

IN THE HIGH COURT OF BOMBAY AT GOA
CRIMINAL WRIT PETITION NO.81 OF 2018

Mrs. Vina Patkar,
wife of Mr.Dajvip Patkar,
Indian National, major in age,
unemployed, residing at
c/o Vibha Nayak,
"Sita Nivas", near Safy Masjid,
Baina, Vasco da Gama, Goa. .. Petitioner

V/s

Mr. Dajvip Patkar,
son of Mr. Vilas Patkar,
Indian National, major in age,
Advocate, resident of B-19,
Chamundavan, Housing Board
Colony, Mapusa, Goa. .. Respondent

Ms. Maria Caroline Collasso, Advocate for the petitioner.

Shri D. J. Pangam, Advocate for the respondent.

CORAM :- C. V. BHADANG, J.

Date : 14th June, 2018.

ORAL JUDGMENT :

Rule, made returnable forthwith. The learned Counsel for the respondent waives service. Heard finally by consent of parties.

2. By this petition, the petitioner (original accused no.1 before the learned Magistrate) is challenging the order dated

28/02/2018, issuing summons to Bharat Sanchar Nigam Ltd (BSNL) to produce call data records (CDR) and text messages in respect of the mobile number of the petitioner, for the period from 01/08/2013 to 30/10/2017.

3. It is the contention of the learned Counsel for the petitioner that the Magistrate is yet to record the verification of the complainant and is yet to decide on the question of issuance of process. It is contended that before issuing process and taking cognizance, it was not open for the learned Magistrate to seek call records from the BSNL. It is submitted that even otherwise, no case is made out for seeking the call records of the petitioner. It is submitted that the order is totally unreasoned.

4. The learned Counsel for the respondent submits that the call data records are relevant for deciding the controversy between the parties and as such, there was nothing wrong in the Magistrate calling for such record.

5. I have carefully considered the circumstances and the submissions made.

6. The procedure for dealing with a private complaint by

Magistrate, is found in Section 200 onwards of Cr.P.C. Under the applicable procedure, the Magistrate is expected to record verification of the complainant and then first decide as to whether a case for taking cognizance / issuance of process, is made out. In an appropriate case, the Magistrate can postpone such issuance of process and while doing so, can direct enquiry to be conducted in accordance with Section 202 of Cr.P.C. Nothing of this sort has been done in the present case. Admittedly, the Magistrate has neither recorded the verification of the complainant nor has decided upon the question of issuance of process. In such circumstances, in my considered opinion, the Magistrate could not have directed the CDR to be called. That apart the impugned order also does not show that the Magistrate has set out any reasons for doing so. Although elaborate reasons cannot be expected in the matter of the present nature, there should be some reasons to disclose that the Magistrate has applied mind and has found it necessary to seek such call data records. In that view of the matter, the following order is passed :

- (i) The petition is allowed.
- (ii) The impugned order is hereby set aside.
- (iii) The learned Magistrate shall first record verification of the complainant and shall then decide as to whether a case for taking cognizance / issuance of process is made out or

not.

(iv) In the event the learned Magistrate decides to issue process, it would be open to the learned Magistrate to consider the application seeking CDR, after hearing the parties on its own merits and in accordance with law.

(v) Rule is made absolute in the aforesaid terms.

C. V. BHADANG, J.

SMA