

Court No. - 64

Case :- APPLICATION U/S 482 No. - 7764 of 2023

Applicant :- Pooja Upadhyay

Opposite Party :- State Of U.P.And Another

Counsel for Applicant :- Diwan Saifullah Khan,Kripa Kant Pandey,Rajiv Lochan Shukla,Udai Prakash Deo Pandey

Counsel for Opposite Party :- Sunil Kumar Singh,G.A.

Hon'ble Samit Gopal,J.

1. List revised.
2. Heard Sri Kripa Kant Pandey, learned counsel for the applicant, Sri Sunil Kumar Singh, learned counsel for the opposite party no. 2, Sri Ajay Singh, learned A.G.A.-I for the State and perused the record.
3. The present Criminal Misc. Application U/S 482 of Code of Criminal Procedure has been filed by the applicant **Pooja Upadhyay** with the following prayers:-

“It is, therefore, most respectfully prayed that this Hon’ble Court may kindly be pleased to allow this application and quash the order dated 03.02.2023 passed by Additional Sessions Judge/F.T.C.-2, Varanasi in S.T. No. 235 of 2020 (State vs. Ram Vichar and others) by means of which the application of the applicant dated 30.11.2022 has been rejected and further be pleased to direct the learned trial court to call for the G.D. dated 21.09.2019 from 7:00 AM to 1:35 p.m. of Police Station Chetganj, Police Station Dashashwamedh, Police Station Kotwali as well as the control room regarding the incident dated 21.09.2021 at 07:30 A.M. which are necessary for the proper adjudication of the S.T. No. 235 of 2020 arising out of Case Crime No.227 of 2019 under Sections 302, 307, 504, 506 r/w 34 I.P.C., Police Station Chetganj, District Varanasi, so that justice may be done.

It is further prayed that this Hon’ble Court may kindly be pleased to stay the further proceedings of the S.T. No. 235 of 2020 (State vs. Ram Vichar and others), arising out of Case Crime No.227 of 2019, under Sections 302, 307, 504, 506 r/w 34 I.P.C., Police Station Chetganj, District Varanasi, during the pendency of the present application, so that justice may be done.

And/or may be pleased to pass any other order or direction which this Hon'ble Court may deem fit and proper in the present fact and circumstances of the case."

4. Previously this application u/s 482 Cr.P.C. was decided by an order dated 6.7.2023 passed by a co-ordinate Bench of this Court. The said order reads as under:-

"Supplementary affidavit filed by learned counsel for the applicant is taken on record.

The present applicant (accused) has invoked inherent jurisdiction of this court assailing the order dated 03.02.2023 passed by Additional Sessions Judge/ Fast Track court No.2, Varanasi, rejecting the application dated 30.11.2022 moved on behalf of accused (applicant) in Sessions Trial No.235 of 2020 (State Vs. Ram Vihar and others) arising out of Case Crime No.227 of 2019, under sections 302, 307, 504, 506 R/w 34 IPC, Police Station Chetganj, District Varanasi.

First informant (opposite party no.2) has lodged an FIR with respect to the incident in question dated 21.09.2019 at about 7.30 A.M., wherein mother of the applicant succumbed to injuries and father of the applicant sustained grievous injuries due to the deadly attack with lethal arms made by the present applicant.

During pendency of the trial present applicant (one of the accused) has moved an application dated 30.11.2022 (Paper No. 60Kha) with the prayer that FIR has been lodged at a belated stage at 13.35 hours with respect to the incident took place at about 07.30 hours, therefore, GD entry of dated 21.09.2019 between the timing of incident i.e., 07.30 hours upto the timing of the lodging an FIR i.e., 13.35 hours should be summoned from the Police Station Chetganj, Contral Room Chetganj, Police Station Dashashwamedh, and Police Station Kotwali. Learned trial court by order impugned dated 03.02.2023 has rejected the application. Having been aggrieved the instant application under Section 482 Cr.P.C has been filed assailing the order dated 03.02.2023.

Learned counsel for the applicant submits that for the purposes of defence GD entry between the time of incident and the time of FIR registered is relevant inasmuch as FIR has been lodged at a belated state. It is further submitted that the

FIR appears to be manipulated only to falsely implicate the applicant and the other co-accused, therefore, to show the innocence of the applicant, GD entry is required to be perused.

