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Crl.O.P.No.25674 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.12.2023

CORAM :

THE HONOURABLE MR. JUSTICE A.D.JAGADISH CHANDIRA

Crl.O.P.No.25674 of 2023
and Crl.M.P.No.17818 of 2023

K.Narashimman

... Petitioner

Vs.

State represented by its,
The Inspector of Police,
Vigilance and Anti-Corruption Wing,
Krishnagiri.

Crime No.8/AC/2018

... Respondent

PRAYER : Criminal Original Petition filed under Section 482 of Criminal Procedure Code, pleaded to call for the records relating to the order dated 11.10.2023 made in Crl.M.P.No.10219 of 2023 in Spl.C.C.No.01 of 2020 on the file of the learned Chief Judicial Magistrate, Krishnagiri and set aside the same.

For Petitioner : Mr.N.Manoharan

For Respondent : Mr.S.Udaya Kumar
Government Advocate (Crl.Side)



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ORDER

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This Criminal Original Petition has been filed by the petitioner (A1), who has been facing trial in Spl.C.C.No.01 of 2020 on the file of the learned Chief Judicial Magistrate, Krishnagiri, seeking to set aside the order passed in CrI.M.P.No.10219 of 2023 in Spl.C.C.No.01 of 2020 dated 11.10.2023, dismissing the petition filed by the petitioner under Section 91 of Cr.P.C.

2. The brief facts of the case is that on the basis of the complaint given by one Jayakumar/*de facto* complainant alleging that the accused/petitioner herein had demanded illegal gratification of Rs.15,000/- for allotment of a Panchayat shop on rent to the *de facto* complainant, the respondent Police has registered a case in Crime No.8/AC/2018 for the offence under Section 7(a) of Prevention of Corruption (Amendment) Act, 1988, against the petitioner, who was working as a Project Director/Joint Director, District Rural Development Agency, Krishnagiri, and another on 06.09.2018.

3. The demand of illegal gratification was stated to have been made twice by one K.Sathiyamoorthy (A2), who was a Record Clerk in the office of



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the District Rural Development Agency, Krishnagiri, on behalf of the petitioner herein, first time on 30.08.2013 and second time on 05.09.2018 and since the *de facto* complainant was not inclined to pay the bribe, he lodged the complaint on 06.09.2018, pursuant to which, the trap was laid by the Trap Laying Officer on 07.09.2018. After completion of investigation, the respondent Police has filed the final report and the case has also been taken up for trial in Spl.C.C.No.01 of 2020 on the file of the learned Chief Judicial Magistrate, Krishnagiri.

4. As per police report, the entire trap team proceeded to the office of the accused, wherein, A2 had obtained the tainted money of Rs.15,000/- from the *de facto* complainant and handed over the same to one Ashokraaj (A3). Thereafter, based on the pre-assigned signal given by the *de facto* complainant, the Trap Laying Officer had proceeded to the scene of occurrence and arrested A2 and A3 and later, based on the statements recorded from A2 and A3, A1 was arrested on 07.9.2018 at 6.00 pm, and remanded to judicial custody on the same day.



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5. The respondent after completion of investigation, has filed the final report against the petitioner and two others for the alleged offence under Sections 7 (a) of the Prevention of Corruption Act, 1988 r/w 120 B IPC and the case was taken up for trial in Spl.C.C.No.1 of 2020. The petitioner was issued summons and the copies were served on him in compliance of Section 207 Cr.P.C.

6. It is the case of the petitioner that after coming out on bail, the petitioner had sent representations dated 21.12.2018 and 10.09.2019 respectively to the Additional Secretary to the Government, Rural Development and Panchayat Raj Department, Secretariat, Chennai-9 with a request to direct the respondent to secure the cell phone call details of the Authorities concerned and the video footages recorded during the course of the trap. However, no action was taken on the said representations.

7. The petitioner had contended that since the documents relating to the decisions taken on the representations dated 21.12.2018 and 10.09.2019 respectively sent to the Secretary to the Government of Tamil Nadu, Rural



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Development and Panchayat Raj Department and some other documents were necessary and desirable for the purpose of trial, he had filed a petition under Section 91 of Cr.P.C seeking the production of the documents before the framing of charges and it was dismissed. Against the dismissal, the petitioner had approached this Court in Crl.O.P.No.10368 of 2022 and this Court finding that the petition was filed prematurely prior to framing of charges and commencement of trial, had dismissed the same vide order dated 18.07.2022.

