

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRR No. 704 of 2017**

- Mahaveer Chandrakar S/o Kapil Chandrakar Aged About 50 Years
R/o Village Ranpa, Police Station & Tahsil- Kunda, District Kabirdham
(Kawardha) Chhattisgarh.(Accused) **--- Petitioner**

Versus

- State of Chhattisgarh through Officer-In-Charge Police Station &
Tahsil-Kunda, District-Kabirdham (Kawardha) Chhattisgarh. ---
Respondent

For the applicant	:	Mr. K. A. Ansari, Advocate with Mrs. Meera Ansari
For the Respondent	:	Mr. Suryakant Mishra, Panel Lawyer

Hon'ble Shri Justice Goutam Bhaduri**Order on Board****19.07.2017**

1. This revision is filed against the order dated 12.06.2017 passed by the learned Court of Additional Sessions Judge (FTC) Kabirdham in Sessions Trial No.35/2016 wherein the application filed under section 91 of Cr.P.C., seeking direction to submit certain previous statements of witnesses and other papers was rejected.
2. Briefly stated facts of the case as narrated are that one Usha Chandrakar was married to the present applicant 17-18 years back. According to the prosecution, she committed suicide by setting herself ablaze on 26.6.2015. Initially, the *merg* intimation u/s 174 of Cr.P.C., was given on 17.7.2015 from hospital at Raipur where she died. The subsequent *merg* intimation was registered on the basis of same on

03.10.2015. The investigation was carried and initially the FIR was lodged against Mahavir Chandrakar, the husband; Kapil Chandrakar father in law; Virendra Chandrakar, brother- in-law, Smt. Rani Bai the daughter-in-law; and Ku. Chandralekha, the sister in law on 10.01.2016. In between, the investigation was carried out and the statement of witnesses were recorded. Eventually the police during investigation found that no case is made out except against that of Mahavir Chandrakar, who is husband and the charge sheet was filed against the applicant alone u/s 306 IPC. During the course of trial, an application u/s 91 of Cr.P.C., was moved inter alia claiming that during the merger inquest as also during enquiry by the SDO(Police), the Statement of different persons few of them who were also cited as prosecution witnesses were recorded. It was further stated that on the basis of earlier statement recorded by the SDO(P), a detailed enquiry was carried out and the SDO(P) came to a definite finding that the persons apart from Mahavir chandrakar have not been named to have abetted the cause, consequently the SDOP by its finding directed to exonerate the other persons who were also named in FIR. In this background, it was stated that the statements so recorded earlier were relevant to the accused applicant, therefore, they should be supplied to the accused, having not been filed along-with the charge sheet.

3. The learned trial Court after hearing the parties rejected the application vide order dated 12.06.2017 holding that according to prosecution, the accused had already obtained the document under Right to Information, therefore, the

documents are no longer required and dismissed the application. Being aggrieved by such order, the present petition has been filed.

4. Shri K.A. Ansari, learned Senior Advocate assisted by Mrs. Meera Ansari would submit that the order of the court below is grossly illegal, which cannot be sustained. It is submitted that if the statements are recorded in previous enquiry and are required to be contradicted to find out the truth, then the accused have right to contradict the statements of the witnesses. It is further contended that withholding the document cannot be permitted when on the subject issue the statement was recorded and a categorical finding was arrived at by the SDO(P) whereby few of the accused were exonerated. He further placed reliance in ***2001(2) CGLJ 216 – Santosh Vs. State of Chhattisgarh*** and would submit that in the facts and circumstances of the case, the application filed u/s 91 Cr.P.C ought to have been allowed and the order dated 12.06.2017 is to be quashed.
5. Per contra, learned State Counsel supports the order. It is submitted that the copy of statement having been obtained under Right to Information Act, the accused has every right to confront them during cross examination and thereby the order of the court below is without any fault.
6. Perused the documents filed along-with the petition. It would show that the charge sheet has been filed against the applicant u/s 306 of IPC for death of his wife who committed suicide by setting herself ablaze on 26.6.2015. The case file also contains a letter dated 06.04.2016 which is a letter addressed by the SDO(P), Pandariya, District Kabirdham to

the Superintendent of Police, Kabirdham.

