

**HIGH COURT OF CHHATTISGARH, BILASPUR****Criminal Revision No. 351 of 2021**

Mahatarin Bai, W/o Bir Singh, aged about 40 years, R/o Dokrabhatha,  
Police Station Chhuikhadan, District Rajnandgaon (C.G.) (**Accused**)

---- Applicant

**Versus**

State of Chhattisgarh, through the Police Station, Chhuikhadan, District  
Rajnandgaon (C.G.) (**Prosecution**)

----Non-applicant

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For Applicant : Mr. Rakesh Pandey, Advocate  
For Non-applicant : Mr. Raghvendra Verma, Govt. Advocate.

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**Hon'ble Mr. Justice N.K. Chandravanshi**

**Order On Board**

**22.06.2021**

1. Proceedings of the matter have been taken-up through Video Conferencing.
2. This revision petition has been preferred challenging the order dated 6.4.2021 passed by Learned Court of Additional Sessions Judge, Khairagarh, District Rajnandgaon in Sessions Trial No. 27/2020 [**State of Chhattisgarh v. Mehatarin Bai**] whereby the Court below has dismissed the application filed by the Applicant under Section 91 of the Code of Criminal Procedure, 1973 (henceforth 'Code').
3. Briefly stated facts of the case as narrated are that the applicant is an accused under Section 302 of the Indian Penal Code. She has moved an application under Section 91 of the Cr.P.C. before the trial Court calling for documents i.e. statement of witnesses recorded during merg enquiry with regard to Merg No. 25/2020 registered at Police Station Chhuikhadan, District

Rajnandgaon, which according to the applicant are an important and relevant documents and also vital piece of evidence for her defence.

4. The court below, vide impugned order dated 6.4.2021, has rejected the application under Section 91 of the Cr.P.C. holding that the said documents are part of case diary and not of charge sheet *and* copy of the charge sheet has already been provided to the applicant, therefore, as per law, required documents could not be furnished to the applicant.

5. Learned counsel for the Applicant would submit that merg report was registered on the basis of information given by one Dharam Sahu, who is uncle of deceased-boy Vishal @ Dadu Sahu wherein it was informed that on 6.7.2020, deceased - boy fell into water-tank while he was playing with other children. During merg enquiry, witnesses of merg enquiry had also reiterated the same facts but later on due to previous family dispute and jealousy, the applicant was falsely implicated in this case stating that she has committed offence of murder of deceased – Boy by drowning him in the water tank, therefore, learned counsel for the applicant would submit that previous statements of witnesses, which were recorded by the Police during merg enquiry, are an important piece of evidence for the defence of the applicant, therefore, the order passed by the Court below rejecting application under Section 91 of the Cr.P.C., being perverse and illegal, is liable to be quashed. He placed reliance upon the judgments of this Court in the matter of **Surendra Gupta alias Somaru v. State of C.G.**<sup>1</sup> and **Mahaveer Chandrakar v. State of Chhattisgarh**<sup>2</sup> in support of his submissions.

6. Per contra, Learned counsel for the State opposes the said application filed by applicant on the ground that witness may be cross-examined as to his previous statements made by him as contemplated under Section 145 of the Evidence Act if such previous statements are brought on record, in accordance with law, before the Court and if the contingencies as contemplated under Section 172 (3) of Code of Criminal Procedure are fulfilled. In support of his submission, he placed reliance upon the judgment of the Supreme Court in the matter of **Balakram v. State of**

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1 2016 (4) C.G.L.J. 253

2 (2017) 4 CGLJ 354

**Uttarakhand and others<sup>3</sup>.**

7. I have heard learned counsel appearing for the parties and perused the documents annexed with the application.

8. A careful perusal of the merg intimation recorded on 6.7.2020, it reveals that Dharam Sahu, who is said to be the uncle of deceased -boy, informed that while playing with the children, deceased -boy fell into a water tank and after taking him out from the water tank, he was taken to the Government Hospital, Chhuikhadan, where he was declared brought dead.

9. It is one of the established legal belief that fair investigation and fair trial are backbone of criminal justice system. Therefore, it is the duty of the prosecution that it must provides all such relevant documents to the applicant, which are necessary and important for his just and fair defence.