8. Thereafter, the petitioner, after framing of charges, has filed a petition in Crl.M.P.No.10219 of 2023, under Section 91 of Cr.P.C before the Chief Judicial Magistrate, Krishnagiri, with a prayer to furnish certain vital documents (7 documents) to prove his innocence, by contending that the respondent had not conducted an impartial investigation and had not collected the real evidence and to suppress the truth, the respondent have fabricated several documents and burked valuable and vital evidence. The respondent has filed a detailed counter. The trial Court, after hearing both sides, had dismissed the petition vide order dated 11.10.2023, against which the present application has been filed.



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9. Mr.N.Manoharan, learned counsel for the petitioner submitted that the petitioner is an accused facing trial in Spl.C.C.No.1 of 2020 for the offence under Sections 120B IPC r/w 7(1)(a), 13(2) r/w 13(1)(b) of Prevention of Corruption Act, 1988. He further submitted that the allegation against the petitioner is that he along with other accused had demanded illegal gratification from the *de facto* complainant for allotment of a Panchayat shop on rent to the *de facto* complainant. It is the specific case of the *de facto* complainant that he had met A2 on 30.08.2018 and thereafter, again on 05.09.2018 at his office and the demand is stated to have been made on two days. The *de facto* complainant had also made a specific averment that the petitioner had directed him to do as per the instructions of A2. He also submitted that the petitioner was not at all present during such time as alleged by the *de facto* complainant and thereby, the petitioner has to prove that he was not present at the particular place by proving the tower locations of mobile phones of the *de facto* complainant as well as the accused at the particular time.

10. He further submitted that the prosecution had suppressed the vital details with regard to the movements and they have also burked several



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documents and a fair investigation had not been conducted by the prosecution.

Immediately, after coming out on bail, the petitioner has sent two representations dated 21.12.2018 and 10.09.2019 respectively stating that the allegations against him are absolutely false and that a stage managed trap was organized and also he was not present at the relevant period in the office and that he had requested Secretary to the Government of Tamil Nadu, Rural Development and Panchayat Raj Department to secure call details and tower locations of the *de facto* complainant, respondent police and his team and the other accused in this case to disprove the prosecution case. He also submitted that now the trial has commenced and the action taken report on the representations by the Secretary and the documents sought by the petitioner are very much necessary and desirable for arriving at a just decision in this case. He also submitted that the respondent had relied on an audio clipping stated to be the conversation between the *de facto* complainant and the accused recorded on 05.09.2018 in the digital Sony IC Recorder (ICD - PX 312 SL.No.2654046) which is in the possession of the Deputy Superintendent of Police, Vigilance and Anti-Corruption. Though a copy of the audio clipping recorded in a Compact Disk is furnished along with a certification under Section 65-B of the



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Evidence Act, no Hash Value of the original recording has been shown in the certificate and thereby, there is a possibility of tampering. He further submitted that without the Hash Value, the authenticity of the copy made in the Compact Disk is doubtful and there is a chance that it could have been tampered. Thereby, the petitioner had sought for the production of the Sony IC Recorder (ICD - PX 312 SL.No.2654046) in which the alleged conversation was originally stated to be recorded to compare the Hash Value in the original recording with the copy. The petitioner had also sought for the details relating to the movement of the officials by production of Sentry Relief Register, Visitors' book entry, General Diary, Vehicle Log Book and the driver's Pocket Note in respect of the vehicles used in the trap. He further submitted that since the documents sought by the petitioner are official relevant documents and are available with the authorities and now that the case is ripe for trial, the petitioner had filed the application under Section 91 of Cr.P.C seeking for production of those documents.

11. Learned counsel for the petitioner further submitted that right of fair trial is a facet of criminal law and the petitioner is facing charges under the



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Prevention of Corruption Act. When statutory presumption is attracted against the petitioner, a bounden duty is cast on the petitioner as accused to rebut the case of the prosecution and thereby, the trial Court ought to have allowed the application. He also submitted that the petitioner has stated specific reasons for summoning those documents, whereas the trial Court, without properly considering the matter with regard to the desirability and necessity of the case, had dismissed the application. Thereby, the present application has been filed.