Per contra, learned counsel for the opposite party no.2 has contended that there is no relevance of as such document which has not been relied upon by the prosecution. It is further submitted that what was endorsed in the GD between the time of incident and the lodging of an FIR has got no relevance for the purposes of present case inasmuch as same has not been relied upon by the prosecution to prove the accused guilty. It is further submitted that the examination-in-chief made by the witnesses would be relevant for the purposes of cross-examination. Any other additional evidence or the question has got no significance on the trial.

Having considered the rival submissions advanced by learned counsel for the parties and perusal of record, it reveals that at the time of cross-examination of Mr. Pradeep Kumar Mishra (PW-2) application dated 30.11.2022 has been moved on behalf of the accused (present applicant) to summon the GD entries dated 21.09.2019 between 07.30 hours to 13.35 hours from the concerned police stations. Intending to summon the G.D. entry dated 21.09.2019 from three police stations and one control room, applicant has referred the spot inspection report prepared by field unit Varanasi Forensic Science Laboratory, Varanasi. Against the said application prosecution has filed an objection (paper no. 61 Kha) opposing the application with an averment that at the stage of evidence of PW-2, there is no need to summon the police record which are not relevant and not prepared by the PW-2.

Learned trial court while rejecting the application (paper No. 60 Kha) has clearly observed that cross-examination has to be done only with respect to the examination-in-chief which has been made by PW-2 and the documents which has been produced and relied upon by prosecution as an evidence. Perusal of impugned order reveals that prosecution has neither filed any documentary evidence to show anything relevant with regard to any event allegedly took place between 07.30 hours to 13.35 hours nor, in the examination-in-chief made by PW-2, anything has been pointed out or indicate the

relevance of G.D. entry dated 21.09.2019 of three police stations and one control room with respect to any event during that period. PW-2 has not prepared the spot inspection report. Therefore, in this eventuality, I am of the considered opinion that, at the stage of cross-examination of PW-2, there is no justification to summon the GD entry dated 21.09.2019 between 07.30 hours to 13.35 hours from the four different police stations namely Police Station Chetganj, Contral Room Chetganj, Police Station Dashashwamedh, and Police Station Kotwali. Learned trial court has rightly rejected the application dated 30.11.2022 (paper no.60-Kha).

The scope and ambit of the inherent jurisdiction of the High Court under Section 482 CrPC has been examined in detail by Hon'ble Apex Court in State of Haryana and Others Vs. Bhajan Lal and Others, (1992 Suppl (1) SCC 335). The relevant para is mentioned hereunder:-

"102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an

order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code on the concerned Act (under which a criminal proceeding is instituted to the institution and continuance of the proceedings and or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

It has been further elucidated recently by Hon'ble Apex Court in Arnab Manoranjan Goswami Vs. State of Maharashtra and Others, 2020 SCC Online SC 964 where jurisdiction of the High Court under Article 226 of the Constitution of India and Section 482 CrPC has been analysed at great length.

Further, in the case of M/s Neeharika Infrastructure Pvt. Ltd. Vs. State of Maharashtra and others reported in AIR 2021 SC 1918, Full Bench of the Apex Court while considering the powers of quashing under Section 482 of the Criminal Procedure Code and/or Article 226 of the Constitution of India has illustrated the circumstances under which quashing of a

criminal case can be done and/or interim order can be granted.

Therefore, the disputed defence of the accused cannot be considered at this stage. In absence of any of the grounds recognized by the Supreme Court which might justify the quashing of complaint or the impugned proceedings, the prayer for quashing the same is not sustainable in the eyes of law. I do not see any abuse of the court's process either. The summoning court has been vested with sufficient powers to discharge the accused even before the stage to frame the charges comes, if for reasons to be recorded it considers the charge to be groundless. Moreover, the applicants have got a right of discharge under Section 239 or 227/228 Cr.P.C., as the case may be, through a proper application for the said purpose and he is free to take all the submissions in the said discharge application before the Trial Court.

