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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL.M.C. 1146/2016**
SONIA SINGH

..... Petitioner

Represented by: Mr.Pradeep Rana, Adv

versus

THE STATE NCT OF DELHI & ANR

..... Respondents

Represented by: Mr.Satya Narain Vashisht,
APP for the State/R1.

CORAM:

HON'BLE MR. JUSTICE SURESH KAIT

ORDER

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21.03.2016

Crl. M.A.No.4940/2015 (for exemption)

Exemptions allowed, subject to all just exceptions.

Accordingly, the application is allowed.

CRL.M.C. No.1146/2016

1. By way of this petition filed under Section 482 of the Code of Criminal Procedure, 1973, petitioner seeks direction thereby setting aside the order dated 07.04.2015 in case FIR No.01/2010 for the offences punishable under Section 498A/406/34 of the IPC registered at police station North Rohini, Delhi passed by learned Metropolitan Magistrate whereby the application of respondent No.2/accused under Section 91 of the Cr P C has been allowed and the Investigating Officer was directed to produce the documents mentioned therein.

2. To strengthen the contentions, learned counsel for application has

relied upon the decision of the Supreme Court in *State of Orissa v. Debendra Nath Padhi : (2005) 1 SCC 568* wherein 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. In so far 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 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.

26. xx xx

27. xx xx

28. We are of the view that jurisdiction under Section 91 of the Code when invoked by accused the necessity and desirability would have to be seen by the Court in the context of the purpose-investigation, inquiry, trial or other proceedings under the Code. It would also have to be borne in mind that law does not permit a roving or fishing inquiry.”

3. As stated in the application by accused that during the enquiry/ investigation the following documents were filed by him with the investigating authority:-

“a) Copy of complaint dated 12.12.2008 bearing DD No.25D, PS V.Vihar, Delhi;

b) Copy of complaint dated 16.03.2009 bearing DD No.53B, PS V.Vihar, Delhi;

c) Copy of communication dated 22.12.2011 made to DCP (O) bearing diary No.950 regarding istridhan articles;

d) Copy of forwarding letter dated 03.01.2012 regarding handing over of the transcript of the telephone call dated 22.12.2008 along with recorded CD vide DD No.59D at PS N.Rohini; and

e) Copy of complaint dated 28.05.2009 made to the office of Commissioner of Police on 01.06.2009.”

4. The impugned order was passed on 07.04.2015, however, till date the said order has not been complied with. Petitioner is the complainant of afore

noted case FIR wherein no order has been passed against her.

5. It is the case of the petitioner that aforesaid documents were never produced by the accused during the enquiry or investigation. If the said documents are not with the police, then it is sheer wastage of time to direct the investigating authority to file in the Court.

6. Admittedly, present petition has not been filed by the State whereas vide impugned order dated 07.04.2015 learned Metropolitan Magistrate directed the State to file the documents. Thus, it is for the State to see whether those documents were filed during the course of investigation and were part of the investigation. It cannot be disputed that the Investigating Officer was supposed to file all the documents whatever collected during investigation for fair trial.

7. The facts of instant case and that of ***D.N.Padhi*** (*supra*) are not identical in as much as learned Metropolitan Magistrate has not opined that the documents sought to be produced by the Investigating Officer on the application of accused are prerequisite for finding whether any case is made out against accused or not.

8. In view of above facts, the petitioner being the complainant is not aggrieved by the impugned order as no direction has been passed against her by learned Metropolitan Magistrate. Therefore, I am not inclined to interfere with the impugned order particularly, when the State has not challenged the order passed by learned Metropolitan Magistrate. Only the State can tell

whether the documents were part of investigation or not.

9. Consequently, instant petition is dismissed with no order as to cost.

Crl. M.A.No.4939/2016 (for stay)

Dismissed as infructuous.

SURESH KAIT, J

MARCH 21, 2016

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