

HIGH COURT OF CHHATTISGARH, BILASPURCriminal Misc. Petition No.2402 of 2019Order reserved on: 15-11-2019Order delivered on: 9-12-2019

Firoz Siddiqui, S/o Kamruddin, Aged about 52 years, R/o 4th Floor, Shri Ram Heritage, Katora Talab, Raipur, P.S. Civil Line, Raipur, District Raipur (C.G.)

(In jail)
---- Petitioner

Versus

The State of Chhattisgarh, through S.H.O., Police Station Civil Line, Raipur, District Raipur (C.G.)

---- Respondent

For Petitioner: Mr. Maneesh Sharma, Advocate.

For Respondent / State:

Mr. Mateen Siddiqui, Deputy Advocate General.

Hon'ble Shri Justice Sanjay K. Agrawal

C.A.V. Order

1. The short question which emanates for consideration in this petition filed under Section 482 of the CrPC is, whether the trial Magistrate is justified in issuing general warrant for search of locker held by the petitioner in exercise of power conferred under Section 93(1)(c) of the CrPC? The aforesaid question arises in this case on the following factual backdrop: -
2. The petitioner was arrested by the jurisdictional police on 31-7-2019 in connection with Crime No.449/2019 registered at Police Station Civil Lines, Raipur, as he is alleged to have committed the offence punishable under Sections 384, 120B & 201 read with Section 34 of the IPC and during the pendency of investigation, on 18-9-2019, an

application for issuance of search warrant of the petitioner's locker No.G 4/28 at IDBI Bank, Branch Aishwarya Residency, Telibandha, Raipur, was filed by the jurisdictional police before the Chief Judicial Magistrate, Raipur stating that for collection of evidence, search of the petitioner's locker is necessary. Thereafter, charge-sheet was filed before the jurisdictional criminal court on 24-9-2019 for the aforesaid offences against the petitioner and thereafter, the learned Chief Judicial Magistrate on 30-9-2019 considered and granted that application finding that for collection of evidence in connection with the crime, issuance of warrant of search for his locker appears to be just and proper. The order granting general warrant for search of locker was assailed by the petitioner by way of revision, but he remained unsuccessful leading to filing of the instant petition under Section 482 of the CrPC.

3. Mr. Maneesh Sharma, learned counsel appearing for the petitioner, would submit that the learned Chief Judicial Magistrate is absolutely unjustified in granting the application filed under Section 93(1) of the CrPC and would also submit that for investigation of an offence, that too for collection of evidence, no search warrant can be issued under Section 93(1)(c) of the CrPC. He would further submit that Section 93(1)(c) of the CrPC requires the Court to consider that for the purposes of any inquiry, trial or other proceeding under the Code, general search is required, then only search warrant can be issued. In the instant case, the learned trial Magistrate without application of mind, on mere asking by the police station that for collection of evidence, search warrant be issued, issued general warrant for search of locker which runs contrary to the provisions

contained in Section 93(1)(c) of the CrPC, as it smacks complete non-application of mind and in aid of investigation for which no warrant under Section 93(1)(c) of the CrPC can be issued, as such, the order passed by the trial Magistrate and by the revisional Court perpetuating the illegality, deserve to be set-aside. He relied upon a judgment of the Supreme Court in the matter of V.S. Kuttan Pillai v. Ramakrishnan and another¹ to support his contention.

4. Mr. Mateen Siddiqui, learned Deputy Advocate General appearing for the State / respondent, would submit that the petitioner is standing trial for the aforesaid offences, particularly Section 384 of the IPC, as he has extorted more than ₹ 1,90,00,000/- (Rupees one crore ninety lakhs only) from the complainant and therefore to collect evidence of such an offence committed by the petitioner / accused, search warrant has been obtained by the jurisdictional police which is strictly in accordance with Section 93(1)(c) of the CrPC. He would further submit that investigation is a proceeding under the Code within the meaning of Section 93(1)(c) of the CrPC and therefore general search warrant issued by the Magistrate in aid of investigation under the Code is valid. He placed reliance upon a decision of the M.P. High Court in the matter of Avadhesh Singh Tomar and others v. State of Madhya Pradesh and others² to buttress his submission.

