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Crl.O.P.No.9745 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.04.2024

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Crl.O.P.No.9745 of 2024
& Crl.M.P.No.6751 of 2024

V.Kowshik.

... Petitioner/Accused 1

/versus/

1. The Inspector of Police,
T-15, SRMC Police Station,
Iyyappanthangal, Chennai.
Crime No.258 of 2022.

2. The General Manager,
Bharati Airtel Ltd.,
Head Office, Chennai,
No.101, Bharathi Towers,
Santhome High Road,
Santhome, Chennai.

... Complainant/Respondents

Prayer: Criminal Original Petition is filed under Section 482 of Criminal Procedure Code, to set aside the order dated 23.02.2024 passed by the Learned Principal Special Court under EC & NDPS Act, Chennai – 104, in Crl.M.P.No.5426 of 2023 in C.C.No.322 of 2023 in Crime No.258 of 2022.

For Petitioner : Mr.P.Ramesh Kumar

For R1 : Mr.S.Udaya Kumar
Government Advocate (Crl.Side)



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ORDER

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This Criminal Original Petition is filed to set aside the order dated 23.02.2024 passed by the Learned Principal Special Court under EC & NDPS Act, Chennai – 104, in Crl.M.P.No.5426 of 2023 in C.C.No.322 of 2023 in Crime No.258 of 2022.

2. The petition is filed by one of the accused in C.C.No.322 of 2023 on the file of the Principal Special Court for EC and NDPS cases under Section 91 of Cr.P.C. to call for the call details from the service providers for the cellphone number that he had been using at the time of arrest.

3. The trial Court, after considering the prayer, dismissed the petition, stating that the stage of summoning the documents under Section 91 of Cr.P.C., has not reached and the case is posted for framing of charge and therefore, if at all any document is to be relied upon by the accused and to be summoned, it can be done at the time of examining the defence witness. Further, the trial Court has also found that the phone number mentioned in the petition does not stand in the name of the petitioner but in the name of his father and therefore, there is no necessity to summon the call details of the



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phone number which stands in the name of the petitioner's father.

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4. The learned Counsel appearing for the petitioner submitted that since the call details will be preserved by the service providers only for a period of one year and when the trial reaches the stage of examination of defence witness, one year period may expire, the available right of the petitioner to establish his non-presence in the alleged place of recovery and arrest will be defeated.

5. This Court, after perusing the records, finds that the impugned order dismissing the petition is only on the ground that it is not the appropriate stage to entertain the petition under Section 91 of Cr.P.C., but has also found that the cellphone number referred to by the petitioner herein does not stand in the name of the petitioner and therefore, there will not be any evidentiary value for the call details of the cellphone, which stand in the name of the petitioner's father.

6. This Court is totally in agreement with the second reason assigned by the trial Court. The call details of the particular cell number are not a substantive piece of evidence for proof of *alibi*. Furthermore, when the cell number itself does not stand in the name of the petitioner, the relevancy of the



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document pales to insignificance. Hence, the petition challenging the impugned order passed by the trial Court stands dismissed.

7. Accordingly, this Criminal Original Petition is dismissed.

Consequently, connected Miscellaneous Petition is closed.

24.04.2024

Index : Yes/No.

Neutral Citation : Yes/No.

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Copy to:

1. The Principal Special Court under EC & NDPS Act, Chennai
2. The Inspector of Police, T-15, SRMC Police Station, Iyyappanthangal, Chennai.
Crime No.258 of 2022.
3. The Public Prosecutor, High Court of Madras, Chennai.



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Dr.G.JAYACHANDRAN,J.

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