

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 29th NOVEMBER, 2021

IN THE MATTER OF:

+ **CRL.M.C. 2334/2021**

DINESH KUMAR @ DINA

..... Petitioner

Through Mr. Jitender Sethi and Mr. Hemant
Gulati, Advocates

versus

STATE, NCT OF DELHI

..... Respondent

Through Ms. Meenakshi Chauhan, APP for the
State with SI Harbir Singh, STF
Crime Branch

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

SUBRAMONIUM PRASAD, J.

1. The petitioner challenges the order dated 15.04.2021 passed by the Special Judge - 02 (NDPS), Tis Hazari Courts, New Delhi, dismissing the application filed by the petitioner herein under Section 91 Cr.P.C for summoning the call detail records (CDRs) and location chart and timeline of SI Mukesh Tyagi, Constable Ashish Kumar, SI Priyanka, Head Constable Rohit Solanki and Constable/Head Constable Ravinder.

2. As per the prosecution, on 02.12.2020, secret information was received by ASI Danvir Singh at about 09:30 PM in the office of Special Task Force (STF), Crime Branch, Sunlight Colony, New Delhi, that two persons will be coming in a white coloured Scorpio car at about 11:00 PM to supply *Ganja* to someone under Geeta Colony Flyover, Bypass, Ring Road, Delhi. The material on record discloses that the informer was produced

before Inspector Sunil Kumar who verified the facts of the secret information and on being satisfied, Inspector Sunil Kumar and ASI Danvir Singh produced the secret informer before the ACP/STF, Pankaj Singh. ASI Danvir Singh was directed to form a raiding team and take necessary action. DD entry, being DD No. 11 was lodged at 10:00 PM and the copy of the same was forwarded to Inspector Sunil Kumar for proceeding further in accordance with Section 42 NDPS Act. A raiding team was formed consisting of Head Constable Virender Kumar, Constable Paramjeet, Constable Parvinder and Constable Shashi Kant and they departed along with the secret informer. Material on record discloses that the petitioner and one Sachin Kumar were apprehended near Geeta Colony Flyover, Bypass Ring Road, Delhi, when they were going in a white coloured Scorpio car bearing No. UP 17-J-5200. The requirements of Section 50 NDPS Act were complied with and 84.350 Kg *Ganja* was recovered. Accordingly, a case *vide* FIR No. 186/2020 dated 03.12.2020 Under Section 20/25 NDPS Act was registered at Police Station Crime Branch, New Delhi and investigation was handed over to Sub-Inspector Mukesh Tyagi, STF/Crime Branch.

3. During the course of Investigation in the present case, accused persons were interrogated and statement of witnesses were recorded. The petitioner herein was arrested at about 06:30 AM on 03.12.2020. Three mobile phones including one Micromax having two SIM Cards (Airtel & Vodafone belonging to UP West circle), One Samsung Duos (Golden Colour) having two BSNL SIM cards belonging to Orissa Circle and One Samsung Duos (Blue Colour) having two BSNL SIM cards belonging to Orissa Circle were recovered from the possession of the petitioner. Material on record discloses that the SIM cards were registered in different names.

Material on record also discloses that two SIM cards registered in U.P were taken without permission and the other four SIM cards of BSNL belonging to Orissa circle were found to be issued on fake IDs. Material on record also discloses that heavy amount was transferred from the account of the petitioner to the account of the person who had supplied the recovered contraband.

4. The petitioner moved an application under Section 91 Cr.P.C. with the following prayers:

"(A) The I.O. of P.S, Crime Branch, Delhi Police, Sun Light Colony Delhi, FTP No, 0186/2020 Dated 03/12/2020 to furnish before this Hon'ble Court the Call Detail Record and Phone Locations i.e. mobile Number 9996745661, 9759844057 and 7088572531 from 11:00AM dated 02/12/2020 to 5:00PM dated 03/12/2020 and preserve the same the call details of the above said mobile Number 9996745661, 9759844057 and 7088572531 which belongs to applicants to bring the truth before this Hon'ble court.

