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Crl.O.P. Nos.30541, 30531, 30534, 30522, 30523, 30527 and 30538 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 23.02.2026

PRONOUNCED ON: 25.03.2026

CORAM:

THE HON'BLE MR. JUSTICE A.D. JAGADISH CHANDIRA

Crl.O.P. Nos.30541, 30531, 30534, 30522, 30523, 30527 and 30538 of 2025
and

Crl.M.P. Nos.20867, 20863, 20865, 20854, 20856, 20859 and 20866 of 2025

Crl.O.P. No.30541 of 2025:

Mr. S. Kannan

Petitioner

vs.

The State represented by
the Deputy Superintendent of Police
ACB, CBI, Chennai

Respondent

Crl.O.P. No.30531 of 2025:

Mr. Dayanidhi Maran

Petitioner

vs.

The State represented by
the Deputy Superintendent of Police
ACB, CBI, Chennai

Respondent

Crl.O.P. No.30534 of 2025:

Mr. Dayanidhi Maran

Petitioner

vs.

The State represented by
the Deputy Superintendent of Police
ACB, CBI, Chennai

Respondent

Crl.O.P. No.30522 of 2025:

Mr. Dayanidhi Maran

Petitioner

vs.

The State represented by
the Deputy Superintendent of Police
ACB, CBI, Chennai

Respondent



Crl.O.P. No.30523 of 2025:

Mr. Dayanidhi Maran

Petitioner

vs.

The State represented by
the Deputy Superintendent of Police
ACB, CBI, Chennai

Respondent

Crl.O.P. No.30527 of 2025:

Mr. Dayanidhi Maran

Petitioner

vs.

The State represented by
the Deputy Superintendent of Police
ACB, CBI, Chennai

Respondent

Crl.O.P. No.30538 of 2025:

Mr. Dayanidhi Maran

Petitioner

vs.

The State represented by
the Deputy Superintendent of Police
ACB, CBI, Chennai

Respondent

Prayer in Crl.O.P. No.30541 of 2025:

Criminal Original Petition filed under Section 528 of the BNSS, 2023, to set aside the order dated 10.10.2025 in Crl.M.P. No.8576 of 2025 in C.C.No.10 of 2019 on the file of the Special Court No.II for Trial of Criminal Cases Related to Elected Members of Parliament and Members of Legislative Assembly of Tamil Nadu, Chennai and allow the petitioner's prayer to summon Shri. Rakesh Kumar Somani, AGM (Vigilance), BSNL, New Delhi, (A.L.W. 48) as a Court Witness under Section 348 BNSS.

Prayer in Crl.O.P. No.30531 of 2025:

Criminal Original Petition filed under Section 528 of the BNSS, 2023, to set aside the order dated 10.10.2025 in Crl.M.P. No.8571 of 2025 in C.C.No.10 of 2019 on the file of the Special Court No.II for Trial of Criminal Cases



Related to Elected Members of Parliament and Members of Legislative Assembly of Tamil Nadu, Chennai and allow the petitioner's prayer for causing production of the correspondences by letters, *etc.* between PW 36 A.Gunasekaran with the different personnel/Department of BSNL seeking documents, the reply correspondences of the said personnel/Department of BSNL handing over documents and electronic records, along with the correspondences by letters, *etc.* between PW 36 and officials of the CBI arranged sequentially and chronologically, in connection with the investigation of the present case.

Prayer in Crl.O.P. No.30534 of 2025:

Criminal Original Petition filed under Section 528 of the BNSS, 2023, to set aside the order dated 10.10.2025 in Crl.M.P. No.8573 of 2025 in C.C.No.10 of 2019 on the file of the Special Court No.II for Trial of Criminal Cases Related to Elected Members of Parliament and Members of Legislative Assembly of Tamil Nadu, Chennai and direct the respondent to produce before the Trial Court the complete materials and findings in Preliminary Enquiry No.PE-5[A]/2011/ACB/CBI/Chennai.

Prayer in Crl.O.P. No.30522 of 2025:

Criminal Original Petition filed under Section 528 of the BNSS, 2023, to set aside the order dated 10.10.2025 in Crl.M.P. No.8583 of 2025 in C.C.No.10 of 2019 on the file of the Special Court No.II for Trial of Criminal Cases Related to Elected Members of Parliament and Members of Legislative Assembly of Tamil Nadu, Chennai and allow the petitioner's prayer to summon the Secretary (Telecom), Government of India, as a Court Witness under Section 348, BNSS, (corresponding to Section 311 Cr.P.C.).



Prayer in Crl.O.P. No.30523 of 2025:

Criminal Original Petition filed under Section 528 of the BNSS, 2023, to set aside the order dated 10.10.2025 in Crl.M.P. No.8584 of 2025 in C.C.No.10 of 2019 on the file of the Special Court No.II for Trial of Criminal Cases Related to Elected Members of Parliament and Members of Legislative Assembly of Tamil Nadu, Chennai and allow the petitioner's prayer to summon LW2 Shri. A. Mahalingam and LW34 Shri Mohan Lal Sindhi as Court Witnesses under Section 348, BNSS (corresponding to Section 311 Cr.P.C.).

Prayer in Crl.O.P. No.30527 of 2025:

Criminal Original Petition filed under Section 528 of the BNSS, 2023, to set aside the order dated 10.10.2025 in Crl.M.P. No.8586 of 2025 in C.C.No.10 of 2019 on the file of the Special Court No.II for Trial of Criminal Cases Related to Elected Members of Parliament and Members of Legislative Assembly of Tamil Nadu, Chennai and allow the petitioner's prayer to summon Shri. T. Sathyamurthy, then Inspector of Police, CBI, ACB, Chennai as a Court Witness under Section 348, BNSS (corresponding to Section 311 Cr.P.C.).

Prayer in Crl.O.P. No.30538 of 2025:

Criminal Original Petition filed under Section 528 of the BNSS, 2023, to set aside the order dated 10.10.2025 in Crl.M.P. No.8568 of 2025 in C.C.No.10 of 2019 on the file of the Special Court No.II for Trial of Criminal Cases Related to Elected Members of Parliament and Members of Legislative Assembly of Tamil Nadu, Chennai and allow the petitioner's prayer for causing production of the correspondence by letters, etc. written by Shri.T.Sathyamurthy, Inspector of Police, CBI/ACB to the different personnel/Department of BSNL seeking documents, the reply correspondences of the said personnel/Department of BSNL handing over documents and electronic records, along with the correspondents by letters, etc., to the said



Inspector of Police, arranged sequentially and chronologically in connection with the investigation of the present case.

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For petitioner in
Crl.O.P.No.30541 of 2025

Mr. R. Srinivas, Sr. Counsel
assisted by Mr. Kavim Bharathan

For petitioner in
Crl.O.P. Nos.30522, 30523,
30527, 30531, 30534 and
30538 of 2025

Mr. T. Mohan, Sr. Counsel
assisted by
Mrs. M. Sneha

For respondent in all cases

Mr. N. Baaskaran
Spl. Public Prosecutor for CBI Cases

COMMON ORDER

At the outset, it is worth pointing out that for the sake of convenience and also to avoid prolixity, the petitioners in these cases will be referred to by their respective names.

2. In this batch of seven cases, there are totally seven criminal original petitions, out of which, six have been filed by Mr. Dayanidhi Maran and the remaining one is filed by one Mr. Kannan, who are A.3 and A.6 respectively, in C.C. No.10 of 2019 on the file of the Special Court No.II for trial of criminal cases related to elected Members of Parliament and Members of Legislative Assembly of Tamil Nadu, Chennai 600 001 (hereinafter “the Trial Court” for the sake of brevity).

