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CrI OP No.28918 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.01.2024

CORAM:

THE HONOURABLE MR. JUSTICE N.ANAND VENKATESH

CrI.O.P.No.28918 of 2023

and

CrI.MP.No.20163 of 2023

R.Vineshkumar

...Petitioner

Vs.

The State

Rep. by the Inspector of Police

V3, J.J.Nagar Police Station

Anna Nagar, Chennai

(Crime No.226/2018)

...Respondent

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C., to call for the records of the case in CrI.MP.No.504 of 2023 in SC.No.8 of 2019 on the file of the Magalir Neethimandram, Thiruvallur dated 29.09.2023 and set aside the same.

For Petitioner

: Mr.B.Francis Xavier

For Respondent

: Mr.A.Damodaran

Additional Public Prosecutor

ORDER

This Criminal Original petition has been filed seeking to set aside the order passed by the Court below in CrI MP No.504 of 2023 in SC No.8 of 2019 dated 29.09.2023, dismissing the application filed



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under Section 91 of Cr.PC to issue summons to the concerned nodal agency to produce the mobile phone conversation between two mobile numbers from 22.05.2018 to 25.05.2018, tower location, CDR particulars, ownership of the SIM, IMIE particulars and other relevant materials, in order to substantiate the defence of the petitioner.

2. Heard Mr.B.Francis Xavier, learned counsel for the petitioner and Mr.A.Damodaran, learned Additional Public Prosecutor appearing for the respondent.

3. The petitioner is an accused in Crime No.226 of 2018 for an offence under Section 450, 376(1), 506(ii) of IPC. The offence is alleged to have taken place on 20.05.2018. The FIR was registered on 22.05.2018 at 14.00 hours. In the course of investigation, the petitioner is said to have been arrested on 25.05.2018. On completion of the investigation, the final report was filed and the Court below has taken cognizance for offence under Section 450, 376(1) and 506(ii) of IPC.

4. The case of the prosecution is that on 21.05.2018 at about



1.30 a.m, the petitioner is said to have raped the victim girl at knife point.

5. According to the petitioner, he has been wrongly made as an accused in this case. To substantiate his defence, the petitioner initially filed an application under Section 91 of Cr.PC for directing the respondent police to collect the call details. This application was dismissed by the Court below and it was put to challenge before this Court in Crl RC No.1016 of 2022. This revision petition came to be dismissed on 06.09.2022 and the relevant portions are extracted hereunder :-

7. The Trial Court has rightly observed that the Court cannot direct the respondent police to collect evidence on behalf of the defence and it is for the accused to collect the evidence by invoking appropriate provisions of law to disprove the case of the prosecution. Therefore, the remedy of the petitioner is elsewhere and he should have filed a petition under Section 91 Cr.PC before the Trial Court seeking to direct the telephone authority i.e service provider of the two cell phone numbers stated by the revision petitioner / accused to produce the call and conversation details before the Court. But, instead, he has



filed petition seeking to direct the respondent police to produce such details, which is not correct.

8. In such view of the matter, this Court does not find any perversity in the order passed by the Court below and hence, this Criminal revision case is dismissed. Consequently, connected miscellaneous petitions are closed. However, the petitioner is at liberty to workout his remedy in the manner known to law.

6. Pursuant to the above order, the petitioner filed yet another application under Section 91 of Cr.PC to direct the nodal agency to produce the relevant details. This application was dismissed by the Court below by an order dated 29.09.2023 and the same has been put to challenge in the present criminal original petition.

7. The case of the petitioner is that he was kept in illegal detention from 22.05.2018 to 25.05.2018 and the arrest was shown only on 25.05.2018. This information was sent from one mobile number by way of message to another mobile number. The petitioner claims that if the details of the message, tower location etc., are furnished by the nodal agency, the petitioner will be able to substantiate the defence.



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8. The Court below has dismissed the application mainly on the ground that the petitioner had never stand before any authority that he was illegally detained in the police station from 22.05.2018 to 25.05.2018. The Court below had also taken into consideration the remand order passed by the learned Judicial Magistrate, Ambattur, wherein it was mentioned that there was no complaint against the police regarding any illegal detention. In view of the same, the Court below came to a conclusion that the application filed by the petitioner is unsustainable.

9. In the considered view of this Court, the trial is yet to commence in this case. The defense that is going to be taken by the accused will get more clearer only after the examination of the prosecution witnesses. An accused is not expected or warranted to come up with his defence even before the commencement of the Trial. The defence has to be developed in the course of trial and ultimately, if any materials are to be collected to substantiate that defence, the accused person must file an appropriate application seeking for those details.



Unfortunately, the petitioner seems to be attempting to develop a defence even before the commencement of the Trial. The exact defence of the accused person will get revealed only after he answers the questions put to him at the stage of 313 (1) (b) of Cr.PC and thereafter, he is called upon to produce the defence evidence. In view of the same, the reason that was assigned by the Court below while dismissing the application at this stage does not warrant the interference of this Court. The Court below was only looking at the application from the standpoint of view of illegal detention from 22.05.2018 to 25.05.2018 and nothing beyond that. How far this so called illegal detention for this period will come to the aid of the petitioner to establish that the petitioner has been falsely roped in this case, will get clearer only on the completion of the examination of witnesses on the side of the prosecution. The petitioner has to establish his defence during the course of cross examination of each witness. Thereafter, it will be left open to the petitioner to seek for materials in order to substantiate that defence for which the foundation has already been laid at the time of examination of the prosecution witnesses.

10. In the light of the above discussion, this Court does not find



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any ground to interfere with the order passed by the Court below at this stage. The trial in this case can go on and if ultimately, the petitioner is able to lay a foundation during trial and thereafter, he seeks for substantiating the defence by means of production of some materials, it will be left open to the petitioner to revive the claim at the relevant point of time. Except giving this clarity, no further orders can be passed in this Criminal Original Petition.

11. This Criminal Original petition is disposed of with a direction to the learned Sessions Judge, Mahalir Neethi Mandram (Fast Track Mahila Court), Tiruvallur, to dispose of SC No. 8 of 2019, within a period of three months from the date of receipt of the copy of this order. Consequently, the connected miscellaneous petition is closed.

02.01.2024

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CrI OP No.28918 of 2023



N.ANAND VENKATESH, J.,

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To

1. The Inspector of Police
V3, J.J.Nagar Police Station
Anna Nagar, Chennai
(Crime No.226/2018)
2. The Public Prosecutor,
High Court of Madras,
Madras.

CrI.O.P.No.28918 of 2023
and
CrI.MP.No.20163 of 2023

Dated: 02.01.2024