

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRR No. 1123 of 2018**Order reserved on : 18.07.2019Order delivered on :30.08.2019

- S.K. Baghel (Santosh Kumar Baghel) (wrongly mentioned as S/o Santosh Kumar Baghel) S/o Agam Das Baghel, aged about 57 years, R/o village Bijrakapa Khurd, District - Mungeli, presently residing at Dapara Gambopara, Mungeli, District Mungeli (C.G.)

----Petitioner**Versus**

- State of Chhattisgarh Through : EOW/ACB, Bilaspur, District Bilaspur (C.G.)

---- Respondent

For Petitioner	:	Shri Malay Bhaduri, Adv.
For Respondent/State	:	Shri I. Lakra, P.L.

Hon'ble Smt. Justice Rajani Dubey**C A V ORDER****30/08/2019**

01. The petitioner has filed present revision being aggrieved by the order dated 17.09.2018 passed in pending Special Case No.08/17 (mentioned as Special Case No.08/117) by Special Judge, (Prevention of Corruption Act) for short 'the P.C. Act', District Mungeli, whereby the learned trial Court has rejected the application filed by the petitioner for taking documents on record.

02. Before the learned trial Court, Anti Corruption Bureau

(for short 'ACB') filed charge-sheet under Section 13(1)(e) and 13(2) of the P.C. Act. The learned trial Court has taken cognizance and after framing of charges, the case was listed for examination of witnesses and out of 64 witnesses, 3 witnesses have been examined so far. During pendency of trial, the applicant/accused moved an application for taking proforma I, II and III on record of the trial Court on the averments that during investigation the ACB sought explanation from the applicant/accused by furnishing declaration in shape of proforma I, II and III within certain period. The applicant/accused was not in possession of the relevant information and documents, so he could not produce the same in prescribed time limit and, therefore, he sought 15 days time but his request was not accepted by the investigating agency. Thereafter, the applicant/accused submitted the requisite information as sought vide proforma I, II and III to the investigating agency. These informations in proforma had been sent by registered post to the ACB and the same were received by the ACB, but the investigating agency did not consider these documents, therefore, prejudice caused to the applicant/accused as it reflects from charge sheet. Thus, the applicant/accused moved an application dated 29.11.2017 before the learned trial Court for taking documents pertaining to format proforma I, II and III, which was rejected by it on 17.09.2018. Hence, this revision.

03. Learned counsel for the applicant submits that the

impugned order dated 17.09.2018 with regard to rejection of application dated 29.11.2017 of applicant is contrary to law and the same is liable to be set aside. He further submits that the applicant wanted to submit relevant documents on the case record during trial as the investigating officer did not take that documents during investigation. These documents were sent by registered post to the investigating agency but the investigating agency did not consider these documents saying that it was not sent within the prescribed time limit. He also submits that non consideration over those documents during investigation adversely affected the investigation as well as quality of charge sheet. The learned trial Court's view and finding that these documents can be submitted and produced at the time of defense evidence is not appropriate on the ground that there are 64 enlisted witnesses, who are yet to be examined. He also submits that these documents are required to be proved and assailed by the applicant by examining the relevant witnesses including officials of ACB who, from time to time, investigated the matter at different stage of investigation, simply on examination of I.O. would not prove the contention of those documents. It has been further argued that it is settled law and procedural aspect that each and every documents has to be on record, which comes during investigation. In case, if documents are not annexed with the charge sheet, it has to be produced at initial stage of trial so that nobody can take the documents as surprise or

astonished. Thus, the learned trial Court has committed grave error of law and the impugned order dated 17.09.2018 may be set aside. In support of his argument, he placed reliance on the decisions of the Supreme Court in the matter of **Nitya Dharmananda @ K. Lenin & Anr. V. Sri Gopal Sheelum Reddy Also Known as Nithya Bhaktanand And Anr.** reported in **(2018) 2 SCC 93, Shashi Bala V. State Govt of NCT of Delhi & Ors (CRL.M.C. No.1752/2016, order dated 08.07.2016)** and order dated **21.08.2017** of this High Court passed **in CRR No.410/2017 (Aakesh Kumar Sinha V. State of Chhattisgarh).**

04. On the other hand, learned State counsel supporting the impugned order passed by the trial Court would submit that the documents were not relevant to the initial stage of trial. He would further submit that the order passed by the learned trial Court is just and proper and does not call for any interference by this Court.

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

06. From the material on record, what comes before this Court is that the prosecution agency, before the trial Court, has admitted in its reply that applicant/accused has sent proforma I, II & III by registered post but these documents were not received within prescribed time limit and then the matter was sent for prosecution sanction. Later on, the documents were received after six months from the date

when the matter was sent for prosecution sanction. The Hon'ble Supreme Court, while dealing with the identical issue, in the matter of **State of Orissa Versus Debendra Nath Padhi**¹ has held in para 25, which reads thus:-

“25. Any document or other things 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. Insofar 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.

1 (2005) 1 SCC 568

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 a 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.”

07. Further, in the matter of **Hardeep Singh Etc. Versus State of Punjab and ors. Etc²**, a Bench of five-judges observed in para 19, which reads thus :-

“19. *The Court is the sole repository of justice and a duty is cast upon it to uphold the rule of law and, therefore, it will be inappropriate to deny the existence of such powers with the courts in our criminal justice system where it is not uncommon that the real accused, at times, get away by manipulating the investigating and/or the prosecuting agency. The desire to avoid trial is so strong that an accused makes efforts at times to get himself absolved even at the stage of investigation or inquiry even though he may be connected with the commission of the offence.”*

08. Further, Hon'ble the Supreme Court in the matter of

² (2014) 3 SCC 92

Manu Sharma Vs. State (NCT of Delhi)³ 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.

09. This High Court, in the matter of **Akash Kumar Sinha V. State of C.G. (CRR No.410/2017)**, vide order dated **21.08.2017**, held that the statement recorded during the investigation cannot be withhold.

10. In the instant case, the issue is related to disproportionate assets, movable and immovable property & corruption charges thereof against the accused/applicant, which is said to have been acquired by public servant in check period and the same is required to be accessed properly not only by the investigating agency but also by the trial Court. It is also an admitted fact that proforma I, II and III were sent by the accused/applicant by registered post to the ACB though, it

3 (2010) 6 SCC 1

was not received by them in prescribed time. These documents might not be supported the case of the prosecution but, if it finds support to the defence, the same cannot be withhold.

11. Thus, in view of the aforesaid plethora of judgments of Hon'ble Supreme Court and considering the facts and circumstances of the present case, the application dated 29.11.2017 deserves to be allowed and it is hereby allowed.

12. In the result, impugned order dated 17.09.2018 is set aside. The trial Court shall proceed accordingly in further adjudication of the trial.

Sd/-

(Rajani Dubey)
JUDGE