

IN THE HIGH COURT OF DELHI AT NEW DELHI

CRL.M.C. 7324/2006 & CRL.M.A.12487/2006

Date of order: 29th February, 2008

OM PRAKASH SHARMA Petitioner
Through Mr. Siddharth Luthra, Senior
Advocate with Mr. Anurag Ahluwalia,
Advocate.

versus

C.B.I. Respondent
Through Mr. R.M. Tewari, Advocate.

CORAM:
HON'BLE DR. JUSTICE S. MURALIDHAR

1. Whether Reporters of local papers may be allowed to
see the order? Yes
2. To be referred to the reporter or not? Yes
3. Whether the order should be reported in the Digest? Yes

ORDER

Dr. S. Muralidhar, J. (open court)

1. This petition under Section 482 of the Code of Criminal Procedure, 1973 (CrPC) challenges an order dated 27th October 2006 passed by the learned Special Judge, Delhi dismissing an application filed by the Petitioner seeking to place on record some public documents which according to the Petitioner required consideration by the Special Judge at the stage of framing of charges.

2. The Petitioner is facing trial in case RC No. 8(A)/91/SIU/VIII/CBI New Delhi under Section 13(1)(e) read with

Section 13(2) of Prevention of Corruption Act, 1988 (PC Act). Earlier the Petitioner had filed applications dated 20th May 2003 and 27th April 2004 under Section 91 and 294 CrPC before the learned Special Judge seeking to produce certain documents which included orders passed by the Income Tax Appellate Tribunal (ITAT) and orders passed by the other income-tax authorities for the various assessment years during the check period 1960-91. However, those applications came to be disposed of by an order dated 30th April 2005 by the Special Judge recording the fact that the learned counsel for the accused had conceded that the documents could not be looked into at that stage in view of the judgment of the Supreme Court in *State of Orissa v. Debendra Nath Padhi* 2005 (1) SCC 568.

3. The Petitioner was aggrieved by the aforementioned order dated 30th April 2005 since it was felt that the concession was wrongly made. Accordingly he filed Criminal Miscellaneous (C) No. 4539 of 2005 in this Court under Section 482 CrPC wherein it was urged that even by an earlier order dated 10th November 2003 passed by the learned Special Judge it had been held that documents filed by the Petitioner along with an earlier application dated 30th May 2003 would be taken into consideration while considering the question of charge. That order despite being challenged by the Petitioner had been upheld both by this Court as well as by the Supreme Court. However, the impugned order dated 30th April 2005 had the effect

of taking away the relief granted, although of a limited nature by the Special Judge by the earlier order dated 10th November 2003. It was further urged that the observations in *Debendra Nath Padhi* have been misread by the learned Special Judge since it did not restrict the scope of Section 294 CrPC which could be invoked independent of Section 91 CrPC. Alternatively, it was pleaded before this Court that in view of the observations in paras 28 and 29 of *Debendra Nath Padhi*, this Court should exercise its inherent powers to permit the Petitioner to produce the documents as prayed for by him before the learned Special Judge at the stage of framing of charges.

4. On the aforementioned application, this Court on 30th September 2005 passed the following order:

“Crl.M.C. No. 539/2005 & Crl.M. No. 9244/2005

Notice. Heard.

Learned counsel for the Petitioner, after arguing the matter for some time seeks permission to withdraw the petition submitting that Petitioner would file certified copies of some public documents before the learned trial court, praying to the learned court to take into consideration those documents. Needless to say, learned trial judge shall pass appropriate order whenever any such application is moved by the Petitioner.

Dismissed as withdrawn.”

5. Pursuant to the aforementioned order the Petitioner filed an

application before the learned Special Judge which came to be dismissed by the impugned order dated 27th October 2006. After noticing the law laid down by the Supreme Court in ***Debendra Nath Padhi***, the learned Special Judge held that the effect of the public documents sought to be produced by the Petitioner, could be examined only during the trial.

6. Mr. Siddharth Luthra, the learned Senior Counsel appearing for the Petitioner urged that the mandate of the order passed by this Court on 30th September 2005 had not been complied with by the learned Special Judge. According to him, the said order passed by this Court required the Special Judge to examine the documents produced and form an opinion whether they were necessary to be considered at the stage of framing of charges. He further submits that the many of these documents are in fact orders passed by the ITAT including those concerning the check period, i.e., 1962-91, whereas the documents sought to be produced by the CBI were selective for three particular assessment years. According to him, the orders passed by the ITAT in appeal against the orders of the subordinate authorities produced by the CBI negate the effect of the latter orders. He further relies upon paras 28 and 29 of the judgment in ***Debendra Nath Padhi*** to urge this Court again to exercise its inherent powers to permit the Petitioner to produce the documents before the learned Special Judge at the stage of framing of charges.

