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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **CRL.M.C. 829/2019 & CRL.M.A.3344/2019**

SHRI TIPPINEES MALATHU JOSEPH Petitioner

Through: Mr. Ashwin Vaish, Mr. Vinod
Pandey, Mr. V. Thomas, Mr.
Kunal Awana, Advs.

versus

STATE Respondent

Through: Mr.Panna Lal Sharma, APP
with SI Seema Bhati, PS N.A.
Nayar, Delhi

CORAM:

HON'BLE MR. JUSTICE CHANDER SHEKHAR

ORDER

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14.02.2019

CRL.M.A. 3344/2019 (for exemption)

Allowed, subject to all just exceptions. Application stands disposed of.

CRL.M.C. 829/2019

1. The petitioner has filed the present petition under Section 482 read with Section 91 of the Code of Criminal Procedure, 1973 (Cr.P.C.) for setting aside the order dated 19.1.2019 passed in FIR No.74/2018 dated 15.2.2018 under Section 376 of the Indian Penal Code, 1860 (IPC) and Section 6 of the Protection of Children from Sexual Offences Act, 2012 (POCSO Act), registered at Police Station, New Ashok Nagar, in Sessions Case No. 905/2018.

2. Learned counsel for the petitioner submitted that during the course of cross-examination PW1 complainant, admitted that in January, 2018, she had become extremely violent and had started

hitting her mother as well as her brother and had also tried to assault them with a sharp instrument consequently her mother sustained injury and the neighbours were called to physically restrain her. She also voluntarily submitted that she was under depression at that time. She was not given any medication. PW-1 has also stated in her cross-examination that at one point of time, she put herself on fire. During the period when her father was in Kerala, i.e. after June, 2017, she had repeated incidents of violence, till the registration of FIR.

3. Learned counsel for the petitioner further submitted that in the light of testimony of PW-1 wherein it is admitted by her that she visited Holy Family Hospital in April, 2018, but denies the fact that she suffers from Attention Deficit Disorder read as ADD and is on anti-psychotic drugs, interest of justice demands, that the absolute truth is revealed by production of the following documents, i.e. Initial Assessment Sheet, Casualty Card and MLC Form, pertaining to MLC No.C18.014273 F15 dated 25.04.2018 in the name Tara Tippinees, the same being necessary and desirable. In case the medical records pertaining to PW-1 are produced, the same would reveal that she was medically examined on 25.04.2018, at 3:55 p.m. with history of ingesting anti-psychotic medicines and that she suffers from, ADD.

4. Hence, the petitioner moved an application under Section 91 of the Cr.P.C. inter alia seeking to direct the Holy Family Hospital, Okhla Road, Okhla, New Delhi-110025, Department of Emergency Medicine to produce Initial Assessment Sheet, Casualty Card and MLC Form pertaining to MLC No. C18.014273 F15 dated 25.04.2018 in the name of Tara Tippinees.

5. In the light of the submissions of the learned counsel for the petitioner, it would be appropriate to reproduce the impugned order wherein the Trial Court has held that:

“In the present application, the record sought to be summoned is from Holy Family Hospital where victim is alleged to have taken treatment for Attention Deficit Disorder in the year 2018. It is further stated that victim in her testimony has completely denied this fact of having treatment for Attention Deficit Disorder from the aforementioned hospital and as such, it becomes necessary to produce this document to counter the denial of the victim and to prove the conduct of victim which is full of doubt and lacks credibility.

The case law relied by learned defence counsel does not inspire confidence of this Court in view of the fact that the document sought to be summoned pertains to the year 2018 whereas the alleged offence is said to have been committed during the period 2014-2017.

Further, I am in agreement with the submissions of learned State Counsel that that the record sought to be summoned can be produced during the defence evidence.

In view of the facts and circumstances of the case, this court holds that the record sought to be summoned is not necessary or desirable and as such, this court cannot exercise its power u/s 91 Cr.P.C.

Furthermore, the accused will get opportunity to produce his defence at the appropriate stage of defence evidence and at this stage, Court cannot allowed to be used for this purpose by exercising its power u/s 91 Cr.P.C.”

6. There is no doubt that the powers conferred under Section 91 are enabling in nature, aimed at arming the court or any officer-in-charge of a Police Station concerned, to enforce and to ensure the production of any document or other things, “necessary or desirable”,

for the purposes of any investigation, inquiry, trial or other proceedings under the Code, by issuing a summons or a written order to those in possession of such material. The Courts have time and again held that the language of section 91 would, no doubt indicate the width of the powers to be unlimited but the in-built limitation inherent therein takes its colour and shape from the stage or point of time of its exercise, commensurately with the nature of proceedings as also the compulsions of necessity and desirability, to fulfill the task or achieve the object. The *sine qua non* of an order under this section is a consideration by the court that the production of the documents concerned is desirable and necessary for the purposes of the trial. Power of court under section 91 Cr.P.C. for summoning and production of documents is one of absolute discretion. The only condition for exercise of such discretion is that the court must be of the opinion that the production of document is necessary or desirable.

7. The jurisdiction under section 91 of the Code when invoked by accused, the necessity and desirability would have to be seen by the court in the context of the purpose-investigation, inquiry, trial or other proceedings under the Code.

8. Learned counsel for the petitioner submitted that the documents are necessary for the cross-examination of the PW-1. However, perusal of application demonstrates that the only prayer in the application has been made admittedly for the production of the record from the Holy Family Hospital, Okhla Road, Okhla, New Delhi-110025. No such prayer has been made by the petitioner in the application for confronting these documents for the purpose of the

cross-examination of the complainant.

9. Even otherwise, the learned counsel for the petitioner admitted that the offence is said to have been committed during the period 2014-2017 and the documents sought to be summoned pertain to the year 2018. There is nothing on record which connects the documents sought to be summoned with the period during which the alleged offence is said to have been committed, i.e. 2014-2017.

10. Learned counsel for the petitioner, now at this stage, submitted that he wants to show the mental capacity of the petitioner by calling and summoning the aforesaid record. However the petitioner, at this stage, cannot ask or cannot be allowed to summon such a record. The petitioner, in case wants to summon such a record, he can call or summon the same during the defence evidence, as per law only.

11. In my view, the Trial Court has correctly applied its judicial mind while passing the impugned order holding that the record sought to be summoned is neither necessary nor desirable as such, the Trial Court cannot exercise its power u/s 91 of the Cr.P.C. and also, that the accused would get an opportunity to produce his defence at the appropriate stage of defence evidence and at this stage, the Court cannot be allowed to be used for this purpose by exercising its power under Section 91 of the Cr.P.C.

12. In view of the aforesaid, I don't find any flaw or infirmity in the impugned order of the Trial Court.

13. The petition is, accordingly, dismissed.

CHANDER SHEKHAR, J

FEBRUARY 14, 2019/rk