3. For the sake of clarity and convenience, the prayer in each of the petitions is delineated in tabular form as under:



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Petitions filed by Mr. Dayanidhi Maran:

S.No.	Crl.O.P.No.	Relief sought
1.	Crl.O.P. No. 30522/2025	To set aside the order dated 10.10.2025 in Crl.M.P.No. 8583 of 2025 in C.C. No.10 of 2019 on the file of the Special Court No.II for trial of criminal cases related to Elected Members of Parliament and Members of Legislative Assembly of Tamil Nadu, Chennai, and consequently, to allow the petition seeking to summon the Secretary (Telecom) Government of India as a Court witness under S.348 of BNSS/ S.311 Cr.P.C.
2.	Crl.O.P. No.30523/2025	To set aside the order dated 10.10.2025 in Crl.M.P.No. 8584 of 2025 in C.C. No.10 of 2019 on the file of the Special Court No.II for trial of criminal cases related to Elected Members of Parliament and Members of Legislative Assembly of Tamil Nadu, Chennai, and consequently, to allow the petition seeking to summon Shri A. Mahalingam (LW-2) and Shri Mohan Lal Sindhi (LW-34) as a Court witness under S.348 of BNSS/ S.311 Cr.P.C
3.	Crl.O.P. No.30531/2025	To set aside the order dated 10.10.2025 in Crl.M.P.No. 8571 of 2025 in C.C. No.10 of 2019 on the file of the Special Court No.II for trial of criminal cases related to Elected Members of Parliament and Members of Legislative Assembly of Tamil Nadu, Chennai, and consequently, to allow the petitioner's prayer to cause production of the correspondences by letters between A.Gunasekaran (PW-36) with different personnel/Departments of BSNL seeking documents, the reply correspondences of the said personnel/Departments of BSNL handing over documents and electronic records, along with the correspondences by letters, etc, between A.Gunasekaran (PW-36) and officials of the CBI, arranged sequentially and chronologically.



S.No.	Crl.O.P.No.	Relief sought
4.	Crl.O.P. No.30527/2025	To set aside the order dated 10.10.2025 in Crl.M.P.No. 8586 of 2025 in C.C. No.10 of 2019 on the file of the Special Court No.II for trial of criminal cases related to Elected Members of Parliament and Members of Legislative Assembly of Tamil Nadu, Chennai, and consequently, to allow the petition seeking to summon Shri.T.Sathyamurthy, then Inspector of Police, CBI, ACB, Chennai, as Court witness under S.348 of BNSS/S.311 Cr.P.C.
5.	Crl.O.P. No.30538/2025	To set aside the order dated 10.10.2025 in Crl.M.P.No. 8568 of 2025 in C.C. No.10 of 2019 on the file of the Special Court No.II for trial of criminal cases related to Elected Members of Parliament and Members of Legislative Assembly of Tamil Nadu, Chennai, and consequently, to allow the petition seeking issuance of summons to the respondent to cause production of the correspondences by letters, etc., written by Shri.T.Sathyamurthy, Inspector of Police, CBI/ACB to different personnel/Departments for BSNL seeking documents, the reply correspondences from the BSNL handing over documents and electronic records, along with the correspondences by letters, etc., arranged sequentially and chronologically.
6.	Crl.O.P. No.30534/2025	To set aside the order dated 10.10.2025 in Crl.M.P.No. 8573 of 2025 in C.C. No.10 of 2019 on the file of the Special Court No.II for trial of criminal cases related to Elected Members of Parliament and Members of Legislative Assembly of Tamil Nadu, Chennai, and consequently, to allow the petition seeking issuance of summons to the respondent to cause production of the materials and findings in Preliminary Enquiry PE5[A]/11ACB/Chennai.



Petition filed by Mr. S. Kannan:

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S.No.	CrI.O.P.No.	Relief sought
7.	CrI.O.P.No.30541/2025	To set aside the order dated 10.10.2025 in CrI.M.P.No. 8576 of 2025 in C.C. No.10 of 2019 on the file of the Special Court No.II for trial of criminal cases related to Elected Members of Parliament and Members of Legislative Assembly of Tamil Nadu, Chennai, and consequently, to allow the petition seeking to summon Shri.Rakesh Kumar Somani, AGM, Vigilance BSNL, New Delhi (ALW-48) as Court witness under S.348 of BNSS/ S.311 Cr.P.C.

4. A perusal of the charge sheet would reveal that the offences under Sections 120B, 409, 467, 471 and 477A of IPC and 13(1)(c), 13(1)(d) and 13(2) of the Prevention of Corruption Act, 1988, are alleged to have been committed by the accused during the period 2004 – 2007.

5. Given that the factual substratum is common and arises from a single charge sheet, the brief facts are recapitulated conjointly for all the above criminal original petitions.

5.1. Mr. Dayanidhi Maran served as a Minister of Communications and Information Technology (hereinafter referred to as “MoCIT” for the sake of brevity) during the years 2004 – 2007 and Mr.Kannan is the Chief Technical Officer of Sun TV.



5.2. The charge sheet filed by the CBI alleges that during the period 2004–2007, Mr. Dayanidhi Maran, in conspiracy with senior officials of BSNL and certain individuals associated with Sun TV Network such as Mr.Kannan, had dishonestly procured and continued to enjoy a large number of telecom facilities at his residences in Chennai and New Delhi under the BSNL “Service Category”. As far as Mr. Kannan is concerned, the specific allegation is that he had criminally conspired with the other accused by purchasing telephone exchanges/equipment from one M/s.ABS Pvt. Ltd.

5.3 According to the prosecution, the facilities so availed were wholly impermissible for a private individual and in any event, far in excess of the entitlement available to a Member of Parliament or Minister at the relevant time. Notwithstanding such limitation, Mr. Dayanidhi Maran is alleged to have availed a vast spectrum of telecommunications facilities, comprising hundreds of telephone lines, ISDN–PRA/BRA connections, broadband and internet leased circuits, mobile connections, optical fibre connectivity, leased lines, and video conferencing systems, many of which, were pressed into service for the operational exigencies of Sun TV Network and its allied entities. The prosecution further alleged that several BSNL officials, acting in furtherance of the conspiracy, manipulated records by showing BSNL authorities as subscribers while installing the connections at private premises, thereby



converting private connections into service category connections along with failing to raise bills or keep record of subsequently cancelled bills. It is also alleged in the charge sheet that the accused persons had generated false or misleading official replies to conceal liability and thus, enabled continued free usage of high-end telecom infrastructure, resulting in wrongful loss estimated at about Rs. 1.78 crores to the public sector telecom entities, including BSNL and MTNL and corresponding wrongful gain to private beneficiaries, particularly Sun TV Network.

5.4. Notwithstanding the examination of numerous witnesses and marking of several documents by the prosecution at the earlier stage of trial, the subsequent filing of additional witness and document lists, coupled with the selective manner of adducing evidence, compelled the petitioners to move several miscellaneous applications. By two common orders, both dated 10.10.2025, the Trial Court partly allowed and partly dismissed those applications. It is against the said orders of dismissal that the present criminal original petitions have been instituted. The specific prayers sought before the Trial Court in each of the criminal miscellaneous petitions are not reproduced now, as the same are discernible from the tabulation set out above.

