



Crl.O.P.(MD)No.14669 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 03.09.2024

PRONOUNCED ON : 25.09.2024

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

Crl.O.P.(MD)No.14669 of 2024

and

CrI.M.P.(MD)No.9171 of 2024

S.Lakshmanan

... Petitioner/Accused No.1

Vs.

The State of Tamil Nadu,
represented by
The Inspector of Police,
Seevalaperi Police Station,
Tirunelveli District.
(Crime No.94 of 2021)

... Respondent/Respondent

PRAYER: Criminal Original Petition has been filed under Section 528 of B.N.S.S., to set aside the order in Cr.M.P.No.2232 of 2024, dated 09.08.2024 in S.C.NO.528 of 2021 passed by the learned III Additional District and Sessions Judge, Tirunelveli and consequently direct the aforesaid learned Judge to recall the prosecution witnesses namely P.W.Nos.1, 3, 4, 5, 6, 7 and 24 for the purpose of production of their call data records, decoding register so as to subject them under cross examination.



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For Petitioner : Mr.R.Anand

For Respondent : Mr.P.Kottaichamy
Government Advocate (Crl.Side)

Mr.R.Karunanithi
for the defacto complainant

ORDER

This Criminal Original Petition invoking Section 528 B.N.S.S., is directed against the order passed in Cr.M.P.No.2232 of 2024 in S.C.No.528 of 2021, dated 09.08.2024, on the file of III Additional District Court, Tirunelveli in dismissing the petition filed under Section 311 r/w 91 Cr.P.C.

2. The petitioner who is the first accused, is facing trial in S.C.No.528 of 2021, for the offence of murder and other offences. It is not in dispute that the prosecution has examined all the prosecution witnesses and when the case was pending for cross-examination of Investigating Officer – P.W.24, the accused have filed a petition under Section 311 r/w 91 Cr.P.C., (vaguely mentioned as Lakshmanan and others) for issuance of summons to the Nodal Officers of the various Telecom Companies and for direction to produce cell phone call data



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registers and tower location particulars with regard to the cell phone numbers of the witnesses.

3. The respondent police has filed a counter raising serious objections. The learned Special Judge, after enquiry, has passed the impugned order on 09.08.2024, dismissing the said petition. Challenging the order of the dismissal, the first accused has filed the present petition.

4. The case of the petitioner is that the witnesses P.W.1, P.W.3 to P.W.7 were not at all present at the place of occurrence and place of conspiracy, but they were cited as eye-witnesses and conspiracy witnesses, that the said witnesses have given evidence with new version which is totally contradictory from the prosecution case and hence, the accused has already filed a petition to eschew the portion of the deposition of P.Ws before this Court in Crl.O.P. (MD)No.18591 of 2022 and the same was allowed on 31.10.2022 giving liberty to the learned trial Judge to consider eschew of that portition after hearing the prosecution and the Counsel for the accused either before the cross-examination of the witnesses or at the conclusion of the trial, that the prosecution wantonly and intentionally tutored all the prosecution witnesses and forced them to depose



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which are totally irrelevant and unconnected with the prosecution case, that three most material witnesses being P.W.1 to P.W.3, who are close relatives of the deceased had testified before the trial Court about the new facts which are not at all stated during their examination under Section 161(3) Cr.P.C., that the above witnesses were not at all present in the occurrence place at the time of occurrence and that if the above witness' cell phone call data records and tower location are verified, their presence in the occurrence place and their testimonies would be clearly falsified.

5. It is the further case of the petitioner that P.W.24 – Investigating Officer has already been examined in chief, but due to the exaggeration and irrelevant portion of the evidence adduced by the other witnesses, the accused were unable to cross-examine the Investigating Officer, that the call data and tower location records of the Investigating Officer are also very essential, that the above documents are vital documents to prove the defence case and in order to arrive fair conclusion and before cross-examining the Investigating Officer by the accused, that the exact location of the witnesses can be ascertained only after decoding the register and as such, the decoding registeres are the relevant piece of evidence to establish the fact against the false extraneous faith of the prosecution



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evidence and that therefore, the summons may be issued to the listed witnesses directing them to produce the documents listed therein.

6. In the above petition, the petitioner has sought for to issue summons to the Nodal Officers of Airtel, Jio, Vodafone, BSNL telecom of Tirunelveli Division and for production of cell phone call data register and tower location of 7 cell phone numbers including the cell phone of P.W.24 – Investigating Officer.

