

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No.1005 of 2016

- Kamlesh Chandrakar S/o M.L. Chandrakar Aged About 56 Years R/o Kelabadi, Durg, District Durg, Chhattisgarh.

---- Petitioner

Versus

- State Of Chhattisgarh Through Special Police Establishment, Raipur, Chhattisgarh.

---- Respondent

For Petitioners: Shri H. B. Agrawal, Sr. Adv. With Ms. Itu Rani Mukherjee, Adv.
For Respondent/State: Shri D. R. Minz, Dy.GA

S.B. : Hon'ble Shri Justice Manindra Mohan Shrivastava

Order On Board

04/11/2016

Heard on admission.

2. By this petition, the applicant has challenged the order dated 14-10-2016, by which, the application filed by the applicant under Section 91 of Cr.P.C. has been rejected.

3. Learned Senior counsel for the petitioner argued that earlier when the charge sheet was filed by the prosecution in this case, number of documents, which were sought to be relied upon by the prosecution being bulky and voluminous, were not produced during the trial proceedings. On 23-02-2016, a statement was made before the Court by the prosecution that the attempts have been made to produce the voluminous documents running into 5000 pages before the Court, but those documents were never produced by the prosecution and later on, the prosecution stated that it does not want to rely upon those documents as they are not relevant. At this stage, the petitioner moved an application under Section 91 of Cr.P.C. for production of those documents, because production of those documents are relevant

for the purpose of just and fair decision of the criminal case. He further submits that the prosecution has not supplied those documents to the accused, which are contained in the police report, on which, reliance has been placed by the prosecution to prove charges against the accused. However, if those documents were not supplied by the prosecution, trial would not be just and fair and truth will not come out.

4. It appears that voluminous documents running into 5000 pages have not been produced by the prosecution. Order sheet placed on record shows that the Court sought clarification from the Anti Corruption Bureau, Raipur, as to whether the documents not produced are relevant and the prosecution wanted to rely upon such documents. In response, it was submitted in writing before the Court that the documents, which have not been produced, are not relevant and therefore, not necessary to be produced. It appears that the petitioner moved an application under Section 91 of Cr.P.C. for production of records without specifying the nature and relevancy of those documents.

5. The power of Criminal Court under Section 91 of Cr.P.C. are of wide amplitude intended to ensure that truth may come out. As the provision reads, whenever any Court considers that the production of any document or other thing is necessary or desirable for the purposes of any trial or other proceeding under the Code, such Court may issue summons to the persons 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 object and purpose of such provision is to invest the Criminal Court with wide amplitude of power to require production of any material document, which in its opinion, is necessary for just and fair decision of the criminal case. No doubt, the duty of the Criminal Court is to search for truth. While considering the application under Section 91 Cr.P.C., the Court is required to examine the relevancy aspect with specific reference to the document, which are sought to be produced in the Court. Unless there is specific reference to a particular document and relevancy of the document for ensuring just and fair trial, mechanical exercise of power is not envisaged, only because the application for production has

been made.

6. In the present case, the applicant has not clearly stated as to which particular document is necessary and relevant for the purpose of just and fair decision of the case and to extract the truth. The only basis for application is that earlier the prosecution was required to submit voluminous documents enlisted with the charge sheet but failed to produce, therefore, those documents should be produced. The impugned order goes to show that the prosecution has already made a statement before the Court that those documents are not relevant. Unless the prosecution relies upon those documents, it cannot be compelled to produce any document. However, in such a situation, by giving specific reference and relevancy, the accused can always move an application under Section 91 of Cr.P.C. before the Criminal Court for production of any thing or document which is necessary or desirable for the purpose of trial with an objective that the accused can be benefited with just and fair trial and truth comes out.

7. In view of above, I am of the considered opinion that the trial Court has not committed any illegality in rejecting the application under Section 91 Cr.P.C.

8. In the result, the revision petition is dismissed.

9. Learned Senior Counsel for applicant raises an apprehension that the documents, which have not been produced by the prosecution, may be relied upon by the Court.

10. The apprehension, to say the least, is not well founded. The decision of the case obviously has to rest only on the basis of oral as well as documentary evidence available on record and not on the basis of documents which have not been produced before the Court by any of the parties.

Sd/-

(Manindra Mohan Shrivastava)

Judge