6. Mr. R. Srinivas, learned Senior Counsel representing Mr. Kavin Bharathan, learned counsel on record for Mr. Kannan and Mr. T. Mohan,



learned Senior Counsel representing Mrs. M. Sneha, learned counsel on record for Mr. Dayanidhi Maran, canvassed submissions resting on a common foundation. The essence of their arguments is set out hereunder:

6.1. An application seeking re-investigation in C.M.P. No.13839 of 2020 was preferred by the prosecution and by order dated 25.01.2021, the said application came to be allowed. Thereagainst, the petitioners preferred Crl.R.C. No.54 of 2021 before this Court. The said revision was allowed vide order dated 22.02.2021, the order permitting re-investigation was set aside and it was categorically held that the prosecution is bound to establish its documentary evidence strictly in accordance with law, by summoning the witnesses concerned and examining them under Section 311 Cr.P.C.

6.2. Subsequently, the prosecution filed two applications in Crl.M.P.Nos.2730 and 2731 of 2023, seeking to bring on record, additional documents and additional witness, respectively and Crl.M.P. No.2731 of 2023 filed for examining additional witness, viz., Rakesh Kumar Somani (A.L.W. 48) for the purpose of marking four Vigilance reports, was allowed vide order dated 10.03.2023.

6.3. Insofar as the prosecution case pertaining to Rakesh Kumar Somani (A.L.W.48) who is also the witness sought to be examined in Crl.O.P. No.30522 of 2025 is concerned, it is the specific stand of the prosecution that



his testimony is indispensable for the purpose of marking four Vigilance reports, which are stated to constitute material documentary evidence in support of the charge. However, the prosecution, having examined 98 witnesses and marked 418 exhibits, did not examine Rakesh Kumar Somani (A.L.W.48) and also did not choose to mark the 4 vigilance reports which are crucial, as they bear directly upon the allegations and if duly proved, would exonerate them, as the aforesaid documents disclose that there was no irregularity in the installation of excess telephone lines along with other consequential installations, either in the residence or in the camp office of Mr. Dayanidhi Maran at the relevant point of time, which shakes the very foundation of the prosecution case.

6.4. Pertinently, the prosecution had partially marked the annexures in the fourth Vigilance report as Ex. P. 345 through T.S. Ramakrishnan (P.W.63), but had wantonly omitted to mark the 4 Vigilance reports in their entirety. The first Vigilance report, particularly clause II therein, reveals the details of cables laid from Boat Club to Sun TV office, wherein, it is categorically stated that no such cable was laid, which disproves the case of the prosecution, thereby making the allegations levelled against the petitioners baseless.

6.5. The case of the prosecution that the number of telephone connections was inordinately high puts a ceiling on the entitlement of MoCIT, whereas, there is no document to show that there is, in fact, a ceiling on



entitlement. Though evidence of Rita Achary (P.W.60) and Ex. P. 343 refer to entitlement of telecom facilities for Union Ministers, the entitlement of MoCIT is not clear. That apart, a perusal of Rule 435 of the Telegraph Rules, 1951, would show that service connections for the purpose of the department shall be provided free of cost. A clarity on the aspect of entitlement can be arrived at only by examining Mohan Lal Sindhi (L.W.34) since the policy of providing telephone connections to BSNL employees and MoCIT as service category connections were attributed in his statement dated 17.03.2015 and his letter dated 27.04.2015 which is marked as Ex.D.121, which is also referred to in his further statement dated 06.05.2015.

6.6. Insofar as the statements recorded under Section 161 Cr.P.C. and the replies issued pursuant thereto, which were duly approved by the Secretary (Telecom), the examination of the said authority assumes considerable significance in elucidating the question of entitlement. This is especially so since, in his communication dated 03.10.2007, he had adverted to the existence of an inordinately high number of telecom connections. Furthermore, the Secretary (Telecom) would be the only authority competent to draw a clear distinction between the entitlement of an ordinary Member of Parliament and that of the MoCIT with respect to service category connections.



6.7. The prosecution, despite having arrayed Mahalingam (L.W.2) and Mohan Lal Sindhi (L.W.34) as witnesses, had failed to examine them and such an act of cherry-picking evidence is only to deprive the petitioners of their chance to adduce evidence to prove their case. The aforesaid witnesses were the Private Secretary to MoCIT and the in-charge of the PHP section respectively, with the latter even categorically deposing that there were no earmarked guidelines for the entitlement of telecom facilities for MoCIT during the relevant years from 2004 to 2007, thereby, making their examination vital for effective adjudication of the *lis*.

6.8. Insofar as the necessity to examine Sathyamurthy as a Court witness, his crucial role in conducting the preliminary enquiry with various officers of BSNL, DoT, *etc.*, collection of documents, which formed the foundation of the FIR and subsequent final report go to show that he ought to have been examined. That apart, Meenalochani (P.W.39), who is a BSNL official, had categorically deposed that a majority of the investigation was effectively conducted by Sathyamurthy and even some documents refer to him as the I.O. Notably, several documents that were said to have been handed over to him by the officials concerned were not annexed in the final report and Sathyamurthy being the custodian of all documents pertaining to the enquiry at the relevant period, the prosecution ought to have examined him before the Trial



Court, having admitted to have appointed him as a Pairavi Officer to oversee the prosecution of the case.

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6.9. During the trial, the prosecution examined Gunasekaran, DGM (Vigilance), BSNL, as P.W.36, who deposed that he collected certain documents from various BSNL officials/departments and handed them over to Rajesh Kumar (P.W.98) – Investigating Officer, through Production-cum-Seizure Memos Ex.P-173, Ex.P-174, and Ex.P-326 dated 31-08-2013, 02-09-2013, and 05-12-2013. This was also deposed by Rajesh Kumar (P.W.98) during his chief-examination. However, during cross-examination, Gunasekaran (PW-36) admitted that Rajesh Kumar (P.W.98) did not directly collect the documents from the BSNL officials/departments concerned. Instead, Gunasekaran (P.W.36) co-ordinated with the CBI and through letters and communications, collected the documents from the respective officials/departments and then handed them over to Rajesh Kumar (P.W.98). These correspondences between the Vigilance Department with various BSNL officials/departments have not been fully produced before the Trial Court to establish continuity and relevance. Further, certain electronic records, including CDs, are stated to have been seized, and the related correspondences are essential to establish the chain of custody and as such, those correspondences must be collected and produced chronologically prior to recalling witnesses and before the cross-examination of Rajesh Kumar (P.W.98) on behalf of the petitioners.



6.10. During the examination of Rajesh Kumar (P.W.98), Investigating Officer, the FIR in this case was marked as Ex.P.381. The said exhibit indicates that based on source information, a Preliminary Enquiry bearing No. PE-5[A]/11 ACB/CHE was registered and the allegations were enquired into. When it is the categorical evidence of other witnesses that a preliminary enquiry was conducted by Sathyamurthy, neither the evidence of Rajesh Kumar (P.W.98) nor the FIR (Ex.P.381) discloses which officer conducted the said preliminary enquiry or what the findings or report of such enquiry were, which are necessary for the effective cross-examination of witnesses. The preliminary enquiry report and the materials collected during the preliminary enquiry being official documents, their production before the Court is necessary and critical for effective adjudication of the *lis*.

6.11. The prosecution had wantonly arrayed the witnesses and chosen not to examine some of them, in order to deprive the petitioners of a chance to prove their case. The Trial Court, while partially allowing the applications filed by the petitioners and partially dismissing them, had found that the witnesses sought to be examined by the petitioners cannot be examined as Court witnesses at the instance of the petitioners and can only be examined as defence witnesses. In the event of the witnesses turning hostile, the petitioners may not be able to cross-examine their own witnesses and the trial Court erred in dismissing the



applications filed by the petitioners wherein some of the witnesses who were not examined by the prosecution, were sought to be examined.