5. I have heard learned counsel for the parties and considered their rival submissions made herein-above and also went through the record with utmost circumspection.

6. In order to consider the plea raised at the Bar and to answer the

1 (1980) 1 SCC 264

2 2015(3) MPLJ 75

question, it would be appropriate to notice Section 93(1) of the CrPC which provides as under: -

“93. When search-warrant may be issued.—(1)(a) Where any Court has reason to believe that a person to whom a summons or order under section 91 or a requisition under sub-section (1) of section 92 has been, or might be, addressed, will not or would not produce the document or thing as required by such summons or requisition, or

(b) where such document or thing is not known to the Court to be in the possession of any person, or

(c) where the Court considers that the purposes of any inquiry, trial or other proceeding under this Code will be served by a general search or inspection,

it may issue a search-warrant; and the person to whom such warrant is directed, may search or inspect in accordance therewith and the provisions hereinafter contained.”

7. It would be appropriate to mention that Section 93(1)(c) of the CrPC in particular is the *pari materia* provision to Section 96(1), clause (c), of the Code of Criminal Procedure, 1898, now repealed.
8. A careful perusal of Section 93(1)(c) of the CrPC would show that the Legislature has consciously used the words, “inquiry, trial or other proceeding”, but has omitted the word “investigation”. The word “inquiry” has been defined in Section 2(g) of the CrPC by stating that “inquiry” means every inquiry, other than a trial, conducted under this Code by a Magistrate or Court. Likewise, the word “investigation” has been defined in Section 2(h) of the CrPC stating that “investigation” includes all the proceedings under this Code for the collection of evidence conducted by a police officer or by any person (other than a Magistrate) who is authorised by a Magistrate in this behalf.
9. Inquiry is by Magistrate, whereas investigation is by police officer or

by any person other than Magistrate or Court. The object of investigation is collection of evidence, but that of an inquiry is determination of truth or falsehood of certain allegation in order to the further action.

10. The investigation is neither an enquiry nor trial. It is within the executive domain of the police to investigate and is independent of any control by the Magistrate. (See **Manubhai Ratil Patel Tr. F Ushaben v. State of Gujarat**³.)
11. Investigation starts after the police officer receives information in regard to an offence. It consists generally of: (i) Proceeding to the spot; (ii) ascertainment of the facts and the circumstances of the Case; (iii) discovery and arrest of the suspected offender; (iv) collection of the evidence relating to the commission of the offence which may consists of: (a) the examination of various persons (including the accused) and recording their statements, if the I.O. thinks fit; (b) the search of places or seizure of things considered necessary for the investigation and to be produced at the time of the trial; and (v) formation of opinion as to whether it is a fit Case for the accused to be sent up for the trial and, if so, taking steps for same for the filing of charge-sheet. (See **H.N. Rishbud v. State**⁴.)
12. A trial is a judicial proceeding which ends in conviction or acquittal. (See **Tuneswar v. State of Bihar**⁵.)
13. The nature of power being exercised by the Magistrate while issuing the search warrant under Section 93 of the CrPC has been held to be judicial by the Supreme Court (Constitution Bench) in the

3 2013 Cr LJ 160 (165) (SC)

4 AIR 1955 SC 196

5 1978 Cr LJ 1080 (Pat)

matter of M.P. Sharma and others v. Satish Chandra, District Magistrate, Delhi and others⁶ by holding that issue of a search warrant is normally the judicial function of the Magistrate. When such judicial function is interposed between the individual and the officer's authority for search, no circumvention thereby of the fundamental right is to be assumed.

14. In V.S. Kuttan Pillai (supra) wherein the provisions of Section 93(1)(c) of the CrPC were dealt with, it was held by Their Lordships of the Supreme Court that Section 93(1)(c) of the CrPC comprehends a situation where a search warrant can be issued as the Court is unaware of not only the person but even the place where the documents may be found and that a general search is necessary. It was also held that issuance of search warrant is a serious matter and it would be advisable not to dispose of an application for search warrant in a mechanical way by a laconic order. It was emphasised by Their Lordships that issue of a search warrant being in the discretion of the Magistrate it would be reasonable to expect of the Magistrate to give reasons which swayed the discretion in favour of granting the request. A clear application of mind by the learned Magistrate must be discernible in the order granting search warrant.

