

**AFR**

**HIGH COURT OF CHHATTISGARH, BILASPUR**

**CR.R. No. 166 of 2020**

Prakash Gupta, S/o. Late Biharilal, aged about 38 years, R/o. CIMS Chowk Sadar Bazar, Police Station - City Kotwali Bilaspur, District Bilaspur, Chhattisgarh.

**---- Applicant**

***Versus***

State of Chhattisgarh, Through : Police Station City Kotwali Bilaspur, District Bilaspur, Chhattisgarh.

**-----Respondent**

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|----------------------|----------------------------------------------------------------------------|
| For Petitioner       | : Mr. Ashish Shukla, Advocate                                              |
| For Respondent/State | : Mr. Devendra Pratap Singh, Dy.A.G.                                       |
| For Objector         | : Mrs. Renu Kochar & Mr. Rahil Arun Kochar,<br>& Mr. Anil Gupta, Advocates |

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**Hon'ble Shri Justice Rajendra Chandra Singh Samant**

**Order On Board**

**12/03/2020**

1. This petition has been brought against the order dated 20.01.2020, passed by the learned 2<sup>nd</sup> Additional Sessions Judge, Bilaspur, in Sessions Trial No.179 of 2019, in which, the application filed by the victim for taking documents in the prosecution case has been allowed.
2. It is submitted by the learned counsel for the applicant that the complainant in any case or the counsel engaged by him have no entitlement to conduct prosecution in session trial under Section 225 of the Cr.P.C. It is the public prosecutor, who shall open the case and Section 301 Sub-section (1) of Cr.P.C. also provides for the same. It is only in Sub-section (2) of Section 301 of Cr.P.C.,

the pleader engaged by a private person can assist the public prosecutor and he shall act only under the directions of the public prosecutor and may, if the Court permits, submit written arguments after the evidence is closed in the case. It is further submitted that this provision nowhere provides that a counsel engaged by private person is also competent to file documents in support of the prosecution case, which were earlier not filed along with the charge-sheet. Therefore, there is no permission under the Code to supplement the prosecution case by filing an additional documents. Reliance has been placed on the judgment of Supreme Court in case of ***Shiv Kumar Vs. Hukam Chand & Another***, reported in ***(1997) 7 SCC 468*** and the judgment in case of ***Rekha Murarka Vs. State of West Bengal & Anr.***, reported in ***(2020) 1 SCC (Cri) 496***, it is submitted that the learned trial Court has committed grave error in allowing the application for production of documents. Therefore, this revision petition be allowed and the impugned order be interfered with.

3. State counsel opposes the petition and the submission made in this respect. It is submitted that no error has been committed by the learned Court below.
4. Counsel for the objector – Maya Gupta, who has filed application under Section 301(2) of Cr.P.C. seeking permission to assist the prosecution, who is the person on whose application, the learned Court below has passed the impugned order, submits that there is no error committed in passing the impugned order. The Court

has wide powers under Section 91 of Cr.P.C. and also under Section 311 of Cr.P.C. for calling of additional evidence in the trial, which includes production of documents. Relying on the judgment of High Court of Rajasthan in case of **Prakash Chand Baid Vs. State of Rajasthan & Anr.**, in S.B. Criminal Misc. Petition No. 851 of 2014, decided on 05.06.2015, in which, the complainant had presented some documents at the time of his examination and the same were exhibited also. It was held that there is wide discretion conferred upon the Court under Section 91 of Cr.P.C. where such documents can be admitted in the trial and the Court is also similarly empowered under Section 311 of Cr.P.C. The goal of the criminal Court is to discover the truth in the trial and it was held that no perversity, illegality has been committed.

5. It is submitted that in case of **Nitya Dharmananda @ K. Lenin & Anr. Vs. Sri Gopal Sheelum Reddy also known as Nithya Bhaktananda & Anr.**, reported in **2018 SAR (Criminal) 374**, the Supreme Court has held that the trial Court has power under Section 91 of the Cr.P.C. to get produced the material in the trial, which was not produced with the charge-sheet. Therefore, it is submitted that the order of taking documents on record is sustainable. It is further submitted that revision petition filed is not maintainable, for the reason that in case of **Sethuraman Vs. Rajamanickam**, reported in **(2009) 5 SCC 153**, the Supreme Court has held that the order passed under Section 91 and 311

of Cr.P.C. are of interlocutory in nature, therefore, no revision shall be maintainable.

6. In reply, it is submitted by the counsel for the petitioner that the revision petition is maintainable because the application allowed by the trial Court has attained finality and the documents presented have become the part of the prosecution case. Therefore, this order passed is totally perverse, which is unsustainable. Hence, interference is prayed for.
7. I have heard the learned counsel for the parties and perused the documents placed on record.
8. The victim of the case Maya Gupta filed an application making a prayer that the counsel appointed by her be allowed to present her case and the documents filed along with the application be taken on record. The learned Court below has allowed the prayer in the application directing the counsel of the complainant to assist the prosecutor and taking the documents on record, it was observed that the documents are with respect to the medical treatment of the victim, which may be of help while determining the case.
9. Now the question is whether the Court has such power to admit the documents filed by the victim subsequent to filing of the charge-sheet.
10. Section 91 of Criminal Procedure Code is relevant in this regard, which is as follows:-

**“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.”

11. The starting word of Section 91 of Cr.P.C. mentions that whenever any Court considers, that the production of documents or other thing is necessary or desirable for the purposes of the trial before such Court, then the Court has power to get such documents produced before it. The initial words, when the Court forms opinion, is one part of the provision and subsequent part of

the provision mentions the powers of the Court for summoning and production of the documents. In the particular case, the trial Court has formed its opinion that documents presented by the complainant appear to be necessary for determination of the case and as the documents were already filed, therefore, the Court was not required to exercise the power for getting the documents produced. The power of the Court under Section 311 of Cr.P.C. is with respect to the examination of any person as witness, who is present in the Court, though not listed witness of the prosecution or recall or re-examination of any person already examined. This empowerment under the Code by the provision only goes to show that the trial Court has been given discretion to take approach for production of evidence and documents, which are not present in the case of prosecution and the very purpose of the same is only to explore the truth in the case, which may come to help in arriving at a just decision. ***Prakash Chand Baid Vs. State of Rajasthan (supra)*** and ***Nitya Dharmananda @ K. Lenin & Anr. Vs. Sri Gopal Sheelum Reddy (supra)*** are the same preposition. Therefore, on the basis of this observation, I am of this view that the learned trial Court has not committed any error and under no circumstance it can be said that the order passed is perverse in any sense.

12. The Investigating Officer had made attempt to collect this documents regarding which, one memo is present in the charge-sheet. Copy of the same has been produced for perusal of this

Court. Therefore, it appears that the documents, which has been produced by the complainant were desired in the investigation, but without collecting the same, the charge-sheet has been filed. Hence, after over all consideration, I am of this view that the order impugned does not suffer from any infirmity, which need no interference. Hence, this petition is dismissed.

**Sd/-**  
**(Rajendra Chandra Singh Samant)**  
Judge

Balram