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6.12. The Trial Court, without appreciating these crucial aspects, had partly dismissed the applications and the same ought to have been allowed in order to see a larger picture and only then, the case can be effectively adjudicated.

7. Based on the above submissions, Mr. R. Srinivas, learned Senior Counsel appearing on behalf of Mr. Kannan and Mr. T. Mohan, learned Senior Counsel appearing on behalf of Mr. Dayanidhi Maran would plead for allowing of the criminal original petitions.

8. On behalf of the petitioners, to buttress their contentions, reliance was placed on certain judgments. The proposition for which they relied on those authorities, together with the relevant paragraph(s) are given as under:

1. CIRCUMSTANCES WHEN A WITNESS CAN BE EXAMINED AS A COURT WITNESS:

(i) Jamatraj Kewalji Govani v. The State of Maharashtra [AIR 1968 SC 178]:

“10. Section 540 is intended to be wide as the repeated use of the word ‘any’ throughout its length clearly indicates. The section is in two parts. The first part gives a discretionary power but the latter part is mandatory. The use of the word ‘may’ in the first part and of the word ‘shall’ in the second firmly establishes this difference. Under the first part, which is permissive, the court may act in one of three ways : (a) summon any person as a witness, (b) examine any person present in court although



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not summoned, and (c) recall or re-examine a witness already examined. The second part is obligatory and compels the Court to act in these three ways or any one of them, if the just decision of the case demands it. As the section stands there is no limitation on the power of the Court arising from the stage to which the trial may have reached, provided the Court is bona fide of the opinion that for the just decision of the case, the step must be taken. It is clear that the requirement of just decision of the case does not limit the action to something in the interest of the accused only. The action may equally benefit the prosecution. There are, however, two aspects of the matter which must be distinctly kept apart. The first is that the prosecution cannot be allowed to rebut the defence evidence unless the prisoner brings forward something suddenly and unexpectedly. This was laid down by Tindal, C.J. in words which are oft-quoted: "There is no doubt that the general rule is that where the Crown begins its case like a plaintiff in a civil suit, they cannot afterwards support their case by calling fresh witnesses, because they are met by certain evidence that contradicts it. They stand or fall by the evidence they have given. They must close their case before the defence begins; but if any matter arises ex improviso, which no human ingenuity can foresee, on the part of a defendant in a civil suit, or a prisoner in a criminal case, there seems to me no reason why that matter which so arose ex improviso may not be answered by contrary evidence on the part of the Crown." [Reg v. Frost¹] There is, however, the other aspect namely of the power of the Court which is to be exercised to reach a just decision. This power is exercisable at any time and the Code of Criminal Procedure clearly so states. Indeed as stated by Avory J. in Rex v. Dora Harris²: "The cases of Reg v. Chapman, (8 C & P. 558) and Reg v. Holden, (8 C & P. 606) establish the proposition that the presiding judge at a criminal trial has the right to call a witness not called by either the prosecution or the defence, if in his opinion this course is necessary in the interests of justice. It is true that in none of the cases has any rule been laid down limiting the point in the proceedings at which the judge may exercise that right." However the learned Judge points out that injustice is possible unless some limitation is put upon the exercise of that right and he adopts for that purpose the rule laid down by Tindal, C.J. in Reg v. Frost even in those cases where a witness is called by the Judge after the case for the defence is closed, and states, "that the practice should be limited to a case where the matter arises ex improviso, which no human ingenuity can foresee, on the part of a prisoner, otherwise injustice would ensue" and cites the case of Reg v. Haynes where Bramwell B. refused to allow fresh evidence to be gone into after the close of the whole case. In Dora Harris case, five persons were tried, two for stealing and they pleaded guilty and three others for receiving who pleaded not guilty. The first two remained in the dock and the trial proceeded against the other three. They gave evidence on their own behalf and the prosecution case was not quite strong. The Recorder then asked one of the other two accused to give evidence and allowed the prisoner Dora against whom the evidence went to cross-examine him but did not ask Dora to enter the box again to contradict the new evidence. This was held by the Court of



Criminal Appeal to be a wrong exercise of the power of the Court. It was an extreme example of the exercise of the power.”

(ii) Mohanlal Shamji Soni vs. Union of India [1991 Supp (1) SCC 271]

“10. In such a situation a question that arises for consideration is whether the presiding officer of a court should simply sit as a mere umpire at a contest between two parties and declare at the end of the combat who has won and who has lost or is there not any legal duty of his own, independent of the parties, to take an active role in the proceedings in finding the truth and administering justice? It is a well accepted and settled principle that a court must discharge its statutory functions — whether discretionary or obligatory — according to law in dispensing justice because it is the duty of a court not only to do justice but also to ensure that justice is being done. In order to enable the court to find out the truth and render a just decision, the salutary provisions of Section 540 of the Code (Section 311 of the new Code) are enacted whereunder any court by exercising its discretionary authority at any stage of enquiry, trial or other proceeding can summon any person as a witness or examine any person in attendance though not summoned as a witness or recall or re-examine any person in attendance though not summoned as a witness or recall and re-examine any person already examined who are expected to be able to throw light upon the matter in dispute; because if judgments happen to be rendered on inchoate, inconclusive and speculative presentation of facts, the ends of justice would be defeated.”

“15. Besides the above specific provisions under the CrPC and CPC empowering the criminal and civil courts as the case may be, to summon and examine witnesses, a judge in order to discover or to obtain proof of relevant facts is empowered under Section 165 of the Indian Evidence Act to exercise all the privileges and powers subject to the proviso to that section which power he has under the Evidence Act. Section 540 of the old Code (Section 311 of the new Code) and Section 165 of the Evidence Act may be said to be complementary to each other and as observed by this Court in *Jamatraj Kewalji Govani v. State of Maharashtra* [(1967) 3 SCR 415 : AIR 1968 SC 178 : 1968 Cri LJ 231] “these two sections between them confer jurisdiction on the judge to act in aid of justice”.”



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2. PARTICIPATORY ROLE OF COURT IN A TRIAL – CONFERMENT OF POWERS ON TRIAL COURT *VIDE* SECTION 311, CR.P.C. AND SECTION 165 OF THE EVIDENCE ACT:

i. *Zahira Habibulla H. Sheikh vs. State of Gujarat [(2004) 4 SCC 158]*:

“43. The courts have to take a participatory role in a trial. They are not expected to be tape recorders to record whatever is being stated by the witnesses. Section 311 of the Code and Section 165 of the Evidence Act confer vast and wide powers on presiding officers of court to elicit all necessary materials by playing an active role in the evidence-collecting process. They have to monitor the proceedings in aid of justice in a manner that something, which is not relevant, is not unnecessarily brought into record. Even if the prosecutor is remiss in some ways, it can control the proceedings effectively so that the ultimate objective i.e. truth is arrived at. This becomes more necessary where the court has reasons to believe that the prosecuting agency or the prosecutor is not acting in the requisite manner. The court cannot afford to be wishfully or pretend to be blissfully ignorant or oblivious to such serious pitfalls or dereliction of duty on the part of the prosecuting agency. The prosecutor who does not act fairly and acts more like a counsel for the defence is a liability to the fair judicial system, and courts could not also play into the hands of such prosecuting agency showing indifference or adopting an attitude of total aloofness.”

