

HIGH COURT OF CHHATTISGARH AT BILASPUR**CRMP No. 292 of 2020**

1. Kashyap Kumar Patel, S/o Shri Pradeep Kumar Patel, Aged 35 years, R/o In front of Lucky Typing, Kudwa Line, Ganj Ward, District Gondia, Maharashtra.
2. Yashwant Narayan Rangari S/o Late Narayan Rangari, Aged 43 years, R/o Barabhati, P.S. Arjuni, District Gondia, Maharashtra.
3. Ravindra Parvate, S/o Rusi Parvate, Aged about 28 years, R/o Tadgaon, P.S. Arjuni, District Gondia, Maharashtra.

---Petitioners**Versus**

State of Chhattisgarh, Through Sub-Divisional Officer (P), Police Station Koyalibeda Tahsil Antagarh, District Kanker, Chhattisgarh.

--- Respondent

For Petitioners :- Mr. Sidharth Shukla, Advocate
 For State :- Mr. Rahul Jha, Government Advocate

Hon'ble Shri Justice Sanjay K. Agrawal**Order on Board****03/02/2020**

1. Petitioners herein challenge the legality, validity and correctness of the impugned order dated 06/01/2020 by which learned Special Judge (N.I.A. Act) has rejected petitioners' application for summoning to produce the preliminary report dated 26/05/2017 prepared by the Border Security Force (BSF).

2.Mr. Siddharth Shukla, learned counsel for the petitioners would submit that the document claimed by the petitioners i.e. preliminary report submitted by the Border Security Force on 26/05/2017 is extremely necessary for the just and proper disposal of the criminal case filed against the petitioners as they have already been charge-sheeted for the offence punishable under Sections 17, 20, 40 and 40(2) of Unlawful Activities (Prevention) Act, 1967 along with Sections 21(12)/177, 105/177, 191/177, 184 of the Motor Vehicle Act, 1988 and they are being tried for the aforesaid offences by the special Court. The said document is of sterling quality which can prove that the petitioners are innocent and have been falsely implicated in the crime in question, therefore, it needs to be produced before the Court before framing of charge against the present petitioners in view of the judgment rendered by the Supreme Court in the matter of **State of Orissa v. Debendra Nath Padhi**¹. He further relies upon Section 91 of the Cr.P.C. and submits that the document so claimed by the petitioners is absolutely necessary to prevent the abuse of process of the Court and

1 (2005) 1 SCC 568

accordingly, it may be directed to summon the respondent in order to produce the said document.

3. I have heard learned counsel for the petitioner at length and perused the record carefully.

4. Section 91 of the Cr.P.C. provides as under :-

"91. Summons to produce document or other thing.—(1) Whenever any Court or any officer in charge of a police station considers that the production of any document or other thing is necessary or desirable for the purposes of any investigation, inquiry, trial or other proceeding under this Code by or before such Court or officer, such Court may issue a summons, or such officer a written order, to the person in whose possession or power such document or thing is believed to be, requiring him to attend and produce it, or to produce it, at the time and place stated in the summons or order.

(2) Any person required under this section merely to produce a document or other thing shall be deemed to have complied with the requisition if he causes such document or thing to be produced instead of attending personally to produce the same.

(3) Nothing in this section shall be deemed—

(a) to affect, sections 123 and 124 of the Indian Evidence Act, 1872 (1 of 1872), or the Bankers' Books Evidence Act, 1891 (13 of 1891) or

(b) to apply to a letter, postcard, telegram or other document or any parcel or thing in the custody of the postal or telegraph authority."

5. A careful perusal of the aforesaid provision would show that the power to issue a summons for the production of a document or a thing is to be exercised whenever the Court considers that its

production is necessary or desirable for the purposes of investigation, inquiry, trial or other proceeding. In other words, the power is available to the Court at every stage of proceedings contemplated under the Code. It has to be noticed that this power is available not only to the Court but also to any officer-in-charge of a police station and the only condition for the exercise of the power is that the production of the document or the thing should be necessary or desirable for purposes of the proceedings and the only restriction is that contained under sub-section (3) which provides that the provisions of the Section shall not affect Sections 123 and 124 of the Indian Evidence Act or apply to articles in the custody of the Postal or Telegraph authorities.

6. The Supreme Court has an occasion to consider the scope and ambit of Section 91 of the CrPC in a three-Bench judgment in Debendra Nath Padhi's case (supra) in which Their Lordships of the Supreme Court have held that Section 91 of the CrPC does not confer right on the accused to seek production of document to prove his defence at the stage of framing the charge and observed as under: -

"25. Any document or other thing 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 his possession to prove his defence. Section 91 presupposes that when the document is not produced process may be initiated to compel production thereof. 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. In so far 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 his possession to prove his defence. Section 91 presupposes that when the document is not produced process may be initiated to compel production thereof. such a prayer for summoning and production is made and the party who makes it whether police or accused. 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 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."

7. Their Lordships further considered the matter with reference to its earlier decision in the matter of Om Parkash Sharma v. CBI² and held as under: -

"28. We are of the view that 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. It would also have to be borne in mind that law does not permit a roving or fishing inquiry."

8. The principle of law laid down in Debendra Nath Padhi's case (supra) was followed with approval by their Lordships in the matter of V.L.S. Finance Limited v. S.P. Gupta and another³. Their Lordships agreed with the proposition of law laid down in Debendra Nath Padhi's case (supra). (See paragraph 49 of that report.)

9. Very recently, in Nitya Dharmananda alias K. Lenin (supra), Their Lordships followed the principle of law laid down in Debendra Nath Padhi's case (supra) and held that defence has no right to invoke Section 91 of the CrPC dehors the

2(2000) 5 SCC 679

3(2016) 3 SCC 736

satisfaction of the Court, at the stage of charge and observed as under: -

"8. Thus, it is clear that while ordinarily the Court has to proceed on the basis of material produced with the charge-sheet for dealing with the issue of charge but if the court is satisfied that there is material of sterling quality which has been withheld by the investigator/ prosecutor, the court is not debarred from summoning or relying upon the same even if such document is not a part of the charge-sheet. It does not mean that the defence has a right to invoke Section 91 CrPC de hors the satisfaction of the court, at the stage of charge."

10. Reverting back to the facts of the present case, considering the submission made by learned counsel for the petitioners, the material available on record and the finding recorded by learned special Judge, I do not consider it a fit case for invoking paragraph 29 of Debendra Nath Padhi's case (supra) to the facts of the present case. I do not find any illegality or perversity in the finding recorded by learned Special Judge in the impugned order.

11. This petition under Section 482 of the Cr.P.C. is accordingly dismissed *in limine*. No cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge