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

+ **CRL.M.C. 4554/2019 & CRL M.A. 35562/2019**

NILOY KUMAR PANDE

..... Petitioner

Through: Mr. Prag Chawla & Mr. Sudeep
Sudan, Advocates

versus

THE STATE (GOVT. NCT OF DELHI)

..... Respondent

Through: Mr.Sanjeev Sabharwal APP for State
SI Neeraj Kumari, PS Prashant Vihar

CORAM:

HON'BLE MS. JUSTICE ANU MALHOTRA

ORDER

% **31.01.2020**

The petitioner vide the present petition seeks the setting aside of the impugned order dated 18.07.2019 of the learned ASJ: Special FTC(North), Rohini Courts, Delhi in FIR No. 331/2018 whereby the application filed on behalf of the petitioner arrayed as accused in FIR No. 331/2018 PS Prashant Vihar under Section 376/506 of the Indian Penal Code herein arrayed as accused/petitioner was declined.

The petitioner seeks to place on record certain documents stated to be important as averred in the application, which prayer made seeking that the said documents be taken on record, was declined by the Ld. Trial Court, it having been observed that the arguments on charges had not been addressed and that the petitioner sought to rely on the said documents at the time of arguments on charge.

The impugned order makes reference to the verdict of the

Hon'ble Supreme Court in the case of ***State of Orissa v. Debendra Nath Pandhi***, AIR 2005 SC 359 which observe to the effect that at the stage of consideration of charge, the accused cannot be allowed to place on record documents. Paragraphs 18, 25, 28 and 29 of the said judgment read as under:-

“18 - We are unable to accept the aforesaid contention. The reliance on Articles 14 & 21 is misplaced. The scheme of the Code and object with which Section 227 was incorporated and Sections 207 and 207(A) omitted have already been noticed. Further, at the stage of framing of charge roving and fishing inquiry is impermissible. If the contention of the accused is accepted, there would be a mini trial at the stage of framing of charge. That would defeat the object of the Code. It is well-settled that at the stage of framing of charge the defence of the accused cannot be put forth. The acceptance of the contention of the learned counsel for the accused would mean permitting the accused to adduce his defence at the stage of framing of charge and for examination thereof at that stage which is against the criminal jurisprudence. By way of illustration, it may be noted that the plea of alibi taken by the accused may have to be examined at the stage of framing of charge if the contention of the accused is accepted despite the well settled proposition that it is for the accused to lead evidence at the trial to sustain such a plea. The accused would be entitled to produce materials and documents in proof of such a plea at the stage of framing of the charge, in case we accept the contention put forth on behalf of the accused. That has never been the intention of the law well settled for over one hundred years now. It is in this light that the provision about hearing the submissions of the accused as postulated by Section 227 is to be understood. It only means hearing the submissions of the accused on the record of the case as filed by the prosecution and documents submitted therewith and nothing more. The expression 'hearing and submissions of the accused' cannot mean opportunity to file material to be granted to the accused and thereby changing the settled law. At the stage of charge hearing the submissions of the accused has to be confined to the material produced by the police.

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“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 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 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, he 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 sued 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 possessing to prove his defence. Section 91 presupposes that when the document is not produced process may be initiated to compel production thereof.

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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, enquiry, 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 enquiry".

29 - Regarding the argument of accused having to face the trial despite being in a position to produce material of unimpeachable character of sterling quality, the width of the powers of the High Court under Section 482 of the Code and Article 226 of Constitution of India is unlimited whereunder in the interests of justice the High Court can make such orders as may be necessary to prevent abuse of the process of any Court or otherwise to secure the ends of justice within the parameters laid down in Bhajan Lai's case".

and it was thus observed by the Ld. Trial Court that in view of the said proposition of law, the petitioner cannot be allowed to place on record any document at the stage of charge.