“44. The power of the court under Section 165 of the Evidence Act is in a way complementary to its power under Section 311 of the Code. The section consists of two parts i.e. : (i) giving a discretion to the court to examine the witness at any stage, and (ii) the mandatory portion which compels the court to examine a witness if his evidence appears to be essential to the just decision of the court. Though the discretion given to the court is very wide, the very width requires a corresponding caution. In *Mohanlal v. Union of India* [1991 Supp (1) SCC 271 : 1991 SCC (Cri) 595] this Court has observed, while considering the scope and ambit of Section 311, that the very usage of the words such as, “any court”, “at any stage”, or “any enquiry or trial or other proceedings”, “any person” and “any such person” clearly spells out that the section has expressed in the widest-possible terms and do not limit the discretion of the court in any way. However, as noted above, the very width requires a corresponding caution that the discretionary powers should be invoked as the exigencies of justice require and exercised judicially with circumspection and consistently with the provisions of the Code. The second part of the section does not allow any discretion but obligates and binds the court to take necessary steps if the fresh evidence to be obtained is essential to the just decision of the case, “essential” to an active and alert mind and not to one which is bent to abandon or abdicate. Object of the section is to enable the court to arrive at the truth irrespective of the fact that the prosecution



or the defence has failed to produce some evidence which is necessary for a just and proper disposal of the case. The power is exercised and the evidence is examined neither to help the prosecution nor the defence, if the court feels that there is necessity to act in terms of Section 311 but only to subserve the cause of justice and public interest. It is done with an object of getting the evidence in aid of a just decision and to uphold the truth.”

“46. Ultimately, as noted above, ad nauseam the duty of the court is to arrive at the truth and subserve the ends of justice. Section 311 of the Code does not confer on any party any right to examine, cross-examine and re-examine any witness. This is a power given to the court not to be merely exercised at the bidding of any one party/person but the powers conferred and discretion vested are to prevent any irretrievable or immeasurable damage to the cause of society, public interest and miscarriage of justice. Recourse may be had by courts to power under this section only for the purpose of discovering relevant facts or obtaining proper proof of such facts as are necessary to arrive at a just decision in the case.”

ii. Gaurav Maini vs. State of Haryana [(2024) 20 SCC 765]:

“48. Shamlal Garg, grandfather of the kidnapped boy Sachin Garg (PW 2) was the first person who came into contact of the police officials on 15-4-2003 and he admittedly disclosed about the incident to investigating officer (PW 37). In that background, Shamlal Garg would have been the most vital witness to unfurl the truth of the matter. However, for the reasons best known to the prosecution, Shamlal Garg was not examined as a witness in the case. As a matter of fact, the trial court should have remained vigilant and it was absolutely essential for the court to have exercised powers under Section 311CrPC so as to summon and examine Shamlal Garg in evidence because his evidence was essential for a just decision of the case. Section 165 of the Evidence Act permits the Judge to ask any question as he pleases in any form, at any time, of any witness, or of the parties about any fact relevant or irrelevant or may order production of any document or thing.

49. A conjoint reading of Section 311CrPC and Section 165 of the Evidence Act makes it clear that the trial court is under an obligation not to act as a mere spectator and should proactively participate in the trial proceedings, so as to ensure that neither any extraneous material is permitted to be brought on record nor any relevant fact is left out. It is the duty of the trial court to ensure that all such evidence which is essential for the just decision of the case is brought on record irrespective of the fact that the party concerned omits to do so.



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50. This Court in *Pooja Pal v. Union of India* [*Pooja Pal v. Union of India*, (2016) 3 SCC 135 : (2016) 1 SCC (Cri) 743] examined the ambit of powers of the courts under Section 311CrPC read with Section 165 of the Evidence Act and held as below: (SCC pp. 164-66, paras 54 & 57)

“54. It was propounded in *Zahira Habibulla case* [*Zahira Habibulla H. Sheikh v. State of Gujarat*, (2004) 4 SCC 158 : 2004 SCC (Cri) 999] that in a criminal case, the fate of the proceedings cannot always be left entirely in the hands of the parties, crimes being public wrongs in breach and violation of public rights and duties, which affect the whole community and are harmful to the society in general. That the concept of fair trial entails the triangulation of the interest of the accused, the victim, society and that the community acts through the State and the prosecuting agency was authoritatively stated. This Court observed that the interests of the society are not to be treated completely with disdain and as *persona non grata*. It was remarked as well that due administration of justice is always viewed as a continuous process, not confined to the determination of a particular case so much so that *a court must cease to be a mute spectator and a mere recording machine but become a participant in the trial evincing intelligence and active interest and elicit all relevant materials necessary for reaching the correct conclusion, to find out the truth and administer justice with fairness and impartiality both to the parties and to the community.*

57. It was underlined in *Zahira Habibulla case* [*Zahira Habibulla H. Sheikh v. State of Gujarat*, (2004) 4 SCC 158 : 2004 SCC (Cri) 999] that if ultimately the truth is to be arrived at, the eyes and ears of justice have to be protected so that the interest of justice do not get incapacitated in the sense of making the proceedings before the courts, mere mock trials. *While elucidating that a court ought to exercise its powers under Section 311 of the Code and Section 165 of the Evidence Act judicially and with circumspection, it was held that such invocation ought to be only to subserve the cause of justice and the public interest by eliciting evidence in aid of a just decision and to uphold the truth.* It was proclaimed that though justice is depicted to be blindfolded, it is only a veil not to see who the party before it is, while pronouncing judgment on the cause brought before it by enforcing the law and administer justice and not to ignore or turn the attention away from the truth of the cause or the *lis* before it, in disregard of its duty to prevent miscarriage of justice. That any indifference, inaction or lethargy displayed in protecting the right of an



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ordinary citizen, more particularly when a grievance is expressed against the mighty administration, would erode the public faith in the judicial system was underlined. It was highlighted that the courts exist to do justice to the persons who are affected and therefore they cannot afford to get swayed by the abstract technicalities and close their eyes to the factors which need to be positively probed and noticed. The following statement in *Jennison v. Baker* [*Jennison v. Baker*, (1972) 2 QB 52 : (1972) 2 WLR 429 (CA)] , was recalled: (QB p. 66)

‘...“The law should not be seen to sit by limply, while those who defy it go free, and those who seek its protection lose hope.” ’ ”

3. Object of Section 311 Cr.P.C.– Zahira Habibulla H. Sheikh (5) vs. State of Gujarat [(2006) 3 SCC 374]:

“27. The object underlying Section 311 of the Code is that there may not be failure of justice on account of mistake of either party in bringing the valuable evidence on record or leaving ambiguity in the statements of the witnesses examined from either side. The determinative factor is whether it is essential to the just decision of the case. The section is not limited only for the benefit of the accused, and it will not be an improper exercise of the powers of the court to summon a witness under the section merely because the evidence supports the case of the prosecution and not that of the accused. The section is a general section which applies to all proceedings, enquiries and trials under the Code and empowers the Magistrate to issue summons to any witness at any stage of such proceedings, trial or enquiry. In Section 311 the significant expression that occurs is “at any stage of any inquiry or trial or other proceeding under this Code”. It is, however, to be borne in mind that whereas the section confers a very wide power on the court on summoning witnesses, the discretion conferred is to be exercised judiciously, as the wider the power the greater is the necessity for application of judicial mind.

