

IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL WRIT PETITION NO. 35 OF 2016

Shri Korada Venkara Rao,
58 yuears of age,
Accounts Officer,
National Officer,
National Small Industries orpn. Ltd.
(NSOC) Panaji, Goa.
Permanent resident Village Venulavalasa,
Mandal Anandapuram,
Dist. Vishakhapatanam (AP),
presently residing at House no. 149,
House of Royal, 3rd Floor,
Caranzalem, Panaji, Goa.

..... Petitioner

V e r s u s

1. State
Through CBI, ACB, Goa
2. Shri Krishna Kalyanrao Kulkarni,
54 years of age,
Occ. Managing Partner of M/s. Waman
Industries, Regd. Office 3rd Bldg.,
3rd flor, Sesa Ghor, Patto Panaji,
Goa,
Factory: 52-A, Bethora Industrial Estate,
Bethora, Ponda, Goa,
Res: Survey No. 77, Shahunagar,
Hari Mandir Road,
Bijapur, Karnataka.
3. Shri Richard I. D' Souza,
46 years, Occ: Ex-Partner of
M/s. Waman Industries, Ponda,
Res: H. No. 169/8, Sapana Orchids,
Phate I, Bethora Road,
Curti, Ponda Goa.
4. Shri Sambu Gurulingappa Kakkalameli,
42 years of age, Occ: Advocate,
Office cum Res. 704, 7th Floor,
Ganesh Tower, Opp. Platform no. 1 of
Thane Railway Station,

Thane (W), Maharashtra

..... Respondents

Mr. Arun Bras De Sa, Advocate for the Petitioner.

Mr. Joseph Vaz, Special Public Prosecutor for the Respondent no. 1.

Coram :- C. V. BHADANG, J

Date : 7th April, 2016

ORAL JUDGMENT

Rule, made returnable forthwith. Shri J. Vaz, learned Special Public Prosecutor waives service for the first Respondent. The Respondent nos. 2 to 5 are the co-accused along with the Petitioner. As such, service of notice on the Respondent nos. 2 to 4 is hereby dispensed with. The Petition is taken up for final disposal by consent of the parties.

2. The Petitioner and the second to fourth Respondents are facing prosecution before the learned Special Judge at Panaji, in Criminal case no. (Disp.) No. 3/2013 for the offence punishable under Section 120-B read with Section 420, 467, 468 read with Section 471(2) of I.P.C. and Section 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act. After the prosecution had led its evidence, the learned Special Judge recorded the statement of the Petitioner under Section 313 of the Cr. P. C., in which the Petitioner expressed his intention to examine himself in his defence.

3. Learned Counsel for the parties submit that at present, the Petitioner

had entered into the witness box and his part chief examination is recorded.

4. Be that as it may, the present Petition arises out of an Order dated 04.02.2016, by which an application (exhibit 412) filed by the Petitioner purportedly under Section 91 of Cr. P. C. has been rejected. By the said application, the Petitioner had prayed for issuance of summons to the various authorities as set out in the application for production of original/certified copies of the documents under Section 91 of the Cr. P. C.

5. The Petitioner has set out in all sixteen documents in Para 2 of the application.

6. The Application was opposed on behalf of the prosecution.

7. The learned Special Judge found that the documents at serial nos. 1, 2, 3, 14 and 15 are available with the Petitioner and, as such, there is no need to issue summons under Section 91 of Cr. P.C. The learned Special Judge has further found that the documents at serial nos. 4 and 5 are not with CBI as per the stand taken in the reply whereas document at serial nos. 6 to 13 are with NSIC i.e. the Department in which the Petitioner was working. The learned Special Judge also found that the Petitioner had not disclosed as to how the documents were “necessary or desirable for the purpose of Trial.”

8. The learned Special Judge further found that the powers under

Section 91 of Cr. P.C. are limited and discretionary and unless the Court finds that the documents are necessary or desirable for the purpose of trial, the same cannot be summoned.

9. I have heard the learned Counsel for the Petitioner and the learned Special Public Prosecutor for the first Respondent. The learned Counsel for the Petitioner, on instructions, states that he will restrict the prayer for production of the documents as specified in paras 2(ix) to 2(xiii) which are as under :

- (ix) Inspection report in respect of M/s DCI Pharmaceuticals Pvt. Ltd.
- (x) Inspection report dated in respect of M/s. Digital Designer.
- (xi) Inter Office Memorandum dated 31.01.2001.
- (xii) Inter Office Memorandum dated 23.08.2005.
- (xiii) Internal Audit Report (2005-2006) dated 22.05.2006.

10. The learned Counsel also submits that the Petitioner is in possession of these documents and would produce the same during the course of his evidence in defence.

11. Shri J. Vaz, learned Special Public Prosecutor for the first Respondent states that the production of any such document would be subject to the objection regarding their relevancy, admissibility and proof which can be decided by the learned Special Judge.

12. It can thus be seen that the Petitioner now does not want to seek issuance of any summons under Section 91 Cr. P.C. Inasmuch as the Petitioner has entered into the witness box in his own defence, it would be permissible for him to produce the aforesaid documents which are in his possession. The same would be subject to the relevancy, admissibility and proof of the said documents which shall be decided by the learned Special Judge.

13. The Petition is disposed of in the aforesaid terms.

C. V. BHADANG, J.

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