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THE HIGH COURT OF DELHI AT NEW DELHI

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W.P (Crl.) No.31/2012

Date of Decision: 01.03.2012

Ravindra Kumar Chandolia

..... Petitioner

Through: Mr. Vijay Aggarwal, Mr. Gurpreet
Singh and Mr. Varun Sharma,
Advocates

Versus

CBI

..... Respondent

Through: Ms. Sonia Mathur, Advocate

CORAM:

HON'BLE MR. JUSTICE M.L. MEHTA

M.L. MEHTA, J.

1. The present writ petition under Article 226 read with 227 of Constitution of India seeks to assail the order of the learned trial court dated 19/12/2011 whereby an application under Section 91 Cr.PC moved by the petitioner for summoning of some documents was dismissed.

2. The petitioner herein along with other co-accused persons was facing trial for offences under Section 120B IPC read with Section 13(2) read with Section 13(1)(d) of Prevention of Corruption Act (hereinafter referred to as "PC Act"), on the allegations of criminal conspiracy and criminal misconduct in respect of allotment of Letters of Intent (LOI), Unified Access Services (UAS) Licenses and Spectrum by Department of Telecommunication (DoT).

3. In the abovesaid case, the petitioner was arrested by CBI on 2.2.2011 at New Delhi. After investigation, the CBI filed a charge sheet on 02/04/2011 against twelve accused persons including the present petitioner, a public servant of the Joint Secretary level, before the court of Shri O.P. Saini, Special Judge Patiala House courts, New Delhi.

4. The facts in brief are that receipt of applications for new UAS licenses in DOT has been a continuous process. The applications were processed in the order in which they were received. However after A. Raja took over as Minister of Communication & Information Technology (MoC&IT) in May 2007, there was manipulation in the processing of these applications for UAS licenses by DOT. The petitioner at the relevant time was posted as Private Secretary to the Minister Mr. A. Raja and was alleged to be an active participant in the alleged conspiracy with the Minister. He was alleged to be continuously monitoring the status of the receipts of applications in the Access Service Cell of DoT and was continuously up-dating himself with the status of the applications as also the particulars of the applicant companies. There were allegations against the Minister and other accused persons including the petitioner herein that they had conspired to ensure better prospects to favoured companies to cut short the last date of receipt of the applications to bring them in the consideration zone for allotment of spectrum in different circles. It was also alleged that they had also conspired to manipulate the procedure in order to benefit those favoured companies.

5. The case before the learned Special Judge was at the stage of recording prosecution evidence and Mr. Aseervatham Achary was under examination as PW7 when the instant application was filed by the petitioner for summoning

some documents. This witness was cited as PW103 in the list of witnesses by the prosecution. The said application was dismissed by learned Special Judge holding that the documents which are sought to be produced were aimed at fishing expedition and the application was designed to waste the time of the court and to delay the proceedings.

6. The impugned order has been assailed mainly on the ground that the production of documents as detailed in the application under reference is necessary for effective cross examination of PW7 Mr. Aseervatham Achary. Learned counsel for the petitioner submitted that when the petitioner was posted as PS to Minister, Mr. Aseervatham Achary was also posted as Additional PS and from the documents Mr. Aseervatham Achary was to be confronted to elicit that he was also doing all the official work of the Minister and was not only engaged in his personal work. He submitted that confronting Mr. Aseervatham Achary with these documents is also necessary to impeach his credit. Learned counsel for the petitioner relied upon the judgments of *S.K. Singhal Vs. State of M.P.* 1997 Cri.LJ 3145 and *Bhagwant Singh Vs. Commissioner of Police* (1985) 2 SCC 537 in support of his submissions. The crux of these judgments is that the production of documents under Section 91 Cr.P.C. depends upon their desirability, necessity and relevance and further more that difficulty in compliance with is not a ground to deny opportunity of hearing. These legal propositions are not at all disputed.

7. Per contra, learned Standing Counsel for CBI stated that the documents sought to be produced were not specific but vague and were neither relevant nor necessary for the purpose of cross examination of PW7 Mr. Aseervatham Achary.

8. Learned Special Judge relied upon the judgment of Apex Court in the case of *State of Orissa v Debendra Nath Padhi* [AIR 2005 SC 359] wherein it was held that Section 91 Cr.PC 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 Cr.PC at the stage of framing of charges. Learned counsel appearing for the petitioner tried to distinguish this judgment by stating that the documents are sought to be produced for the purpose of cross examination of Mr. Aseervatham Achary (PW7) and not at the stage of framing of charges, **but for his**. The observations of the Apex Court in *Debendra Nath Padhi* (supra) 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.

9. Section 91 Cr.PC envisages production of any document or other thing which according to the court or police officer in charge of the police station is necessary or desirable for the purpose of any investigation, enquiry or trial or other proceedings under the Code. The width of the powers under this section is unlimited. The only limitations are as regards to the such documents or things to be necessary or desirable for the purposes mentioned therein. Though the case of Debendra Nath Padhi (supra) pertained to the stage of framing of charges and the Apex Court held that at that stage, the case of production of documents was not made out, but the plain and literal reading of provisions of section 91 Cr.PC would reveal that the court was empowered to order for production of document or other thing only when that may be necessary or desirable for the purpose of enquiry, trial or other proceedings. The court has to deal with this issue to satisfy itself as regard to the necessity or desirability of the documents sought to be produced.

