

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Revision No. 944 of 2015**

Surendra Gupta Alias Somaru S/o Late Ramdeo Gupta Aged About 35 Years R/o Bhel Tarai, Police Station - Sitapur, At Present - Village - Vatwahi, Police Station - Lundra, District Surguja Chhattisgarh

---- Applicant

Versus

State Of Chhattisgarh Through : Police Station - Lundra, District - Surguja, Chhattisgarh

---- Respondent

For Applicant:

Mr. Rakesh Pandey, Advocate

For State/ Respondent:

Ms. S. Ghai, Panel Lawyer

Hon'ble Shri Justice P. Sam Koshy**Order on Board****29.04.2016**

1. The present Revision has been preferred challenging order dated 12.05.2015 passed by the Learned Sixth Additional Sessions Judge, Ambikapur in Sessions Trial No. 134/2014 whereby the Court below has dismissed the application filed by the Applicant under Section 91 of Cr. P.C.

2. The facts in brief in the present case is that the Applicant is an accused under Sections 304-B, 498-A and 306 I.P.C. He had moved an application under Section 91 of Cr. P.C. before the Trial Court calling for documents i.e. Merg Diary of Merg No. 33/2013 registered at Police Station Lundra, District – Surguja which according to him is a relevant

document and is an important piece of evidence for his defence. The Court below has rejected the same on the ground that the said document has no relevance in connection with the charge levelled against the Applicant. He prays that the said document will not cause prejudice to the case of the prosecution in case if the document is called and placed along with the record. But If the document is of some advantage to the Applicant to be used as his defence it can not be opposed by the prosecution.

3. Learned State Counsel however opposes the application on the ground that the order passed by the Court below is a well speaking order and does not call for any interference on the ground that there is no necessity of these records to be called for.

4. Considering the submissions made by the parties, this Court is of the opinion that admittedly initially a charge under Section 306 was made against the Applicant however subsequently additional charges under Sections 304-B and 498-A have been levelled. Thereafter, the Applicant moved an application under Section 91 of Cr.P.C. calling for record which according to him is going to help him as one of his defence and the case can go in his favour.

5. The Supreme Court in (1999) 4 SCC 621 (State of Kerala v. Babu) has held that

“A prayer made by the accused that in some other case during the course of the investigation a witness had made a particular statement and as his statement was running

contrary to the statement on basis of which the applicant accused was facing trial, such statement recorded during the course of another investigation be requisitioned. The Supreme Court observed in the said matter that any previous statement recorded during the course of any enquiry, investigation or trial would be termed as a previous statement and can always be used for contradicting the witness or to prove the omissions amounting to contradictions. The Supreme Court observed that on a reading of Section 162 of the Code and bearing in mind the object of the said section and section 145 of the Evidence Act, it is clear that an accused in a criminal trial has the right to make use of the previous statements of a witness (emphasis supplied) including the statements recorded by the investigating agency during the course of an investigation for the purpose of establishing a contradiction in the evidence of a witness or to discredit the witness. The Supreme Court further observed that in a case where the statements are before the Court then there would be no difficulty because an accused is entitled under Section 207 of the Code for the supply of free copies of documents referred in the said section which includes the previous statement recorded (under) sub-section (3) of the Section 161 of the Code, but the accused does not have such a right as matter of course in regard to other previous statements; more so, in regard to the statements recorded by the investigating agency under Section 161 in a case other than the one that is being tried by the Court.”

6. Relying on the said Supreme Court decision this High Court in an identical matter reported in **2001 Cr.L.J. 1180 (Santosh v. State of Chhattisgarh)** in paragraph 15 & 16 held that:-

“15. If the accused has a right to summon the statements recorded during the course of another investigation then in a case like present he would not stand on a worse footing.

The accused is certainly entitled to make a submission to the Court that each and every previous statement of the witness must be filed along the charge-sheet irrespective of the fact that such statements support or do not support the prosecution allegations.

16. It would be contrary to law to hold that the prosecution agency is entitled to file only those statements or document on which they are placing reliance. If such an authority is given to the police/prosecution agency it would lead to a judicial anarchism. The prosecution agency under such an authority would be entitled to suppress material documents and would not permit such evidence to see the light of the day which tends to support or help the case and cause of the accused. The police, the investigating agency and the prosecution agency are not the judges, they simply have to make investigation and submit the challan honestly before the Court. It is for the Court to decide in accordance with law after taking into consideration the evidence which is brought on the record. A Court is not entitled to say that it would not permit use of the statements recorded under Section 174, Cr..PC. A previous statement of a witness recorded during the course of the enquiry, investigation and/or trial continues to be a previous statement and in accordance with Section 145 of the Indian Evidence Act the accused is entitled to contradict the maker of such statement with his previous statement.”

That in a Criminal trial, statement of previous witnesses recorded by the investigating agency during the course of investigation can always be used for the purpose of substantiating the contradiction among the evidence of the witnesses. In the instant case the Applicant is relying upon the merg intimation that was lodged before Lundra Police Station on 14.08.2013 so as to contradict the entire case of the prosecution.

7. Applying the principle laid down in the said judgment by this Court and the Supreme Court, in the opinion of this Court the order of the Court below on application under Section 91 of Cr.P.C. deserves to be and is quashed.

8. Accordingly, the instant Revision is allowed. The Court below is directed to take appropriate steps in calling the record and proceed further to decide the matter expeditiously.

Sd/-

(P. Sam Koshy)
JUDGE