(B) To Direct the concerned I.O. of P.S. Crime Branch, Delhi Police, Sun Light Colony, Delhi to furnish before this Hon'ble court the list of arresting team members name along with their designations and Mobile numbers and also locations & Mobile Phone Call Details Record dated 02/12/2020 and preserve the same the call details & locations.

(C) To direct the I.O, Concerned to furnish & preserve the CCTV Footage/Recording from Jewar toll Plaza to Zero Point Near Pari Chowk, Greater Noida,UP. of Jaypee Infratech Ltd Sector - 128, Noida U.P. Yamuna Expressway, U.P, dated 02/12/2020 time 1:30 PM To 4:00 PM

(D) To direct to Incharge/Manager Jewar Toll Plaza to preserve and furnish the CCTV Footage/Recording from Jewar toll Plaza to Zero Point Near Pari Chowk Greater Noida,UP. Also be direct to Jaypee Infratech Ltd. Sector - 128, Noida U.P. Yamuna Expressway U.P,Yamuna Expressway Dated 02/12/2020 time 1:30 PM (13:30) To 4:00 PM (16:00).

(E) To direct the I.O. Concerned to furnish preserve the CCTV Footage/Recording from Under Geeta Colony Flyover, Bypass Ring Road, Delhi (place of alleged incident mentioned in the, FIR by the I.O. concern) to the office of Crime Branch, Delhi Police, Sunlight Colony, Delhi dated 02/12/2020 time 09:00PM (21:00) to 11:55PM (23:55) and recording of way as several CCTV cameras are installed in the route of alleged incident Place to Sunlight colony, Delhi Crime Branch Office Delhi Police is also required to meetout the real facts of the case."

5. The said application was decided by an order dated 01.02.2021, whereby the learned Trial Court directed that the location chart and mobile phones of the accused and the members of the raiding party be preserved. The learned Trial Court also directed that the CCTV recordings of the Jewar Toll Plaza and the CDRs of the mobile phones of the raiding party be also preserved.

6. The petitioner, thereafter, filed another application under Section 91 Cr.P.C with the following prayers:

"(A) To provide the details with regards to the designation of the above mentioned Officials of police (posted at the office of Crime Branch Sunlight Colony Delhi on or before 02/12/2020.

(B) To provide the correct details with regards to all mobile contact number/s of the above mentioned officials of police, which they were using on or before 03/12/2020.

(C) To preserve and supply a set to the applicants/accused persons, of the CDRs alongwith location chart of all those numbers of the above mentioned officials of police for the period of 25/11/2020 to 10/12/2020.

(D) To preserve and freeze the video recording and footages, between 11:00 a.m to 18:00 p.m dated 02/12/202 from the CCTV cameras installed by Govt. Of Delhi, Traffic police Delhi and NDMC at Delhi border through DND entrance road, and a set of the same be provided/given to the applicants.

(E) To preserve and freeze the video recording and footages between 11:00 a.m to 18:00 p.m on 02/12/2020, from the CCTV cameras installed by the Govt. Of Delhi. Traffic police Delhi, NDMC, at Delhi border at Mayur Vihar/Noida Border, Delhi and a set of the same be provided to the applicants.

(F) To preserve and freeze the video recording and footages between 21:00 pm to 23:00 p.m on 03/12/2020 from the CCTV cameras installed by the Govt. Of Delhi, Traffic police Delhi and NDMC, at/ under Geeta Colony flyover Delhi i.e the place from where the applicants/ accused persons have been allegedly arrested by the Investigation agency and a set of the same be provided to the applicants, in the interest of justice."

7. It was also stated in the application that the petitioner was picked up on 02.12.2020 from Canal Bridge, Village Machar, Tehsil Khurja,

Bulandshahar, by a raiding team of SI Mukesh Tyagi, SI Priyanka, Head Constable Rohit Solanki, Constable/Head Constable Ravinder and Constable Ashish Kumar and ACP/STF Pankaj Singh. It is stated that since the manner of arrest, as shown in the FIR is not correct and it was found that these officers were at the place where the petitioner and the other accused were present and the location of the accused persons also matches with the location of these officers then it would show that the accused persons have not been arrested in a manner that is stated in the complaint and, therefore, the petitioner ought to be acquitted on that ground itself.

