

GAHC010124292024



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : Crl.Pet./742/2024

CHINTAN JAIN
S/O SHRI NAYAN CHANDRA JAIN, R/O ATHAK AWAS, 115-A, GANDHI
NAGAR, WEST BORING CANAL ROAD, BUDDHA COLONY, PATNA-800001,
BIHAR

VERSUS

CBI/AC-1/NEW DELHI
INDIA

Advocate for the Petitioner : MS. J BAISHYA

Advocate for the Respondent : SC, CBI

BEFORE
HONOURABLE MRS. JUSTICE MALASRI NANDI

ORDER

Date : 19.07.2024

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Heard Mr. D. V. Pathy, learned counsel for the petitioner. Also heard
Mr. M. Haloi, learned Standing counsel CBI.

2. By filing this petition u/s 482 Cr.P.C. read with Article 227 of the Constitution of India, the petitioner has prayed for quashing of the order dated 13/05/2024 passed by the learned Special Judge, Additional Court No. 2, CBI, Assam in Misc. (CBI) case No. 29/2023 arising out of special Case no. 02/2022, whereby the CBI court has rejected the petition filed by the petitioner u/s section 91 of Cr.P.C.

3. The allegation in the FIR in brief is that during the year 2021 one Ranjit Kumar Borah, who was then working as a Deputy Chief Electrical Engineer in N.F. Railways, while acting in pursuance of criminal conspiracy with the present petitioner who is Director of M/s Sunshine Devices Pvt. Ltd. Patna and also operating a firm under the name and style of Athak Udyog, Patna, was facilitating and extending undue favours in matters of various works like preparation of measurement books, processing of bills, early release of payments against bills related to North East Frontier Railway in lieu of demand and acceptance of illegal gratification being paid by the present petitioner. Subsequently, a charge-sheet has been submitted in the case against the accused/petitioner along with some other accused.

4. The petitioner, thereafter, filed an application u/s 91 Cr.P.C. requesting the trial court to summon production of documents which form the basis of the launch of the first information report. The petitioner made such request primarily on the grounds that there is no material or documents annexed to the First information report in which allegations were made and the same were contained only in the annexure appended thereto. There was no sanction or approval as required under mandatory requirement

of Rule 419 A and 16, 17 of Indian Telegraph Act and also the requirement of post facto approval or sanction of any such order or decision permitting tapping or surveillance of mobile phones and also without considering the necessity and desirability of production of such material evidence to prevent a commencement of vexatious trial in the ends of justice and fair play. But the learned trial court merely reiterating the judicial pronouncements rendered by the Hon'ble Supreme Court without appropriate consideration thereof rejected the application u/s 91 of Cr.P.C. Hence, this criminal petition.

5. It was urged by learned counsel for the petitioner that the learned Special Judge CBI has erred in passing the order dated 13/05/2024 by rejecting the petition u/s 91 Cr.P.C. as because the surveillance order which has been relied upon can only be issued u/s 5 (2) of Indian Telegraph Act, 1885 and in compliance with the direction issued by the **Hon'ble Supreme Court in PUCL vs. Union of India reported in (1997) 1 SCC 301.**

6. It is also submitted that neither there exist any documents, thereby establishing that those orders were issued by the respondents. There exist no previous statement regarding any orders, the process whereby the surveillance order had been issued or had been duly sent to the Review Committee as contemplated under Rule 419 A of Indian Telegraph Rules, 2014. Thus the documents filed along with present charge-sheet do not prove the legitimacy and therefore, the alleged electronic data is not admissible in law.

7. According to the learned counsel for the petitioner, the application u/s 91 of Cr.P.C. was filed for the purpose of conducting fair trial and the fair

trial includes right of complete disclosure and the petitioner has a right to seek indulgence to bring on record the documents which are in possession of the respondents and are of starling quality as contemplated by the Hon'ble Supreme court in the case of **Hardeep Singh vs. State of Punjab reported in (2014) 3 SCC 92.**

8. Learned counsel for the petitioner has further contended that the court can invoke section 91 Cr.P.C. either suo moto or on behest of some stakeholder in the process of investigation, trial or other proceedings. The cause for invoking section 91 can arise from any source, be it victim, accused and police. Denying any of the stakeholders, the right to invoke section 91 may defeat the ultimate object behind section 91 which is to ensure discovery of truth, rendering of justice and preventing of failure of justice.

9. The learned counsel for the petitioner has referred the following case laws –

- a. (2018) 2 SCC 93 (Nitiya Dharmananda @ K. Lenin vs. Gopal Sheelum Reddy)
- b. (2010) 6 SCC 1 (Manu Sharma vs. State (NCT of Delhi)
- c. (2017) 10 SCC 1 (Justice (retd) K.S. Puttaswamy and another vs. Union of India and another)

10. In response, learned standing counsel CBI, by referring the Judgment of **P. Ponnusamy vs. State of Tamil Nadu, reported in (2023) 1 ALT (Cri) (SC) 165**, has pointed out that before the

commencement of trial, the accused only receives a list of documents and statements relied upon by the prosecution but is kept in the dark on other material in the possession of the prosecution, even if it has exculpatory value.

11. It is further submitted that in case documents are sought it applies at the trial stage, after charges are framed. The trial court is at liberty to exercise such discretion having regard to the rule of relevance in the context of the accused's right of defense. Accordingly, learned standing counsel CBI prays for dismissal of the prayer of the petitioner.

12. Admittedly, in the case in hand the charge has not yet been framed. As per section 207/208 Cr.PC the accused is required to be provided copies of the charge sheet, statements of the witnesses, documents and other related materials and only the list of statements/documents etc which are not relied upon. Prosecution is not obliged to provide the unrelayed documents and statements etc with the list and the accused has to move appropriate application u/s 91 Cr.PC at the relevant time for the production of any document/statements out of the list supplied.