15. In the matter of K. Hoshide and another v. Emperor⁷, the Division Bench of the Calcutta High Court has held that an inquiry relates to proceeding held by a Court or a Magistrate while an investigation relates to the steps taken by a police officer or a person other than a Magistrate. Their Lordships also held that the third clause of

6 AIR 1954 SC 300

7 AIR 1940 Calcutta 97

Section 96(1) of the Code of Criminal Procedure, 1898, which is *pari materia* to Section 93(1)(c) of the Code of Criminal Procedure, 1973, has nothing whatsoever to do with an investigation. It does not provide for any step to be taken in aid of an investigation but it provides for something which the Magistrate may do for the purpose of serving an inquiry, trial or other proceeding under the Code. It was further held that clause 3 of Section 96(1) of the old Code does not empower the issue of the warrant to help the investigation by the police and the customs authorities. It was also held that a search warrant is not to be issued automatically or for the mere asking. It can only be issued when the Court considers that the purpose of an inquiry would be served. The Magistrate must apply his judicial mind to the question and must satisfy himself that the issue of the warrant is necessary. A search warrant should not be issued as a matter of course on the bare statement of a police officer that a search was necessary.

16. In the matter of **Kalinga Tubes Ltd. and others v. D. Suri and another**⁸, a Division Bench of the Orissa High Court held that the word “investigation” is absent in clause (3) of sub-section (1) of Section 96 of the Code of Criminal Procedure, 1898, therefore, the requirement of a higher and stricter standard for general searches is necessary and it was further held that what is necessary in such cases is that the Magistrate should be reasonably satisfied that the search is likely to be a link in the chain which in the normal course will lead to an inquiry under the CrPC, if the expected material is found on the search and that he should also be satisfied that there

⁸ AIR 1953 Orissa 153

is reasonable ground for the expectation.

17. In the matter of **Shri Melicio Fernandes v. Shri Mohan Nair and another**⁹, the Full Bench of the Bombay High Court (Goa) has held that issue of search warrant is purely a discretionary power and the issue of search warrant is normally the judicial function of the Magistrate. The words “reason to believe” coupled with other words contemplate an objective determination based on intelligent care and deliberation involving judicial review as distinguished from a purely subjective consideration. It was further held that this function being judicial, it necessarily follows that the Magistrate has to apply his mind judicially.
18. The Punjab and Haryana High Court in the matter of **Harbans Singh v. The State of Punjab and another**¹⁰ while dealing with Section 96(1) of the old Code held that the Court is required to record its reasons which should indicate that it has applied its mind before passing the order directing the issue of search warrant and for that it must see that there is sufficient material before it which justifies the drastic action which it is being invited to take. The Punjab and Haryana High Court finding that the Chief Judicial Magistrate issued search warrant on the basis of the first information report of the case and on the request made by the police, without giving any reason as to why the accused will not produce the documents and the things required, quashed the general search warrant issued against the petitioner therein.
19. Likewise, in the matter of **Bimal Kanti Ghosh v. M.**

⁹ AIR 1966 Goa, Daman and Diu 23

¹⁰ 1978 Cri. L.J. 1591

Chandrasekhar Rao¹¹, the Orissa High Court has held that the Court before issuing a search warrant must have reasons to believe that the person to whom summons under Section 91 of the CrPC has been issued will not or would not produce document. The expression “reasons to believe” would mean that there must be some justifiable grounds for the Court to form that opinion and mere suspicion cannot take the place of justification to have the opinion.

20. In the matter of **Re: Mahomed Tahir**¹², the Bombay High Court has held that for a search warrant to be issued under the Code of Criminal Procedure it is not necessary that the proceedings should be actually pending before the Magistrate at the time he issues the warrant. A warrant may be issued for the purpose of an inquiry about to be made, provided it is an inquiry under the Code, but not for the purpose of an inquiry either being made or about to be made otherwise than under the Code.

