

(2018) 06 BOM CK 0144
In the Bombay High Court
Case No : Criminal Writ Petition No.81 Of 2018

Mrs. Vina Patkar

APPELLANT

Vs

Mr. Dajvip Patkar

RESPONDENT

Date of Decision : 14-06-2018

Acts Referred:

Code of Criminal Procedure, 1973 — Section 200, 202

Citation : (2018) 06 BOM CK 0144

Hon'ble Judges : C. V. Bhadang, J

Bench : Single Bench

Advocate : Maria Caroline Collasso, D. J. Pangam

Final Decision : Allowed

Judgement

1. Rule, made returnable forthwith.Â The learned Counsel for the respondent waives service.Â Heard finally by consent of parties.
2. By this petition, the petitioner (original accused no.1 before the learned Magistrate) is challenging the order dated 28/02/2018, issuing summons to Bharat Sanchar Nigam Ltd (BSNL) to produce call data records (CDR) and text messages in respect of the mobile number of the petitioner, for the period from 01/08/2013 to 30/10/2017.
3. It is the contention of the learned Counsel for the petitioner that the Magistrate is yet to record the verification of the complainant and is yet to decide on the question of issuance of process.Â It is contended that before issuing process and taking cognizance, it was not open for the learned Magistrate to seek call records from the BSNL.Â It is submitted that even otherwise, no case is made out for seeking the call records of the petitioner.Â It is submitted that the order is totally unreasoned.

4. The learned Counsel for the respondent submits that the call data records are relevant for deciding the controversy between the parties and as

such, there was nothing wrong in the Magistrate calling for such record.

5. I have carefully considered the circumstances and the submissions made.

6. The procedure for dealing with a private complaint by Magistrate, is found in Section 200 onwards of Cr.P.C. Under the applicable procedure,

the Magistrate is expected to record verification of the complainant and then first decide as to whether a case for taking cognizance / issuance of

process, is made out. In an appropriate case, the Magistrate can postpone such issuance of process and while doing so, can direct enquiry to be

conducted in accordance with Section 202 of Cr.P.C. Nothing of this sort has been done in the present case. Admittedly, the Magistrate has

neither recorded the verification of the complainant nor has decided upon the question of issuance of process. In such circumstances, in my

considered opinion, the Magistrate could not have directed the CDR to be called. That apart the impugned order also does not show that the

Magistrate has set out any reasons for doing so. Although elaborate reasons cannot be expected in the matter of the present nature, there should be

some reasons to disclose that the Magistrate has applied mind and has found it necessary to seek such call data records. In that view of the matter,

the following order is passed :

(i) The petition is allowed.

(ii) The impugned order is hereby set aside.

(iii) The learned Magistrate shall first record verification of the complainant and shall then decide as to whether a case for taking cognizance / issuance

of process is made out or not.

(iv) In the event the learned Magistrate decides to issue process, it would be open to the learned Magistrate to consider the application seeking CDR,

after hearing the parties on its own merits and in accordance with law.

(v) Rule is made absolute in the aforesaid terms.