8. The learned Trial Court *vide* order dated 15.04.2021, after considering the material on record, held that the relief sought by the petitioner has already been considered earlier and, therefore, the present application is not maintainable and was thereby dismissed.

9. It is this order which has been assailed in the instant petition.

10. The petitioner had not filed the order dated 01.02.2021 with the instant petition. The petitioner was directed to file the said order and the case was adjourned to 24.11.2021. An application for preponment of the matter was filed stating that as per the notification of the Central Government, the service providers were directed to keep the CDRs only for a period of 12 months and since the arrest was made on 02.12.2020, the period of 12 months would expire on 02.12.2021 and the entire purpose of filing the instant application will be defeated. The said application was rejected *vide* order dated 22.10.2021 and it was observed that the order dated 01.02.2021 was not on record. The petitioner filed one more application for preponment of hearing wherein it was stated that the next date of hearing is very close to 02.12.2021, after which the CDRs will be destroyed and,

therefore, a request was made that the State may be asked to file a Status Report. The learned APP appearing for the State submitted that the Status Report will be filed before the next date of hearing. On the next date of hearing, the Status Report was handed over in Court and a copy of the same was supplied to the learned counsel for the petitioner.

11. Heard Mr. Jitender Sethi, learned counsel for the petitioner and Ms. Meenakshi Chauhan, learned APP for the State and perused the material on record.

12. The learned counsel for the petitioner contends that the prayer made in the application which was disposed *vide* order dated 01.02.2021 and the prayer in the application from which the impugned order arises were different. It is stated by the learned counsel for the petitioner that the petitioner has been picked up from a different place by a separate raiding party and, therefore, the CDRs of those officers ought to be preserved so that the petitioner can built up their defence. The learned counsel for the petitioner also places reliance on the order dated 06.05.2014 passed by the Supreme Court in **Special Leave to Appeal (Crl.) No. 1477/2014**, titled as Suresh Kumar v. Union of India. In the facts of the said case, the petitioner therein had sought for the CDRs of the raiding party contending that the CDRs of the raiding party would show that the place and the manner of arrest of the petitioners therein was not as has been projected by the State. In the present case, the Court has already directed that the CDRs of the raiding party be preserved. What the petitioner is now asking is the CDRs of random officers alleging that they have picked the petitioner from a different place. Other than mere *ipse dixit* of the petitioner, at this juncture, there is nothing to show that the petitioner had been picked up from a different place

by a different raiding party. The CCTV cameras have been directed to be preserved. Needless to state that unless it is extremely necessary for the facts of that case the CDRs of the officers of Special Task Force must not be exposed as it would endanger the officers concerned and their informers. The CCTV footage of the road, which has been preserved. A perusal of the Status Report indicates that SI Mukesh Tyagi, whose CDRs are now being sought was not a part of the original raiding team. It is further interesting to note that in the first application under Section 91 Cr.P.C. filed by the petitioner, the petitioner had not sought for the CDRs of these officers. No doubt, out of six names sought for, Head Constable Rohit Solanki and Constable Ashish Kumar are a part of the witnesses in the present case but their role in the present case is that Head Constable Rohit Solanki had deposited the exhibits of the present case in FSL Rohini for expert opinion on 08.12.2020 and the role of Constable Ashish Kumar is that he had collected the FSL result/expert opinion along with exhibits and deposited the same in *Malkhana* of P.S. Crime Branch, Delhi on 01.02.2021 and, therefore, there is no need to preserve their CDRs. As stated earlier, SI Mukesh Tyagi took over the investigation after the arrest of the petitioner and was not a part of the raiding party and, therefore, his CDRs need not be preserved.