7. This Court is unable to accept the submission of the learned Senior Counsel for the petitioner. The paragraphs of the judgment in ***Debendra Nath Padhi*** that are relevant for the present case read as under:

“23. As a result of aforesaid discussion, in our view, clearly the law is that at the time of framing charge or taking cognizance the accused has no right to produce any material. Satish Mehra case holding that the trial court has powers to consider even materials which the accused may produce at the stage of Section 227 of the Code has not been correctly decided.....”

“27. Insofar as Section 91 is concerned, it was rightly held that the width of the powers of that section was unlimited but there were inbuilt, inherent limitations as to the stage or point of time of its exercise, commensurate with the nature of proceedings as also the compulsions of necessity and desirability, to fulfill the task or achieve the object. Before the trial court the stage was to find out whether there was sufficient ground for proceeding to the next stage against the accused. The application filed by the accused under Section 91 of the Code for summoning and production of document was dismissed and order was upheld by the High Court and this Court. But observations were made in para 6 to the effect that if the accused could produce any reliable material even at that stage which might totally affect even the very sustainability of the case, a refusal to look into the material so produced may result in injustice, apart from averting an exercise in futility at the expense of valuable judicial/public time, these observations are clearly obiter dicta and in

any case of no consequence in view of conclusion reached by us hereinbefore. Further, the observations cannot be understood to mean that the accused has a right to produce any document at the stage of framing of charge having regard to the clear mandate of Sections 227 and 228 in Chapter 18 and Sections 239 and 240 in Chapter 19.

28. We are of the view that jurisdiction under Section 91 of the Code when invoked by the accused the necessity and desirability would have to be seen by the Court in the context of the purpose - investigation, inquiry, trial or other proceedings under the Code. It would also have to be borne in mind that law does not permit a roving or fishing inquiry.

29. Regarding the argument of accused having to face the trial despite being in a position to produce material of unimpeachable character of sterling quality, the width of the powers of the High Court under Section 482 of the Code and Article 226 of Constitution of India is unlimited whereunder in the interests of justice the High Court can make such orders as may be necessary to prevent abuse of the process of any Court or otherwise to secure the ends of justice within the parameters laid down in Bhajan Lal case.”

8. If this Court was considering the plea for exercise of its inherent powers for the first time then the argument of learned Senior Counsel for the Petitioner could have still been considered by this Court. However, this very argument raised by the Petitioner in Criminal Miscellaneous No. 4539 of 2005 was obviously not entertained by this Court when it passed the order dated 30th

September 2005 which has been extracted hereinabove. It is, therefore, not possible to permit the Petitioner to once again urge this Court to invoke its inherent powers under Section 482 CrPC.

9. Also this Court is not able to discern from a reading of the impugned order dated 30th September 2005 any mandate having been issued to the Special Judge to consider the documents placed by the Petitioner before that court before passing an order on the application. All that this Court said in the order dated 30th September 2005 was to record the submission of the counsel for the Petitioner that the Petitioner would be placing some public documents before the Special Judge. After recording that submission, this Court merely observed that learned trial judge shall pass appropriate orders whenever any such application is moved by the Petitioner. A reading of the impugned order shows that the learned Special Judge has precisely done that. He has followed the judgment of the Supreme Court in *Debendra Nath Padhi* and dismissed the application. Given the law laid down by the Supreme Court in para 23 of *Debendra Nath Padhi* and given the fact that this Court has already declined to entertain the prayer of the Petitioner to exercise its inherent jurisdiction under Section 482 CrPC to permit him to produce the documents in question, no fault can be found with the impugned order passed by the learned Special Judge.

10. It is urged by the learned Senior Counsel for the Petitioner that the Petitioner's right to produce these document documents during the course of the trial should not be prejudiced by either the impugned order or the present order. The law laid down by the Supreme Court in *Debendra Nath Padhi* preserves the right of the accused to produce the documents in his possession at the stage of trial. It only prohibits the accused from relying on those documents at the stage of framing of charge.

11. There is no merit in this petition and it is accordingly dismissed. The interim orders stand vacated. The application is also dismissed.

12. The trial court record be sent back forthwith. A certified copy of this order will be delivered to the trial court concerned within five days. Order dasti to the counsel for the parties.

S. MURALIDHAR, J.

FEBRUARY 29, 2008

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