



Crl.R.C.(MD)No.730 of 2025

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 11.07.2025

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THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

Crl.R.C.(MD)No.730 of 2025

and

Crl.M.P(MD)No.7928 of 2025

M.Raja

... Petitioner

Vs.

V.Nageshwaran

... Respondent

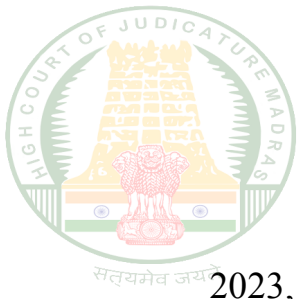
PRAYER : Criminal Revision Case filed under Section 438 r/w 442 of BNSS, to call for the records in Crl M.P No.1781 of 2024 in STC No. 163 of 2023 on the file of Fast Track Court (ML) Uthamapalayam, dated 03.10.2024 and to set aside the same.

For Petitioner : Mr.S.A.Ajmal Khan

For Respondent : Mr.K.Guhan

ORDER

This Criminal Revision Case is directed against the order dated 03.10.2024 passed by the learned Fast Track Court (Magisterial Level), Uthamapalayam, in Crl.M.P. No. 1781 of 2024 in S.T.C. No. 163 of



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2023, whereby the petition filed by the revision petitioner under Section 45-A of the Indian Evidence Act, 1872, seeking expert opinion by obtaining the call history of two mobile numbers 8086628834 and 7639316725 for the date 22.05.2022, was dismissed.

2. Factual Background:

(a) The petitioner herein is the accused in the said calendar case. The respondent is the complainant. The petitioner filed an application under Section 45-A of the Indian Evidence Act for a direction to summon the call detail records (CDRs) of the aforementioned mobile numbers, in order to substantiate his plea of alibi.

(b) The Trial Court dismissed the said application on the ground that during the cross-examination, the accused had admitted that the cheque in question was filled in his handwriting. The Trial Court concluded that the plea of alibi, in light of such admission, was not sustainable.

3. Petitioner's Contentions:

(a) The learned counsel for the petitioner submitted that he is a resident of Kerala, whereas the respondent/complainant resides in Kariyanampatti Village, Uthamapalayam Taluk, Theni District.



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According to the complaint, the petitioner had issued two cheques for a sum of Rs.4,00,000/- each on 22.05.2022 at the complainant's house.

(b) The petitioner, however, denies having issued any cheque on that date and contends that he was physically present in Kerala on 22.05.2022. To substantiate this claim, the petitioner relies on a WhatsApp conversation dated 15.05.2022, wherein the complainant allegedly acknowledged that the petitioner owed only Rs.5,95,000/- not Rs.8,00,000/-. The said WhatsApp conversation is marked as Exhibit D. 2.

(c) The petitioner contends that the call history and location data of the respective mobile numbers for 22.05.2022 are crucial to establish his presence in Kerala on the relevant date and thereby rebut the allegation of cheque issuance at Theni.

4. Respondent's Contentions:

The learned counsel for the respondent submits that the Trial Court rightly dismissed the petition as a delay tactic by the petitioner. It is contended that the accused had already admitted that the cheque in question, marked as Exhibit P.1, was filled in his handwriting, and hence his plea of alibi cannot be sustained. The respondent asserts that the



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expert opinion sought through the call detail records would not alter the evidentiary value of the admission made by the petitioner during cross-examination.

5. Points for Consideration:

The following issues arise for determination:

- (i) Whether the dismissal of the application under Section 45-A of the Indian Evidence Act, 1872 by the Trial Court is sustainable?
- (ii) Whether calling for the call history records and expert opinion is essential for securing a fair trial?

6. Discussion and Findings:

(a) On the Scope of Section 45-A of the Indian Evidence Act:

(i) Section 45-A of the Indian Evidence Act, 1872, permits the Court to obtain expert opinion, particularly relating to electronic records. In the context of digital evidence, such as call detail records and location data, the opinion of an expert may assist the Court in drawing accurate conclusions regarding the presence or absence of a party at a particular location.



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(ii) The Hon'ble Supreme Court in **Tomaso Bruno v. State of**

Uttar Pradesh¹, observed:

“25. The production of scientific and electronic evidence in court as contemplated under Section 65-B of the Evidence Act is of great help to the investigating agency and also to the prosecution.....”

(b) On the Right to Fair Trial:

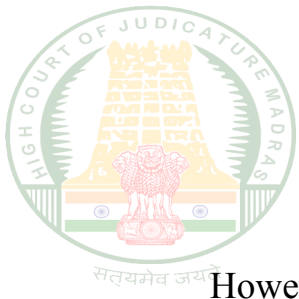
(i) Article 21 of the Constitution of India guarantees the right to life and personal liberty, which includes the right to a fair trial. The denial of an opportunity to produce relevant evidence, particularly when the accused seeks to prove innocence through technological means, would be violative of such a right.

(ii) In the instant case, the accused seeks to establish his defense of alibi through legally admissible evidence—i.e., call history and location details—which are maintained by service providers and can only be summoned through Court direction.

(c) On the Observations of the Trial Court:

(i) The Trial Court, while dismissing the petition, observed that the petitioner ought to have obtained the records from the network provider.

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However, such records cannot be accessed by individuals unless the Court issues appropriate directions under law.

(ii) Moreover, the Trial Court appears to have relied heavily on the petitioner's admission during cross-examination regarding the handwriting on the cheque. However, such an admission does not conclusively disprove the defense of alibi, especially when the core dispute pertains to the *circumstances* and *location* of issuance of the cheque.

(d) Conduct of the Complainant:

A noteworthy submission made by the petitioner pertains to the conduct of the respondent/complainant, who is a Government teacher. Rule 6 of the Tamil Nadu Government Servants Conduct Rules, 1973, prohibits Government servants from engaging in private financial transactions involving interest. During cross-examination, the complainant allegedly admitted to having received Rs.10,000/- as interest, which may attract disciplinary implications.



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7. Accordingly,
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(a) In light of the above discussion, this Court is of the considered view that summoning the call history and location details of the concerned mobile numbers for the date 22.05.2022, along with expert opinion, would assist in securing a just and fair adjudication of the matter.

(b) Accordingly, the order dated 03.10.2024 passed by the learned Fast Track Court (Magisterial Level), Uthamapalayam in Crl.M.P. No. 1781 of 2024 in S.T.C. No. 163 of 2023 is hereby **set aside**.

(c) The Trial Court is directed to:

(i) Issue appropriate direction to the concerned service providers to furnish the call detail records and location data for mobile numbers 8086628834 and 7639316725 for 22.05.2022;

(ii) Obtain expert opinion on the same under Section 45-A of the Indian Evidence Act;

(iii) Complete the trial expeditiously and in any case, within **six (6) months** from the date of receipt of a copy of this order.



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(d) This Criminal Revision Case is allowed. Consequently,
connected Criminal Miscellaneous Petition stands closed.

11.07.2025

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

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To

The Fast Track Court (ML),
Uthamapalayam.



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L.VICTORIA GOWRI ,J.

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Order made in
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