



**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**

S.B. Criminal Miscellaneous (Petition) No.4342/2024

Narendra Kumar Soni S/o Navrang Prasad, aged about 57 Years,
R/o H.No. 26, Basant Vihar, Kota (Rajasthan).

----Petitioner

Versus

State of Rajasthan, Through P.P.

----Respondent



For Petitioner(s) : Mr.Pankaj Gupta with
Mr.Harshit Bhatt &
Mr.Chinmay Sharma

For Respondent(s) : Mr.Vivek Choudhary, PP

JUSTICE ANOOP KUMAR DHAND

Order

07/01/2025

Reportable

1. By way of filing of this petition, a challenge has been made to the impugned order dated 01.06.2024 passed by the Special Judge, Prevention of Corruption Act, Kota wherby she had partly rejected the application filed by the petitioner under Section 91 Cr.P.C. for summoning the tower locations of the witnesses of the trap proceedings.

2. Learned counsel for the petitioner submits that the petitioner has been falsely booked in an anti-corruption case. Counsel submits that in fact no trap proceedings were conducted on 10.03.2023 and presence of the two witnesses, namely, Sonu Meena and Jitender Meena has been incorrectly mentioned/ incorporated in the trap proceedings. Counsel submits that these witnesses were not present and at the time of alleged proceedings even then, their presence has been shown at the place of alleged occurrence. Counsel submits that as per the footage of the CCTV



camera, only three persons, namely, the petitioner, brother of the complainant and one unknown person were present while neither the trap party nor these two above witnesses were present. Counsel submits that in order to verify the aforesaid fact, an application was submitted under Section 91 Cr.P.C. with the prayer for preserving the location of the mobile numbers of these witnesses including the mobile number of the complainant and Investigation Officer along-with other members of the trap party.

3. Counsel submits that the said application submitted by the petitioner was partly allowed by the Court below and mobile locations of the complainant as well as the Investigating Officer were ordered to be preserved, but the prayer with regard to preserving mobile locations of the above two witnesses, namely, Sonu Meena and Jitender Meena and other members of the trap party has been declined. Counsel submits that the Court below has committed an error in not accepting the prayer made by the petitioner with regard to preservation of the mobile locations of these two witnesses, namely, Sonu Meena and Jitender Meena.

4. Counsel submits that in the light of the following judgments passed by this Court and the Apex Court in the cases of **Kapil Vs. State of Rajasthan Thro' P.P.** reported in **2021 (3) Cr.L.R. (Raj.) 844** & **Suresh Kumar Vs. Union of India** reported in **2014 SCC OnLine SC 1833**, the direction be issued to the concerned mobile company to preserve the location of the mobile phones of Sonu Meena and Jitender Meena.

5. *Per contra*, learned Public Prosecutor opposed the prayer and submitted that the Trial Court has already partly allowed the application filed by the petitioner under Section 91 Cr.P.C. and the





call details, mobile locations of the complainant as well as the Investigating Officer were ordered to be kept preserved. Counsel submits that the Trial Court has not committed an error in not accepting the prayer of the petitioner with regard to preserving the mobile locations of the above two witnesses along-with other witnesses of the trap party, hence, under these circumstances, interference of this Court is warranted.

6. Heard and considered the submissions made at Bar and perused the material available on the record.

7. As per contents of the application submitted by the petitioner under Section 91 Cr.P.C., no trap proceedings were conducted by the trap party in the short time on 10.03.2023, i.e., from 1:40PM till 3:18PM. It has been alleged in the said application that fabricated documents and evidence has been prepared by the Investigating Agency at the behest of the complainant to falsely implicate the petitioner in the instant case, that is why, a prayer was made to preserve the location of the mobile phones of the complainant, Investigating Officer, witnesses, namely, Sonu Meena and Jitender Meena and other members of the trap party in order to ascertain the truth with regard to the correctness of the trap proceedings conducted by the Investigating Agency.

8. The application filed by the petitioner has been partly allowed and the direction has been issued to preserve the mobile location of the complainant as well as the Investigating Officer, but the prayer of the petitioner with regard to other witnesses, i.e., Sonu Meena and Jitender Meena has been declined.

9. Learned counsel for the petitioner has confined his prayer with regard to preserving the tower location of the mobile phones





of Sonu Meena and Jitender Meena in the light of the judgment passed by the Hon'ble Apex Court in the case of **Suresh Kumar Vs. Union of India** reported in **2014 SCC OnLine SC 1833**.

10. In order to reveal the truth whether above these two witnesses were present on the spot or not when the trap proceedings were conducted on 10.03.2023, the application was submitted by the petitioner under Section 91 Cr.P.C. for getting the tower locations of their cell-phones. The tower location of the cell-phones of these witnesses on the scene of offence is the probable distance of the petitioner to unearth the true facts, during the course of trial.

