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THE HIGH COURT OF DELHI AT NEW DELHI

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CrI.M.C. 4130/2011 & CrI.M.A. 19202/2011

Date of Order: 13.12.2011

Suresh Kumar Pathrella

..... Appellant

Through: Mr. R.K.Dhawan, Mr.Rahul Gaur,
Advocates.

versus

Central Bureau of Investigation

..... Respondent

Through: Ms.Sonia Mathur, Advocate.

CORAM:

HON'BLE MR. JUSTICE M.L. MEHTA

M.L. MEHTA, J. (Oral)

1. This is a petition under Section 482 CrPC and Article 227 of the Constitution of India read with Section 91 CrPC against the order dated 03rd November, 2011 of the learned Special Judge, CBI in C.C.No. 28/11.

2. The petitioner is facing trial in the aforesaid criminal case in the court of Special Judge, CBI, New Delhi. The case was at the stage of consideration of charges. The petitioner filed an application under Section 91 CrPC before the Special Judge for supply of copies of some of the documents. The petitioner at the relevant time was posted as Branch Manager at New Friends Colony Branch of Oriental Bank of Commerce when he allegedly gave unauthorized credit facilities to some firms exceeding his power and without prior sanction of the senior authorities.

3. The plea of the petitioner was that the credit facilities to those firms were allowed in accordance with the prevalent rules after obtaining the necessary permission/sanction of the competent authority.

It was averred that the original documents pertaining to grant of credit facilities allowed to those firms were on the record of the bank and thus, all those documents may be got placed on record and the copies thereof be supplied to him.

4. Learned counsel appearing for the petitioner relied upon the judgment of **Dharambir Vs. CBI**, 148 (2008) DLT 289 of this court wherein this court after discussing the various decisions on the point of supply of documents made certain conclusions in Para 13, one of which appearing at Serial No. IX was as under:

“(ix) Where the accused insists that some other document apart from what is stated in this list of documents attached to a charge-sheet should be taken as being proposed to be relied upon by the prosecution, and submits that this is evident from a reading of the charge sheet, the trial Court will examine such submission and if it is satisfied that the charge sheet does in fact indicate that some other document is also proposed to be relied upon by the prosecution, then it can require the prosecution to furnish the accused a copy of such document as well”.

5. On the other hand, plea of the prosecution was that no regular limit was sanctioned to the firms except the firm namely M/s. Red Cats Agencies. It was averred that all the credit facilities which were sanctioned by the branch to those firms except M/s. Red Cats Agencies were sanctioned on ad-hoc basis at the branch level by the petitioner exceeding his discretionary powers. Sometime in October, 1995, the discretionary powers of the petitioner were withdrawn on the instructions of the higher authorities.

6. The learned ASJ vide the impugned order declined the production of those documents and also supplying of copies thereof to the petitioner. The learned ASJ relied on the judgment of Supreme Court in the case of **State of Orissa Vs. Debendra Nath Padhi**, AIR, 2005

Supreme Court 359 wherein it was held that Section 91 does not confer any right of production of documents to the accused to enable him to prove his defence and such a power need not to be exercised under Section 91 of the CrPC at the stage of framing of charges. The relevant observation of the Supreme Court can be noted as under:

“25. Any document or other thing envisaged under the aforesaid provision can be ordered to be produced on finding that the same is 'necessary or desirable for the purpose of investigation, inquiry, trial or other proceedings under the Code'. The first and foremost requirement of the section is about the document being necessary or desirable. The necessity or desirability would have to be seen with reference to the stage when a prayer is made for the production. If any document is necessary or desirable for the defence of the accused, the question of invoking Section 91 at the initial stage of framing of a charge would not arise since defence of the accused is not relevant at that stage. When the section refers to investigation, inquiry, trial or other proceedings, it is to be borne in mind that under the section a police officer may move the Court for summoning and production of a document as may be necessary at any of the stages mentioned in the section. In so far as the accused is concerned, his entitlement to seek order under Section 91 would ordinarily not come till the stage of defence. When the section talks of the document being necessary and desirable, it is implicit that necessity and desirability is to be examined considering the stage when such a prayer for summoning and production is made and the party who makes it whether police or accused. If under Section 227 what is necessary and relevant is only the record produced in terms of Section 173 of the Code, the accused cannot at that stage invoke Section 91 to seek production of any document to show his innocence. Under Section 91 summons for production of document can be issued by Court and under a written order an officer in charge of police station can also direct production thereof. Section 91 does not confer any right on the accused to produce document in his possession to prove his defence. Section 91 presupposes that when the document is not produced process may be initiated to compel production thereof.

