



CrI.O.P.(MD)No.4221 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on : 25.10.2024

Delivered on : 13.11.2024

CORAM

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

CrI.O.P.(MD)No.4221 of 2024

and

CrI.M.P.(MD)No.3347 of 2024

Arumugam

: Petitioner/Petitioner

Vs.

The Inspector of Police,
Natham Police Station,
Dindigul District.
Crime No.177 of 2023.

: Respondent/Respondent

PRAYER : Criminal Original Petition filed under Section 482 of Cr.P.C, to call for the records of the Special Court for POCSO Act, Dindigul in Cr.M.P.No.190 of 2024 in Spl.S.C.No.314 of 2023, dated 07.03.2024 and to set aside the same.

For Petitioner : Mr.S.Anandha Rajagopal,

For Respondents : Mr.P.Kottai Chamy,
Government Advocate (Criminal Side)



Crl.O.P.(MD)No.4221 of 2024

ORDER

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This Criminal Original Petition invoking Section 482 of Cr.P.C., is directed against the order passed in Cr.M.P.No.190 of 2024 in Spl.S.C.No.314 of 2023, dated 07.03.2024, on the file of the Special Court for POCSO Act Cases, Dindigul.

2.The petitioner is the accused in Spl.S.C.No.314 of 2023 for the alleged offence under Section 9(m) and 10 of POCSO Act.

3. It is not in dispute that the prosecution has examined all the witnesses and after completing the proceedings under Section 313 of Cr.P.C., when the case was pending for defence evidence, the accused has filed the present petition under Section 91 of Cr.P.C., seeking a report from the second respondent therein/Cyber Crime Police Station with regard to the call details and tower location for the cell numbers belonging to P.W.1, P.W.3 to P.W.5, P.W.8 and 9 and also the cell phone number of the petitioner/accused.

4. The respondent has filed a counter statement raising serious objections. The learned Sessions Judge, after enquiry, has passed the impugned



CrI.O.P.(MD)No.4221 of 2024

order, dated 07.03.2024, dismissing the petition. Challenging the order of dismissal, the present original petition came to be filed.

5.The case of the petitioner/accused is that the petitioner was irrigating his lands at Manappachery, Melur Taluk, Madurai District at about 10.30 am on 18.04.2023, but the defacto complainant has lodged the complaint as if the petitioner had misbehaved with the defacto complainant's daughter at that time; that the prosecution has examined P.W.4 Deepak Raja, P.W.5 Ganapathi, P.W.8 Thangappa and P.W.9 Muthukumar, who were not available at Sundakkapatti Village at the occurrence time, but they have given evidence falsely in support of the defacto complainant and that therefore, the call detail records and tower location of P.W.1, P.W.3, P.W.4, P.W.5, P.W.8 and P.W.9 and investigating Officer's cell phone and CDR and tower location of the petitioner's cell phone are vital to the case and are of sterling quality evidentiary value; that the petitioner can prove his innocence only when he is allowed to produce the said evidence as he was watering his paddy field at the relevant point of time and that therefore, the petitioner was constrained to file the above petition under Section 91 of Cr.P.C.



Crl.O.P.(MD)No.4221 of 2024

6. The defence of the respondent is that the above petition has been filed only to harass the witnesses, that calling for the CDR particulars and tower particulars would affect the personal liberty and privacy of the prosecution witnesses and that therefore, the petition is liable to be dismissed.

7. It is pertinent to note that the Investigating Officer has already collected/gathered call detail particulars of the complainant and the petitioner/accused from Dindigul District Cyber Crime Branch and the said report came to be marked through the Special Sub-Inspector of Police/Rathnakumari as P.W.12 and that the petitioner/accused has now sought for the call detail particulars and tower location for other witnesses P.W.4, P.W.5, P.W.8 and P.W.9 and also for Investigating Officer.

8. The learned counsel for the petitioner would rely on a decision of this Court in the case of ***K.Dineshkumar @ Dinesh Vs. Mrs.Franvin Dani and others*** in Crl.O.P(MD)no.22185 of 2023, dated 27.02.2024, wherein the accused therein, by alleging that the petitioner and his friend were taken to the police station and they were kept in the Police Station till 08.00 am on 26.06.2022 and thereafter, they were shifted to different place to B2 Esplanade Police Station at about 10.30 am, has filed a petition for production of call



detail particulars of the respondent police, who had taken the petitioner from his house on 25.06.2022; that the said petition was dismissed by the trial Court on the ground that examination of the witness was not yet commenced and when that order was challenged, a learned Judge of this Court, by observing that the petitioner therein was facing a serious offence and wanted to establish that he was taken into custody even on 25.06.2022 by some of the respondents, who are police officials and whereas it was sought to be projected as if the contraband was seized from the petitioner on 26.06.2022 and thereafter, he was arrested and remanded to judicial custody and also taking note of the fact that the above details will be available only for a period of two years and thereafter, it will be effaced and taking note of the lapse of more than 1½ years, has set aside the order passed by the trial Court and directed the trial Court to call for the documents sought for by the petitioner from the concerned mobile operator.