13. Hon'ble Supreme Court suo moto started proceedings and framed draft rules regarding various aspects of the criminal trials to remove certain deficiencies and shortcomings and ultimately adopted and finalized and same in **In Re: To issue certain guidelines regarding inadequacies and deficiencies in criminal trial vs. State of Andhra Pradesh, Suo Moto Writ (Crl.) No. 1/2017 decided on 20.04.2021**. In para No. 11 of this order, Hon'ble Supreme Court held as under;

“This Court is of the opinion that while furnishing the list of statements,

documents and material objects under Section 207/208 Cr.P.C., the magistrate should also ensure that a list of other materials, (such as statements, or objects/documents seized, but not relied on) should be furnished to the accused. This is to ensure that in case the accused is of the view that such materials are necessary to be produced for a proper and just trial, she or he may seek appropriate orders, under the Cr.P.C. (*Section 91 referred at footnote*), for their production during the trial, in the interests of justice. It is directed accordingly; the draft rules have been accordingly modified.”

14. Hon’ble Supreme Court in **Nitya Dharmanand vs. Gopal Sheelum Reddy (2018) 2 SCC 93** held that at the stage of framing of charge, accused ordinarily cannot invoke Section 91 Cr.P.C. but the court is not debarred to exercise its power to look after the unrelieved documents and materials which are of sterling quality.

15. In **Neelesh Jain vs. State of Rajasthan 2006 Cr.L.J. 2151** in which application moved under Section 91 Cr.P.C. was allowed for production of certain documents available with the police but were not filed with the charge-sheet.

16. In the case of **Reliance Industries Ltd. vs. SEBI CrI. Appeal. No. 1167/2022** decided on 5-8-2022 in which three fundamental principles of disclosure of information i.e. reliability, fair trial as well as transparency and accountability were discussed. Reliance is also placed upon decisions of Hon’ble Supreme Court in cases of **Manu Sharma vs. State (2010) 6 SCC 1** and **Manoj vs. State of M.P. (2023) 2 SCC 353** in which it is also mentioned that accused is entitled to the unrelieved documents and other material.

17. However, question has arisen at which stage of the case, accused is entitled to get the list of unrelieved documents/ statements or material etc. CBI is relying upon the latest decision dated 7-11-2022 of Hon'ble Supreme Court in case P. Ponnusamy vs. State of Tamil Nadu 2022 Live Law (SC) 923 in which various earlier judgments such as Manu Sharma vs. State, Manoj Kumar vs. State of MP as well as Draft Rules framed in case In Re: To issue certain guidelines regarding inadequacies and deficiencies in Criminal Trial vs. State of Andhra Pradesh were also discussed and the Court specifically held in para no. 17 that disclosure requirement arises only at the trial stage, after the charges are framed. Accused will be given only one opportunity of disclosure who can avail the facility at that stage. The court after considering the rule of relevancy in context of the accused's right of defence can exercise its discretion for production of such documents but this opportunity cannot be sought repeatedly. This judgment was given by three Judges Bench and simple fact that one of the Judges gave dissenting view on some point itself is not a ground to hold that it was a judgment of only two Judges. Still it has to be treated as judgment given by three Judges. This judgment in P. Ponnusamy's case will prevail being the latest judgment which has overridden other previous law.

18. Thus, the following guidelines and principles have emerged from the above case laws;

- (i) That accused has no right to seek unrelieved documents, statements etc. prior to the date of framing of charge but court itself can see the same at its own discretion.
- (ii) That on moving of any application seeking list of such unrelieved documents, statements etc. after framing of charge, the

same shall be provided to the accused but such right can be exercised only once at trial stage.

- (iii) That accused after going through the list can move an application u/s 91 Cr.P.C. for calling any material unrelayed document, statement etc. which is relevant in context of his right of defence. Thereafter, court if deem proper can summon that unrelayed document etc. but such type of repeated applications can be declined by court if it is found that the same are moved to delay the matter.

19. No doubt, various judgments as cited by learned counsel for the petitioner that unrelayed documents, statements etc. can be provided even at the initial stage but when the Hon'ble Supreme Court has now specifically said in the latest judgment of P. Ponnusamy's case that prior to framing of charge, no such right can be exercised by the accused; so due to these reasons, the application filed u/s 91 Cr.P.C by the accused /petitioner demanding production of other documents, statements and other materials are liable to be rejected being premature.

20. Otherwise also, making prayer for providing copies of unrelayed documents, statements and other material is also misconceived at this stage because only the list will be made available to the accused persons even as per directions given in In Re: To issue certain guidelines regarding inadequacies and deficiencies in Criminal Trial vs. State of Andhra Pradesh (supra) and not the documents, materials etc. Thereafter, accused/petitioner will have liberty to apply afresh for supply of list of unrelayed documents, statements etc. once the charges are framed and the case is put at trial. At that stage, after receipt of list of such unrelayed material, accused

will have also an option to move another application under Section 91 Cr.P.C. for production of any particular document or material which is related to his defence and needed for the purpose of cross examination of any prosecution witness.

21. Regarding submission of the learned counsel for the petitioner on Indian Telegraph Act, in view of the Judgment of P. Ponnusamy (Supra), this is not the stage to consider as to whether surveillance orders which had been obtained by following proper procedure or not.

22. In view of the aforesaid legal proposition, this court is of the view that the petitioner has not come with clean hands. By following the Judgment of P. Ponnusamy (supra), the present petition is not maintainable.

23. In the result, the criminal petition is dismissed and disposed of accordingly.

JUDGE

Comparing Assistant