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CrI.O.P.No.23211 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.10.2023

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

CrI.O.P.No.23211 of 2023

The State by
The Deputy Superintendent of Police,
CBI, STB, New Delhi.

... Petitioner

Vs.

1.Shri K.B.Brahmadathan
S/o.Late Sh.K.B.Nambudiripad,
the then Chief General Manager BSNL,
Chennai Permanent R/O 127, 7th Street,
Harinagar, Poonkunnam,
Trichur-680 002.

2.Shri.M.P.Velusamy
S/o.Late Sh.V.Palaniyandi,
The then Chief General Manager,
Chennai Telecom District, BSNL,
Chennai R/O 164/2, Kumaran Nagar,
Jagir Reddy Patti, Salem,
Tamilnadu-636 302.

3.Shri Dayanidhi Maran
S/o.Shri Murasoli Maran,
Union Minister for Communication
and Information Technology,
Government of India R/O No.4,
2nd Avenue, Boat Club Road,
Chennai-600 028.



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4.Sh.Vedagiri Gowthaman

5.Sh.K.S.Ravi

6.Shri S.Kannan

7.Kalanithi Maran

S/o.Murasoli Maran,

Chairman and MD, Sun TV,

Maran Towers, 73, MRC Nagar Main Road,

Chennai-28.

Respondents

...

Prayer: Criminal Original Petition is filed under Section 482 of Criminal Procedure Code, pleaded to set aside/modify the direction of the learned trial Court pertaining to the direction in Para No.18 in CrI.M.P.No.2730 of 2023 order dated 10.03.2023 and consequently direct the learned trial Judge to issue summons to the Vigilance, BSNL to cause production of the documents under Section 91 Cr.P.C.

For Petitioner : Mr.N.Baaskaran
Special Public Prosecutor

ORDER

The learned Special Public Prosecutor representing CBI who is conducting the trial in C.C.No.10 of 2019 on the file of the Sub Court No.II For Trial of Criminal Cases Related to Elected Members of Parliament and Member of Legislative Assembly of Tamil Nadu, Chennai, aggrieved by the



observation and order passed by the Presiding Officer in his application filed under Section 91 of Cr.P.C., is before this Court to set aside / modify the direction of the learned trial Judge, pertaining to the direction in para 18 in Crl.M.P.No.2730 of 2023 dated 10.03.2023 and consequently direct the learned trial Court who issue summons to the Vigilance, BSNL to cause production of documents under Section 91 Cr.P.C.

2. The impugned order of the trial Court dated 10.03.2023 passed by the Court below pursuant to the application filed under Section 91 Cr.P.C., for production of documents listed and the witnesses who can speak about the documents was allowed by the trial Court with the following observation:

“18.The Section 91 Cr.P.C. Petition mentioned documents in Sl.Nos.1 to 6 namely Ex.P.297, Ex.P.274, Ex.P.322, Ex.P.296, Ex.P.311 and one USB filed as additional documents as per the order of this Court are electronic record, therefore the certificate under Section 65(B) IEA are mandatory. The other documents described in Sl.No.8 to 12 relate to the offence period 2004 to 2007 and appear to be relevant to the fact of this case. The Serial No.7-Office Memorandum



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(Circular) No.10/16/200-MG dated 06.10.2003 of the Ministry of Home Affairs, New Delhi, is claimed that this Circular is relevant to the issue involved in this case. Therefore, this Court is of the view that this petition under Section 91 Cr.P.C., is deserved to be allowed, however, taking note of several years passed from the offence period , it is required the respective persons to attend this Court personally to produce the documents, with this observation this petition is allowed.”

3. It is contended by the learned Special Public Prosecutor (CBI) that due to administrative reason, some of the documents which were maintained in branch offices of BSNL were transferred to Vigilance Cell and therefore, the person who are presently under the control of those documents, were present in compliance with the summons ready to produce the said documents. However, the trial Court having found that those persons who are now in the custody of the document not been mentioned in the petition under Section 91 Cr.P.C., directed the learned Special Public Prosecutor to file petition/memo to that effect. The learned Special Public Prosecutor has also filed the memo on 29.03.2023 which reads as below:



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“It is submitted that the case posted today for further proceedings.

2. It is submitted that today case posted for LW.50, Shobana Balaji. The calculation sheets prepared by LW.50 was with the office of Computer Billing Centre, BSNL, KK Nagar, Chennai. The prosecution has filed 91 Cr.P.C., petition to cause production of the above calculation sheet prepared by LW.50 and summon was sent to Vigilance, BSNL, Chennai.

3. The Vigilance, BSNL, collected the document from the above office and producing the calculation sheet before this Hon'ble Court.

Therefore, this Hon'ble Court may be pleased to receive the document and thus render justice”

4. The grievance of the learned Special Public Prosecutor is that even after filing of the memo, the trial Court refused to accept the documents produced by Mr.Baskar from Vigilance Cell of BSNL and had returned the memo insisting him to make certain correction in the memo. To set aside the observation made in paragraph 18 of the order dated 10.03.2023, which is



extracted above, this petition under Section 482 is filed.

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5. The point of conflict between the Presiding Officer and the Special Public Prosecutor appears to be regarding the disclosure of the custodian of the document called for. While the Presiding Officer insisted to disclose in writing that Mr.Baskaran of BSNL vigilance cell have brought the documents on his (Special Public Prosecutor) advice, the learned Special Public Prosecutor has refused to put it in writing as part of the memo.

6. This is case of very sensitive nature involving a former Central Minister and others which has checkered history in the course of trial.

7. The learned Special Public Prosecutor who is conducting the case before the trial Court submitted that the Presiding Officer on various occasions interfering in the course of trial. This Court not inclined to entertain such allegations that too when that is not the subject matter of Criminal Original Petition.

8. As far as the present petition, it is suffice to direct the trial



Court to receive the documents which are already been permitted to produce by the CBI on the application under Section 91 Cr.P.C., if there is any change of custody while producing the documents, a memo be received disclosing the charge of custody or custodian of the document.

9. The trial Court is directed whenever witnesses are present instead of adjourning the matter for technical reason necessary indulgence to be shown and proceed with the trial.

10. With this observation, this Criminal Original Petition is disposed of.

16.10.2023

Index : Yes/No

Neutral Citation : Yes/No

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To

1.The Sub Court No.II For Trial of Criminal Cases Related to Elected Members of Parliament and Member of Legislative Assembly of Tamil Nadu, Chennai

Dr.G.JAYACHANDRAN,J.



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2.The Deputy Superintendent of Police,
CBI, STB, New Delhi.

3.The Public Prosecutor (CBI),
High Court of Madras,
Chennai.

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