12. The details of the documents which are required and the reasons stated by the petitioner are extracted hereunder :-

1	Action Taken Report on the representations dated 21.12.2018 and 10.09.2019 given to the Secretary to Govt., Rural Development and Panchayat Raj	Soon after he came out on bail, he has given the said representations to secure the call details and the video footages recorded during the course of trap.
2	Call Detail Record (CDR) of his phone number and tower location between 30.08.2018 and 07.09.2018	Respondent had produced the call details between 31.08.2018 and 07.09.2018 only, whereas the alleged first demand was made on 30.08.2018.
3	Sony IC Recorder (ICD - PX 312 SL.No.2654046) recorded on 05.09.2018 in the possession of DSP, V & AC.	CD furnished was not properly copied from the voice recorder. Hash value of original records and CD were not produced. Original voice recorder is needed for cross examination.



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4	TLO used video recorder during the alleged trap on 07.09.2018, which is available with DSP, V & AC	The video recorded footage are very much necessary to falsify the entire trap proceedings. Deliberately, the police has withheld it.
5	CDR of the complainant with tower locations of his phone No. 9448305344 between 30.08.2018 and 07.09.2018.	Prosecution produced CDR covering the period between 05.09.2018 and 06.09.2018 with incomplete particulars.
6	CDR details of Arunkumar's mobile No. 8148091215 recorded on 06.09.2018 Including caller ID, ADD1, ADD2, ADD3 and tower location.	Prosecution produced incomplete particulars of CDR for the mobile number of LW9. Call details do not contain the location
7	(i) Sentry Relief Register for the period from 30.08.2018 to 08.09.2018 (ii) Visitors' book 30.08.2018 to 08.09.2018 entry from 30.08.2018 to 08.09.2018 (iii) General Diary from 30.08.2018 to 08.09.2018 (iv) Vehicle Log Book and driver's Pocket Note for the vehicle bearing Regn. No.TN 07 G 2806 and TN 07 G 2741	To disprove the version of the prosecution and to prove the false implication of the petitioner.

13. The respondent has filed a counter affidavit.



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14. In the counter, it is stated that the averments made by the petitioner in paragraphs 1 to 6 are correct and the averments in paragraphs 7 to 9 are denied as false. Further, the respondent has also filed the details about the availability and non availability of the documents sought by the petitioner and the reasons for non availability of the files which are extracted hereunder :-

Sl.No	Documents prayed by the petitioner under Section 91 Cr.P.C	Availability of Document	Reason for non availability of the Documents in the files of the respondent
1.	Action Taken Report on the representations dated 21.12.2018 and 10.09.2019 given to the Secretary to Govt., Rural Development and Panchayat Raj	Not Available	These are the official matters related with the Rural Development and Panchayat Raj department, those reports are not provided by the HOD concerned to the I.O. Hence, such reports are not available in the files of the respondent.
2.	Call Detail Record (CDR) of his phone number and tower location between 30.08.2018 and 07.09.2018	Not Available	The de-facto complainant met A-1 on 05.09.2018 only. Hence, the I.O has collected the CDR of the petitioner's mobile number 9488344684 for the period from 31.08.2018 to 07.09.2018 only. I.O did not collect the CDR for the period from 30.08.2018 to 07.09.2018. Hence the CDR is not available in the files of the respondent.
3.	Sony IC Recorder (ICD - PX 312 SL.No.2654046) recorded on 05.09.2018 in the possession of DSP, V & AC.	Only the Device is available	Due to the short memory (1.85/2GB) of Sony IC recorder, all voice recordings are copied to the laptop after completion of every recording



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			then and there. Usually, old voice records are deleted if the device memory is full. Since the registration of this case, 16 trap cases were registered Krishnagiri in V&AC, Detachment. Hence, the Sony IC recorder available with the office of the DSP, V&AC, Krishnagiri without any old recordings.
4.	TLO used video recorder during the alleged trap on 07.09.2018, which is available with DSP, V & AC	Not Available	No video recorder had been used by the TLO during the trap proceedings. Hence no video graph / video footage is available in the files of the respondent.
5.	CDR of the complainant with tower locations of his phone No. 9448305344 between 30.08.2018 and 07.09.2018.	Not Available	The alleged first demand was made by the A-2 on 30.08.2018 in person. Hence the I.O has collected the CDR of the de-facto complainant's mobile number 9443805344 from 05.09.2018 to 06.09.2018 only in which cell phone conversations were made. I.O did not collect the CDR for the period from 30.08.2018 to 07.09.2018. Hence the CDR is not available in the files of the respondent.
6.	CDR details of Arunkumar's mobile No. 8148091215 recorded on 06.09.2018 Including caller ID, ADD1, ADD2, ADD3 and tower location.	Not Available	The CDR provided by the service provider for the mobile number 8148091215 does not consists caller ID, ADD1, ADD2, ADD3 and tower location details. Hence, these details are not available in the files of the respondent.



