



Crl.O.P.No2659 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 12.02.2025

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.O.P.No.2659 of 2025

G.Natarajan

... Petitioner/Accused

Vs.

The State by
The Inspector of Police,
Vigilance and Anti Corruption,
City Special Unit-III,
Chennai
(Crime No.1/AC/2013/CC-III)

... Respondent

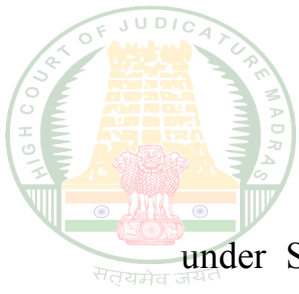
PRAYER: Criminal Original Petition is filed under Section 528 of B.N.S.S, 2023, prays to set aside the order dated 20.01.2025 passed against the petitioner by the learned Chief Judicial Magistrate in Crl.M.P.No.9 of 2025 in Spl.C.No.4 of 2014.

For Petitioner : M/s.N.Lakshmipriya

For Respondent : Mr.S.Udayakumar
Government Advocate (Crl.Side)

ORDER

The petitioner/accused, facing trial in Spl.C.C.No.4 of 2014, a trap case had filed in Crl.M.P.No.5 of 2020, seeking direction under Section 94 of the BNS, 2023, to direct the service provider, BSNL, to produce a certificate



under Section 65B for Ex.D20, a CD containing call details recorded in mobile No.9445850198 during the relevant period.

2. The petitioner's contention is that he has been falsely implicated, and to disprove this, he has examined several witnesses, including himself as DW.11. Through him, he has marked a CD containing tower location details issued by BSNL as Ex.D20. At the time of marking Ex.D20, the prosecutor before the lower Court had objected, stating that the CD was not accompanied by a certificate under Section 65B. The petitioner had earlier filed a petition seeking direction to the service provider, BSNL, to furnish a certificate under Section 65B.

3. The petitioner had marked Ex.D21 and Ex.D22, which are RTI and RTA response for CDR details and reason for non issuance of certificate under Section 65B for a period of 09.01.2013 to 19.01.2013. The service provider replied that the data could not be retrieved as it was more than 8 years old, and there had been a change of electronic system at the office of BSNL. The reply confirm that the CDR details already supplied on 19.08.2013 and Ex.D20, CD given by BSNL. Further DW.9, Kalavathy from BSNL



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confirms request for call details and tower locations for Mobile No.9445850198 for the period from 09.01.2013 to 19.01.2013, by Ex.D16, prosecution not objected to this fact.

4. The learned counsel appearing for the petitioner submits that the sum and substance of the reply to the RTI and RTA is that the call details and tower location given to the petitioner by BSNL on 19.08.2013, but due to the passage of time, since data could not be retrieved presently and due to change of Electronic System, certificate under 65B could not be issued. In support of this contention, the petitioner had examined DW.9, one Kalavathy, PRO from BSNL, who confirmed that on 14.08.2013, the petitioner had sought call details for mobile No.9445850198 for a period of 09.01.2013 to 19.01.2013, along with tower location, on payment of necessary fees. The same had been provided, and marked Ex.D.16. The prosecution had not seriously disputed Ex.D16.

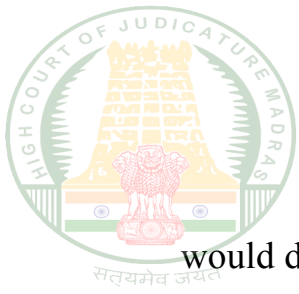
5. The petitioner further submitted that he, on the day of the trap, attended a meeting at the Executive Engineer's office in K.K.Nagar and was not available in his office, which is proved. PW.9, the Executive Engineer



confirmed the petitioner attending the meeting in the Executive Engineer's office on 18.01.2013 between 14.30 hrs to 16.30 hrs, as per Ex.D2, which was obtained through RTI.