11. The Hon'ble Apex Court in the case of **Suresh Kumar** (supra) while deciding with the identical situation, has held in para 8 as under:-

"8. All that we are concerned with is whether call details which the appellant is demanding can be denied to him on the ground that such details are likely to prejudice the case of the prosecution by exposing their activities in relation to similar other cases and individuals. It is not however in dispute that the call details are being summoned only for purposes of determining the exact location of the officers concerned at the time of the alleged arrest of the appellant from Yashica Palace hotel near the bus stand. Ms. Makhija made a candid concession that any other information contained in the call details will be of no use to the appellant and that the appellant would not insist upon disclosure of such information. That in our opinion simplifies the matter inasmuch as while the call details demanded by the appellant can be summoned in terms of Section 65B of the Indian





Evidence Act such details being relevant only to the extent of determining the location of officers 8 concerned need not contain other information concerning such calls received or made from the telephone numbers concerned. In other words if the mobile telephone numbers called or details of the callers are blacked out of the information summoned from the companies concerned it will protect the respondent against any possible prejudice in terms of exposure of sources of information available to the Bureau. Interest of justice would in our opinion be sufficiently served if we direct the Trial Court to summon from the Companies concerned call details of Sim telephone No. 9039520407 and 7415593902 of Tata Docomo company and in regard to Sim No. 9165077714 of Airtel company for the period 24.02.2013 between 4.30 to 8.30 p.m. We further direct that calling numbers and the numbers called from the said mobile phone shall be blacked out by the companies while furnishing such details. "

12. It has also been held that the Apex Court in the above case

Suresh Kumar (supra) that:-

"That electronic records are admissible evidence in criminal trials is not in dispute. Sections 65A and 65B of the Indian Evidence Act make such records admissible subject to the fulfilment of the requirements stipulated therein which includes a certificate in terms of Section 7 65B(4) of the said Act. To that extent the appellant has every right to summon whatever is relevant and admissible in his defence including electronic record relevant to finding out the location of the officers effecting the arrest. Be that as it may we do not at this stage wish to pre-judge the issue which would eventually fall for the consideration of the Trial Court."





13. Preserving and requisitioning of the call details and tower location details would be necessary, otherwise the same would be lost forever. The right of accused to invoke the provisions of Section 91 Cr.P.C. for obtaining documents in support of his defence has been recognized by the Constitutional Courts. The legislative intent behind enactment of Section 91 Cr.P.C. is to ensure that no cogent material or evidence involved in the issue remains undiscovered in unearthing the true facts during investigation, enquiry, trial or other proceedings. No doubt while passing the appropriate direction for preserving and production of call details/tower location details under Section 91 Cr.P.C. would violate the right to privacy of the police officials but the right of the accused under Article 21 of the Constitution of India in ensuring free and fair investigation/trial would prevail over the right to privacy of the police officials. Some extent of privacy can be breached in production of the said call details, as this would facilitate the learned trial Court in discovering the truth and rendering justice, which is fair to all stake holders.

14. The denial of an adequate opportunity to the accused by non-production of the electronic record, which is admissible under Section 65-A and 65-B of the Indian Evidence Act in criminal trial, would amount to miscarriage of justice. Section 91 Cr.P.C. helps in facilitating a fair and just resolution to the case by ensuring that relevant evidence is made available to the Court for making informed decisions and arrive at a just and fair outcome. It enables the Court to secure important documentary evidence that





may be in possession of individuals or organization and helps prevent the destruction, tampering or loss of crucial documents, thereby maintaining the integrity of the judicial process. The power under 91 Cr.P.C. must be exercised for production of such evidence, which would assist the Court in discovering the truth in the pursuit of justice. However, the right of privacy of the police officials cannot be breached at the *ipse dixit* of the accused. Before any such order for production of call details/tower location is passed, the accused is required to prove necessity and desirability of such evidence, which would be relevant to establish the guilt or innocence of the accused.

15. As principles of natural justice are integral part of fair trial under Article 21 of the Constitution of India, any denial of the best available evidence or effective and substantial hearing to accused in proving defence would amount to denial of free and fair trial.

16. Keeping in view, the proposition of law as laid down by the Hon'ble Apex Court in the case of **Suresh Kumar** (supra), the instant petition as well as the application submitted by him under Section 91 Cr.P.C. stands partly allowed. The Trial Court is directed to summon the tower location of cell-phone Nos.7734044190 (Airtel) belonging to the witness Jitender Meena as well as tower location of cell-phone No.7851024844 (Jio) belonging to the witness Sonu Meena, for the period commencing on 10.03.2023 with effect from 1:40PM till 10:00PM. This Court further directed that calling the numbers and the numbers called from the said





mobile phones shall be blacked out by the companies while furnishing such details.

17. With the aforesaid observation and direction, the petition stands disposed of.

18. Stay application and all other application(s), pending if any, also stand disposed of.

19. No order as to costs.

(ANOOP KUMAR DHAND),J

Aayush Sharma /94