Having considered the rival submissions advance by learned counsel for the applicant and learned AGA and the material available on record, in the light of dictum of Hon'ble Apex Court as discussed above, no ground made out to consider the merits of the instant case. I do not find any justifiable ground to interfere in the order impugned in exercise of inherent jurisdiction under section 482 Cr.P.C. There is no infirmity, perversity or illegality in the order impugned passed by the learned trial court warranting the indulgence of this court. As such, prayer of quashing as made in instant application is hereby refused.

Before parting, learned counsel for the applicant submits that in all sections, as mentioned in the FIR, maximum punishment is seven years or less than 7 years, therefore, the bail application if filed by the present applicant may be considered in the light of the dictum of Hon'ble Supreme Court in the case of Satender Kumar Antil Vs. Central Bureau of Investigation and another reported in (2021) 10 Supreme Court Cases 773. In the cited case, Hon'ble Supreme Court has given certain guidelines for deciding the bail applications by categorising the offences.

Considering the entire facts and circumstances of the case and the dictum of Hon'ble Supreme Court, I think it appropriate

that, in case, the applicant no. 1 appears/surrenders before the concerned court below and moves bail application within two weeks, the same shall be considered and decided in accordance with law, considering the judgment of Hon'ble Supreme Court, expeditiously as early as possible.

There shall be no order as to costs."

5. Subsequently on an application correction was done in the said order vide order dated 07.2.2024 passed by the said co-ordinate Bench of this Court. The said order reads as under:-

"Order on Crl. Misc. Application No.2 of 2024 :-

As prayed by learned counsel for the applicant instant application is dismissed as withdrawn.

Order on Crl. Misc. Application No.1 of 2024 :-

1. Instant correction application has been filed to delete second last and third last paragraph at page no.6 of the order dated 06.07.2023.

2. Application is allowed. Second last and third last paragraph of the order dated 06.07.2023 are hereby deleted and in its place following paragraph is incorporated :-

"Instant application is dismissed".

6. Against the said orders dated 06.7.2023 and 07.2.2024 a Special Leave Petition (Crl.) No. 9297 of 2024 (Pooja Upadhyaya vs. The State of Uttar Pradesh and another) was filed before the Apex Court which was allowed vide order dated 15.07.2024, the impugned orders dated 06.7.2023 and 07.2.2024 were set aside and the High Court was requested to decide the present petition under Section 482 Cr.P.C. afresh at the earliest preferably within one month. It was further ordered that meanwhile the trial will continue, but it may not be closed till the above-stated petition is decided by the High Court. The said order dated 15.07.2024 reads as under:-

"1. Delay condoned.

2. Issue notice.

3. On our asking, Ms. Parul Shukla, AOR accepts notice on behalf of respondent no.2-complainant.

4. Leave granted.

5. *The appellant is one of the accused along with her husband in the trial emanating out of FIR No.227/2019, under Sections 302, 307, 504 and 506, read with Section 34 of the Indian Penal Code, 1860, registered at Police Station Chetganj, District Varanasi, U.P. It is not necessary to go into the details of the occurrence which led to registration of the above-stated FIR. Suffice it to say that the appellant – one of the accused moved an application on 30.11.2022 before the Trial Court with the prayer to summon and verify the GD Entry dated 21.09.2019 between the timing of incident, i.e., 07.30 hours, upto the timing of lodging of the FIR, i.e., 13.35 hours, of the Police Station Chetganj, Contral Room Chetganj, Police Station Dashashwamedh, and Police Station Kotwali. The Trial Court dismissed the application vide order dated 03.02.2023. The appellant challenged that order before the High Court in a petition under Section 482 of the Code of Criminal Procedure, 1973 (in short, the Cr.P.C.”).*

6. *It appears from the later part of the impugned order passed by the High Court, where the scope and mbit of inherent jurisdiction exercisable by a High Court under Section 482 of Cr.P.C. has been iscussed, that the High Court was given the impression that the appellant sought quashing of the FIR. As noticed earlier, the short prayer made by the appellant pertains to summoning of the GD Entry dated 21.09.2019 regarding the timing of the incident, i.e., 07.30 hours upto the timing of the lodging of the FIR, i.e., 13.35 hours. The record sought to be summoned pertains to three police stations and the Control Room.*

7. *Since the nature of the relief sought by the appellant is different then what has been ubstantially perceived by the High Court in the impugned order, it seems to us, that the petition filed by the appellant under Section 482 of Cr.P.C. requires fresh consideration.*