28. As indicated above, the section is wholly discretionary. The second part of it imposes upon the Magistrate an obligation : it is, that the court shall summon and examine all persons whose evidence appears to be essential to the just decision of the case. It is a cardinal rule in the law of evidence that the best available evidence should be brought before the court. Sections 60, 64 and 91 of the Evidence Act, 1872 (in short “the Evidence Act”) are based on this rule. The court is not empowered under the provisions of the Code to compel either the prosecution or the defence to examine any particular witness or witnesses on their side. This must be left to the parties. But in weighing the evidence, the court can take note of the fact that the best available evidence has not been given, and can draw an adverse inference. The court will often have to depend on intercepted



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allegations made by the parties, or on inconclusive inference from facts elicited in the evidence. In such cases, the court has to act under the second part of the section. Sometimes the examination of witnesses as directed by the court may result in what is thought to be “filling of loopholes”. That is purely a subsidiary factor and cannot be taken into account. Whether the new evidence is essential or not must of course depend on the facts of each case, and has to be determined by the Presiding Judge.”

9. *Per contra*, Mr. N. Baaskaran, learned Special Public Prosecutor for CBI Cases appearing for the respondent, submitted that the issue before this Court is bi-fold, as hereunder:

a. Whether the Court is bound to examine witnesses as Court witnesses merely on application by the petitioners under the apprehension that they might turn as hostile witnesses.

b. Whether the petitioner should be given the benefit of production of documents, including materials and correspondences forming part of the preliminary enquiry, as all documents collected during the investigation, which are relevant to the criminal case, were already furnished by the Investigating Officer.

10. To the first issue, learned Special Public Prosecutor submitted that the petitioners can very well take advantage of Section 154 of the Evidence Act, which permits one to put any question to the witness in the event of them turning hostile, which necessarily solves the dilemma of the petitioners, virtually giving them an opportunity to cross-examine the said witness as well.



On the other hand, if and only if certain doubts are raised by the Court on its own volition, it is empowered under Section 311 Cr.P.C to examine any witness as a Court witness and that not being the instant case, the Trial Court had rightly dismissed the applications seeking examination of witnesses as Court witnesses.

11. Seeking to confute the submissions made regarding the entitlement of the MoCIT, the learned Special Public Prosecutor, placing reliance on Office Memorandum (Ex.P.343), contended that the attempt to portray the entitlement of the MoCIT as distinct from that of other Union Council Ministers is wholly misconceived. As the Council itself included the MoCIT, the contention that no entitlement existed in the absence of a specific provision is untenable, particularly when Ex.P.343 does not disclose any explicit exclusion of the MoCIT. Moreover, the statement of Mohan Lal Sindhi (L.W.34) concerning service connections under Rule 435 of the Telegraph Rules is confined to official usage and does not encompass residential usage. In such circumstances, the petitioners cannot seek to interpret or rely upon rules that are intended to govern departmental functioning and which expressly preclude personal usage.

12. To the second issue, the learned Special Public Prosecutor submitted that the preliminary enquiry report filed by one of the witnesses sought to be examined, *i.e.*, Sathyamurthy, is a confidential report and the same, though forming the basis for the registration of the case, was pressed into



service only for making out a *prima facie* case. That apart, the documents that were scrutinized during the preliminary enquiry were already part of the documents before the Trial Court, thereby making their production through filing various miscellaneous petitions and subsequently preferring the present criminal original petitions, an exercise in futility. That apart, the preliminary enquiry report is merely a result of a fact-finding process and its production to the accused cannot be treated as a matter of right, when there is a statutory bar under Section 125 of the Evidence Act. There is absolutely no valid reason given by the petitioners to show why the correspondences between various officials regarding collection of electronic records are required or why it is vital to prove their chain of custody, particularly when the prosecution had fulfilled the requisite mandate under Section 65B of the Evidence Act, before the Trial Court. The petitioners had filed many an application before the Trial Court seeking to summon various documents and the same were allowed and as such, the Trial Court, had dismissed the other applications, only after thorough application of mind. Accordingly, he prayed for the criminal original petitions to be dismissed. In support of his contentions, the learned Special Public Prosecutor relied on the judgment in **Sidhartha Vashisht alias Manu Sharma [(2010) 6 SCC 1]**.

13. Before advertng to the rival submissions advanced by the learned Senior Counsel appearing for the petitioners and the learned Special Public



Prosecutor appearing for the respondent, it would be apposite to bear in mind the scope and object of Section 311 Cr.P.C./Section 348 of the BNSS, 2023. The provision is broadly inherent conferring upon the Court, the power to summon any person as a witness, or examine any person present in Court, or recall and re-examine any witness already examined, if the Court considers such evidence to be essential for the just decision of the case. The determinative factor, therefore, is not the stage of the proceedings or the party at whose instance such power is invoked, but whether the evidence sought to be adduced would assist the Court in arriving at a just and effective adjudication of the issues arising in the trial.

14. The Supreme Court, in **Jamatraj Kewalji Govani**, *supra*, has categorically held that the power under the said provision is intended to enable the Court to discover the truth and to render a just decision. While the first limb of the provision confers a discretionary power upon the Court, the latter limb casts an obligation upon the Court to summon or examine a witness if his evidence appears to be essential for the just decision of the case. Thus, the inherent power is essentially a judicial tool placed in the hands of the Court to ensure that the cause of justice is not defeated on account of inadvertent omissions or the manner in which the parties conduct their respective cases.



15. Bearing the above principles in mind, the issues arising for consideration in the present batch of petitions may broadly be classified into two limbs:

- a. Summoning certain individuals as Court witnesses; and
- b. Summoning and production of certain correspondences and materials, including those relating to the preliminary enquiry.

16. Insofar as the first category of relief, the petitioners seek to summon the Secretary (Telecom), Rakesh Kumar Somani (A.L.W. 48), Mahalingam (L.W.2), Mohan Lal Sindhi (L.W.34) and Sathyamurthy as Court witnesses.

17. A perusal of the materials placed before this Court would indicate that the aforesaid individuals are not strangers to the case of the prosecution. On the contrary, they appear to have had a discernible role in matters forming part of the investigation. Rakesh Kumar Somani (A.L.W.48), according to the prosecution, is indispensable for marking the Vigilance reports that constitute material documents relating to the allegations forming the subject matter of the charge sheet. Likewise, Mahalingam (L.W.2) and Mohan Lal Sindhi (L.W.34) appear to have been involved in the provision and administrative regulations of telecommunication facilities during the relevant period. Their statements



recorded during the course of investigation and the documents attributed to them indicate that they may have knowledge concerning the administrative framework, specifically, the entitlement of MoCIT and other governing aspects pertaining to provision of service category connections.

18. Similarly, Sathyamurthy, the I.O., who conducted the preliminary enquiry that preceded the registration of the FIR and spearheaded the collection of certain documents from officials of BSNL and the Department of Communications is also sought to be examined. The materials on record indicate that he played a significant role in the early stages of the investigation. The records placed before this Court suggest that he was involved in the collection of documents from various departments and in the interrogation of several witnesses during the preliminary enquiry, laying the foundation for the allegations levelled in the charge sheet against M/s. Kannan and Dayanidhi Maran.

19. It is incontrovertible that some of these individuals were initially cited as witnesses by the prosecution but were not ultimately examined during the course of trial. Mr.T.Mohan, learned Senior Counsel appearing on behalf of Mr.Dayanidhi Maran submitted that the petitioners have fairly cooperated in the trial, not employing any dilatory tactic at any time, promptly cross-examining all witnesses, whereas, the prosecution had wantonly delayed the trial, by



seeking further investigation at one point in time and partially examining its own witnesses. The petitioners contend that the non-examination of these interested witnesses has resulted in relevant aspects of the matter remaining unexplored.

