

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****CRR No. 665 of 2019**Order reserved on : 01.10.2019Order delivered on : 17.12.2019

- Ramesh Kumar Koshle son of Shri A.D. Koshle, aged about 54 years, R/o House No.28-B, Om Zone, Shubham Vihar, Bilaspur, District Bilaspur (C.G.)

----Petitioner**Versus**

- Central Bureau of Investigation (Anti Corruption bureau), Through : The Inspector, Bhilai, District Durg (C.G.)

---- Respondent

For Petitioner	:	Shri Shashank Thakur, Adv.
For Respondent/State	:	Shri P. Chetan Kumar, Adv.

Hon'ble Smt. Justice Rajani Dubey**C A V ORDER****17/12/2019**

01. This revision has been filed against the order dated 04.04.2019 passed by learned Special Judge of Special Court for trial of C.B.I. Cases, Raipur, District Raipur in Special Criminal Case No.194/2016, whereby the learned trial Court has rejected the application filed by the applicant under Section 91 of Cr.P.C. for production of CCTV footage and fixed the case for prosecution witness.

02. Brief facts of the case are that, before the trial Court, the

charge sheet has been filed under Sections 7, 11 and 13 (1) d read with section 13(2) of the Prevention of Corruption Act, 1988 (for short 'the P.C. Act') and Section 120-B of I.P.C. against the petitioner. During trial, the applicant filed an application under Section 91 Cr.P.c. before the trial Court but the learned trial Court, under the impugned order, dismissed the application of the applicant holding that the CCTV footage is not a part of charge sheet and the application is premature. Hence, this criminal revision.

03. Learned counsel for the applicant submits that the learned trial Court, while passing the impugned order, has not considered the facts of the case in proper manner and thus the impugned order deserves to be set aside. The applicant by bringing the CCTV footage on record intended to introduce his defence by confronting the relevant witnesses as he is confident that the CCTV footage has recorded the true and actual story/circumstances during the time when the said transaction of bribe is alleged to have taken place. He further submits that the CCTV footage serves as a statement in law, therefore, the applicant has every right to confront the relevant witnesses, which are to be examined by the prosecution for the purposes of bringing contradictions. The co-ordinal principles of law is that the defence has to be taken up at the earliest instance, and through cross examination, the accused avails the right of introducing his defence by raising question to establish his theory of probability. The

learned trial Court lost sight of these settled principles of law governing the criminal trial and thereby has passed the order defeating the legal right of the applicant by coming to conclusion that the application under Section 91 of Cr.P.C. is premature. He also submits that the trial Court ought to have considered the fact that the CCTV footage have recording of the incident and the prosecution agency has intentionally not made it a part of record at the time of filing of the charge sheet, which they should have done at the first instance. Hence, the applicant moved an application under Section 91 of Cr.P.C. so that the correct facts may be placed on record, but the trial Court without considering this factual aspect of the matter, dismissed the application in an illegal manner.

04. On the other hand, learned State counsel supporting the impugned order submits that the order impugned is just and proper and does not call for any interference by this Court.

05. I have heard the learned counsel for the parties and perused the record.

06. In the instant case, which pertains to gratification, apart from the criminal case, a departmental inquiry was also initiated by the employer against the applicant, who is Branch Manager of Punjab National Bank, Gaud Branch, District Janjgir Champa (C.G.). The applicant, to substantiate his plea, had filed some documents in Departmental Inquiry, which shows that on the basis of CCTV footage, the applicant was given clean cheat in it. This trial is also related to the same

incident. The petitioner, in his defence, has demanded for CCTV footage which is available with the bank.

07. So far as electronic evidence (CCTV footage is concerned, it is settled position of law that the electronic evidence is admissible in law when it is supported by the CFSL report to the effect that the electronic evidence has not been tempered with. 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. The Court is also duty bound and empowered to discover the truth of case.

08. 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.

09. The Supreme Court in **Manu Sharma Vs. State (NCT of Delhi) (2010) 6 SCC 1** has held in para 217, which reads 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.”

10. In the case in hand, the learned trial Court has rejected the application of the applicant filed under Section 91 of Cr.P.C. for production of the CCTV footage on the ground that the same is not relevant at this stage and it is also not a part of the charge sheet. The trial Court also held that the defence has not brought any such fact before it which could show that as to in which manner the CCTV footage would be used in defence.

The applicant is a Govt. servant and was posted as Manager in the Punjab National Bank, Gaud Branch, District Janjgir Champa (C.G.) and the CCTV footage of his office is very significant to substantiate his plea as on the date of incident whatever had happened in the office, must be recorded in the CCTV camera. Moreover, the petitioner's stand that he has every right in law to confront the relevant prosecution witnesses regarding the CCTV footage, appears to

be justified.

11. Thus, considering the aforesaid facts and circumstances of the case and applying the principles, it would be appropriate in the interest of justice to afford an opportunity to the applicant.

12. In the result, the impugned order dated 04.04.2019 is set aside. The application filed by the applicant under Section 91 Cr.P.C. is allowed. The trial Court to call for the relevant footage of CCTV camera mentioned in the application and proceed in accordance with law.

13. The revision is thus allowed.

Sd/-

(Rajani Dubey)
JUDGE