

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 678 OF 2015

The State of Maharashtra,
Through Police Inspector,
ACB, Aurangabad.

Petitioner

VERSUS

Vinod Jagannath Chaudhari
Age : 38 years, Occu : Service,
R/o : At present C/o Mr. Ram Ithape,
Shripad Housing Society
Behind Shri Flour Mill, Near Honaji Nagar,
Jatwada Road, Harsul, Aurangabad.

Respondent

Mr. S. G. Karlekar, APP for the Petitioner/State.
Mr. N. S. Ghanekar, Advocate for Respondent.

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(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 17/06/2016

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

2. The petitioner/State is aggrieved by the order dated 19.03.1015 passed by the learned Additional Sessions Judge, Aurangabad below

application Exhibit-4 in Special Case No. 53 of 2014.

3. The learned APP appearing on behalf of the petitioner has strenuously criticized the impugned order primarily on two grounds. Firstly, that the application Exhibit-4 sets out vague and ambiguous pleadings and secondly, the impugned order is a cryptic order and that no reasons are assigned while passing the said order.

4. The learned APP submits that merely because the accused filed an application seeking a direction to the cellular services provider to preserve the record with regard to the cellular phones, the trial Court has passed the order and particularly when the two cellular phones have no concern with the proceedings. Such an order should be passed for justifiable reasons.

5. He further submits that any application inviting a Judicial order ought to set out the purpose for which the jurisdiction of the Court is invoked and justify the prayer made. He places reliance on the judgment of the Hon'ble Supreme Court in the matter of **Om**

Prakash Sharma Vs. CBI, Delhi, (2000) 5 SCC 679. He has specifically relied on paragraph Nos.6 and 7 of the said judgment.

6. Learned APP further submits that the application Exhibit-4 has been filed not for merely seeking the preservation of CDR and SDR records, but aimed at exerting pressure on the Investigating Officer for self-serving purposes. The intention of the accused in seeking such an order is to exert pressure on the Investigating Officer by holding out a threat that the record is likely to reveal objectionable material. The learned APP, therefore, submits that such applications need to be rejected in order to avoid an oblique motive of the accused being achieved.

7. Mr. Ghanekar learned Advocate for the respondent submits that there is no oblique motive behind moving application Exhibit-4. He submits that the respondent/accused has gathered information that the complainant and the Investigating Officer were hand in gloves and it was for a considerable duration that they were in touch with each other on two cellular phones maintained by each of them

whose numbers are mentioned in the prayer clause 'B' of Exhibit-4. He further submits that the CDR/SDR record would reveal certain conversation between the complainant and the Investigating Officer and that would support the case of the respondent/accused, who is said to be apprehended in an anti corruption case.

8. He further submits that the accused is not required to disclose his defence at a primary stage in the matter. The CDR is such record which is normally maintained by the cellular services for a period of about one year. After the said period, the record is normally destroyed. The preservation of Call Detail Records (CDR) (CDR) and the Subscriber Detail Records (SDR) would enable the material evidence coming before the Court.

9. He has placed reliance upon the judgment of this Court in the matter of **Kamal Ahmed Mohammed Vakil Ansari & ors. Vs. The State of Maharashtra 2014 ALL MR (Criminal) 5055**, to support his contention that the CDR is required to be preserved if it would eventually bring the truth before the Court.

10. He further submits that application Exhibit-4 had put forth two fold prayers. Firstly, that the CDR and SDR along with tower location was to be preserved and secondly, the said record was to be produced before the Court. By the impugned order, the learned Court has only directed preservation of the CDR and SDR and tower location and has not yet considered the prayer for production of the said record.

11. He, therefore, submits that in the subsequent stages in the matter, he may move an application under Section 91 of the Code of Criminal Procedure for producing the record and at the relevant time, the Say of the prosecution would be considered and the learned Court would decide the relevance, significance and justifiability for production of the record. That can be independently decided by the Court.

12. I have considered the submissions of the learned Advocates for the respective sides.

13. It is trite law that an accused can not be compelled to disclose his defense at a stage at which it is not right to do so. Normally, a statement under Section 313 of the Code of Criminal Procedure upon being recorded would disclose the defence of the accused since the Magistrate would put a question to him as to whether, he would like to say anything with regard to the charges levelled upon him. It is given to understand that application Exhibit-4 has been filed prior to the recording of statement under Section 313.

14. Insofar as the submissions of the learned APP that the impugned order is cryptic in nature is concerned, I have no reason to disagree with his submissions. In the peculiar backdrop of this case merely because the accused is not required to disclose his defence, would not mean that the learned Court passing an order should pass a cryptic order. The learned Court is expected to support its order with reasons since reasons are fundamental to the conclusions drawn by the Court and they indicate that the Court has considered the material on record and has applied its mind to such material

while granting or rejecting the prayer put forth. However, I have no reason to disagree with the conclusions of the learned Additional Sessions Judge since the application is rightly allowed.

15. In the light of the above and upon considering the reports cited by both the sides, I am disposing of this petition without interfering in the impugned order with the observation that the order is restricted only to the extent of the preservation of the CDR, SDR and tower location. Rule is discharged.

16. In the event, the accused desires to seek the production of the said record, he shall have to move a separate application for the same and the learned Trial Court shall consider the said application after hearing all the sides, on its own merits and in accordance with law applicable.

(RAVINDRA V. GHUGE, J.)