20. In reply to the above contention, the learned Special Public Prosecutor contended that when the prosecution does not examine some of its witnesses, the Court can always draw an adverse inference. Furthermore, the objection raised by the respondent that the petitioners may summon these individuals as defence witnesses and that there is no necessity to examine them as Court witnesses cannot be accepted wholly in the peculiar circumstances of the present case. The power under Section 348, BNSS, is not restricted by the procedural lapses or methods opted by the parties. Rather, it enables the Court to summon a witness as a Court witness where the Court is satisfied that such examination would assist in the effective adjudication of the issues involved in the trial.

21. In the instant case, where the allegations involve the provision and utilisation of telecommunication infrastructure, the interpretation of administrative rules, and the functioning of public sector entities during the relevant period, the evidence of individuals who were directly connected with the relevant administrative processes, assumes significance. Their testimony



may shed light on the factual and procedural aspects underlying the allegations and may assist the Court in appreciating the evidence already on record in its proper perspective. The question relating to the entitlement of the MoCIT to telecommunication facilities during the relevant period assumes considerable significance in the context of the allegations made by the prosecution. In this regard, the evidence of Rita Achary (P.W.60) shows that she has discussed about the entitlement of Union Ministers. However, her testimony appears to shed light only on the general policy applicable to Union Ministers and does not specifically address the administrative privileges that may be applicable to the Minister heading the Department concerned.

22. In matters relating to departmental facilities and administrative privileges, the scope and nature of entitlement may vary depending upon the position held and the functional requirements of the office. In such circumstances, the person best placed to clarify the administrative framework governing such entitlement would be the Secretary (Telecom), who functions as the senior-most executive authority within the Department of Communications. Therefore, insofar as the question relating to the entitlement of the MoCIT to service category connections, the examination of the Secretary (Telecom) would be imperative as it would assist the trial Court in obtaining clarity on the relevant administrative framework. Accordingly, this Court finds that the prayer in Crl.O.P.No.30522 of 2025 deserves to be acceded to.



23. It is equally well settled that the object of Section 348, BNSS, is not to permit either party to fill up the lacunae in their case. At the same time, the provision is intended to ensure that the Court is not deprived of relevant evidence which may be necessary for arriving at the truth. Where the Court finds that the evidence of certain individuals may have a bearing on the issues that arise for determination, the Court would be justified in summoning such persons as Court witnesses in order to secure the ends of justice. In that aspect, it becomes vital to analyse whether the statement of the persons sought to be examined is already before the Trial Court. On perusal of records, it can be seen that there is no statement of Sathyamurthy having been recorded under Section 161 Cr.P.C and so is the case *qua* Rakesh Kumar Somani (A.L.W. 48) as well. Though Rakesh Kumar Somani (A.L.W.48) has filed 4 Vigilance reports, neither was his statement recorded under Section 161 Cr.P.C. nor was he examined by the prosecution as a witness. The absence of statements of this duo under Section 161 Cr.P.C., coupled with the reasons stated in the preceding paragraphs, make it appropriate for them to be examined as Court witnesses under Section 311 of Cr.P.C./Section 348, BNSS. Accordingly, this Court finds that the prayers in Crl.O.P.No.30527 of 2025 and Crl.O.P.No.30541 of 2025 also deserve to be acceded to.

24. However, with respect to the other individuals sought to be examined as Court witnesses, *viz.*, Mahalingam (L.W.2) and Mohan Lal Sindhi



(L.W.34), this Court finds that the submissions advanced by Mr. N. Baaskaran merit acceptance. The aforesaid witnesses can, in fact, be examined by the petitioners as defence witnesses and in the event of they turning hostile, the petitioners can always take recourse to Section 154 of the Evidence Act. Therefore, the issue as to whether they have to be examined as Court witnesses is answered in favour of the respondent. Accordingly, the prayer sought in Crl.O.P.No.30523 of 2025 does not have legs to stand.

25. The next limb of the relief sought by the petitioners, as already alluded to above, relates to the production of various correspondences exchanged amongst officials of BSNL, the Vigilance Department and the investigating agency, as well as the materials relating to the preliminary enquiry conducted prior to the filing of the final report.

26. The principal contention advanced by the petitioners is that such correspondences are necessary to establish the chain of custody of the documents and electronic records collected during the course of investigation.

27. Upon consideration of the materials placed on record, this Court is unable to accept the submission of the prosecution that such correspondences are wholly irrelevant or unnecessary. From the evidence of Gunasekaran (P.W.36) and Rajesh Kumar (P.W.98), it can be seen that the documents forming part of the prosecution case were not directly collected by the Investigating



Officer from the Departments concerned, but were routed through the Vigilance Wing of BSNL by way of communications and correspondences.

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28. In such circumstances, the correspondences exchanged amongst the Vigilance officials, departmental authorities and the investigating agency assume relevance in establishing the manner in which the documents were sourced, transmitted and ultimately, brought on record. Thus, the chain of custody of documents and electronic records is not a mere procedural formality, but has a direct bearing on the evidentiary value and reliability of such materials, particularly in a case involving allegations of manipulation of official records.

29. In the light of the above discussion, this Court is of the considered view that the production of such correspondences would ably assist the Trial Court in arriving at a more complete and accurate appreciation of the evidence on record and would also enable the petitioners to effectively cross-examine the prosecution witnesses. While holding so, this Court is fortified by a 3 Judge Bench judgment in **P. Ponnusamy vs. State of Tamil Nadu [2023] 12 SCC 666**] quoting with approval the judgment of a 2 Judge Bench in **Sidhartha Vashisht, supra**. At this juncture, it is profitable to extract, as under, the relevant paragraphs from **Sidhartha Vashisht, supra**.

“216. Under Section 170, the documents during investigation are required to be forwarded to the Magistrate, while in terms of Section



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173(5) all documents or relevant extracts and the statement recorded under Section 161 have to be forwarded to the Magistrate. The investigating officer is entitled to collect all the material, which in his wisdom is required for proving the guilt of the offender. He can record statement in terms of Section 161 and his power to investigate the matter is a very wide one, which is regulated by the provisions of the Code. The statement recorded under Section 161 is not evidence per se under Section 162 of the Code. The right of the accused to receive the documents/statements submitted before the court is absolute and it must be adhered to by the prosecution and the court must ensure supply of documents/statements to the accused in accordance with law. Under the proviso to Section 162(1) the accused has a statutory right of confronting the witnesses with the statements recorded under Section 161 of the Code thus indivisible.

217. Further, Section 91 empowers the court to summon production of any document or thing which the court considers necessary or desirable for the purposes of any investigation, inquiry, trial or another proceeding under the provisions of the Code. Where Section 91 read with Section 243 says that if the accused is called upon to enter his defence and produce his evidence there he has also been given the right to apply to the court for issuance of process for compelling the attendance of any witness for the purpose of examination, cross-examination or the production of any document or other thing for which the court has to pass a reasoned order.

218. The liberty of an accused cannot be interfered with except under due process of law. The expression “due process of law” shall deem to include fairness in trial. The court (sic Code) gives a right to the accused to receive all documents and statements as well as to move an application for production of any record or witness in support of his case. This constitutional mandate and statutory rights given to the accused place an implied obligation upon the prosecution (prosecution and the Prosecutor) to make fair disclosure. The concept of fair disclosure would take in its ambit furnishing of a document which the prosecution relies upon whether filed in court or not. That document should essentially be furnished to the accused and even in the cases where during investigation a document is bona fide obtained by the investigating agency and in the opinion of the Prosecutor is relevant and would help in arriving at the truth, that document should also be disclosed to the accused.

