

**IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH**

CRM-M-44253-2016 (O&M)

Reserved on : 17.07.2019

Pronounced on : 18.07.2019

Ramesh Khatri

...Petitioner

Versus

State of Haryana and another

...Respondents

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present:- Ms. Priyanka Dalal, Advocate (Legal Aid Counsel)
for the petitioner.

Mr. Deepak Grewal, DAG, Haryana.

Mr. Sushil Jain, Advocate
for respondent No. 2.

ARVIND SINGH SANGWAN, J.

Prayer in the present petition, filed under Section 482 Cr.P.C., is for quashing the order dated 17.05.2016, passed by the trial Court in case FIR No. 295/2015, under Sections 323, 506, 341 and 509 of the IPC, registered at Police Station City Sonipat, vide which, an application, filed by the petitioner, under Section 91 Cr.P.C. for production of some documents and CCTV footage, was dismissed; as well as the order dated 04.11.2016, passed by the revisional Court, dismissing the revision filed by the petitioner.

The present petition was initially filed and represented in person, however, later on, a legal aid counsel was provided to the petitioner to assist the Court on his behalf. ;

Brief facts of the case are that the present FIR was registered

against the petitioner for wrongfully restraining the procession of the Private Schools Association, which was going to meet Deputy Commissioner, Sonipat on 21.05.2015 in order to give a memorandum against the damage caused by the guardians in Spring Birds School, Sonipat. It was also stated in the FIR that the petitioner used indecent language and gave beatings to the complainant i.e. Principal of Shambu Dayal Modern School, Sonipat and also extended threat to the members of the Private Schools Association.

The police, after completion of the investigation, submitted a challan against the petitioner and at the stage when the case was fixed for framing of charge, the petitioner moved an application under Section 91 Cr.P.C. for production of documents/CCTV footage as detailed below:

- (i) CCTV Camera Footage dated 21.05.2015 from 6.00 AM to 27.05.2015 6.00 PM from Mr. R.K. Sharma, Principal, Shambhu Dayal Modern School, Sonapat.
- (ii) CCTV Footage of the office of SDO (Civil) Sonapat from 21.5.2015 to 27.05.2015.
- (iii) Staff attendance register of Shambhu Dayal Modern School, Sonapat w.e.f. 12.06.2014 to 12.10.2015 pertaining to the applicant/accused and adjustment register from the school.
- (iv) Service book along with ACR of the applicant/accused from the office of Shambhu Dayal Modern School, Sonapat through its Administrator-SDM, Sonapat.
- (v) File regarding departmental inquiry in respect of incident dated 21.05.2015 in connection with the FIR No. 295 dated 27.05.2015, u/s 294, 323, 341 and 506 IPC, P.S.City Sonapat, conducted by Sub Divisional Magistrate-cum-Administrator, Shambhu Dayal

Modern School, Sonapat vide which the applicant was suspended on 05.06.2015 and terminated by the principal from the post with immediate effect vide termination letter No. 8817/15 dated 12.10.2015.

(vi) Complaint made by the complainant Ramesh Khatri to Superintendent of Police, Sonapat, District Magistrate, Sonapat, CM Window/N/2015/60581, Sub Divisional Magistrate, Sonapat and Additional Deputy Commissioner dated 21.05.2015 against Principal Sh. R.K.Sharma, Ms. Neetu Arora and Police officials.

(vii) Complaint made by complainant to I.G. Police Rohtak Range, Rohtak dated 28.08.2015, 11.08.2015.

(viii) Copy of permission regarding raising procession under Section 134A of the RTE Act, on 21.05.2015 against the government i.e. to gherao the Deputy Commissioner, Sonapat from S.D.M.-cum-Administrator of Shambhu Dayal Modern School, Sonapat.

(ix) Record of case titled State versus Ramesh Khatri.

The trial Court, thereafter, vide order dated 17.05.2016, dismissed the aforesaid application by passing the following order:

“5. After hearing the contentions of learned APP for the State as well as accused and perusing the case file very carefully, it is noticed that the challan under Section 173 Cr.P.C. was filed by the prosecution against accused Ramesh Khatri on 15.06.2015. The allegations against the accused Ramesh Khatri are that he on 21.05.2015 at about 9.30 a.m., wrongfully restrained the procession of Private School Association, which was going to meet Deputy Commissioner, Sonapat in order to give memorandum against damage caused by guardians in Spring Bird School, Sonapat in respect of admission in

Schools as per Section 134A of RTI Act. The allegations levelled against accused Ramesh Khatri are also for using indecent language and causing beating to the complainant i.e. Principal of Shabmu Dayal Modern School, Sonapat and also threatening the members of the School Association. The accused Ramesh Khatri has filed the present application under Section 91 of Cr.P.C., for production of aforesaid documents as well as CCTV Footage in order to show that he was not present at the time of alleged occurrence. A perusal of the application filed by accused Ramesh Khatri shows that he has not mentioned in the said application that he was not present at the time of alleged occurrence. The accused has simply mentioned in his application that the aforesaid documents and CCTV Footage be summoned from the concerned office/department in the interest of justice.

