

HIGH COURT OF CHHATTISGARH, BILASPUR**CRMP No. 1244 of 2019**

Lakeshwar Sahu, S/o Late Mansingh, aged about 29 years, R/o Tedinara, Police Station Bagbahra, Distt. Mahasamund, Chhattisgarh.

---- **Petitioner**

Versus

State of Chhattisgarh, Through Station House Officer, Police Station Bagbahra, Distt. Mahasamund, Chhattisgarh.

--- **Respondent**

For Petitioner	:	Mr. Shobhit Mishra, Advocate
For State	:	Mr. Sanjay Ku. Agrawal, Government Advocate

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

20.06.2019

1. Petitioner herein is an accused standing trial for offence punishable under Sections 354 (c), 509 (b), 327, 376 (a) / 376(2) of IPC and 66 (e) of Information & Technology Act before the Court of Sessions, Mahasamund whereby he filed an application under Section 91 of Cr.P.C. for production of relevant call details and other particulars of mobile phones of the petitioner and the complainant. By the impugned order dated 09/04/2019, the said application filed by the petitioner has been rejected by learned Additional Sessions Judge, Mahasamund relying upon the decision rendered by the Supreme Court in the matter of ***State of Orissa Vs. Debendra Nath Padhi***¹.
2. Mr. Shobhit Mishra, learned counsel for the petitioner submits that learned Additional Sessions Judge is absolutely unjustified in rejecting petitioner's application under Section 91 of Cr.P.C. which ought to have been granted in light of the decision rendered by the Supreme Court in the matter of ***Nitya Dharmananda @ K. Lenin Vs. Sri Gopal Sheelum Reddy also known as Nithya Bhaktananda***², as the documents which sought to have been produced are of sterling quality. As such, the

¹ (2005) 1 SCC 568

² (2018) 2 SCC 93

impugned order is liable to be set aside.

3. I have heard learned counsel for the parties, considered their submissions and went through the records with utmost circumspection.
4. Petitioner has been charge-sheeted before the Court of Sessions, Mahasamund and his matter is still pending consideration for framing of charge, in which stage, he preferred an application under Section 91 of Cr.P.C. for production of certain relevant documents containing particulars of mobile phones of both the petitioner as well as the complainant which has been rejected by the said Court relying upon the decision rendered by the Supreme Court in the matter of ***State of Orissa Vs. Debendra Nath Padhi***, in which, while dealing with Section 91 of the Cr.P.C., their Lordships of the Supreme Court have held as under :-

“ 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.”

5. In the aforesaid case, their Lordships of the Supreme Court have clearly held that the accused is not entitled to file any material or document at the stage of framing of charge. He can only do so at the stage of defence.
6. Since, the trial is at its initial stage and the stage for seeking production of document has not yet come, therefore, in view of the aforesaid decision rendered by the Supreme Court, I do not see and find any illegality or perversity in the order impugned rejecting the petitioner's application under Section 91 of Cr.P.C. However, the petitioner is at liberty to file appropriate application at the appropriate stage of trial.
7. Accordingly, this criminal miscellaneous petition under Section 482 of Cr.P.C. stands dismissed.

Sd/-
(Sanjay K. Agrawal)
Judge