

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.646/2019

DAYA SHANKAR RANDHOUR SINGH ...PETITIONER

Versus

UNION OF INDIA & ANR RESPONDENTS.

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Mr.Ravi L. Gurnani, Advocate for the petitioner.

Mr. H.S. Venegaonkar, Advocate for respondent no.1.

Mr.AR Kapadnis, APP for the Respondent/State.

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CORAM : A.M.BADAR J.

DATED : 27TH JANUARY 2020

ORAL JUDGMENT:

1 Heard. Rule. Heard finally.

2. By this petition, the petitioner/accused in C.B.I. Special Case No.69/2014, for offence punishable u/s 13(2) r/w 13(1)(e)

of the Prevention of Corruption Act 1988 and under Section 109 of the Indian Penal Code, is challenging order below Exhibit 60 passed by the learned Special Judge, C.B.I., Mumbai on 3.1.2019 rejecting his application-Exhibit 60. By the said application(Exhibit 60) before learned trial court, the petitioner herein had prayed for directing the prosecuting agency to produce attested copies of Notification/order issued under Sub-section(1) of Section 2 of Delhi Special Police Establishment Act, 1946 (to be referred to as ‘D.S.P.E.Act for brevity) constituting a force to be called ‘Delhi Special Police Establishment’ and Official Gazette having published the same. Attested copies of Notifications/orders/instructions issued under Sub-section (2) and (3) of section 2 and 3 of the D.S.P.E. Act, 1946 were also sought.

3. Heard learned counsel for the petitioner/accused. Learned counsel for the petitioner/accused argued that the word employed by Section 2 of the D.S.P.E. Act, 1946 is

‘may’ and as such onus is on the prosecuting agency to make out a clear case that Special Police Force called ‘Delhi Special Police Establishment’ is constituted by the Union of India. This, according to the learned counsel, goes to the root of the case and therefore, such document was necessary. Learned counsel further argued that in some other cases on similar application, learned trial court had directed production of documents. However, in the instant case, request so made is rejected with reasons which are not tenable in law. Learned counsel argued that not a single adjournment was sought by the petitioner/accused before the trial court. If it is seen that ‘Delhi Special Police Establishment’ is not established then the prosecution fails. Therefore, in his submissions, it is necessary to have the said document on record.

4. Mr. Venegaonkar, the learned counsel for the prosecuting agency argued that what was sought by the application at

Exhibit 60 has no relevance to the case in hand which is, being tried at Maharashtra State and not at Union territory. He has drawn my attention to the Government Resolution dated 1.4.1963 constituting C.B.I. as Delhi Special Police Establishment'. He further drew my attention to the annexures to the said Notification empowering Delhi Special Police Establishment to carry out investigation of cases in which, public servants under control of Central Government are involved. My attention is also drawn to the Notification of the State Government dated 22.2.1989 issued as per provisions of Section 6 of the D.S.P.E. Act, 1946 by the State Government. Accordingly consent to the extension of power and jurisdiction of the 'Delhi Special Police Establishment' to the whole of the State of Maharashtra for offences punishable under the Prevention of Corruption Act. With this, it is argued that the impugned order is perfectly correct.

5. I have considered the submissions so advanced and also

perused the material placed before me. It is apposite to quote paragraph no.17 of the impugned order which reads thus;

Section 91 of the Criminal Procedure Code confers discretion on Courts to issue summons for production of the documents or any other thing only when the 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 purpose of any investigation, inquiry, trial or other proceeding under Criminal Procedure Code. Even otherwise whatever sought to be produced u/s 91 Criminal Procedure Code are the Notifications in Official Gazettes, which are in public domain.

6. It is also relevant to quote Section 91 of Criminal Procedure Code which deals with summons to produce documents and other things. Said section reads thus;

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' Book 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.

7. Bare perusal of this Section makes it clear that documents sought to be summoned can be called only if the Court feel that it is necessary or desirable for the purpose of trial to have such documents on record.

8. In case in hand, what was sought for, by the application at Exhibit 60 is Notification under Section 2(1) of the D.S.P.E. Act, 1946. It deals with constitution of Special Police Force for investigation in any Union territory. The case in hand, relates to the investigation and prosecution in the State of Maharashtra. My attention is drawn by the C.B.I. to the Notification dated 22.2.1989 of the State Government according consent to extension of power and jurisdiction of members of 'Delhi Special Police Establishment' to the whole of State of Maharashtra for the purpose of investigation of offences punishable under the Prevention of Corruption Act, 1988. Similarly, my attention is also drawn to the Notification dated 1.4.1963 constituting 'Delhi Special Police Establishment' which is empowering to investigate offences relating to officers of Central Government. Thus, the documents sought for has no relevance in the matter and the impugned order is perfectly legal.

9. In this view of the matter, challenge to the impugned order dated 3.1.2019 fails though reliance is placed by the learned counsel for the petitioner, on Judgment of Aurangabad Bench of this court, in **Criminal Writ Petition No.250/2015, the matter of Dr.Paayal Shreekant Chobe Vs. State of Maharashtra and Others.** Documents sought for, are not at all necessary for the purpose of subject trial. Hence, the order.

ORDER

Petition is dismissed.

(A.M.BADAR, J.)

