

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRR No. 1100 of 2017**

- Babulal Chandra S/o Late Shri Bodhram Chandra Aged About 61 Years R/o Village & Post Akalsara, Police Station Baradwar, Tehsil Jaijaipur, District Janjgir Champa Chhattisgarh.

---- Revisioner/Applicant**Versus**

- State Of Chhattisgarh Acting Through Officer In Charge Police Station Baradwar District Janjgir Champa Chhattisgarh.

---- Non Revisioner/Respondent

For Revisioner/applicant	: Shri Ramesh Nayak, Advocate
For Respondent/State	: Shri Lav Sharma, Panel Lawyer

Hon'ble Shri Justice Ram Prasanna Sharma**Order On Board****28.11.2017**

1. Heard the matter finally.
2. The revisioner/applicant has filed this revision under Section 397/401 Cr.P.C. against the order dated 22.9.2017 passed by the 1st Additional Sessions Judge, Sakti, District Janjgir Champa (CG) in Sessions Trial No.03/2017, whereby the said Court has rejected the application filed under Section 91 Cr.P.C. for providing the documents of merged investigation.
3. As per the revisioner, he has filed an application before the Court below for calling the report of enquiry done under Section 174 Cr.P.C. and case diary of the said case, but the trial court has deferred the application directing that the application will be considered at the time of recording statement of Investigating Officer.

4. In the background of the facts of the present case, section 91 & section 174 of Cr.P.C., would be relevant here and quoted below:

91. Summons to produce document or other

thing.-- (1) 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.

(2) Any person required under this section merely to produce a document or other thing shall be deemed to have complied with the requisition if he causes such document or thing to be produced instead of attending personally to produce the same.

(3) Nothing in this section shall be deemed –

(a) to affect Sections 123 and 124 of the Indian Evidence Act, 1872 (1 of 1872), or the Bankers' Book Evidence Act, 1891 (13 of 1891); or

(b) to apply a letter, postcard, telegram or other document or any parcel or thing in the custody of the postal or telegraph authority.

5. Likewise Section 174 of Cr.P.C. is quoted below :

“Section 174. Police to enquire and report on suicide, etc.-- (1) When the officer in charge of a

police station or some other police officer specially empowered by the State Government in that behalf receives information that a person has committed suicide, or has been killed by another or by an animal or by machinery or by an accident, or has died under circumstances raising a reasonable suspicion that some other person has committed an offence, he shall immediately give intimation thereof to the nearest Executive Magistrate empowered to hold inquests, and, unless otherwise directed by any rule prescribed by the State Government, or by any general or special order of the District or sub-Divisional Magistrate, shall proceed to the place where the body of such deceased person is, and there, in the presence of two or more respectable inhabitants of the neighborhood, shall make an investigation, and draw up a report of the apparent cause of death, describing such wounds, fractures, bruises, and other marks of injury as may be found on the body, and stating in what manner, or by what weapon or instrument (if any), such marks appear to have been inflicted.

(2) The report shall be signed by such police officer and other persons, or by so many of them as concur therein, and shall be forthwith forward to the District Magistrate or the Sub-Divisional Magistrate.

6. Now reverting back to section 91 of Cr.P.C., it reveals that the code is in two parts. The first part empowers the Court to summon the production of any document or thing which it deems necessary or desirable for the purpose of any inquiry, or trial. The word “document” has not been defined in the Code. It has been

defined in the Evidence Act under Section 3 which means that *“any matter expressed or described upon any substance by means of letters, figures or marks, or by more than one of those means, intended to be used or which may be used for the purpose of recording that matter”*. Hence the word document would include a case diary, both General and Special. Therefore, under Section 91 of the Code, the Court does have the power to summon the case diary or other documents.

7. More over, the investigating agency and the prosecution both are part and parcel of the State and the action of the State is legally required to be fair, just and reasonable. If the State withholds any material fact or evidence which accrues in favour the accused, such withholding cannot be fair and would be in violation of Article 14 of the Constitution. More so a procedure which permits the withholding of evidence which is in favour of accused cannot be termed as fair and reasonable and such procedure would be in violation of Article 21 of the Constitution of India. Withholding any evidence without any justification would amount to shelving of facts away from the Court. The prosecution, therefore, is required to place the whole truth before the Court and it cannot be allowed to keep the things in dark before the Court. Above all, the Court is also duty bound to discover the truth of case. The courts are empowered to discover the truth. In case the court is of the opinion that the application u/s 91 of the Code is genuine and has not been moved with such motive, then the Court must exercise its jurisdiction and direct the production of document including the case

diary. The Criminal Court should keep in mind that justice should not only be done, but must appear to be done.

8. In ***Nirmal Singh Kahlon v. State of Punjab, (2009) 1 SCC 441*** the Hon'ble Supreme Court specifically stated that a concept of fair investigation and fair trial are concomitant to preservation of the fundamental right of the accused under Article 21 of the Constitution of India. It was held that the concept of judicious and fair investigation as the right of the accused to fair defence flows from this concept itself. The right to defence of accused cannot be hampered which he is entitled to receive in accordance with law.

9. The provisions of Section 173(5) contemplate and make it obligatory upon the investigating officer where the provisions of Section 170 apply to forward to the Magistrate along with his report, all documents or relevant extracts thereof on which the prosecution proposes to rely other than those already sent to the Magistrate during investigation in terms of Section 170(2) of the Code. During the investigation the statement recorded u/s 161 of all the persons whom the prosecution proposes to examine as witnesses shall also be sent to the Magistrate. Some element of discretion is vested with the police officer under Section 173(6); where he is of the opinion that any such statement is not relevant to the subject matter of the proceedings or its disclosure to the accused is not essential in the interest of justice and is inexpedient in the public interest, he shall indicate that part of the statement requesting a Magistrate that part from the copies to be granted to the accused and stating his reason for making such a

request. Sub-section (7) of the same section is indicative of another discretion given to the police officer under law that where he finds it convenient, he may furnish the copy of documents referred to in sub-section (5) of the Section.

10. In the present case, there was an enquiry regarding death of the deceased and the defence has all the rights to know about the enquiry, and therefore, it should be within the knowledge of the defence side as to what was the enquiry report and what was mentioned in the case diary and the same is relevant for just decision of the instance case.

11. For the foregoing reasons, the revision is allowed. The trial Court is directed to call for the enquiry report regarding death of the deceased and case diary of the case for the purpose of asking questions to all the prosecution witnesses.

Sd/

(Ram Prasanna Sharma)
JUDGE