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7.	(i) Sentry Relief Register for the period from 30.08.2018 to 08.09.2018	Available	Available with the office of the DSP, V&AC, Krishnagiri.
	(ii) Visitors' book entry from 30.08.2018 to 08.09.2018	Not Available	No visitor's maintained book was in V&AC Krishnagiri office for the period from 30.08.2018 to 08.09.2018.
	(iii) General Diary from 30.08.2018 to 08.09.2018	Available	Available with the office of the DSP, V&AC, Krishnagiri.
	(iv) Vehicle Log Book and driver's Pocket Note for the vehicle bearing Regn. No.TN 07 G 2806 and TN 07 G 2741	Not Available	No logbook for the vehicles and pocket note of the drivers were maintained in V&AC Krishnagiri office for the period from 30.08.2018 to 08.09.2018 since the vigilance duty is a confidential duty.

15. The submissions of the learned Government Advocate (Crl.Side) appearing for the respondent with regard to the 7 documents sought for by the petitioner is as under :-

(a) As far as 1st document is concerned, it was sent to the Secretary and those documents might be available with the Secretary to the Government of Tamil Nadu, Rural Development and Panchayat Raj Department and the Court has to issue necessary directions for call for those documents.

(b) As far as Call Detail Record (CDR) sought for in respect of items 2, 5 and 6 are concerned, they have already been furnished to the



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petitioner vide document No. 42, 43 and 46 respectively and those documents contain all the details required by the petitioner including the time and the tower locations of the mobile phones, however, the petitioner has called for CDR in respect of Mobile No.94883 44684 from 30.08.2018 to 07.09.2018, whereas, the respondent has collected the details from 31.08.2018 and not from 30.08.2018 and the CDR details prior to 30.08.2018 were not collected from the service provider and they are not available with the respondent. In respect of the CDR details on 30.08.2018, normally CDR details will be retained by the service provider for a period of two years and subject to storage and availability can be called for from the concerned service provider.

(c) As far as item 3, Sony IC Recorder (ICD-PX312 SL.2654046) is concerned, the same recorder had been used in several traps and due to shortage of memory (1.85/2 GB), the voice recordings done during the particular trap were copied to a laptop after completion of every recording and thereafter, the same was copied to the compact disk and the compact disk was furnished to the petitioner along with certification under Section 65-B of the Evidence Act. However, the hash value of the recording is not mentioned in the certificate. The respondent has not tampered with the original recordings



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and that since the same recorder was also used for subsequent traps, there might be a possibility of over lapping of recordings, however, the respondent has no objection in producing the original Sony IC Recorder before the trial Court concerned and has no objection in sending the same for forensic examination for calculating and comparing the hash value of the Sony IC Recorder, if the same is available in the hard disk.

(d) As far as to the claim of Item No.4 is concerned, no video graph was taken during the time of trap as alleged by the petitioner and hence, they are not available.

(e) As far as to the claim of item 7 is concerned, item 7(1) and 7(3) are available and since item 7(2) and 7(4) are not maintained, the respondent may not be able to furnish them.

16. Learned Government Advocate (Crl.Side) further submitted that the case is based on the illegal demand made by the petitioner and his subordinates and based on which, the trap was laid, during which, subordinates of the petitioner were caught red handed while receiving the bribe. Based on the statements recorded from the subordinates, the petitioner was also arrested. He



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also submitted that the respondent after completing investigation in a fair manner has filed the final report and that no suppression or burking of materials was done by them. He further submitted that the petitioner had earlier filed an application under Section 91 Cr.P.C prior to framing of charges and the trial Court had dismissed the application and the petition in Crl.O.P.No.10368 of 2022 filed by the petitioner before this Court seeking to set aside the order passed by the trial Court was also dismissed by this Court vide order dated 18.07.2022.

17. In reply, the learned counsel for the petitioner submitted that the application was dismissed by this Court, since this Court felt that it was filed at a pre mature stage. He further submitted that since the petitioner believes that the documents are desirable and necessary for arriving at a just decision in this case, the present application has been filed after commencement of trial

18. Heard the learned counsel for the petitioner and the learned Government Advocate (Crl.Side) for the respondent and the perused the materials available on record.



