

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.1366 OF 2016

Suresh Duryadhan Suryavanshi

Applicant

versus

The State of Maharashtra

Respondent

Mr.C.K.Pendse for Applicant.

Ms.Vidya Kasle, Special Public Prosecutor, for State.

CORAM : PRAKASH D. NAIK, J.

DATE : 21st August 2017

PC :

1. The applicant has challenged the order dated 19th July 2016 passed below Exhibit-50 by the Sessions Court, Mumbai in Sessions Case No.543 of 2015. The applicant is an accused in the said proceedings. The applicant had preferred an application under Section 91 of Code of Criminal Procedure, 1973 ('Cr.P.C.') for seeking direction to produce certain documents in the nature of call detail records. The said application was rejected by order dated 19th July 2016. While rejecting the said application, the Sessions Court has observed that application u/s 91 of Cr.P.C. cannot be preferred at the instance of defence or accused. It is further observed that if the Court or officer in-charge of police station considers production of document or other thing desirable for the purpose of trial, the summons can be issued for its production. It is further stated that summons u/s 91 of Cr.P.C. can be issued by Court suo-motu or on request by the prosecution.

2. Learned counsel for applicant submitted that he would restrict his application to the prayers made in the present application. It is prayed that the nodal officers of various mobile service providing companies such as Bharti Airtel Ltd, Aircel Ltd; Idea Cellular, Reliance Communications, Tata Teleservices Ltd; Indicom, Vodafone India, MTNL, BSNL to produce CDR and Tower Location of Sr.PI. Smt. Jagirdar, P.I. Mr.Satam, P.N.Parab, P.C. Mr.Suresh Kamble and also Panch witnesses in respect of recovery panchanama dated 27th April 2015. It is submitted that the Trial Court has proceeded on a wrong notion that accused cannot prefer an application u/s 91 of Cr.PC. He relied upon the decision of Andhra Pradesh High Court in case of **K.V.Rama Krishna Reddy Vs. The State reported in 1975-Cri.L.J.-980** and another decision of Gujarat High Court in case of **Maheshchandra K. Trivedi Vs. State reported in 1999(2)-GLH-1029**.

3. Learned APP opposed the application. It is submitted that no ground for granting the reliefs as prayed for in the application u/s 91 of Cr.PC. were made out by the applicant. It is further submitted that the Sessions Court has rejected the application by observing that the relief as prayed for cannot be granted.

4. I have perused the order passed by learned Sessions Court which is under challenge in this application. Apparently, the Court has proceeded on the basis that an application u/s 91 of Cr.PC. cannot be preferred at the instance of defense or by the accused. The law is contrary to the observations made by the Sessions Court. Although Sessions Court has also rejected the application with an

observation on the merits of the application preferred by the applicant, I am of the opinion that Sessions Court can be directed to entertain a fresh application, if preferred by the applicant, u/s 91 of Cr.P.C, with a direction to decide the same in accordance with law.

5. Hence, I pass following order :

ORDER

(i) The order dated 19th July 2016 passed by Additional Sessions Judge, City Civil and Sessions Court, Court No.41, Greater Mumbai below Exhibit-50 in Sessions Case No.543 of 2015 is quashed and set aside;

(ii) The applicant is permitted to file a fresh application u/s 91 of Cr.P.C. restricting his prayers to prayer clause (b) in present application. The Additional Sessions Court, Greater Mumbai shall decide such fresh application, if filed by the applicant, on merits and in accordance with law, without being influenced by earlier order dated 19th July 2016;

(iii) It is clarified that this Court has not adjudicated present application on merits of the case;

(iv) Criminal Application is disposed of.

(PRAKASH D. NAIK, J.)