code of Criminal Procedure, 1973.

18. The Juvenile Justice Board is a Court of Justice as per Section



20 of IPC. Section 20 of IPC reads thus:

"20. "Court of Justice".—The words "Court of Justice" denote a Judge who is empowered by law to act judicially alone, or a body of Judges which is empowered by law to act judicially as a body, when such Judge or body of Judges is acting judicially. Illustration A panchayat acting under 22 Regulation VII, 1816, of the Madras Code, having power to try and determine suits, is a Court of Justice."

19. The proceedings before the Juvenile Justice Board are controlled by Cr.P.C, and therefore, the Criminal Rules of Practice are applicable to the Juvenile Justice Board.

20. The proceedings of the Court are the documents forming the acts or records of the acts of a Judicial Officer, and hence, they are public documents within the meaning of Section 74 of the Indian Evidence Act.

21. The contention of the learned Public Prosecutor is that as per Section 99 of the Act, the reports relating to the child are to be treated as confidential. Section 99 of the Act reads thus:

**"99. Reports to be treated as confidential:**

1) All reports related to the child and considered by the Committee or the Board shall be treated as confidential:  
Provided that the Committee or the Board, as the case may be, may, if it so thinks fit, communicate the substance thereof to another Committee or Board or to the child or to the child's parent or guardian, and may give such Committee or the

Board or the child or parent or guardian, an opportunity of producing evidence as may be relevant to the matter stated in the report.

(2) Notwithstanding anything contained in this Act, the victim shall not be denied access to their case record, orders and relevant papers."

22. The reports, as mentioned in Section 99 of the Act, do not come under the proceedings paper as referred to in Rule 73 of the Criminal Rules of Practice.

23. Normally, the reports relating to the child, as mentioned in Section 99 of the Act, may not find a place in the Proceedings Paper prepared under Rule 73. The learned Amicus Curiae submitted that there may be a situation where the proceedings paper may contain a confidential report relating to the child, and in such cases, the Juvenile Justice Board cannot issue copies of such proceedings.

24. In the present case, the petitioner applied for getting a certified copy of the 'B' Diary, which is not required to be maintained as per the Criminal Rules of Practice. The Juvenile Justice Board maintains Proceedings Paper furnishing therein the judicial steps taken in the case. Therefore, if the petitioner makes an application for getting the

Proceedings Paper as per Rule 222 of Criminal Rules of Practice, the Juvenile Justice Board shall issue the same, subject to the restrictions contained in Section 99 of the Act. The learned counsel for the petitioner, relying on Sub-section (2) of Section 99 of the Act, submitted that the victim/the defacto complainant is entitled to have access to their case record, orders and relevant papers. The right of the victim, as provided in Sub-section (2) of Section 99 of the Act, is only subject to the restrictions contained in Sub-section (1) of Section 99 of the Act. The learned Public Prosecutor submitted that the application seeking certified copy of 'B' diary had already been rejected.

25. If the petitioner makes an application seeking certified copy of the Proceedings Paper, the Juvenile Justice Board shall consider the same in accordance with law.

The Original Petition (Crl.) is disposed of as above.

**Sd/-**

**K. BABU**

**JUDGE**

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**APPENDIX OF OP(CRL.) 334/2023**

PETITIONER EXHIBITS

Exhibit-P1	TRUE PHOTOCOPY OF THE FINAL REPORT IN JST.NO.33/2018 PENDING ON THE FILES OF THE JUVENILE JUSTICE BOARD, THODUPUZZHA
Exhibit-P2	A TRUE PHOTOCOPY OF THE COPY APPLICATION FILED BY THE PETITIONER DATED 06.01.2023

RESPONDENT'S EXHIBITS: NIL