21. Clause (c) of sub-section (1) of Section 93 of the CrPC employs the word “consider” which means to look at closely and carefully; to think or deliberate on; to take into account. (See **Oriental Bank of Commerce v. Sunder Lal Jain**¹³.) The dictionary meaning of the word “consider” is, “to think over”, “to regard as” or “deem to be”. (See **LIC v. A. Masilamani**¹⁴.) Likewise, in the matter of **Southern Railway v. T.R. Chellappan**¹⁵, the term “consider” has been held to be postulates consideration of all the aspects, the pros and cons of the matter after hearing the aggrieved person. The term

11 1986 Cri. L.J. 689

12 AIR 1934 Bom 104

13 (2008) 2 SCC 280

14 (2013) 6 SCC 530

15 (1976) 3 SCC 190, 201

“consider” means to think over; it connotes that there should be active application of mind. In other words, the term “consider” postulates consideration of all the relevant aspects of the matter. (See Bhikhubhai Vithlabhai Patel v. State of Gujarat¹⁶.) The dictionary meaning of the word “consider” is “to review attentively, to survey, examine, inspect (arch.), to look attentively, to contemplate mentally, to think over, mediate on, give heed to, take note of, to think deliberately, bethink oneself, to reflect” (vide Shorter oxford Dictionary). According to Words and Phrases – Permanent Edition Vol. 8-A “to consider” means to think with care. It is also mentioned that to “consider” is to fix the mind upon with a view to careful examination; to ponder; study; mediate upon, think or reflect with care. The words “considers it necessary” postulate that the authority concerned has thought over the matter deliberately and with care and it has found necessary as a result of such thinking to pass the order. (See Barium Chemicals Ltd. v. A.J Rana, Paragraph 14.)¹⁷

22. Reverting to the facts of the case in light of the principles of law laid down in the aforesaid judgments flowing from Section 93(1)(c) of the CrPC which is a *pari materia* provision to Section 96(1) of the old Code, 1898, it is quite vivid that the petitioner was arrested on 31-7-2019 in connection with Crime No.449/2019 registered at Police Station Civil Lines, Raipur, for the offence punishable under Sections 384, 120B & 201 read with Section 34 of the IPC, and during the continuance of investigation, an application for issuance of search warrant of the petitioner's locker No.G 4/28 at IDBI Bank,

16 (2008) 4 SCC 144

17 (1972) 1 SCC 240

Branch Aishwarya Residency, Telibandha, Raipur, was filed by the Station House Officer, Police Station Civil Lines, Raipur, before the Chief Judicial Magistrate, Raipur, on 18-9-2019 which states as under: -

थाना प्रभारी थाना सिविल लाईन रायपुर

क्र./थाना/सि.ला./राय/जअ-2326/19, दिनांक 18.09.19

प्रति,

माननीय मुख्य न्यायिक मजिस्ट्रेट,
रायपुर ।

विषय:-थाने के अप.क्रं. 449/19, धारा 384, 120 बी, 201, 34 भादवि के आरोपी फिरोज सिद्धीकी के आईडीबीआई बैंक शाखा ऐश्वर्या रेसीडेंसी तेलीबांधा रायपुर में संचालित लॉकर की तलाशी हेतु अनुमति प्रदाय करने बाबत ।

महोदय,

---000---

निवेदन है कि थाना के अप.क्रं. 449/19, धारा 384, 120 बी, 201, 34 भादवि में आरोपी फिरोज सिद्धीकी पिता कमालुद्दीन सिद्धीकी उम्र 52 वर्ष सा. ए-403, 404 चौथा तल श्रीराम हेरीटेज कटोरा तालाब थाना सिविल लाईन रायपुर को दिनांक 30.07.2019 को गिरफ्तार कर न्यायिक रिमाण्ड पर भेजा गया है । जो वर्तमान में केन्द्रीय जेल रायपुर में निरुद्ध है । प्रकरण के आरोपी फिरोज सिद्धीकी का आईडीबीआई बैंक शाखा, ऐश्वर्या रेसीडेंसी, तेलीबांधा, रायपुर में खाता एवं लॉकर संचालित होने की जानकारी प्राप्त होने पर शाखा प्रबंधक से जानकारी प्राप्त किया गया । शाखा प्रबंधक के द्वारा जानकारी दिया गया है, कि आरोपी फिरोज सिद्धीकी का उनके बैंक की शाखा में खाता एवं लॉकर संचालित है । फिरोज सिद्धीकी का लॉकर नं. जी 4/28 है । अपराध में साक्ष्य के संकलन में उक्त लॉकर की तलाशी लिया जाना आवश्यक है ।