7. The respondent has filed a counter raising objections stating that the above petition has been filed at a belated stage with an intention to divert the core issue and adopting dilatory tactics to protract the trial of the case, that the accused have no right to seek call data register pertaining to P.W.24 – the Investigating Officer, as the accused have attempted to interfere in the personal liberty of the official concerned and about his investigating powers in a crucial murder case, that the Investigating Officer gathered secret information through his source and if the information source is disclosed, then there is no safety for the informant in all the sensitive cases handled by the Investigating Officer, that if the information was disclosed, then it would violate their privacy and shall



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prejudice the rights and privacy of police officials and created hindrance in performance of their duties, that the procuring call detail records of the mobile phones of police officials including their tower location can prejudice their safety and privacy, that the claim of the accused with regard to the other witnesses is also untenable, as it also includes the personal liberty and privacy of the prosecution witnesses and more particularly P.W.1 to P.W.3 are under constant life threat, that if their personal details are disclosed, the same would cause trouble and hardship to their life and personal liberty, that the above prosecution witnesses have specifically stated that they have not used the cell phone on the date of occurrence during their course of cross-examination and therefore, the question of summoning call date and tower location particulars are not at all necessary, that if this type of petition is entertained, then it will lead to chaos in the administration of justice and the accused in the murder cases will come forward with the similar kind of petitions in future only with an ulterior motive to delay in rendering justice to the crime victims in the Society and that therefore, the petition is liable to be dismissed.

8. The learned Counsel for the petitioner would rely on the judgment of the Hon'ble Apex Court in the case of *Varsha Garg Vs. State of Madhya*



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Pradesh and others reported in **2022 SCC Online SC 986** and as rightly pointed out by the learned Counsel for the petitioner, though the said decision was cited before the trial Court, the learned trial Judge without considering the decision of the Hon'ble Supreme Court, has only referred the findings of the trial Court and the High Court, negatived the reliefs sought for, ie., for production of the decoding registers.

9. In the above decision case, one Advocate was brutally murdered outside his office and at the instance of the complaint given by his spouse, F.I.R., came to be registered and after investigation, charge sheet came to be filed. Moreover in that decision, the prosecution has submitted supplementary charge sheet along with the certificates of the Nodal Officers of certain cellular companies and the said Nodal Officers came to be examined before the trial Court and thereafter, the Investigating Officer was also examined and after the completion of the proceedings under Section 313 Cr.P.C., the prosecution after coming to know that the copy of the C.D., which was produced before the Court and exhibited was found to be corrupted, an application for receiving the copy of the C.D., which was available at the police station and the same was allowed and directed the Investigating Officer to produce on the next hearing and since the same was



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not produced, their application was rejected, that the prosecution has filed another application under Section 311 Cr.P.C., for summoning the certificate issuer and another application under 311 Cr.P.C., to summon the Nodal officers of Idea and under Section 91 to produce call data records of 2 mobile numbers and that since the petitions were dismissed by the trial Court, which came to be confirmed by the High Court, the Criminal Appeals came to be filed before the Hon'ble Supreme Court. In that case, the prosecution has already recovered call data details of some cell phone numbers and obtained necessary certificates of certain cell companies, that they have also examined the said Nodal Officers before the trial Court and that subsequently after coming to know about the involvement of two more numbers, they have sought for the call data records of the said two numbers.

10. In present case, the defence, for the first time and that too at the fag end of the trial by alleging that the witnesses P.W.1, P.W.3 to P.W.7 were not at all present at the time of occurrence, has attempted to sidetrack the issue by calling for call details and decoding register. Admittedly, the defence has not taken any action till the Investigating Officer was examined in chief and when the case was pending for cross-examination, the above petition came to be filed.



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Considering the above, the decision of the Hon'ble Supreme Court referred above, cannot be made applicable to the case on hand.

11. More importantly, during the cross-examination of the said witnesses, all the said witnesses would depose specifically that they have not taken cell phone with them to the occurrence place and that they were not having cell phones with them at the time of occurrence. As rightly contended by the learned Government Advocate (Crl.Side), after eliciting such answers from the witnesses, this Court is at loss to understand as to why and for what purpose, call details were sought for.

12. Now turning to the call details and tower location particulars with regard to the cell phone of the Investigating Officer – P.W.24, the petitioner in his application filed under Section 311 r/w 91 Cr.P.C., has nowhere whispered as to what purpose, the call details and the tower location and the decoding register of Investigating Officer's mobile number was sought for. As already pointed out, the prosecution has raised very serious objections with regard to the petitioner's prayer for seeking call details and tower location of the Investigating Officer – P.W.24.



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13. The learned Counsel appearing for the defacto complainant would rely on the decision of the Delhi High Court in ***Attar Singh Vs. State (NCT of Delhi)*** in Crl.M.C.No.406 of 2016, wherein also call data and location chart of the Investigating Officer was sought to be preserved and the High Court has specifically observed as thus:

“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



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claimed that accused does not have any right to have the information about the final activities of the investigating officer and 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.”

14. The learned Counsel would rely another decision of the Kerala High Court in ***State (NCT of Delhi) Vs. Neeraj*** in Crl.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



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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.”

15. 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. Considering the above, the impugned order dismissing the petition 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.

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

25.09.2024

NCC : Yes/No
Index : Yes/No
Internet: Yes/No

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To
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- 1.The Inspector of Police,
Seevalaperi Police Station,
Tirunelveli District.
- 2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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K.MURALI SHANKAR, J.

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Pre-Delivery order made in

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