



Crl.O.P.No.26931 of 2023

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.02.2024

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Crl.O.P.No.26931 of 2023

1.Illavarasan
2.Kumar

... Petitioners

Vs.

The State represented by,
Inspector of Police,
NIB-CID, Salem District,
Cr.No.56 of 2022.

... Respondent

Prayer : Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure to set aside the order dated 28.07.2023 in unnumbered Crl.M.P.No. of 2023 on the file of the learned Special Judge for EC/ NDPS Act cases, Salem in Cr.No.56 of 2022 on the file of the Inspector of Police, NIB-CID, Salem District by allowing this criminal original petition.

For Petitioner : Mr.M.Purushothaman
For Respondent : Mr.A.Gopinath
Government Advocate (Crl.Side)



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ORDER

This petition has been filed challenging the order passed by the Court below dated 28.07.2023, refusing to entertain the application filed by the petitioner u/s.91 of Cr.P.C. Where the petitioners sought for summoning certain call details from the mobile numbers stated in the petition and also the fast tag locations / particulars of the vehicle. The petitioners (A4 and A5) are facing charges for offence u/s.8C, 20(b)(ii)(c), 25 and 29(1) of NDPS Act and Section 468, 471 and 420 r/w.34 IPC. There are totally five accused persons in this case and the petitioners are arrayed as A4 and A5.

2. When the matter came up for hearing on 04.01.2024, this Court passed the following order:

" It is seen that the final report was taken on file in the year 2022 and it has been numbered as Spl.C.C.No.115 of 2022. There are totally five accused persons in this case and A1, A3 to A5 are in jail. A2 alone is absconding and NBW is pending. If the police is not able to secure A2, the Court below can very well split up the case and commence the proceedings with respect to the other accused persons. This is more so since the accused persons are inside jail for a very long period of time. The Court below shall submit a report by explaining the steps to be taken in this case for splitting up the case with respect to A2. This Court is intending to



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direct the trial to be concluded within a time frame. The learned Special Judge for EC/NDPS Act Cases, Salem, is directed to submit a report before this Court before the next date of hearing.

2. Post this case under the caption for passing "further orders" on 22.01.2024."

3. Pursuant to the above order, a report has been sent by the learned Additional District Judge and Presiding Officer of the Special Court dated 19.01.2024. He has stated that A2 was absconding and Non Bailable Warrant was also issued against him and that if the Police fails to execute the NBW within a short period of time, the Court below will take steps to split up the case and dispose of the case as early as possible.

4. The learned Government Advocate (Crl.side) appearing on behalf of the respondent submitted that the matter came up for hearing on 30.01.2024. On that date, the case was split up as against A2 in Spl.C.C.No.27/2024. A1, A3, A4 and A5 were present before the Court and copies were served on them u/s.207 of Cr.P.C. The matter was posted for framing of charges on 03.02.2024. On that date, the charges were also framed and the case is now posted for examination of the witnesses



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on 14.02.2024.

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5. In the light of the above development, a semblance of control has now been brought up in the case and the case has started progressing.

6. The petitioner filed the application u/s/91 of Cr.P.C seeking for the following reliefs:

"It is therefore prayed that this Hon'ble Court may be pleased to summon the

(i) call details from 06.00 am on 23.03.2022 to 13.30 hrs on 26.03.2022 of the following mobile numbers:-

1.6381096040

2.94981828603

3. Mobile numbers of Sub Inspectors of Police Mr.Boopathi and Mr.David Balu and Constables Mr.Raja and Mr.Kumar of the respondent Police Station

(ii) Fast tag locations / particulars, etc., of the vehicle bearing REgistration No.KL-07-AT-6464."

7. The Court below refused to entertain this application on the ground that it is prematured and that such application can be filed at the appropriate time during trial.

8. The learned counsel for the petitioners submitted that the petitioners were falsely implicated in this case. To substantiate the same,



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the petitioners wanted to get the tower location of the mobile numbers that were used by the police as well as the petitioners in order to establish that they could not have been arrested as claimed by the police near the Primary Agricultural Cooperative Bank near Mudhalaipatti over bridge at Karur to Salem National Highways, at 13.30 hours.

9. What was sought for in the petition filed before the Court below and what is now sought to be argued before this Court in this petition are factually distinct and different. The petitioners had specifically sought for the call details pertaining to certain mobile numbers from 23.03.2022 to 26.03.2022. However, it is now clarified that the call details are not required and what is required is only the tower locations of the mobile numbers belonging to the police as well as the petitioners.

10. The Court below has taken into consideration the fact that the case was at the stage of service of summons to the accused persons and therefore, the Court below thought that it is a premature stage to entertain the application.



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11. By the time this petition has taken up for hearing, some progress has been made in this case and the case is now at the stage of examination of the witnesses. Therefore, the case has reached a stage where the petitioners can seek for details which the petitioners want to use while examining some official witnesses. As has been repeatedly held by this Court, there is no fixed formula for determining the stage at which the application can be filed under Section 91 of Cr.P.C. It is always depend upon the facts and circumstances of each cases and purpose for which the documents are sought for by the accused persons. In the instant case, the petitioners / A4 and A5 are seeking for details which they want to use to confront official witnesses. Some may be required in order to enable the petitioners to effectively defend themselves in this case. This is more so, since the petitioners are facing very serious charges.

12. In view of the above, this Court is not inclined to interfere with the order passed by the Court below dated 28.07.2023. It is left open to the petitioners to file a fresh application before the Court below



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and seek for the correct details which are required by giving the necessary reasons. The Court below shall deal with the application on its own merits and in accordance with law and shall ensure that the petitioners are able to defend themselves effectively in the trial. If any such application is filed, order shall be passed by the Court below within a period of two weeks from the date of filing of the application.

13. This Criminal Original Petition is disposed of in the above terms.

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Speaking Order/Non-speaking Order

Index :Yes/No

Neutral citation: Yes/No

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To

1.The Inspector of Police,
NIB-CID, Salem District,



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2. The Public Prosecutor,
High Court, Madras.

N.ANAND VENKATESH, J.

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