6. Moreover, the Hon'ble Supreme Court of India in case law cited in "State of Orrisa vs. Debendra Nath Padhi, (2005) I SCC 568, has held that at the time of framing of charge or taking cognizance, the accused has no right to produce any material. It was also held in the aforesaid case law by Hon'ble Apex Court that any document or other thing envisaged under the provision of Section 91 Cr.P.C. 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. It was further held in the aforesaid case law by the Hon'ble Apex Court that necessity of desirability would have to be seen with reference to the stage when a prayer is made for the production and 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 charge would not arise since defence of the accused is not relevant at that stage. It was further held

in the aforesaid case law by the Hon'ble Apex Court that in so far as accused is concerned his entitlement to seek an order under Section 91 of Cr.P.C., would not come till the stage of defence. The accused Ramesh Khatri has filed the present application under Section 91 Cr.P.C., on 09.03.2016, when the case was fixed for arguments on framing of charge. Hence, the accused has no right to move the present application under Section 91 of Cr.P.C., in view of the law laid down by the Hon'ble Apex Court.

7. Thus, in view of the aforesaid reasoning and discussion, the present application under Section 91 of Cr.P.C., filed by the accused Ramesh Khatri fails and the same is hereby dismissed.”

The petitioner, thereafter, preferred a revision before the Court of Sessions, which too was dismissed, vide impugned order dated 04.11.2016. The operative part of the order reads as under:

“It is admitted that the case was fixed for argument on charge when the present application was filed by the petitioner. It has held by the **Hon'ble Supreme Court in case of State of Orissa Vs. Debendra Nath Padhi (2005) (1) SCC 568** that at the time of framing of charge or taking cognizance, the accused has no right to produce any material. It was further held that the question of invoking Section 91 at the initial stage of framing of charge would not arise since defence of the accused is not relevant at that stage. It was further held that in so far as accused-applicant is concerned, his entitlement to seek an order under Section 91 of Cr.P.C. would not come till the stage of defence.

The accused has sought production of CCTV footage and certain documents before framing of

charge and has argued that with the passage of time the above said evidence may disappear or may be tampered with. The police report was called by this Court and the Investigating Officer reported that the Principal of this School had reported that CCTV camera was not in working condition during the period from 21.05.2015 to 27.05.2015. The petitioner may obtain the certified copies of the documents in question and may produce the same at the time of his evidence if the same are relevant for the decision of this case. In the considered opinion of this Court there is no illegality or infirmity in the impugned order passed by the trial Court. Hence, Revision petition is dismissed. Trial Court file along with copy of this judgment be sent to the trial Court. File be consigned to the record room after due compliance.”

Learned counsel for the petitioner has argued that the courts below have wrongly observed that the case is fixed for framing of charge, therefore, at that state, the aforesaid application cannot be entertained as the petitioner can produce the desired documents/CCTV footage while leading his defence evidence.

Learned counsel for the petitioner has relied upon ***V. K. Shashikala vs. State Rep. by Superintendent, 2013 (1) R.C.R. (Criminal) 244*** to submit that it is held by Hon'ble Supreme Court that an accused cannot be denied access to the documents in respect of which a prayer is made for exhibiting the documents which are not on record while recording the statement of the accused under Section 313 Cr.P.C.

In reply, learned State counsel, assisted by learned counsel for respondent No. 2/complainant, has opposed the prayer of the petitioner on the ground that the courts below have rightly held that at the time of

framing of charge or taking cognizance, the accused has no right to produce any evidence. It is also argued that the Investigating Officer has made a report that the CCTV camera of the school was not working during the period from 21.05.2015 to 27.05.2015 and the petitioner can obtain the documents referred to in the application under the RTI Act and can put the same to the prosecution witnesses at the relevant time.

Learned counsel for the complainant has argued that at the relevant, the government has appointed an administrator of the school and, therefore, the complainant had no control over the CCTV camera, installed in the school, which as per prosecution was not found to be in working condition.

Learned counsel for the complainant has further argued that in application under Section 91 Cr.P.C., there is no reference as to how various documents, required by the petitioner, which are relating to the service book, departmental inquiries, attendance register, complaints given against the principal of the school etc., have any bearing on the present case as incident pertains to beating the principal/complainant. Therefore, the said application was moved just to mislead the Court.

After hearing learned counsel for the parties, I find no ground to interfere in the findings recorded by the courts below.

The judgment rendered by Hon'ble Supreme Court in ***V. K. Shashikala's case (supra)*** deals with the right of an accused to produce documents at the time of recording of his statement under Section 313 Cr.P.C., whereas in the instant case, the case is still at the stage of framing of charge and, therefore, the trial Court is not to look into the defence set up

by the petitioner at this stage, which the petitioner can lead only during trial at appropriate stage. Moreover, in application, except for CCTV recording, there is no reference to relate the other documents in the alleged incident.

Therefore, finding no illegality in the impugned orders, passed by the courts below, the present petition is hereby dismissed.

18.07.2019

Waseem Ansari

(ARVIND SINGH SANGWAN)

JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>