

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRR No. 977 of 2019**

- Sonu Devesh Bhadoriya S/o Brijendra Singh Bhadoriya Aged About 37 Years R/o Nayapara, Jagdalpur, District Bastar- Jagdalpur Chhattisgarh

---- Applicant**Versus**

- State Of Chhattisgarh Through Police Station Nagarnar, District Bastar- Jagdalpur Chhattisgarh

---- Respondent

For Applicant : Shri Pushpendra Singh Baghel, Advocate
 For Respondent/State : Shri Anurag Verma, PL

Hon'ble Smt. Justice Rajani Dubey**Order On Board****18/09/2019**

This revision is directed against the order dated 24.07.2019 passed by the learned Additional Sessions Judge, Bastar at Jagdalpur in S.T. No. 66/2017 whereby the learned trial judge has dismissed the application filed under Section 91 of Cr.P.C. by the applicant.

2. Facts of the case in brief are that charge sheet has been filed against the applicant and other accused under Sections 294, 506-B, 341, 307, 427, 147, 148, 149 and 212 IPC and Sections 25 and 27 of the

Arms Act. A



applicant has filed application under Section 91 of the Cr.P.C. before the trial Court on the ground that in the police enquiry complainant Shailendra Bhadoriya did not allege anything against the present applicant therefore he prayed that the report may be called before the trial court but the trial judge has dismissed the application on 24.07.2019. Hence, the present revision.

3. Counsel for the applicant submits that the proceedings initiated against the applicant is perverse, illegal and cannot be sustained in the eye of law. He submits that on the date of incident, the applicant was not present at the place of occurrence but instead of closing the matter respondent has filed a false and fabricated charge sheet against the applicant showing his involvement in the case. The Additional Superintendent of Police has conducted the enquiry on the basis of the direction given by the Superintendent of Police. In that enquiry, the witnesses Santosh Bisai, Ritesh Bisai and Vinod Bisai, have stated that at the time of incident, the applicant was in the office of Balaji Mines at Dhanpunji. The enquiry report was submitted by the Additional Superintendent of Police, Jagdalpur before the Superintendent of Police and in the report he found that the applicant was in no way involved in the case but in that report he made his suspicion on conclusive facts of evidence. On the basis of this report, the Superintendent of Police directed the SHO, Nagarnar to further enquire into the matter and submit his report as per legal process but in spite of direction given by the SP, no enquiry was conducted by SHO Nagarnar and by disobeying the order of the SP, additional charge sheet was filed before the trial court showing the involvement of the present applicant in this case. He further submits that on the

same set of facts and grounds, name of other co-accused person Rajeev Sharma has been removed from the charge sheet on the basis of report submitted before the S.P. Nagarnar. The applicant has received letter dated 06.02.2019 filed under Right to Information Act that the matter is under investigation and therefore no information could be provided under RTI Section 6 (Chha). The applicant has submitted all these facts before the trial court but the trial court dismissed the application filed by him under Section 91 Cr.P.C. without applying judicial mind therefore, the order impugned is liable to be set aside. He has placed his reliance in the matter of **Mahaveer Chandrakar Vs. State of Chhattisgarh (Cr.Rev. No. 704/2017)**.

4. On the other hand State counsel supported the impugned order and placed his reliance in the matter of **State of Orissa Vs. Debendra Nath Padhi (2005)1 SCC 568** wherein the Apex Court observed that in so far as the accused is concerned, his entitlement to seek order under Section 91 of the Code of Criminal Procedure, 1973 would ordinarily not come till the stage of defence. Summons to produce documents in terms of provision of Section 91 of Code of Criminal Procedure, 1973 can be invoked only at the stage of taking defence evidence.

5. Heard counsel for the parties and perused the material available on record.

6. It is clear from the documents that the applicant has earlier filed Cr.M.P. No. 1271/2017 and this court vide order dated 08.03.2019 has passed order thus:

“Since the trial has begun, petitioner No.2 shall be

at liberty to put forth all the grounds before the trial court.”

The applicant has also filed some applications of RTI (Annexure A-10) which shows that on 13.02.2019 he has filed the copy of letter received through RTI. The Supreme Court in **Manu Sharma Vs. State (NCT of Delhi) (2010) 6 SCC 1** has held in paras 217 and 220 as under:

“217. [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 documents 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 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.”

This Court also in Cr.Rev. No. 704/2017 has held that :

“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.”

7. Similarly, in the present case also, enquiry was done by the

Additional Superintendent of Police Jagdalpur and statement of witnesses were recorded by the enquiry officer applying the aforesaid principle and taking into consideration the facts of the case, if the application filed by the applicant under Section 91 Cr.P.C. is looked into, it clearly points out that the statements and enquiry report would be relevant for just decision of the instant case.

8. For the foregoing reasons, the impugned order dated 24.07.2019 is clearly incorrect in law and would have to be set aside. It is accordingly set aside. The application filed by the applicant under Section 91 Cr.P.C. is allowed. Consequently, the revision is allowed.

Sd/-

(Rajani Dubey)
Judge