

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CRL.REV.P. 276/2018 & CRL.M.A. 5747/2018 (Delay)

Date of decision: 28th January, 2021

IN THE MATTER OF:

THE STATE GOVT OF NCT OF DELHI Petitioner

Through Ms. Kusum Dhalla, APP for State

versus

NIZAMUDDIN @ NIZAM Respondent

Through Mr. Sumer Kumar Sethi, Advocate

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

SUBRAMONIUM PRASAD, J.

1. This revision petition has been filed by the State challenging the order dated 04.12.2017 whereunder, the learned Additional Sessions Judge, Karkardooma Courts, Delhi has directed the Investigating Officer to procure the call detail records and location via mobile towers of all members of the raiding team and also of the secret informer and himself. The Investigating Officer was also directed to procure the mobile phone of the accused from the *malkhana*.

2. It is the contention of the State that the trial court has failed to appreciate that the said order amounts to interference in the investigation process and the accused does not have any right to have the information about how the investigation is progressing as the accused is not entitled to call records. It is also submitted by the State that the documents sought to

be produced have not been a part of the charge-sheet and details of the personal information of the Investigating Officer of the case would amount to the intrusion on the privacy of the Investigating Officer. It is also stated that apart from information regarding this case, details of other cases would also be there in the mobile of the Investigating Officer which the accused is not entitled to see.

3. Heard Ms. Kusum Dhalla, learned APP appearing for the State and Mr. Sumer Kumar Sethi, learned counsel for the respondent.

4. Under Section 91 CrPC, whenever any court considers production of any document or any other thing necessary or desirable for the purpose of investigation, inquiry, trial or other proceeding under this Code, then the court can issue summons to the person, in whose possession such document or thing is believed to be, requiring him to produce it in the court.

5. The power of the Magistrate under Section 91 CrPC to call for the call records of the Investigating Officer has been discussed in Attar Singh v. State (NCT of Delhi) reported as **2016 SCC OnLine Del 3907** wherein this Court upheld the order of the trial court directing the production of call records of the Investigating Officer. All contentions raised in this case were taken by the prosecution there also and they were rejected on the facts of the case.

6. This Court in its judgment dated 05.11.2019 in CrI.M.C. 3161/2019 titled as Narcotics Control Bureau v. Gaurav Kumar has observed as under:

“6. On perusal of the aforesaid provision of law, it is clear that whenever any Court or any officer in charge of a Police Station considers that the production of any document or other thing is necessary or desirable for the purposes of any

investigation, inquiry, trial or other proceeding under this Code by or before such Court or officer, such Court may issue summons, or such officer a written order, to the person in whose possession or power such document or thing is believed to be, requiring him to attend and produce it, or to produce it, at the time and place stated in the summons or order.

7. The similar issue came before the Hon'ble Supreme Court in the case of Suresh Kumar Vs. Union of India 2015 (3) JCC (Narcotics) 121 whereby the Hon'ble Supreme Court held as under:-

“8. All that we are concerned with is whether call details which the appellant is demanding can be denied to him on the ground that such details are likely to prejudice the case of the prosecution by exposing their activities in relation to similar other cases and individuals. It is not however in dispute that the call details are being summoned only for purposes of determining the exact location of the officers concerned at the time of the alleged arrest of the appellant from Yashica Palace hotel near the bus stand. Ms. Makhija made a candid concession that any other information contained in the call details will be of no use to the appellant and that the appellant would not insist upon disclosure of such information. That in our opinion simplifies the matter in as much as while the call details demanded by the appellant can be summoned in terms of Section 65B of the Indian Evidence Act such details being relevant only to the extent of determining the location of officers concerned need not contain other information concerning such calls received or made from the telephone numbers concerned. In other words if the mobile telephone numbers caller details of the callers are blacked out of the information summoned from the companies concerned it will protect the respondent against any possible prejudice in terms of exposure of sources of information available to the Bureau. Interest

of justice would in our opinion be sufficiently served if we direct the Trial Court to summon from the Companies concerned call details of Sim telephone No. 9039520407 and 7415593902 of Tata Docomo company and in regard to Sim No. 9165077714 of Airtel company for the period 24.02.2013 between 4.30 to 8.30 pm. We further direct that calling numbers and the numbers called from the said mobile phone shall be blacked out by the companies while furnishing such details.”

8. Similar issue also came up before this Court in the case of *Suresh Kalmadi Vs. CBI 2015 {3} JCC 1874* whereby this Court held as under:-

“24. It is submitted by the petitioner that the nexus that the call records will demonstrate strikes at the foundation of the Prosecution's case, and which would show that there was no conspiracy between the petitioner and other accused persons to favour M/s Swiss Timing, and that in fact other officials of the OC, i.e. Prosecution witness PW- 18 Sujit Panigrahi attempted to favour MSL as a bidder and these facts in support of this are evident and demonstrable, but have been deliberately overlooked or concealed by the Prosecution and therefore, the petitioner has a right to an effective opportunity to establish this case with the aid of relevant documents such as the Call Detail Records of Mr. Jyoti Chhabra. At this stage, the Court is not concerned whether the averments made in the application under Section 91 Cr.P.C. may be gospel truth or not. If the documents are necessary in order to decide the real controversy, the same cannot be thrown particularly when the application is filed by the accused.

25. There is some force in the submission of the petitioner for some extent as it also appears from the pleadings that

the Trial Court has taken an inconsistent view while passing the Impugned Order. In similar applications under Section 91 Cr.P.C. moved by Accused No. 3 for summoning Call Detail Records of PW-18 Sujit Panigrahi and PW-29 Vijay Kumar Gautam, the Trial Court by orders dated 16th April, 2013 and 9th July, 2013 summoned the records sought. However, the prayer of the petitioner in the application under Section 91 Cr.P.C. was rejected.”

7. A perusal of the above mentioned judgments shows that this Court can call for the call detail records of the Investigating Officer. The impugned order calling for the call detail records of the Investigating Officer and the raiding team and the direction to produce mobile phone of the accused from *malkhana* therefore does not require interference. The accused is entitled only to the call details of the Investigating Officer and the raiding team only for the purpose of this case and the order has to be restricted to the call details of the Investigating Officer for the present case only.

8. The details of the call records of the secret informer also cannot be revealed as, such an order, is likely to jeopardise the life of the secret informer. The order to provide for the call detail records of the secret informer cannot sustain.

9. A perusal of the Lower Court records shows that pursuant to the order impugned herein, charge-sheet has been filed and four prosecution witnesses have already been examined. At this juncture, directing the State to produce the call records of the Investigating Officer and the other members of the raiding team pertaining to the case will not cause any prejudice to the investigation.

10. In view of the above, the order dated 4.12.2017 is modified to the extent that the call detail records and location via mobile tower of all the members of raiding team, Investigating Officer and the mobile phone of the accused from *malkhana* be produced.

11. The revision petition is disposed of accordingly.

SUBRAMONIUM PRASAD, J.

JANUARY 28, 2021

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