7. Perused the contents of the letter. It purports that a complaint was filed by one Kapil Thakur who is the father of accused and on that basis the enquiry was conducted with respect to the allegations but the entire family has been falsely implicated in the case. The tenor of the letter would show that an application was filed with a prayer for investigating the suicide committed by Usha Chandrakar on 26.6.2015. It is stated that Mahavir Chandrakar, the accused, was married to Usha 17 years back. Thereafter Mahavir Chandrakar, was living separately as there had been some dispute over the partition of the lands with his father. The letter shows that during such enquiry, the statements of Kapil Chandrakar, Virendra Chandrakar, Dinesh Chandrakar, all residents of village Rapa and Bhikam Singh, Jwala Prasad Satnami, Ishwar Chand Chandrakar were recorded. The statements of Rewa Ram Kulmitra and his son Raghu Raj Kulmitra who are father and brother of deceased were also recorded.
8. The statement of daughter of Usha Chandrakar namely Ku. Dakeshwari @ Neha, aged about 13 years, was also recorded. As per the statements of villagers and other persons it records the fact that Mahavir Chandrakar was married to Usha Chandrakar 17 years back and he was residing separately for the last 10 years. It also records the fact that son of Mahavir Chandrakar died 8 years back due to snake bite and thereafter Usha Chandrakar lost her mental balance and because of losing mental balance, she went out of her home and used to sweep the lanes (*Galis*) of

village by broom (*Jhadu*). She was treated for some time but in the intermittent period, she used to get lunatic attack. It also records that the brother of deceased namely Bichchen also lost his mental balance and has left the house in the year 2004 itself.

9. The enquiry further records that deceased Usha Chandrakar 5-6 days before the date of incident i.e., of 26.6.2015 again suffered lunatic attack and stopped to take food, therefore, she was taken by Mahavir Chandrakar, the husband to his in-laws place at village Jhaphel, but from there also she fled away. Consequently Mahavir Chandrakar along-with his brother-in-law Raghuraj started searching her and during such search when they reached Mungeli, she was found at Bus-stand and after taking her from Bus-stand they came back to Kunda and from Kunda, all of the three went back to village Rapa. It also records that Mahavir Chandrakar had told his brother-in-law that his wife was not taking her meals for the last 5 days and therefore wanted to call a doctor and when they went to call the doctor, Usha Chandrakar poured kerosene oil on her and set herself ablaze. The said letter also records the fact that the statements of father of deceased Rewaram, brother Rekhraj and mother Keja Bai were also recorded. The letter also fortifies the fact that the statement was made by Raghuraj the brother of deceased who went along-with applicant to call doctor before the incident happened.
10. 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.

11. 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;

(3) [When--

(i) the case involves suicide by a woman within seven years of her marriage; or

(ii) the case relates to the death of a woman within seven years of her marriage in any circumstances raising a reasonable suspicion that some other person committed an offence in relation to such woman; or

(iii) the case relates to the death of a woman within seven years of her marriage and any relative of the woman has made a request in this behalf; or

(iv) there is any doubt regarding the cause of death; or

(v) the police officer for any other reason considers it expedient so to do, he shall, subject to such rules as the State Government may prescribe in this behalf, forward the body, with a view to its being examined, to the nearest Civil

Surgeon, or other qualified medical man appointed in this behalf by the State Government, if the state of weather and the distance admit of its being so forwarded without risk of such putrefaction on the road as would render such examination useless.

(4) The following Magistrates are empowered to hold inquests, namely, any District Magistrate or Sub-Divisional Magistrate and any other Executive Magistrate specially empowered in this behalf by the State Government or the District Magistrate.”

12. Section 174 of Cr.P.C., requires the Officer In-charge of a Police Station or any Police Officer especially empowered by the State Government to make an enquiry into all suspicious deaths. During investigation, he may make an enquiry or inquest into the cause of death, the circumstances which led to the death and the manner in which the offence took place. While preparing an inquest memo or spot Panchnama, the Police officer may record the statement of witnesses so as to come to a prima-facie finding as to whether any offence has been made out or not. The statements recorded during the inquest if make out a case for registration of offence, he is obliged to register the case and if not the officer is required to make further report to the empowered Magistrate.
13. In the facts of a case when the enquiry was made by the Police and the witnesses did not speak against the commission of crime and however any other contradictory statements if were made which clamps the allegations on accused then in order to find out the truth, the accused shall be entitled to confront those statements to the witnesses. In a case law reported in **2001 (2) CGLJ 216 – Santosh Vs.**

State of Chhattisgarh the similar proposition had come up for consideration wherein this Court has observed as under:

“14. In the matter of State of Kerala Vs. Babu (1999) Vol. 4 SCC 621, a prayer was 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 the basis of which the applicant accused was facing trial, such statement recorded during the course of another investigation can 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 statement 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 difficult 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 sub-section (3) of Section 161 of the code, but the accused does not have such a right as a matter of course in regard to other previous statements; more so, in regard to the statement recorded by the investigating agency under Section 161 in a case other than the one that is being tried by the Court.

