



Crl.O.P.No.21556 of 2024

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:04.09.2024

Coram:

THE HONOURABLE DR. JUSTICE G. JAYACHANDRAN

Crl.O.P.No.21556 of 2024

and

Crl.M.P.No.12330 of 2024

Imran Dawood Khan

...Petitioner

/versus/

Vikram

.. Respondent

Criminal Original Petition has been filed under Section 528 of BNSS, to set aside the order passed by the Metropolitan Magistrate, Fast Track Court No.II, Egmore, Chennai in Crl.M.P.No.40091 of 2024 in S.t.C.No.5757 of 2023 order dated 30.07.2024.

For Petitioner

:Mr.K.G.Senthil Kumar



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ORDER

This Criminal Original Petition is filed by the accused to call for SMS details from the service provider Vodafone pertaining to the communication between the complainant and the accused.

2. According to the petitioner, the complainant and the petitioner are good friends and there was a chit transaction at Margadarasi finance in which the respondent stood as guarantor for the loan availed by the petitioner. In this connection, the cheque given as guarantee was misused by the respondent, which is the subject matter of the private complaint under Section 138 of NI Act. There was an SMS communication between them, which would indicate that the cheque was not issued for any enforceable liability. Since the reply of the complainant been erased, it is essential to call for the SMS details from the service provider.



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3. The learned counsel appearing for the petitioner relying upon the judgment of the Delhi High Court in *Suresh Kalmadi v. CBI reported in [2015 SCC Online Del 9636]*, submitted that the right to defend, which flows from the fundamental right to “life” and “personal liberty” enshrined in Article 21 of the Constitution of India, cannot be an illusory right. The application filed under Section 91 of Cr.P.C., cannot be rejected in a mechanical manner and without assigning any reason.

4. This Court has no second opinion about the view expressed by the Delhi High Court in the above said case. However, in this case the communication through SMS between the complainant and the accused, is now sought to be produced by the service provider.

5. Admittedly, the cheque was issued by the petitioner herein to the respondent and in view of dishonour of the cheque, the complaint was filed and the same is pending. Presently, the case is posted for further proceedings. After examination of the witnesses and questioning the accused under Section 313 of Cr.P.C. the application is filed under



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Section 91 of Cr.P.C., to make a roving enquiry and delay the process.

SMS details sought at the most only be self serving document, which can have no bearing in the trial and for decision. Hence, this Criminal Original Petition is dismissed. Consequently, connected Miscellaneous Petition is closed.

04.09.2024

Index:yes/no  
Internet:yes/no  
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To

The Metropolitan Magistrate, Fast Track Court No.II, Egmore, Chennai.

DR.G.JAYACHANDRAN,J.

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