

Ramesh Narayan Dagade ... Respondent

Mr. M.B. Chavan, PSI, ANC, Azad Maidan Unit.

3. The learned Special Judge was of the view that it would be open for petitioner to lead defence evidence, if he chooses to, and call for the relevant documents including the CDR at that stage. The CDR locations and other details cannot be disclosed to the accused as it would endanger the safety of the concerned persons, including the police informants.

4. Mr. Havnur, the learned counsel for the petitioner, submitted that the petitioner has been falsely roped in, for the offences punishable under Section 22(c) read with 8(c) of the Narcotic Drugs and Psychotropic Substances Act, 1985 ('NDPS', Act) for allegedly having been found in possession of the commercial quantity of LSD. CCTV footages and the CDR of the raiding party would bear out the utter falsity of the prosecution case.

5. The petitioner has been making efforts to seek the production of CCTV footages and CDR, since two months of his illegal arrest. Attention of the Court was invited to the orders passed by the learned Special Judge and this Court in the earlier Writ Petitions preferred by the petitioner.

6. By an order dated 7th February 2020, an application preferred by

the petitioner seeking direction to place on record the cellphone numbers of the members of the raiding party, and CCTV footages of feeders kept by the respondent no. 2 was rejected by the learned Special Judge, as the investigation was underway and charge-sheet was yet not filed.

7. In Criminal Application No. 246 of 2020, this Court gave liberty to the petitioner to file an application before the Special Court as by that time the charge-sheet was filed.

8. By an order dated 7th November 2020, the learned Special Judge disposed of the fresh application (Exhibit-7) by observing that investigating officer may invoke Section 173 (8) of the Code of Criminal Procedure and himself make available tower locations of the mobile handsets, if possessed/carried/used by the nine persons, including officers and staff of ANC. The applicant was directed to approach the respondent no. 2 to seek the CCTV footages.

9. As the respondent no. 2 did not take decision on the representations made by the petitioner, Criminal Writ Petition No. 357 of 2021 was filed. A division bench of this Court disposed of the said Writ Petition by an order dated 9th December 2021 thereby directing

the concerned authority to take a decision on the said representations within a period of four weeks thereof.

10. It further appears that the petitioner had filed Miscellaneous Application No. 199 of 2020 before the learned Special Judge seeking production of CDR record of the Mobile No. 9821579916 of Mr. Prashant More and Mobile No. 9854040222 belonging to the petitioner's wife. It was also contended that the CDR and the tower locations produced on record were apparently false and, therefore, directions be given to the Managing Director of Vodaphone Idea Limited to give undertaking to appoint an honest officer as a nodal officer.

11. The aforesaid sequence of events indicates that the petitioner has been relentlessly filing one application after another, seeking directions to produce CDR and CCTV footages.

12. By an order dated 7th November 2020, the Special Court has already directed the investigating officer to place the cellphone numbers and tower locations of the mobile phones handsets of the nine persons, including the members of the raiding party. Mr. Havnur submitted that in response to the said direction a report was filed to

the effect that the members of the raiding party were not carrying the cellphones.

13. If it is demonstrated that the investigating agency was in possession of evidence which bears upon the determination of the facts in issue and it has deliberately withheld such evidence, the Court may draw adverse inference for non production of the best evidence. However, an accused cannot be permitted to conduct a roving enquiry and seek production of documents and evidence, presuming existence of certain state of affairs. If during the course of prosecution evidence, the accused succeeds in eliciting material to show that a particular evidence existed, the accused may either insist for drawing an adverse inference for withholding of evidence or himself adduce such evidence, in his defence.

14. In case of '*Tomaso Bruno and Anr .Vs State of Uttar Pradesh*'¹, on which reliance was placed by Mr. Havnur, the Supreme Court emphasised that non-production of CCTV footages and non-collection of call records (details) and sim details from the mobile phones seized from the accused, amount to withholding of best evidence and such a case would be a fit case to draw an inference against the prosecution

1 (2015) 7 SCC 178

under Section 114 illustration (g) of the Evidence Act that the prosecution withheld the same as it would be unfavourable to them had it been produced

15. In the case of '*Suresh Kumar Vs. Union of India*'², the Supreme Court directed the trial Court to summon from the Telecom companies concerned the call details of the given mobile numbers by blocking out calling numbers and the numbers called from the said mobile phones, while furnishing such details.

16. There can be no duality of opinion as regards the existence of the power to direct the production of documents or summon the witnesses. However, in the facts of the case at hand, in view of the earlier orders passed by the Special Judge and the call details records and the tower locations having been placed on record and / or the response of the investigating agency in relation to those orders, the repeated applications on behalf of the petitioner partake the character of a roving enquiry.

17. In these circumstances, the learned Special Judge was justified in holding that if at an appropriate stage the petitioner seeks production of documents or summons to the witnesses, the said prayer can be

2 (2014) SCC online SC 1833

considered as, at that stage, the Court would have the benefit of evidence on record so as to determine the relevancy and admissibility of the evidence the production of which is sought.

18. For the forgoing reasons, the petition does not deserve to be entertained. The petition thus stands dismissed.

(N.J. JAMADAR, J)