

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.19310 of 2015

Arising Out of PS.Case No. -8 Year- 2001 Thana -C.B.I CASE District- PATNA

1. Upendra Kumar Singh @ Upendra Singh son of Shri Ram Narayan Singh
resident of Village - Chaurasi, P.S. Karaiparsurai, District - Nalanda, at present
residing at Road No. 24, Rajiv Nagar, P.S. Digha, District - Patna.

.... Petitioner/s

Versus

1. The State of Bihar through C.B.I.

.... Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Ravi Bhardwaj, Adv.

For the Opposite Party/s : Mr. Sanjay Kumar, SC, CBI

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 19-05-2015

Heard learned counsel for the petitioner and learned
counsel for the C.B.I.

2. In this application filed under section 482 of the Code of
Criminal Procedure (in short 'the Code'), the petitioner seeks
quashing of the order dated 11.03.2015 passed by the learned Special
Judge, C.B.I.-III, Patna, whereby the learned Judge, exercising his
power under section 91 of the Code, has allowed the prayer of the
C.B.I. for bringing on record two letters dated 08.06.2001 and
23.07.2001 in connection with Special Case No. 05 of 2001 arising
out of R.C. No. 08(A) /01.

3. It has been contended that the aforesaid police case was
registered against the petitioner on 08.06.2001 and, on completion of



investigation, charge sheet was submitted on 13.11.2001. Thereafter, charge was framed against the petitioner and the prosecution has examined altogether nine witnesses while the 10th witness U.S.Agrawal is being examined. At this belated stage, the C.B.I. filed an application on 26.06.2014 whereby a prayer was made to summon the letters dated 08.06.2001 and 23.07.2001 under section 91 of the Code. It has been contended that, as a matter of fact, the prosecution is trying to fill in the lacuna in the case, which cannot be permitted to do so at the fag end of the case where most of the witnesses have been examined and evidence of defence has been closed. It has further been contended that the letter dated 23.07.2001 does not find mention either in the First Information Report or in the charge sheet submitted by the investigating agency and as such the prosecution cannot be allowed to improve its case and thereby bring on record the documents which are not part of the record.

4. On the other hand, learned counsel for the C.B.I. has submitted that the power conferred upon the court under section 91 of the Code is discretionary in nature and the stage of the trial to which it might have reached may not be relevant for exercising such power. He has submitted that the court has passed the order in order to arrive at a just decision in the case.

5. I have heard the parties and perused the record.



6. Section 91(1) of the Code states that whenever any Court or any officer in charge of a police station considers that the production of any document or other thing is necessary or desirable for the purposes of any investigation, inquiry, trial or other proceeding under this Code by or before such Court or officer, such Court may issue a summons, or such officer a written order, to the person in whose possession or power such document or thing is believed to be, requiring him to attend and produce it, or to produce it, at the time and place stated in the summons or order. The language of section 91(1) of the Code is wide enough and it gives the court trying the case to summon any document if it considers that such document is necessary or desirable for the purpose of trial.

7. As the instant case is still at the stage of recording the evidence of prosecution, no harm or prejudice will be caused to the defence, if the two letters referred in the impugned order are called for. The court below has considered the desirability of summoning those two letters from all possible angles and it considered that those two letters are necessary for the purposes of proper adjudication of the matter and to arrive at just and proper conclusion in the trial. There is no proper reason for me to accept the argument advanced on behalf of the petitioner that those two letters have been summoned to fill in the lacuna in the case of prosecution.

8. For the reasons stated, hereinabove, I find no error in the order passed by the court below.

9. However, since the entire procedure specified in the Code is based on the principle of justice and fairness and one of the fundamental principles of legal jurisprudence is that a person accused of any offence should be given fair and equal chance to be heard and defend himself, I direct the court below to give a copy of the two letters summoned by it to the petitioner so that he may also be aware of the contents of those letters and if they are used in evidence, he may defend himself properly.

10. With the aforesaid observation and direction, the application is dismissed.

(Ashwani Kumar Singh, J)

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