26. Reliance on behalf of the accused was placed on some observations made in the case of Om Parkash

Sharma v. CBI, Delhi [(2000) 5 SCC 679]. In that case the application filed by the accused for summoning and production of documents was rejected by the Special Judge and that order was affirmed by the High Court. Challenging those orders before this Court, reliance was placed on behalf of the accused upon Satish Mehra's case (supra). The contentions based on Satish Mehra's case have been noticed in para 4 as under:

"4. The learned counsel for the appellant reiterated the stand taken before the courts below with great vehemence by inviting our attention to the decision of this Court reported in Satish Mehra v. Delhi Admn. ((1996) 9 SCC 766) laying emphasis on the fact the very learned Judge in the High Court has taken a different view in such matters, in the decision reported in Ashok Kaushik v. State ((1999) 49 DRJ 202). Mr Altaf Ahmed, the learned ASG for the respondents not only contended that the decisions relied upon for the appellants would not justify the claim of the appellant in this case, at this stage, but also invited, extensively our attention to the exercise undertaken by the courts below to find out the relevance, desirability and necessity of those documents as well as the need for issuing any such directions as claimed at that stage and consequently there was no justification whatsoever, to intervene by an interference at the present stage of the proceedings".

27. In so far 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, commensurately 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 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 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”.

7. The reliance placed on the judgment of Dharambir Vs. Central Bureau of Investigation (supra) by the counsel for the petitioner is misplaced inasmuch as in the said judgment in Para 13 at Serial No. VI and VII, the court had noted as under:

“(vi) The trial Court or this Court cannot, at the pre-charge stage, direct the prosecution to furnish copies of documents other than that which it proposes to rely upon or which have already been sent to the Court during investigation;

(vii) At the pre-charge stage the trial Court cannot direct that a copy of each and every document gathered by the prosecution must be furnished to the accused irrespective of what the prosecution proposes to rely upon”.

8. In the aforesaid case, this court in Para 10.6 had also noted as under:

“10.6 None of the decisions cited by the petitioners support their contention that the denial to the accused at the pre-charge stage of a copy of each and every document gathered during investigation by the prosecution would constitute a violation of the fundamental right of the accused to a fair trial”.

9. This court had categorically rejected the submission of the petitioner therein that whenever a request is made by an accused to have an access to a document, such a request must be granted by the court.

10. This court in case of **Ashok Chawla Vs. Ram Chander Garvan, Inspector CBI**, 2011 CRI.L.J. 2353 was dealing with the question somewhat similar in the present case and relied upon the case of State of

Orissa Vs. Debendra Nath Padhi (supra) and did not find it necessary to order for the production of documents under Section 91 CrPC at the stage of framing of charges.

11. In view of the law as laid down in the case of State of Orissa Vs. Debendra Nath Padhi (supra), the petitioner cannot have indefeasible legal right to every document of police file or that of the complaint.

12. At the stage of framing of charges, Section 227 and 228 CrPC are applicable. Reading of these provisions together makes it clear that at the beginning and at the initial stage of trial, the court is not required to meticulously judge the truth, veracity and effect of evidence which the prosecutor proposes to adduce nor any weight is to be attached to the probable defence of the accused. It is not obligatory for the judge at that stage of trial to consider in detail and weigh in a sensitive balance whether the facts, if proved, would be incompatible with the innocence of the accused or not. The court at that stage is also not to see whether there is sufficient ground for conviction or whether the trial is certain to end in conviction of the accused. The only thing that has to be seen is whether there is a strong suspicion which leads the court to think that there are grounds for presuming that the accused has committed an offence. No doubt, the judge, while considering the question of framing of charges, has the power to sift and weigh the evidence, but that is only for the limited purpose of finding whether or not, a prima facie case against the accused is made out. The prima facie case would depend upon the facts of each case and it is difficult to lay down a rule of universal application. The petitioner, by seeking production of those documents, seems to be trying to set up his defence at the stage of framing of charges which was not to be the objective of Section 91

CrPC. The necessity or desirability for a particular type of defence could not be gone into at the initial stage of framing of charges. In view of my discussion as above, I do not see any impropriety or illegality in the impugned order of the learned ASJ.

13. The petition is accordingly dismissed.

M.L. MEHTA
(JUDGE)

DECEMBER 13, 2011

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