अतः तलाशी हेतु वारंट जारी करने की कृपा करें । साथ ही अधीक्षक, केन्द्रीय जेल, रायपुर को आरोपी फिरोज सिद्धीकी को नियत तारीख समय को आईडीबीआई बैंक की तेलीबांधा शाखा में उपस्थित कराने हेतु निर्देशित करने का कष्ट करें ।

संलग्न:- बैंक से प्राप्त जानकारी एवं केश डायरी ।

सही/-

थाना प्रभारी
थाना सिविल लाईन
रायपुर

23. Thereafter, on 24-9-2019, final report / charge-sheet was submitted by the jurisdictional police for the aforesaid offence against the petitioner and thereafter, the application submitted by the State / prosecution came up for hearing before the jurisdictional criminal Court on 30-9-2019, that application was considered by the learned Chief Judicial Magistrate and the same was granted by order dated 30-9-2019. Operative portion of the order states as under: -

आवेदन पर सुना गया ।

प्रकरण का अवलोकन किया गया ।

प्रकरण के अवलोकन से दर्शित है कि थाना सिविल लाईन रायपुर द्वारा अभियुक्त फिरोज सिद्दीकी के विरुद्ध धारा-384 भा.दं.सं. के तहत अपराध पंजीबद्ध किया गया है । विवचेना क्रम में अन्य अभियुक्त रईस सिद्दीकी एवं अभियुक्त मोहन यादव उर्फ मोनू यादव को भी अपराध में संलिप्तता दर्शित होने से गिरफ्तार किया गया है । प्रकरण में अन्य अभियुक्त फकरू के फरार होने की दशा में उक्त अभियुक्त के मिलने पर पृथक से धारा-173(8) दं.प्र.सं. के तहत कार्यवाही की जाकर पूरक अभियोग पत्र पेश करना लेख करते हुए तीन अभियुक्तगण के विरुद्ध भारतीय दण्ड संहिता की धारा-384, 201, 120(बी), 34 के तहत अभियोग पत्र दिनांक-25.09.2019 को प्रस्तुत किया गया है । अभियोग पत्र प्रस्तुत करने के पूर्व रिमाण्ड स्तर पर दिनांक-20.09.2019 को थाना सिविल लाईन रायपुर द्वारा यह आवेदन पत्र प्रस्तुत कर अभियुक्त फिरोज सिद्दीकी का बैंक खाता एवं लॉकर आई.डी.बी.आई. बैंक, शाखा ऐश्वर्या रेसीडेंसी तेलीबांध, रायपुर में होना व्यक्त किया गया है । अभियुक्त फिरोज सिद्दीकी का उक्त बैंक में लॉकर क्रमांक जी 4/28 होना भी व्यक्त किया गया है । अपराध में साक्ष्य के संकलन के लिए उक्त लॉकर की तलाशी लेने के संबंध में तलाशी वारण्ट जारी करने एवं अभियुक्त फिरोज सिद्दीकी को आई.डी.बी.आई. बैंक की तेलीबांधा शाखा में उपस्थित कराने हेतु यह आवेदन पत्र प्रस्तुत किया गया है । थाना - सिविल लाईन रायपुर द्वारा यह आवेदन पत्र - रिमाण्ड स्तर पर प्रस्तुत किया गया है, जिसका विरोध करते हुए अभियुक्त फिरोज सिद्दीकी के अधिवक्ता द्वारा जवाब पेश किया गया है । अपराध के साक्ष्य के संकलन हेतु अभियुक्त फिरोज सिद्दीकी के आई.डी.बी.आई. बैंक शाखा तेलीबांधा के लॉकर क्रमांक 4/28 की तलाशी वारण्ट जारी किया जाना उचित प्रकट होता है । फलस्वरूप थाना सिविल लाईन द्वारा प्रस्तुत आवेदन पत्र विचार वाद निम्न शर्तों के अधीन स्वीकार किया जाता है:-