WEB COPY 19. It is relevant to refer to Section 91 of Criminal Procedure Code :-

"91. Summons to produce document or other thing :-

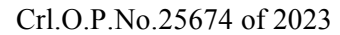
(1) Whenever any Court or any officer in charge of a police station considers that the production of any document or other thing is necessary or desirable for the purposes of any investigation, inquiry, trial or other proceeding under this Code by or before such Court or officer, such Court may issue a 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.

(2) Any person required under this section merely to produce a document or other thing shall be deemed to have complied with the requisition if he causes such document or thing to be produced instead of attending personally to produce the same.

(3) Nothing in this section shall be deemed-

(a) to affect sections 123 and 124 of the Indian Evidence Act, 1872 (1 of 1872), or the Bankers' Books Evidence Act, 1891 (13 of 1891) or

(b) to apply to a letter, postcard, telegram or other document or any parcel or thing in the custody of the



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who are having it.

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21. On perusal of documents and the things sought for and the reasons stated by the petitioner, this Court is of the opinion that the production of the documents are necessary for the purpose of trial. However, while looking into the documents, as far as the Item 1 is concerned, it is submitted by the respondent that those documents might be available with the Secretary to the Government, Rural Development and Panchayat Raj Department, in respect of Item 2, 5 and 6, it is submitted by the respondent that the copies sought for by the petitioner were already furnished to him as Document Nos.42, 43 and 46 respectively, however, it is also stated that the details in Item 2, the CDR details in respect of Mobile No.94883 44684, are available only from 31.08.2018 and the respondent have not collected the CDR details for 30.08.2018.

22. As far as item 3 is concerned, the respondent had submitted that the original recordings have been copied from the Sony IC Recorder to the desktop and they have been furnished to the petitioner by copying the same in Compact Disk along with certification under Section 65 B of Evidence Act and



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it is also submitted that the hash value has not been taken. Further, it is also accepted by the respondent that subsequently, certain recordings overlapping the earlier recordings have been made in the Sony IC Recorder and however, they are ready to produce the Sony IC Recorder (ICD-PX312 SL.2654046) in which the conversation was originally recorded. As far as Item 7 is concerned, the respondent are ready to furnish the copies of 7(i) and 7(iii) and that they have not maintained the documents sought for by the petitioner in 7(ii) and 7(iv) and they are not available and impossible to produce them.

23. In this case, the Hash Value of the recording has not been given. To rule out tampering, the Hash Value of the copy of the recording should tally with the Hash Value of the original recording and if the petitioner is able to make out the prima facie case for tampering or editing of the conversation, it can be compared with the original. It is to be noted that the Court is reminded of the *maxim lex non cogit ad impossibilia*. Law does not expect the performance of the impossible. When documents are not available with the respondent, the Court cannot expect the production of such documents sought for by the petitioner.



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24. Having gone through the documents, this Court is of the opinion that Items 1, 3, 7(i) and 7(iii) are necessary for the trial of the case and in view of the same, this petition stands partly allowed with following directions :-

(a) The learned trial Judge is directed to call for Item 1 (Action Taken Report on the representations dated 21.12.2018 and 10.09.2019 respectively) from the Secretary to the Government of Tamil Nadu, Rural Development and Panchayat Raj Department.

(b) The respondent shall produce the original Sony IC Recorder (ICD-PX312 SL.2654046) before the trial Court along with a memo and after examination of witnesses relating to the audio recording and marking of the compact disk, if the trial Court is of the opinion that there is a suspicion of tampering, then, the Sony IC Recorder (ICD-PX312 SL.2654046) shall be subjected to forensic examination to cross check and compare the hash value found in the original recording found in the Sony IC Recorder with the hash value of the recording in the compact disk;

(c) Further, the respondent shall also furnish the copies of the documents sought for in Item 7(i) and 7(iii) (Sentry Relief Register and General Diary for the period from 30.08.2018 to



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08.09.2018 respectively).

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(d) Subject to storage and availability, the CDR details relating to mobile number 94483 05344 on 30.08.2019 can be called for from the concerned mobile service provider.

25. With the above observations, the Criminal Original Petition stands partly allowed. Consequently, connected miscellaneous petition is also closed.

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Speaking / Non-speaking
Neutral Citation : Yes / No
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To

1. The Chief Judicial Magistrate,
Krishnagiri.
2. The Inspector of Police,
Vigilance and Anti-Corruption Wing,
Krishnagiri.
3. The Public Prosecutor,
High Court of Madras.

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A.D.JAGADISH CHANDIRA, J.

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and Crl.M.P.No.17818 of 2023**

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