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 with the charge sheet irrespective of the fact that such statements support or do not support the prosecution allegations."

14. In the context of the subject matter, section 145 of the Evidence Act would also be relevant which reads as under:

"145. Cross examination as to previous statements in writing.-- A witness may be cross examined as to previous statements made by him in writing or reduced into writing, and relevant to matters in question, without such writing being shown to him, or being proved; but, if it is intended to contradict him by the writing, his attention, must, before the writing can be proved, be called to those parts of it which are to be used for the purpose of contradicting him."

15. If the power is given to the prosecution agency to file documents to their choice to which they placed reliance, it would give an authority to the police or prosecution agency to mend the facts and law to their own wish by concealment. Then if such practice is encouraged in a given case, the prosecution may suppress important relevant documents and may not allow to surface the facts which support the accused. The investigating agency or the prosecution agency which are part and parcel of the State are not the decision maker and the accused is a person who is charged with the offence is held to be innocent till the guilt is proved which is to be adjudged by the Court. The State agencies are under

bounden duty to place documents which are in their possession and submit the same in compliance of section 173 Cr.P.C., It is for the Court to adjudicate after taking into consideration the cases. A previous statement of witness recorded during the course of enquiry, investigation or trial continues to be a previous statement and in accordance with section 145 of the Evidence Act, the accused is entitled to contradict the maker of such statement with his previous statement.

16. Section 145 as has been quoted above would show that a witness may be cross examined, as to the previous statement made by him in writing, or reduced into writing and relevant matters in question, without such writing being shown to him or being proved, if it is intended to contradict him by writing his attention must before the writing can be proved, be called to those parts of it which are to be used for the purpose of contradicting him.
17. 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.

18. 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 with-holding 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.

19. In ***Nirmal Singh Kahlon v. State of Punjab, (2009) 1 SCC 441*** the 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.

20. 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.
21. The Supreme Court in ***Manu Sharma Vs. State (NCT of Delhi)* (2010) 6 SCC 1** has held in paras 217 & 220 thus :

“**217.** Further section 91 empowers the court to summon production of any document or thing which

the court considers necessary or desirable for the purposes of any investigation, inquiry, trial or another proceeding under the provisions of the Code. Where Section 91 read with Section 243 says that if the accused is called upon to enter his defence and produce his evidence there he has also been given the right to apply to the court for issuance of process for compelling the attendance of any witness for the purpose of examination, cross examination or the production of any document or other thing for which the court has to pass a reasoned order.”

“220. The right of the accused with regard to disclosure of document is a limited right but is codified and is the very foundation of a fair investigation and trial. On such matters, the accused cannot claim an indefeasible legal right to claim every document of the police file or even the portions which are permitted to be excluded from the documents annexed to the report under Section 173(2) as per orders of the court. But certain rights of the accused flow both from the codified law as well as from equitable concepts of the constitutional jurisdiction, as substantial variation to such procedure would frustrate the very basis of a fair trial. To claim documents within the purview of scope of Sections 207, 243 read with the provisions of Section 173 in its entirety and power of the court under Section 91 of the Code to summon documents signifies and provides precepts which will govern the right of the accused to claim copies of the statement and documents which the prosecution has collected during investigation and upon which they rely.”

22. In the instant case, the report submitted by the SDO(P) dated 06.04.2016 after a detailed enquiry would show that during enquiry the statements of witnesses were recorded projecting the facts and the investigating officer admitted the existence of certain facts whereby few of the accused

who were named earlier were exonerated. If such facts are accrued in favour of the accused, the statements made during investigation cannot be withheld by police to predetermine commission of offence. The State Agency and the prosecution are not meant to convict accused. During the investigation if the statements are recorded they are obliged to place them before the Court for adjudication. The accused cannot be left at the mercy of prosecution or the State agency, with a pre-conclude that the offence has been committed. It is for the court to adjudicate the same. Therefore, under the circumstances, the statements of witnesses which are recorded during investigation and are relevant to the subject issue are required to be placed before the court so that the accused can get the opportunity for fair hearing as otherwise it will amount to condemning the accused being unheard.

23. Applying the aforesaid principles and taking into the facts of the present case if the application filed by the accused u/s 91 of Cr.P.C., is looked into, it leads to point out that the statements so recorded are nucleus to the entire issue and they would be relevant for just decision of the instant case.
24. For the foregoing reasons, the order dated 12.06.2017 passed by the court below is set aside. The application filed u/s 91 Cr.P.C., is allowed. Consequently, the revision is allowed.

Sd/-
GOUTAM BHADURI
JUDGE