1- अभियुक्त फिरोज सिद्दीकी के आई.डी.बी.आई. बैंक शाखा तेलीबांधा के लॉकर क्रमांक जी 4/28 की तलाशी के दौरान उसका वीडियोग्राफी कराया जायेगा ।

2- लॉकर की तलाशी के संबंध में गवाहों के समक्ष पंचनामा तैयार किया जायेगा ।

3. लॉकर में उपलब्ध सामाग्री में से मात्र इस अपराध से संबंधित साक्ष्य में उपयोग में लाये जाने वाले वस्तु/सामाग्री को जप्त किया जाकर शेष सामाग्री को यथावत उसी लॉकर में रखा जायेगा ।

तदनुसार अभियुक्त फिरोज सिद्दीकी के आई.डी.बी.आई. बैंक शाखा तेलीबांधा के लॉकर क्रमांक जी 4/28 की तलाशी लिये जाने हेतु तलाशी वारण्ट जारी किया जावे । साथ ही, अभियुक्त फिरोज सिद्दीकी को आई.डी.बी.आई. बैंक शाखा तेलीबांधा के लॉकर क्रमांक जी 4/28 की तलाशी लिये हेतु अभियुक्त फिरोज सिद्दीकी को केन्द्रीय जेल रायपुर से आई.डी.बी.आई. बैंक शाखा तेलीबांधा रायपुर में जेल नियमावली अनुसार समुचित सुरक्षा सहित उपस्थित रखने हेतु अधीक्षक केन्द्रीय जेल रायपुर को ज्ञापन प्रेषित किया जावे ।

24. A careful perusal of the above-stated reproduced application and the order passed on that application would show that the jurisdictional police during the course of investigation sought general warrant for searching the locker of the petitioner for collection of evidence of the alleged offences which the learned Chief Judicial Magistrate accepted as it is by holding that for collection of evidence of the offence or crime, issuance of search-warrant appears to be appropriate. It appears that on mere asking by the jurisdictional police, the search-warrant has been issued without any material or justification for issuance of such a warrant for search. In **V.S. Kuttan Pillai** (supra), Their Lordships of the Supreme Court have clearly held that issuance of a search-warrant is a serious matter and it would be advisable not to dispose of an application for search warrant in a mechanical way by a laconic order. On the basis of mere suspicion or allegation raised by the respondent / State Police, warrant under Section 93(1)(c) of the CrPC cannot be issued. The learned Chief Judicial Magistrate ought to have recorded some justifiable reasons to form such an opinion for issuance of search-warrant of locker held by the

petitioner. The police in their application have not even expressed suspicion in the application to have the search-warrant issued against the locker of the petitioner except saying that for collection of evidence of the offence, issuance of search-warrant is necessary or not even produced any material for filing such an application which the Magistrate has accepted and which smacks clear non-application of mind.

25. In the light of the above-stated analysis, if the facts of the present case and the impugned order are examined, it is quite vivid that the order of the learned Magistrate directing issuance of general warrant of the search of locker of the petitioner, smacks complete non-application of mind; it has been passed only on the basis of the application made by the jurisdictional police to collect evidence. It is bereft of any reason demonstrating as to why issuance of search-warrant of the petitioner's locker is necessary. The learned Magistrate has failed to apply its mind while directing for drastic action of search of the petitioner's locker in an application made during the course of investigation.
26. As a fallout and consequence of the above-stated discussion, the order dated 30-9-2019 passed by the learned Chief Judicial Magistrate, Raipur, confirmed by the revisional Court, is hereby set-aside. However, this will not bar the respondent/State to make a duly constituted application for issuance of search-warrant against the petitioner, in accordance with law.
27. The petition is allowed to the extent indicated herein-above.

Sd/-
(Sanjay K. Agrawal)
Judge