

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 24.03.2021	Delivered on 25.03.2021
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CORAM:

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

CrI.OP No.5541 of 2021

and

CrI.MP.No.3568 of 2021

B.William

..Petitioner

.Vs.

1.State Rep.by
The Inspector of Police,
E4-Abhiramapuram Police Station,
Chennai.

2.P.Ponswamy

3.J.Mary Pushpam

4.Basil

5.Boris

6.Yesurajan

7.James Sathish Kumari

8.Murugen

9.Selvaprakash

10.Iyappan

11.A.A.Mohan

..Respondents

PRAYER : Criminal Original Petition is filed under Section 407 of the Code of Criminal Procedure, to transfer the case in S.C.No.348 of 2015, pending before 1st Additional City Civil Court, Chennai to any other Sessions Court in same jurisdiction or any other District.

For Petitioner : Mr.G.Murugendran

For Respondents : Mr.N.Vijayaraj
Special Public Prosecutor
for R 1

ORDER

This Petition has been filed seeking for the transfer of the case pending before the 1st Additional City Civil Court, Chennai in S.C. No. 348 of 2015.

2.The Petitioner is facing trial before the court below for offence under Sections 307 r.w. 120-B, 341 and 302 of the Indian Penal Code, 1860 (hereinafter referred to as "IPC"). There are totally 10 accused persons in this case, and the Petitioner is ranked as A5.

3. This case has a chequered history in terms of the number of times it has reached this court at various stages. This Court passed an order in Crl. O.P. 33856 of 2019, dt. 17.02.2020 wherein, the trial court was directed to complete the proceedings within a period of one month. This period has ended long back and the proceedings gets prolonged due to various petitions filed by the accused persons at each stage.

4. The Petitioner, filed Crl. M.P. No. 6510 of 2020, under Section 91 of the Code of Criminal Procedure, 1973 (hereinafter referred to as "Cr.P.C") to direct the nodal officers of 2 telecom companies to produce Call Detail Records (hereinafter referred to as "CDR") and the details of the persons in whose name the petition-mentioned mobile numbers stood. An order was passed on 03.02.2021, directing the concerned nodal officers to produce the CDR of the cell phone numbers given in the petition for the period from 01.01.2013 to 06.05.2015, if available, along with the details of the persons to whom those numbers belong.

5. Pursuant to the above orders, the nodal officers were present before the court on 17.02.2021 and they filed their reports, and a copy was also furnished to both the sides. Thereafter, the matter was called on 26.02.2021 and posted for final arguments on 01.03.2021.

6. The proceedings dt. 26.02.2021, has now been made as a cause of action for filing this transfer petition, on the ground that the court below on its own, closed the defence side evidence even without giving an opportunity to the Petitioner to file a written statement under Section 233(2), Cr.P.C. According to the Petitioner, an adjournment petition was filed under Section 309, Cr.P.C., stating that a transfer petition is filed before this Court, and this was not even entertained, and the court below proceeded to post the case for arguments. Therefore, according to the Petitioner, the court below is proceeding further in a hasty manner, and the Petitioner does not have confidence in conducting the case. Accordingly, the Petitioner has sought for the transfer of the proceedings.

7. Heard Mr. S. Murugendran, learned counsel for Petitioner and Mr. N. Vijayaraj, learned Special Public Prosecutor appearing on behalf of the 1st Respondent.

8. At the outset, this Court without any hesitation, has to hold that this is yet another petition filed only with a view to drag on the proceedings. The application filed by the Petitioner under Section 91, Cr.P.C. was dealt with and an order was passed, and the nodal officers have submitted their reports on 17.02.2021. It is clear from these reports that the CDR of the mobile numbers for the period from 01.01.2013 to 06.05.2015 is not available since it has already been destroyed. The report also makes it clear that even if the

details have been archived in tapes, the data that is retrieved cannot be authenticated. The reports form part of the case records and it satisfies the order passed by the court below, while allowing the application under Section 91, Cr.P.C.

9.The Petitioner is not seeking these details for the first time. It is reported that he had filed such similar applications even on earlier occasions and withdrawn the same. It is a known fact that CDRs are maintained by the telecom companies only for a maximum period of one year, and thereafter, it is destroyed. For some curious reasons, the Petitioner waits till the year 2020 and seeks details pertaining to the year 2013 to 2015.

10.The accused persons have made up their mind to somehow drag on the proceedings. The incident took place in the year 2013 and till today, the proceedings are yet to be completed. This happens in spite of the fact that this Court had already fixed a time limit for the completion of the proceedings.

11. The Petitioner has filed similar transfer petitions before the Principal Sessions Court in the years 2017 and 2021, respectively, before approaching this Court. Every time, some frivolous reason is cited and the proceedings are kept pending.

12. The case is now at the stage of final arguments and it looks like the accused persons do not want the proceedings to conclude. Therefore, this transfer petition has been filed before this Court for a frivolous reason. The accused persons have sufficiently humiliated the prosecution and frustrated the attempts for the early completion of the case. This Court does not find any merits in the present petition and accordingly the same is dismissed. The court below is directed to proceed further with the final arguments and complete the proceedings within a period of four weeks from the date of receipt of copy this Order. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

KP

To

1. The Inspector of Police,
E4-Abhiramapuram Police Station,
Chennai.

2. The Ist Additional City Civil Court,
Chennai.

3. The Public Prosecutor,
High Court, Madras.

Order in
Crl.OP No.5541 of 2021

GPL (CO)
CSR 25.03.2021