10. With this backdrop of proposition of law, it needs to be examined as to whether the documents sought to be produced by the petitioner for the purpose of cross examination of PW7 are really necessary or desired for the just decision of the case. It is also to be kept in mind that the petitioner was posted as PS to the Minister, whereas Mr. Aseervatham Achary (PW7) was the additional PS at the relevant time. The submission of learned counsel for the petitioner that Mr. Aseervatham Achary (PW7) was also looking after the official works of the Minister and so was equally liable is also to be borne in mind.

11. The documents which were sought to be produced as detailed in the application under reference are as under:

S.No.	Particulars	Relevancy	From whom to be summoned
1.	Copy of letter/ notes written by Mr. Aseervatham Achary to the Department of Post and Dept. of IT and DoT in his capacity as Addl. PS between May 2007 to October, 2008 including approvals given by him on file notings acting in his capacity as Addl. PS for and on behalf of the MOC&IT. He was Addl. PS till October 2008.	For cross examination	Department of IT, DoT and Department of Posts.
2.	Extract of Record of Special Protection Group (SPG) in the PMO/PM Residence showing the dates between May, 2007 to December 2008 when Mr. A. Raja accompanied by Mr. Aseervatham Achary met PM.	For cross examination	PMO/PM Residence/Special Protection Group
3.	Visitor's Register maintained by the Ministry of Home Affairs (MHA) in respect of Sanchar Bhawan between May, 2007 to December 2008.	For cross examination	MHA/Dot.

4.	Visitor's Register in the MOF maintained by the MHA in respect of the office of Finance Minister between May, 2007 to October 2008.	For examination cross	MOF
5.	Dates on which Mr. A. Raja met Mr. P. Chidambram between May, 2007 to December 2008.	For examination cross	MOF
6.	File No.20-165/2007-AS-I in respect of letter sent by Shri Subbarao to Shri D. Mathur in which file notings of the reply sent by Shri D. Mathur to Shri Subbarao are available.	For examination cross	CBI
7.	Call records of Mr. Aseervatham Achary in respect of his mobile number 9810159229 between May 2007 to December 2008.	For examination cross	Concerned Service

12. The documents mentioned at S.No.1 are Copy of letters/ notes written by Mr. Aseervatham Achary to the Department of Post and Dept. of IT in his capacity as Addl. PS between May 2007 to October, 2008 including approvals given by him on file notings acting in his capacity as Addl. PS for and on behalf of the MOC&IT. The documents mentioned at S.No.2 are Extract of Record of Special Protection Group (SPG) in the PMO/PM Residence from the dates between May, 2007 to December 2008 when Mr. A. Raja accompanied by Mr. Aseervatham Achary met PM. This period also runs into 20 months. At S. No.3, the documents are Visitors Register maintained by the Ministry of Home Affairs (MHA) in respect of Sanchar Bhawan between the same period. At S. No.4 are the Visitors Register in the MOF maintained by the MHA in respect of the office of Finance Minister for the same period. At S. NO.5, the dates on which Mr. A. Raja met Mr. P. Chidambram between May, 2007 to December 2008. At S. No.6 , the File No.20-165/2007-AS-I in

respect of letter sent by Shri Subbarao to Shri D. Mathur in which file notings of the reply sent by Shri D. Mathur to Shri Subbarao are available. At S. No.7, Call records of Mr. Aseervatham Achary in respect of his mobile number 9810159229 between May 2007 to December 2008 are sought to be produced.

12. A look at the details of the documents which are sought to be produced as noted above, would reveal that the petitioner seemed to be trying to undertake a roving enquiry not only into the day to day working of PW7 in his official as well as personal capacity, but even wanted to know and expose his movements and phone calls. He even wanted to know as regards to the record of the movements of SPG in the PMO and residential of Prime Minister and also the name of all the visitors visiting the Ministry of Home Affairs. Further, he also wanted to know the dates of meetings of the Minister A. Raja with Minister Mr. P. Chindambram. Even with regard to the file mentioned at S. No. 6 in respect of some letters, it is nowhere disclosed as to the relevancy or desirability of the said letter of Mr. Subbarao. This all seemed to be aimed at roping in PW7 who was working in the same office. It was rightly observed by learned Special Judge that large mass of documents have been sought to be produced without even mentioning any specific necessity or relevancy of any of those documents to the testimony of PW7 or trial.

13. The Apex Court has repeatedly cautioned against undertaking a roving enquiry into the pros and cons of the case by weighing the evidence or collecting material during the course of trial. It is not that in one case Court thought it fit to exercise its powers in no compelling circumstances to do so not in all other cases before it. It is not a matter of course and on the mere asking that the documents could be directed to be produced. The Court

concerned must be allowed in large latitude in the matter of exercise of discretion in this regard.

14. Having examined all the details of the documents sought to be produced and the testimony of PW7, I do not see any relevancy or necessity of any of the record sought to be produced. The learned Special Judge has exercised his discretion judiciously in recording that none of the documents sought to be produced had any bearing or relevancy in respect of cross examination of PW7 or that of the trial.

15. In view of my foregoing discussion, I am of the considered view that this petition is nothing but a frivolous one and is another design of delaying, venture of sidetracking the trial and to waste the precious time of the court. The petition is hereby dismissed with costs quantified as Rs.25,000/- to be deposited with Delhi High Court Legal Services Committee.

M.L. MEHTA, J.

March 01 , 2012
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