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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.11.2021

CORAM:

THE HON'BLE MR.JUSTICE N.SATHISH KUMAR

Crl.O.P.No.19131 of 2017

and

Crl.M.P.Nos. 11612 & 11613 of 2017

I.Pravinkumar,
S/o. Ilangovan

... Petitioner

Versus

1. The Inspector of Police,
CBCID Police Station,
Police Department,
Puducherry.
(Crime No.8 of 2013)

2. C.Maran,
Inspector of Police,
Traffic Police Station (North),
Puducherry.

3. I.R.C.Mohan,
now working as Deputy Commandant,
Indian Reserve Battalion,
Police Department,
Puducherry.

... Respondents

PRAYER : Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for entire records in connection with the Final Report dated 06.03.2017 filed by the 1st respondent in C.C.No.26 of 2017 on the file of Chief Judicial Magistrate, Puducherry and quash the same.

For Petitioner : Mr.P.Parthiban

For Respondents : Mr.V.Balamurugane,
Addl. Public Prosecuor
(Pondy.) for R1

No appearance for R2



ORDER

(This case has been heard through video conference)

This Criminal Original Petition has been filed to quash the final report filed under Sec. 66, 66-C, 72 of Information Technology Act, 2000 r/w 34 of I.P.C.

2. It is the case of prosecution that on 17.12.2012 at about 19.09 hours, under the instructions of accused/A1, A2 and A3 dishonestly and fraudulently sent a false requisition to the Nodal Officer, Aircel Cellular Limited, Chennai by misusing the official email ID mudps.pon@nic.in of Muthaliarpur police station to furnish CDR details of the mobile No.9423 26555 of VMC Sivakumar, the then Member of Legislative Assembly for the period from 17.08.2012 to 20.08.2012 for the purpose of investigation in Crime No.159 of 2012 under Sec.302 I.P.C., thereby collected the unnecessary unrelated and irrelevant information of CDR details of Mr.VMC Sivakumar. Therefore, it is the main contention of learned counsel appearing for petitioner that while A1 was serving as Sub-Inspector of Police, he has arrested some of the accused. On 19.08.2012, M.L.A. Mr.VMC Sivakumar influenced A1 to release the accused, however, the same was not accepted by A1. As a result, he was transferred mala fide. The same was challenged before the Central Administrative Tribunal, wherein he has specifically alleged, what has been conspired between him and MLA in the cell phone conversation. However, the 1st respondent has concluded the investigation and took a stand that no such conversation was taken place. However, he has established that there were conversations between then MLA and this petitioner/A1 in a personal number and call details also perused. Thereafter, a reply statement was filed by the respondents admitting the verbal conversation. Based on the above, transfer order is set aside. Now, the prosecution has been launched mainly on the ground that the petitioner, violating the standing order, obtained CDR details of the cell phone used by MLA, thereby committed offence under Sec. 66, 66-C, 72 of Information Technology Act, 2000.

3. The learned Addl. Public Prosecutor appearing for 1st respondent would submit that there is a standing order issued by the Government, which would clearly contemplate the procedure for obtaining call details recording. It is his contention that only the District Superintendent of Police has been empowered to get call details on record. Violating the same, the petitioner/accused has obtained CDR details, thereby he has committed the offence. Hence, he prayed for dismissal of this petition. However, the factum of transfer of A1, which was challenged before the Central Administrative Tribunal has not been disputed. Further, the allegations made in the petition and the counter allegations before the Central Administrative Tribunal was also not disputed. Now, in the above background, it should be seen whether the offence



charged is made out against the accused or the entire complaint itself is the result of vindictive in nature and only to wreck vengeance, as against the order of quashment of transfer order of the petitioner/A1. The offence charged under Sec. 66, 66-C, 72 of Information Technology Act, 2000. Sec.66 of the Act reads as follows :-

"66. Computer related offences. - If any person, dishonestly or fraudulently, does any act referred to in section 43, he shall be punishable with imprisonment for a term which may extend to three years or with fine which may extend to five lakh rupees or with both."

4. To attract the offence under Sec.66, the accused must have dishonestly or fraudulently do any act falling within the ambit of Sec.43. It is not the case of prosecution that the accused has committed any of the instances as contemplated under Sec.43 of the Act except contending that the accused has used email id of the police station to get the CDR report. Sec.66-C deals with the punishment for identity theft. It is not the case of prosecution that the accused has committed offence using electronic signature, password or any other unique identity of any other person. Sec. 72 deals with penalty for breach of confidentiality and privacy. It is to be noted that what has been done by the accused only to safeguard the interest from the malafide transfer. He has established the same before the Central Administrative Tribunal by producing CDR details. It is established that on the date of occurrence, when Legislative Member has influenced him to release the accused, as he has not agreed, he was transferred. It is not the case of prosecution that MLA has not spoken to A1. Therefore, when the details indicating that there were exchange of phone calls, it cannot be said that such details has in fact intruded the privacy of MLA. A1 has taken such a stand only to prove the malafide transfer because of such incident. Therefore, at any stretch of imagination, merely CDR has been filed at cannot be said that he has breached the confidentiality and intruded the privacy of somebody. Therefore, the prosecution launched by the State as against the petitioner is nothing, but vindictive in nature as the very transfer order was challenged, wherein superior officer in the police department was made as respondent, and took a stand as if there is no conversation between MLA and Sub-Inspector. However, the same found to be false by CDR details. Now, the sanction has also been granted only by D.I.G., who was a party in the previous proceedings, in fact, he has sided with the then MLA. Therefore, all the facts in the complaint would clearly indicates that the complaint is nothing, but motivated and vindictive in nature in order to wreck vengeance against the petitioner, who has exposed malefideness in his Trusties. Hence, such initiation of complaint is nothing, but abuse of process of law.



5. In such view of the matter, this Court is of the view that the entire complaint is motivated one and it cannot be allowed to continue. Accordingly, the final report filed against the accused in C.C.No. 26 of 2017 is hereby quashed. Though this petition has been filed by A1, A2 and A3, who were also included in the charge, merely because they have acted on the instructions of A1 while obtaining CDR details. Even assuming that they have violated the standing order in getting CDR details, the same will lead only to initiate disciplinary proceedings, which is also not initiated so far. In such view of the matter, this Court is of the view that the entire prosecution even against A2 and A3 are liable to be quashed. Further, this Court is also of the view that continuing the prosecution is highly vindictive in nature. Therefore, this Court hope that the respondents would realise that no vindictive action will be taken against the petitioner once again. Accordingly, this Criminal Original Petition is allowed. Consequently, the connected Criminal Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CO)

//True copy//

Sub Assistant Registrar

rpp/gd

To

1. The Chief Judicial Magistrate,
Puducherry.
2. The Inspector of Police,
CBCID Police Station,
Police Department,
Puducherry.
3. The Inspector of Police,
Traffic Police Station (North),
Puducherry.
4. The Deputy Commandant,
Indian Reserve Battalion,
Police Department,
Puducherry.
5. The Public Prosecutor,
Puducherry.



Copy To

The Director General of Police,
Puducherry.

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+1cc to Mr.P.Parthiban, Advocate SR.No.59238

CRL.O.P.No.19131 of 2017

PCH (CO)

GMV (08/12/2021)