9. As rightly contended by the learned Government Advocate (Criminal Side), in the above decision's case, the trial was not commenced, when the petition under Section 91 of Cr.P.C., came to be filed by the accused. But in the present case, as already pointed out, the prosecution has already completed their side evidence and now the case stand posted for arguments.



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10. It is pertinent to note that the defence for the first time and that too at the fag end of the proceedings, by alleging that some of the witnesses were not at all present at the time of occurrence, has attempted to sidetrack the issue by calling for call details and tower location particulars. Admittedly, the petitioner/accused has not taken any action till the completion of the prosecution evidence and when the case was pending for defence evidence, the above petition came to be filed.

11. Considering the above, the decision referred cannot be made applicable to the case on hand. As rightly pointed out by the learned Government Advocate (Criminal Side), the prosecution has already collected and gathered call detail particulars of the defacto complainant and the accused and the said report has already been exhibited as Ex.P.13 through P.W.12/Special Sub-Inspector of Police.

12. The learned trial Judge in the impugned order has specifically observed that the defence has already cross examined P.W.1, P.W.3 to P.W.5 , P.W.8, P.W.9 and P.W.19 with regard to their cell phone. The prosecution has also raised serious objections with regard to the petitioner's prayer for seeking



call details and tower location of the Investigating Officer. At this juncture, it is necessary to refer the decision of Delhi High Court in ***Attar Singh vs. State (NCT of Delhi)*** in Crl.M.C.No.406 of 2016, wherein also call details and location chart of the Investigating Officer was sought to be preserved and the High Court has specifically observed as follows :

“9. I have heard learned counsel for the parties at length & gone through the available records. After hearing the arguments advanced by counsel for the petitioner and the rival contention and after perusal of the order passed by the Trial Court, it appears that the the petitioner is seeking direction from this Court for the supply of the call details of the calls made from the mobile phone of the investigating officer. The grievance of the petitioner is that the calls made from the mobile of the investigating officer would indicate the presence, location and the activities of the investigating officer whereas the case of the State is that in the details of mobile calls of the investigating officer, it is not suggested to be the calls relating to the present case and apart from the present case, the investigating officer being a police officer, had been dealing with other matters and activities of various other accused and with regard to the duty assigned to him. Further contention made by the prosecution is that the accused could not claim the record of various activities of the investigating officer and he has to restrict to the activity of the investigating officer in the present case only. The prosecution has claimed that accused does not have any right to have the information about the final activities of the investigating officer and



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that cannot be limited to the activity in the present case. So, the accused could not be said to be entitled for seeking the details of records of all the calls made or calls received from the mobile phone of the investigating officer.”

13. It is also necessary to refer the decision of the **Kerala High Court in State (NCT of Delhi) vs. Neeraj** in CrI.M.C.No.1239 of 2018, wherein also in a similar issue, the High Court has observed as follows :

“17. Having heard the learned APP for the State, perused the contents of impugned order, this Court finds no reasons to take a view, other than the one expressed in the aforesaid decisions passed by Co-ordinate benches of this Court. In this Court’s opinion, procuring call detail records of the mobile phones of police officials including their tower-wise location can prejudice both their safety and privacy. The concerned police officers may be involved in dealing with cases of different nature, including sensitive or heinous cases or cases of national security, and orders, such as those impugned before this Court, can directly encroach upon the privacy of the police officials. Further, the impugned orders also have the capacity to put at risk and expose the identities of the ‘secret informers’ and risk their safety and security. Thus, the learned ASJ has not passed reasoned orders, and the same opens up windows for possibility of risking confidential information which may be brought on record through call detail records of the investigating officers and other police officials.”



Crl.O.P.(MD)No.4221 of 2024

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14. In the absence of any reasons assigned and taking note of the safety and privacy, the prayer with regard to the Investigating Officer cannot be sustained. As rightly observed by the learned trial Judge, the petitioner has filed the above petition only to drag on the proceedings. Hence, the impugned order dismissing the petition filed under Section 91 of Cr.P.C., cannot be found fault with. Consequently, this Court concludes that the Criminal Original Petition is devoid of merits and the same is liable to be dismissed.

15. In the result, the Criminal Original Petition is dismissed. Consequently, the connected Miscellaneous Petition is also dismissed.

13.11.2024

NCC : Yes/ No
Index : Yes/No
Internet : Yes/ No
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Crl.O.P.(MD)No.4221 of 2024

K.MURALI SHANKAR,J.

das

To

- 1.The Judge, Special Court for POCSO Act,
Dindigul.
- 2.The Inspector of Police,
Natham Police Station,
Dindigul District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Pre-delivery order made in
Crl.O.P.(MD)No.4221 of 2024
and
Crl.M.P.(MD)No.3347 of 2024

Dated: 13.11.2024