

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN  
BENCH AT JAIPUR  
S.B. CR.MISC.PETITION NO.1960/2010  
Pramod Mittal & Anr. Vs. State

Date of order : 29/10/2010.

**HON'BLE MR.JUSTICE MOHAMMAD RAFIQ**

Shri Mahesh Gupta for the petitioners.  
Shri N.R. Saran, P.P. for the State.

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This misc. petition has been filed by the petitioners u/s.91 of the Code of Criminal Procedure with the prayer that the order be issued for summoning the call details from 11.1.08 till 18.1.08 in relation to their residence telephone number 2545102 and mobile numbers 9829012133, 9351166452 and 9414870683 which from the statement of the complainant were kept under observations and application was founded on the premises that the police has withheld such information while filing the challan and has produced the call details only from 16.1.08.

Shri Mahesh Gupta, learned counsel for the petitioners has argued that the learned trial court vide order dated 12.12.2010 has allowed the application of the petitioners and ordered for supplying call details from November, 2007 to January, 2008. The said order was upheld by this Court while dismissing the revision petition filed by the complainant Rajesh Jain vide its order dated 20.1.2010. Presently, the statement of

the complainant was being recorded and that was the stage when the petitioners would set up their defence in cross examination and for that purpose require the call details. This is necessary because the complainant in his statement has admitted that the aforementioned telephone numbers/cell phone numbers were placed under observations. Learned counsel in support of his arguments relied on the judgement of the State of Orissa vs. Debendra Nath Padhi-(2005) 1 SCC 568.

Learned counsel for the petitioners has argued that supply of the entire call details would be necessary for the petitioners to prove their innocence.

Learned PP opposed the petition and argued that whatever call details were in possession of the prosecution were made use of, for the prosecution of the petitioners, were supplied to the petitioners along with challan and otherwise the statement of the complainant has not been correctly read by the petitioners. The learned trial court found that accused-petitioners have been moving such application time and again only with their view to delaying completion of trial and therefore has rightly rejected the application. Only such circumstances/material which would be on record would be put to the accused petitioners while their statement are recorded. The petition is misconceived, it should therefore be

dismissed.

Having heard the learned counsel for the petitioner and learned Public Prosecutor, I have gone through the material on record as also the statement of the complainant.

The petitioners are relying on that part of the statement where in response to the cross examination by their counsel complainant stated that he had asked the police department for keeping his telephone and mobile under observation. Whether or not they had requested the department to do so, was not known to him. In the very next sentence, he has stated that police people informed him that after the incident of kidnapping till recovery of the child, their telephone calls were being kept under supervision. This is not a definite statement, but nevertheless whatever material the investigating agency has sought to make use of against the accused-petitioners has been supplied to them and as rightly argued by the counsel whatever facts and material, the prosecution would like to use against accused would be put to them while their statement u/s.313 Cr.P.C. are recorded. In other words, no such fact or circumstances which is not put to the accused petitioners during their statement u/s.313 can be used against them. Contention that petitioners requires this additional information so as to prove their innocence, is misconceived because in law an accused is

presumed to be innocent unless proved guilty by the prosecution and that can be done only by the required standards of proof i.e. beyond reasonable doubt. It is the prosecution which has to prove the guilt of the accused-petitioners and not the vice versa.

In my considered view, the learned trial court was justified in rejecting the application as it found that applications of this nature were moved earlier and were disposed of and no useful purpose would be served by allowing such an application filed again.

I do not find any merit in this petition, which is accordingly dismissed.

**(MOHAMMAD RAFIQ), J.**

**RS/-**