6. Thus, the petitioner had given details collected through RTI and other records. To prove that the petitioner not demanded and received the bribe amount. Further the petitioner examined himself as DW.11 and marked Ex.D20, Compact Disc supplied by BSNL. At that time, the prosecutor objected to Ex.D20, the CD. However, Ex.D16 was not objected, but Ex.D20 was objected, being an electronic evidence requiring a certificate under Section 65B. The petitioner examined DW.9, marked Ex.D16 and examined himself as DW.11 and marked Ex.D20, Ex.D21 & Ex.D22 to prove the genuineness of Ex.D20 and the reason for non issuance of 65B certificate. Furnishing of call details and tower locations are not disputed

7. The petitioner submissions that he had taken all steps to prove his defence, and hence, the trial Court's dismissal of his petition, citing the reason that the case is 10 years old and the petitioner is trying to protract the proceedings, is not proper. The trial Court to consider Ex.D20, otherwise it

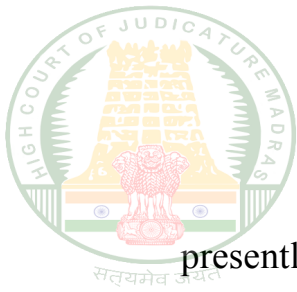


would deprive the petitioner right of defence in the trial, which is a right under Article 21.

8. The learned Government Advocate (Crl.Side) appearing for the State submitted that in this case, the petitioner had produced Ex.D16, the call details and tower location of the petitioner. Ex.D20 is the CD, which is electronic evidence. Marking of CD has been objected to since it is without a certificate under Section 65B. The issuance of a certificate under Section 65B, which is a precondition to consider electronic evidence.

9. In this case, the petitioner's call details and tower locations for his Mobile No.9445850198 obtained on 19.08.2013 confirmed by DW.9, Ex.D16, Ex.D20, Ex.D21 & Ex.D22 through RTI. The objection is for Ex.D20, the CD. The petitioner had examined himself as DW.11, marked Ex.D20, Ex.D21 and Ex.D22.

10. On perusal of Ex.D21 and Ex.D22, it is evident that the call details and tower locations for Mobile No.9445850198 for the period from 09.01.2013 to 19.01.2013 furnished by BSNL in the CD, Ex.D20. Since



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presently Electronic System changed in BSNL office and now it is more than 8 years. The electronic evidence, which was available in the year 2013, are not presently available and hence data could not be retrieved and 65B certificate unable to be furnished. This is proved from the replies dated 24.12.2021 and 31.01.2022. Such being the case, the petitioner cannot be penalized for the non-availability of the data. The inference drawn from the above is in favour of the petitioner. Hence, the trial Court can consider Ex.D16 and examine Ex.D20, Ex.D21 and Ex.D22, taking relevance of the above facts invoking Section 114 of Evidence Act, while deciding the above case.

11. With the above observations, this Criminal Original Petition is disposed of.

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Internet: Yes/No
Neutral Citation: Yes/No
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To

- 1.The Chief Judicial Magistrate, Chengalpattu.
2. The Inspector of Police,
Vigilance and Anti Corruption, City Special Unit-III, Chennai
- 3.The Public Prosecutor, High Court, Madras.



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M.NIRMAL KUMAR, J.

This matter is listed today under the caption "being mentioned" at the instance of the learned counsel appearing for the petitioner.

2. Heard Ms.N.Lakshmipriya, learned counsel for the petitioner and Mr.S.Udayakumar, learned Government Advocate (Crl.Side) for the respondent.

3. Considering the submissions made, Registry is directed to carryout the following corrections in the order dated 12.02.2025 in Crl.O.P.No.2659 of 2025:

(i) In the first paragraph, Crl.M.P.No.5 of 2020 shall be replaced as Crl.M.P.No.9 of 2025.

(ii) In the paragraph Nos.1 & 2, Ex.P20 shall be replaced as Ex.D20.

(iii) In paragraph No.5, the word 'trap' shall be replaced with 'demand'.



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4. The other portions of the order, dated 12.02.2025 shall remain unaltered.

27.02.2025

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Note to office: Registry is directed to issue the corrected order copy immediately to the parties.

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