8. *We may hasten to add that we have not granted time to file the counter affidavit to the State or to the complainant as it will unnecessarily delay the proceedings. The issue being very short, the High Court may decide the petition afresh, with or without their reply. We further clarify that we have not expressed any opinion on merits of the appellant’s claim in the application turned down by the Trial Court and the High Court.*

9. For the reasons afore-stated, the instant appeal is allowed. The impugned orders dated 06.07.2023 and 07.02.2024 are set aside and the High Court is requested to decide the appellant's petition under Section 482 of Cr.P.C. afresh and at the earliest, preferably within one month. Meanwhile, the trial will continue, but it may not be closed till the above-stated petition is decided by the High Court."

7. In the meantime co-accused Rajendra Upadhyay was granted bail by a co-ordinate Bench of this Court vide order dated 07.11.2023 passed in Criminal Misc. Bail Application No.49736 of 2021. The said order was subjected to challenge before the Apex Court which was stayed vide order dated 07.3.2024 of the Apex Court but later on vide order dated 10.5.2024 passed in Special Leave to Appeal (Crl.) No. 2264 of 2024 (Sumit Upadhyay vs. The State of Uttar Pradesh and another) he was granted bail by the Apex Court. The said petition stood disposed of vide the order dated 15.07.2024. The said order dated 15.7.2024 reads as under:-

"The instant petition has been filed seeking cancellation of bail granted to respondent no.2 – Rajendra Upadhyay, who is one of the accused along with his wife in FIR No.227/2019 under Sections 302, 307, 504 and 506, read with Section 34 of the Indian Penal Code, 1860, registered at Police Station Chetganj, District Varanasi, U.P.

2. This Court has passed various orders from time to time to ensure that the respondent-accused, his wife (Pooja Upadhyay), or any other co-accused do not take undue advantage of the bail orders to prolong the trial. We are informed that the directions issued by this Court to ensure the smooth progress in the ongoing trial has borne fruit. Learned State counsel points out that only one witness remains to be examined, for which the Trial is now fixed for 20.07.2024.

3. Let that witness be examined and thereafter, some reasonable opportunity may be given to the accused persons to lead their defence evidence, if they so desire.

4. Respondent no.2 and his wife, however, shall not make any direct or indirect attempt to influence the left out witness and/or tamper with the evidence. If such an attempt is made by them, the complainant shall be at liberty to approach the High Court or this Court.

5. The Trial Court will make an endeavour to conclude the trial at the earliest. This will, however, be subject to the decision of the petition which the wife of respondent no.2 (Pooja Upadhyay) has filed in the High Court, regarding summoning of the record of the Police Station/Control Room, for which we have remanded the matter by a separate order of even date. The Trial Court will make sure that, as soon as the petition filed by one of the accused – Pooja Upadhyay is decided by the High Court, the trial will be concluded within two months thereafter. The Trial Court will further ensure that no frivolous applications are entertained on behalf of the accused.

6. The special leave petition is disposed of in the above terms.

7. All pending applications, if any, also stand disposed of.”

8. The facts of the case are that a First Information Report was lodged on 21.09.2019 at 13:35 hours by Sumit Upadhyay as Case Crime No. 0227 of 2019, under Sections 302, 307, 34, 504, 506 I.P.C., Police Station Chetganj, District Varanasi against Rajendra Upadhyay Ragvendra, Rajat Upadhyay, Pooja Mishra and Ram Vichar Upadhyay with the allegations that on 21.09.2019 at about 07:30 a.m. the accused Rajendra Upadhyay, Rajat Upadhyay and Pooja Mishra collectively armed with country made pistol and chapar while hurling abuses shot his father Krishna Kumar Upadhyay and on shout by his mother on exhortation by Pooja Mishra, Rajendra Upadhyay and Ram Vichar Upadhyay shot his mother also and also fired upon him by a pistol but by chance he got saved. After firing upon his mother, Ram Vichar Upadhyay assaulted his mother with chapar and then all the accused persons ran away. He then took his father and mother to B.H.U. but on the way his mother has died. The accused persons were having enmity with them due to partition of house and a case is already pending regarding it between the family of the informant and the accused persons. There are many cases which are pending and there is an old enmity between them. His report be lodged and action be taken. In the present matter two persons namely Krishna Kumar Upadhyay and Smt. Mamta Upadhyay are alleged to have been shot who have died.

