

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 18.08.2015

CORAM

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

Cr1.OP No.20741 of 2015

and M.P.No.1 of 2015

K.Sureshkumar .. Petitioner
Vs

C.Sandhumani ... Respondent

Prayer :- Criminal Original Petition is filed under Section 482 Cr.P.C., praying to set aside the order passed in C.M.P.No.2134 of 2015 in S.T.C.No.210 of 2014 on the file of Judicial Magistrate, Fast Track Court No.1, Erode dated 01.07.2015 by allowing this Criminal Original Petition.

For Petitioner :Mr.Marudhachalamurthy

ORDER

This Criminal Original Petition has been filed praying to set aside the order passed in C.M.P.No.2134 of 2015 in S.T.C.No.210 of 2014 on the file of Judicial Magistrate, Fast Track Court No.1, Erode dated 01.07.2015.

2. Heard Mr.Marudhachalamurthy, the learned counsel for the petitioner.

3. It is seen that the petitioner is accused for the offence under Sections 138 & 142 of Negotiable Instrument Act. During the course of cross-examination of the complainant, the accused had asked questions whether the complainant had sent some SMS messages to his mobile no., for which, the complainant has stated that she does not remember and she could have sent some greetings and other SMS messages.

4. Based on this evidence, the petitioner/accused filed petition under Section 91 Cr.P.C., for direction to M/s.Vodafone Services to produce all the call lists and SMS messages that emanated from the mobile phone of the complainant from 2010 to 2014.

5. It is seen that for invoking Section 91 Cr.P.C., the petitioner should first satisfy the Court that such a record is available with the person and that the said record is necessary or desirable for the purpose of the case. In State of Orissa Vs Debendra Nath Padi [2004 AIR SCW 6183], the Hon'ble Supreme Court has held that provision of Section 91 Cr.P.C., cannot be used for a roving enquiry.

6. In this case, the petition filed by the petitioner itself, does not disclose how the SMS details and call details of the complainant is necessary for the just decision of the case. That apart, such call details and SMS details will invade into the privacy of an individual, guaranteed by Article 21 of the Constitution of India and that cannot be infringed via Section 91 Cr.P.C.,

6. In the result, the petition is devoid of merits and the Trial Court order is confirmed. Accordingly, this Criminal Original Petition is dismissed. Consequently, the connected miscellaneous petition is closed.

Sd/-

Asst.Registrar(LA)

/true copy/

Sub Asst. Registrar

To,

The Judicial Magistrate,

Fast Track Court No.1, सत्यमेव जयते
Erode.

+1 cc to Mr.R.Marudhachalamurthy Advocate sr.43735

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