On behalf of the petitioner it has been submitted that the documents which the petitioner seeks to place on record as averred in paragraph -2 of the application filed before the trial court which reads as under:-

“ 2. That the said documents are copies of Bank statements of the accused person showing transfer of money in bank account of the Complainant, copy of Sale Deed dated 06.04.2018 executed in favor of the Complainant, wherein, the accused person was the attesting Witness of the said document, copies of Whats App messages exchanged between the accused person and the Complainant, Copies of 3 Cheque issued by Complainant in favor of the accused person which were dishonored on presentation alongwith copies of 3 return memos, receipts.”

are of unimpeachable character and that inasmuch as qua the same an investigation has already been conducted by the Investigating Agency pursuant to directions of this Court vide orders dated 16.08.2018 and 05.10.2018 of this Court in Bail Application No. 1098/2018.

Reliance is also placed on record on behalf of the petitioner on the verdict of the Hon'ble Supreme Court in the case of ***Rukmini Narvekar v. Vijaya Satardekar & Ors, 2008 (14) SCC 1*** with specific reliance placed on observations in paragraph 17 thereof which reads to the effect:-

*“ Thus in our opinion while it is true that ordinarily defence material cannot be looked into by the Court while framing of the charge in view of **D.N.Padhi's case (supra)**, there may be some very rare and exceptional cases where some defence material when shown to the trial court would convincingly demonstrate that the prosecution version is totally absurd or preposterous, and in such*

very rare cases the defence can be looked into by the Court at the time of framing of the charges or taking cognizance.”

The verdict observes therein further to the effect that no verdict can be treated as an Euclid’s formula nor as provisions of the statute and that in some very rare and exceptional cases where some defence material when shown to the trial court would convincingly demonstrate that the prosecution version is totally absurd or preposterous, in such very rare cases the defence material can be looked into by the Court at the time of framing of the charges or taking cognizance.

Reliance is also placed on behalf of the petitioner on the verdict of the Hon’ble Supreme Court in the case of ***Nitya Dharmananda @ K.Lenin & Anr. v. Sri Gopal Sheelum Reddy also known as Nithya Bhakananda & Anr.*** passed in Criminal Appeal No. 2114-2115/2017 dated 07.12.2017 and reliance is also placed on the verdict of the Hon’ble Supreme Court in ***Hardeep Singh Etc. v. State of Punjab & Ors. Etc. (2014) 3 SCC 9,2 a verdict of the Bench of five Hon’ble judges***, paragraphs 8 and 9 which read as under:-

“8. The Court is the sole repository of justice and a duty is cast upon it to uphold the rule of law and, therefore, it will be inappropriate to deny the existence of such powers with the courts in our criminal justice system where it is not uncommon that the real accused, at times, get away by manipulating the investigating and/or the prosecuting agency. The desire to avoid trial is so strong that an accused makes efforts at times to get himself absolved even at the stage of investigating or inquiry even though he may be connected with the commission of offence.”

9. 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 Cr.PC de hors the satisfaction of the court, at the stage of charge.”

observing to the effect that the Court ordinarily 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 same may be looked into.

It is submitted on behalf of the petitioner that the said documents averred in para 2 of the application were not filed with the charge sheet on record and reliance is also placed on ***Nithya Bhakananda*** (supra), wherein the Trial Court was directed to then proceed to deal with the issue of framing of charges in the light of the observations made in the judgment and also to proceed with the matter expeditiously in accordance with law.

Taking into account the factum of documents which are the copies of bank statements of the petitioner showing transfer of money in the bank account of the Complainant, copy of the sale deed dated 06.04.2018 executed in favour of the complainant wherein the petitioner was an attesting witness of the said document, copies of three (3) cheques issued by Complainant in favour of the Petitioner which were dishonoured on presentation along with copies of three (3) return memos, receipts and copies of order dated 16.10.2018 and 05.10.2018 of this Court in Bail Application No.1908/2018 are directed in terms of the verdict of the

Hon'ble Supreme Court in the case of *Nithya Bhakananda* (supra) to be taken into consideration by the learned Trial Court at the stage of consideration of charge in view of the verdict in the case of *Hardeep Singh Etc.* (supra).

In view of the observation made in para-9 in the verdict of *Hardeep Singh Etc.* (supra), however, nothing stated herein above shall amount to any expression on the merits and demerits of the aspect of the charge to be considered and framed by the trial court .

The petition is disposed of accordingly.

ANU MALHOTRA, J

JANUARY 31, 2020

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