9. The trial in the present matter has started in which after evidence of P.W.-1/Sumit Kumar Upadhyay, the statement of Pradeep Kumar/P.W.-2 was being recorded. At this stage an application dated 30.11.2022 numbered as Paper No. 60 Kha was moved on behalf of the accused

mentioning therein that in the file the report of the Forensic Science Lab, U.P., Field Unit, Varanasi regarding spot inspection in which the arrival is mentioned as 21.09.2019 at about 09:30 is mentioned, is before lodging of the F.I.R. of the matter which is at 13:35 hours and the departure only is written by SHO, Chetganj and on its top वि० वि०/सिटि 201 is written but along with charge sheet no General Diary prior to 01:35 p.m. is annexed and neither the G.D. of Control Room, Police Station Chetganj which is very near to the present Police Station and the arrival of S.S.P., Varanasi, S.O. Police Station Chetganj, S.P. (City), Varanasi, I.G. Police, Varanasi, Police of Police Station Dashashwamedh and other police officials of Control Room, Chetganj, Varanasi were called on the information received by him and thus the G.D. dated 21.09.2019 of Police Station Chetganj, Control Room, Chetganj, Varanasi, Police Station-Dashashwamedh and Police Station- Kotwali be summoned in the interest of justice since the evidence of P.W.-2 is fixed and the same is needed for cross-examination.

10. On the said application an objection dated 01.2.2023 was filed by the informant mentioning therein that the trial in the matter is going on and the said application has been filed only for delaying it which is liable to be dismissed. It is further stated that no G.D. of time prior to 01:35 p.m. has been annexed by the Investigating Officer along with the Case Diary. Further the G.D. as has been prayed to be summoned, has no relevance with the present incident since they are of a time after the incident. Further it is stated that neither the P.W.-2/ Pradeep Kumar Mishra has prepared the said documents nor the same have been prepared before him and thus, the prayer is not maintainable. No question can be asked to the said witness in cross-examination. The same may be considered at the stage of defence, if brought forward as evidence before the court.

11. The Additional Sessions Judge/F.T.C. No. 2, Varanasi vide order dated 03.2.2023 rejected the application No. 60 Kha dated 30.11.2022 filed on behalf of the accused person. The finding as returned by the trial court while rejecting the said application is that cross-examination of the witnesses has to be confined only to the papers on which the prosecution is relying. P.W.-2/Pradeep Kumar Mishra has in his examination-in-chief stated about the facts which were as per the documents of the prosecution and his cross-examination, has to be done on the same. Any act done prior to lodging of the F.I.R. cannot be considered at this stage and thus the accused have no right to get the same summoned.

12. Learned counsel for the applicant submitted that approach of the trial court in rejecting the application Paper No.60 Kha vide order dated 03.2.2023 is illegal inasmuch as the trial court should have considered summoning of G.D. as prayed for which would have been useful in cross-examination of P.W.-2 in the trial. It is submitted that there is a possibility that first the police was informed by the informant in which no name of any accused was mentioned and the said G.Ds. were drawn but thereafter in consultation and advise of others, the F.I.R. of the present matter has been lodged naming the accused persons which would go to show the total false implication of the accused persons. Learned counsel further submits that although no Section is mentioned in the said application but it has been filed under Section 91 Cr.P.C. and the said section enables the court to consider production of any document in the trial for adjudication. It is submitted that as such the present application u/s 482 Cr.P.C. be allowed and the prayers as prayed for be allowed.