10. In the matter of **State of Kerala v. Babu** reported in **(1999) 4 SCC 621**, a prayer made by the accused that in some other case during the course of the investigation a witness had made a particular statement and as his statement was running contrary to the statement on the basis of which the applicant accused was facing trial, such statement recorded during the course of another investigation be requisitioned. The Supreme Court observed in the said matter that any previous statement recorded during the course of any enquiry, investigation or trial would be termed as a previous statement and can always be used for contradicting the witness or to prove the omissions amounting to contradictions. The Supreme Court observed that on a reading of Section 162 of the Code and bearing in mind the object of the said section and section 145 of the Evidence Act, It is clear that an accused in a criminal trial has the right to make use of the previous statements of a witness (emphasis supplied) including the statements recorded by the Investigating agency during the course of an investigation for the purpose of establishing a contradiction in the evidence of a witness or to discredit the witness. The Supreme Court further observed that in

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3 Decided on 19.04.2017 in Criminal Appeal No. 694 of 2017 (Arising out of SLP (Cri.) No. 9314 of 2016)

a case where the statements are before the Court then there would be no difficulty because an accused is entitled under Section 207 of the Code for the supply of free copies of documents referred in the said section which includes the previous statement recorded (under) sub-section (3) of the Section 161 of the Code, but the accused does not have such a right as matter of course in regard to other previous statements; more so, in regard to the statements recorded by the investigating agency under Section 161 in a case other than the one that is being tried by the Court.”

**11.** Relying upon the aforesaid decision of the Supreme Court, this Court in an identical matter of **Santosh v. State of Chhattisgarh**<sup>4</sup> has held in paragraphs 15 & 16 as under :

“15. If the accused has a right to summon the statements recorded during the course of another investigation then in a case like present he would not stand on a worse footing. The accused is certainly entitled to make a submission to the Court that each and every previous statement of the witness must be filed along the charge-sheet irrespective of the fact that such statements support or do not support the prosecution allegations.

16. It would be contrary to law to hold that the prosecution agency is entitled to file only those statements or document on which they are placing reliance. If such an authority is given to the police/prosecution agency it would lead to a judicial anarchism. The prosecution agency under such an authority would be entitled to suppress material documents and would not permit such evidence to see the light of the day which tends to support or help the case and cause of the accused. The police, the investigating agency and the prosecution agency are not the judges, they simply have to make investigation and submit the challan honestly before the Court. It is for the Court to

decide in accordance with law after taking into consideration the evidence which is brought on the record. A Court is not entitled to say that it would not permit use of the statements recorded under Section 174, Cr.PC. A previous statement of a witness recorded during the course of the enquiry, investigation and/or trial continues to be a previous statement and in accordance with [Section 145](#) of the Indian Evidence Act the accused is entitled to contradict the maker of such statement with his previous statement."

**12.** In the matter of **Mahaveer Chandrakar (supra)**, this Court while dealing with the provisions enumerated in Section 91 of the Cr.P.C. has held as under:-

**"18.....**Withholding any evidence without any justification would amount to shelving of facts away from the Court. The Prosecution, therefore, is required to place the whole truth before the Court and it cannot be allowed to keep the things in dark before the Court. Above all, the Court is also duty bound to discover the truth of the case. The Courts are empowered to discover the truth. In case the court is of the opinion that the application u/S 91 of the Code is genuine and has not been moved with such motive, then the Court must exercise its jurisdiction and direct the production of document including the case diary. The Criminal Court should keep in mind that justice should not only be done, but must appear to be done."

**13.** Taking into consideration the afore-stated legal position, it is quite clear that in a Criminal trial, statement of previous witnesses recorded by the investigating agency during the course of investigation can always be used for the purpose of substantiating the contradiction among the evidence of the witness.

**14.** If it is considered in the instant case then it is said that witnesses have stated in their statements during merg enquiry that deceased-boy was fell in the water tank while playing with the children but now the applicant has been prosecuted for alleged commission of offence of murder of deceased-boy, therefore, that statements of the witnesses, which are recorded during merg enquiry, are very vital piece of evidence for defence of applicant and in view of above, the trial Court ought to have allowed the application under Section 91 of the Cr.P.C. filed by the applicant.

**15.** Thus, applying the principle of law laid down by this Court and the Supreme Court, I am of the view that order of the court below in not allowing the application under Section 91 of the Cr.P.C. filed by the applicant is liable to be quashed. In view of above, the case cited by learned counsel for the State/respondent i.e. **Balakram (supra)** is distinguishable to the facts of the present case because that case was related to filing of documents, which are said to be the copies of certain pages of police diary maintained under Section 172 of the Cr.P.C..

**16.** For the foregoing reasons, the instant Criminal Revision is allowed. Impugned order dated 6.4.2021 passed by Additional Sessions Juge, Khairagarh, District Rajnandgaon in Sessions Trial No. 27/2020 is hereby quashed. It is held that application under Section 91 of the Cr.P.C. filed by the applicant is allowed. The Court below is directed to take appropriate steps to attach and provide certified copy of the statements of the witnesses, which were recorded during merg enquiry and proceed further to decide the matter expeditiously.

Sd/-

**N.K. Chandravanshi**  
**J u d g e**

D/-