219. The role and obligation of the Prosecutor particularly in relation to disclosure cannot be equated under our law to that prevalent under the English system as aforesaid. But at the same time, the demand for a fair trial cannot be ignored. It may be of different consequences where a document which has been obtained suspiciously, fraudulently or by causing undue advantage to the accused during investigation such document could be denied in the discretion of the Prosecutor to the accused whether the prosecution relies or not upon such documents, however in other cases the obligation to disclose would be more certain. As already noticed the provisions of Section 207 have a



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material bearing on this subject and make an interesting reading. This provision not only require or mandate that the court without delay and free of cost should furnish to the accused copies of the police report, first information report, statements, confessional statements of the persons recorded under Section 161 whom the prosecution wishes to examine as witnesses, of course, excluding any part of a statement or document as contemplated under Section 173(6) of the Code, any other document or relevant extract thereof which has been submitted to the Magistrate by the police under sub-section (5) of Section 173. In contradistinction to the provisions of Section 173, where the legislature has used the expression “documents on which the prosecution relies” are not used under Section 207 of the Code. Therefore, the provisions of Section 207 of the Code will have to be given liberal and relevant meaning so as to achieve its object. Not only this, the documents submitted to the Magistrate along with the report under Section 173(5) would deem to include the documents which have to be sent to the Magistrate during the course of investigation as per the requirement of Section 170(2) of the Code.

220. The right of the accused with regard to disclosure of documents is a limited right but is codified and is the very foundation of a fair investigation and trial. On such matters, the accused cannot claim an indefeasible legal right to claim every document of the police file or even the portions which are permitted to be excluded from the documents annexed to the report under Section 173(2) as per orders of the court. But certain rights of the accused flow both from the codified law as well as from equitable concepts of the constitutional jurisdiction, as substantial variation to such procedure would frustrate the very basis of a fair trial. To claim documents within the purview of scope of Sections 207, 243 read with the provisions of Section 173 in its entirety and power of the court under Section 91 of the Code to summon documents signifies and provides precepts which will govern the right of the accused to claim copies of the statement and documents which the prosecution has collected during investigation and upon which they rely.

221. It will be difficult for the Court to say that the accused has no right to claim copies of the documents or request the Court for production of a document which is part of the general diary subject to satisfying the basic ingredients of law stated therein. A document which has been obtained bona fide and has bearing on the case of the prosecution and in the opinion of the Public Prosecutor, the same should be disclosed to the accused in the interest of justice and fair investigation and trial should be furnished to the accused. Then that document should be disclosed to the accused giving him chance of fair defence, particularly when non-production or disclosure of such a document would affect administration of criminal justice and the defence of the accused prejudicially.”

30. However, it is equally necessary to safeguard any legitimate claim of confidentiality that the prosecution may have in respect of certain documents.



Once the documents are produced before the Trial Court, it would be open to the prosecution to indicate, with specificity, thereby, giving no room for ambiguity, the documents or portions thereof, which, according to it, are of a sensitive or confidential nature, the disclosure of which may be prejudicial to public interest. In such an event, it is for the Trial Court to consider the said objection(s) of the prosecution and to determine, in accordance with law, whether such documents can be disclosed to the accused or the public, either wholly or in a restricted manner, keeping in view the requirements of a fair trial, on the one hand, and at the same time, the need to protect confidentiality, on the other. If the petitioners seek to rely upon any such material, the trial Court shall decide the permissibility of such reliance after undertaking the aforesaid exercise. Accordingly, the relief sought in Crl.O.P.Nos.30531 and 30538 of 2025 deserves to be acceded to, on the above lines.

31. Likewise, Mr. Dayanidhi Maran's request relating to the materials gathered during the course of the preliminary enquiry must also be examined in the context of ensuring a fair trial, while balancing the protection of confidential source information. The question of disclosure of such materials, therefore, requires the Court to harmonise the requirements of justice with any legitimate claim of confidentiality that may be raised by the prosecution.



32. It is well settled that the State may legitimately withhold disclosure of confidential information where such disclosure would injure public interest.

At the same time, the Court is required to strike a balance between the protection of such interests and the fundamental requirement of ensuring fairness in criminal proceedings. Ordinarily, the accused is entitled only to those documents which the prosecution proposes to rely upon in support of its case. However, where the preliminary enquiry forms the bedrock upon which the prosecution case hinges, considerations of fairness may warrant disclosure of such materials only in appropriate circumstances, except those detrimental to public interest.

33. In the present case, the respondent has not specifically invoked any privilege or statutory protection that would bar disclosure of the materials gathered during the preliminary enquiry. Learned Special Public Prosecutor submitted that the preliminary enquiry was only partially conducted by Sathyamurthy and that the documents collected during the course of such enquiry are presently in the custody of the respondent in the malkhana. It was further submitted that such materials merely constitute background information relating to the genesis of the case.

34. Having considered the submissions, this Court is of the view that the materials collected during the preliminary enquiry may, in appropriate



circumstances, be of assistance to the defence in understanding the genesis of the prosecution case. While the accused cannot claim an unfettered right to disclosure of all internal materials of investigation, the Court cannot be oblivious to the fact that such documents may have a bearing on the background in which the prosecution came to be instituted. Notably, the Apex Court, in **Manish Sisodia v. Enforcement Directorate [(2024) 12 SCC 660]**, had held that in order to avail the right to fair trial, the accused cannot be denied the right to inspection of documents, including documents that are not relied upon by the prosecution. In view of the aforesaid principle, this Court is of the considered view that the petitioners may be permitted to seek inspection of the materials collected during the preliminary enquiry.

35. If the petitioners are able to satisfy the Trial Court that the disclosure of such documents would not be detrimental to public interest or otherwise prejudicial to the prosecution, it would be open to the Trial Court to permit the petitioners to rely upon such documents and mark them in evidence in accordance with law and on this footing, Crl.O.P.No.30534 of 2025 deserves to succeed.

36. In the light of the foregoing discussion and for the reasons stated hereinabove, this Court is of the considered view that the impugned orders of the Trial Court warrant interference only to a limited extent.



37. In fine, as far as the petitions seeking the summoning of witnesses are concerned, this Court finds that the evidence of Secretary (Telecom), Rakesh Kumar Somani, AGM (Vigilance) and Sathyamurthy, then Inspector of Police, CBI, appears to be relevant and necessary for the just decision of the case. In such perspective of the matter, the Trial Court ought to have exercised the power under Section 348, BNSS, and examined the said individuals as Court witnesses.

38. Accordingly, Crl. O.P. Nos.30522, 30527, 30531, 30538, 30534 and 30541 of 2025 are allowed and the order of the Trial Court dismissing Crl. M.P. Nos.8583,8586, 8571, 8568, 8573 and 8576 of 2025 respectively is set aside and Crl. O.P. No.30523 of 2025 stands dismissed. Connected criminal miscellaneous petitions stand closed.

39. While bringing the curtains down, considering that the case pertains to allegations relating to the period 2004–2007 and the trial has already progressed substantially, the Trial Court is directed to make every endeavour to expedite the trial and dispose of the case at the earliest possible time.

25.03.2026

cad



To

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1. The Special Judge No.II for Trial of
Criminal Cases Related to
Elected Members of Parliament and Members of Legislative
Assembly of Tamil Nadu, Chennai
2. The Deputy Superintendent of Police
Anti-Corruption Branch
Central Bureau of Investigation
Chennai
3. The Special Public Prosecutor
Central Bureau of Investigation
Chennai



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Crl.O.P. Nos.30541, 30531, 30534, 30522, 30523, 30527 and 30538 of 2

A.D. JAGADISH CHANDIRA, J.

cad

Common order in
Crl.O.P. Nos.30541, 30531, 30534, 30522,
30523, 30527 and 30538 of 2025

25.03.2026