13. Per contra, learned counsel for the first informant/opposite party no. 2 vehemently opposed the prayer as prayed for and the arguments of learned counsel for the applicant and it is submitted that the application Paper No.60 Kha has been moved only in order to delay the trial and without any justifiable reason. It is submitted that in so far as cross-examination of P.W.-2/ Pradeep Kumar Mishra is concerned, the same has no relevance with the said documents inasmuch as the said witness is neither the author of the said documents nor is the scribe of it. It is further submitted that even P.W.-2/ Pradeep Kumar Mishra has no concern with the said documents. It is submitted that the prosecution in examination-in-chief of P.W.-2/ Pradeep Kumar Mishra has not even referred to the said documents in the statement of the said witness. It is submitted that the accused has no right to get the said documents summoned as they are police papers. If reliance is to be placed by the accused on the said papers, he may produce the same at the appropriate stage as his defence. It is further submitted that for all practical purposes the present application u/s 482 Cr.P.C. has lost its efficacy inasmuch as subsequently an application dated 20.7.2024 was filed by the accused before the trial court which is numbered as Paper No. 120Kha and is annexed as annexure-C.A.-3 to the counter affidavit dated 13.12.2024 before the trial court with the prayer that information as given by some person to the police about the incident on 21.09.2019 and is transcribed in the GD of the said date and Police Station be directed to preserve it. It is submitted that the Additional Sessions Judge/F.T.C. No.2, Varanasi, vide its order dated 12.09.2024 allowed the said application and directed that GD dated 21.09.2019 of Police Station Chetganj be preserved for which directions have been

issued to Commissioner of Police, Varanasi for directing appropriate person for it. The order passed therein has been placed before the Court which is annexure no.CA-4 to the said counter affidavit. It is submitted that thus the present application u/s 482 Cr.P.C. substantially does not have any effectiveness as of now. Learned counsel has relied upon the judgement of the Apex Court in the case of **State of Orissa v. Debendra Nath Padhi : (2005) 1 SCC 568 (para no. 25)**. It is submitted that the present petition be dismissed.

14. Learned counsel for the State also opposed the prayer in the present petition and the arguments of learned counsel for the applicant and submitted that the order impugned herein is dated 03.02.2023, after which a second application dated 20.7.2024 was moved by the accused for preserving GD of Police Station Chetganj of the said date which was allowed and thus no cause of action survives. It is submitted that the present case is a day light incident in which eye witnesses are there and the F.I.R. has been lodged promptly. It is submitted that the documents as relied upon, have already been submitted along with police report (report under Section 173(2) Cr.P.C.). It is submitted that if the accused wants to rely any other documents or police records he may produce the same at the appropriate stage as his defence. It is submitted that under the orders of the Apex Court the entire evidence in the present matter has been recorded and the trial is only pending for disposal of the present application under Section 482 Cr.P.C., after which it shall proceed for hearing, arguments and its judgement and permitting the documents of this nature which could have been defence of the accused which has not been taken by them at the appropriate stage, the trial would be delayed.

15. After having heard learned counsels for the parties and perusing the records, it is evident that an application was moved by the accused for summoning G.Ds. of Police Stations, the stage at which the said application was moved, was when examination-in-chief of P.W.-2/Pradeep Kumar Mishra was recorded and he was to be cross-examined and it is stated that the said documents are now needed for his cross-examination. The same was objected by the first informant and subsequently rejected by the trial court by means of the order impugned dated 03.2.2023. The documents which are being relied upon by the prosecution have been filed by them along with the police report under Section 173(2) Cr.P.C. Admittedly the said documents, as are being sought to be summoned, have not been filed by the prosecution as per learned counsel for the applicant, application filed for summoning the documents numbered as Paper No.60 Kha is an application under Section 91 Cr.P.C. The

prosecution does not state that it needs any other documents to support its case. If the accused has to show his defence or even his false implication the same has to be done at the stage of defence evidence. The documents being relied by the accused for defence cannot be summoned.

16. The law on the said issue is trite. In the case of **State of Orissa v. Debendra Nath Padhi : (2005) 1 SCC 568** it has been held by the Apex Court that entitlement of the accused to seek order under Section 91 would ordinarily not come till the stage of defence. It has been held 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. Insofar 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 a 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.”

(emphasis supplied)

17. The trial in the matter has almost concluded inasmuch as the entire evidence being the evidence of prosecution witnesses and the defence evidence have been recorded under the directions of the Apex Court. Even a subsequent application by the accused was moved before the trial court for preserving the said G.D. which has been allowed and appropriate directions have been issued. More so, summoning of the said documents for cross-examination of a totally unconnected witness cannot be permitted. No ground for interference is made out.

18. Accordingly, the present Criminal Misc. Application U/S 482 Cr.P.C. is dismissed.

(Samit Gopal,J.)

Order Date :- 6.5.2025

Naresh