13. The scope of the revision petition under Sections 397/401 Cr.P.C. read with Section 482 Cr.P.C. is narrow. The Supreme Court in Amit Kapoor v. Ramesh Chander, (2012) 9 SCC 460, has observed as under:

“12. Section 397 of the Code vests the court with the power to call for and examine the records of an inferior court for the purposes of satisfying itself as to the legality

*and regularity of any proceedings or order made in a case. The object of this provision is to set right a patent defect or an error of jurisdiction or law. There has to be a well-founded error and it may not be appropriate for the court to scrutinise the orders, which upon the face of it bears a token of careful consideration and appear to be in accordance with law. **If one looks into the various judgments of this Court, it emerges that the revisional jurisdiction can be invoked where the decisions under challenge are grossly erroneous, there is no compliance with the provisions of law, the finding recorded is based on no evidence, material evidence is ignored or judicial discretion is exercised arbitrarily or perversely. These are not exhaustive classes, but are merely indicative. Each case would have to be determined on its own merits.***

13. Another well-accepted norm is that the revisional jurisdiction of the higher court is a very limited one and cannot be exercised in a routine manner. One of the inbuilt restrictions is that it should not be against an interim or interlocutory order. The Court has to keep in mind that the exercise of revisional jurisdiction itself should not lead to injustice ex facie. Where the Court is dealing with the question as to whether the charge has been framed properly and in accordance with law in a given case, it may be reluctant to interfere in exercise of its revisional jurisdiction unless the case substantially falls within the categories aforesaid. Even framing of charge is a much advanced stage in the proceedings under the CrPC.

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20. The jurisdiction of the court under Section 397 can be exercised so as to examine the correctness, legality or propriety of an order passed by the trial court or the inferior court, as the case may be. Though the section does not specifically use the expression “prevent

abuse of process of any court or otherwise to secure the ends of justice”, the jurisdiction under Section 397 is a very limited one. The legality, propriety or correctness of an order passed by a court is the very foundation of exercise of jurisdiction under Section 397 but ultimately it also requires justice to be done. The jurisdiction could be exercised where there is palpable error, non-compliance with the provisions of law, the decision is completely erroneous or where the judicial discretion is exercised arbitrarily. On the other hand, Section 482 is based upon the maxim quando lex aliquid alicui concedit, concedere videtur id sine quo res ipsa esse non potest i.e. when the law gives anything to anyone, it also gives all those things without which the thing itself would be unavoidable. The section confers very wide power on the Court to do justice and to ensure that the process of the court is not permitted to be abused.” (emphasis supplied)

14. Similarly in Sanjaysinh Ramrao Chavan v. Dattatray Gulabrao Phalke, (2015) 3 SCC 123, the Supreme Court observed as under:

“14. In the case before us, the learned Magistrate went through the entire records of the case, not limiting to the report filed by the police and has passed a reasoned order holding that it is not a fit case to take cognizance for the purpose of issuing process to the appellant. Unless the order passed by the Magistrate is perverse or the view taken by the court is wholly unreasonable or there is non-consideration of any relevant material or there is palpable misreading of records, the Revisional Court is not justified in setting aside the order, merely because another view is possible. The Revisional Court is not meant to act as an appellate court. The whole purpose of the revisional jurisdiction is to preserve the power in the court to do justice in accordance with the principles of criminal jurisprudence. The revisional power of the court under

Sections 397 to 401 CrPC is not to be equated with that of an appeal. Unless the finding of the court, whose decision is sought to be revised, is shown to be perverse or untenable in law or is grossly erroneous or glaringly unreasonable or where the decision is based on no material or where the material facts are wholly ignored or where the judicial discretion is exercised arbitrarily or capriciously, the courts may not interfere with decision in exercise of their revisional jurisdiction.”

15. This Court does not find any infirmity with the order of the Trial Court in refusing the CDRs of SI Mukesh Tyagi, Constable Ashish Kumar, SI Priyanka, Head Constable Rohit Solanki and Constable/Head Constable Ravinder since they were not a part of the raiding team. Other than the mere *ipse dixit* there is no material to show that the petitioner was picked up from some other place. The CDRs of the raiding team and the accused and the CCTV footages have been preserved. As stated earlier, in order to ensure the safety of the officers and their informers, the CDRs of officers of STF should not be made public unless it is necessary for the case.

16. Accordingly, the petition is dismissed along with the pending application(s), if any.

SUBRAMONIUM PRASAD, J

NOVEMBER 29, 2021

Rahul