

HIGH COURT OF CHHATTISGARH, BILASPURWrit Petition (Cr.) No.678 of 2020Order reserved on: 9-4-2021Order delivered on: 7-6-2021

Rajeshwar Sharma, S/o Late Shri Ram Kumar Sharma, Aged about 60 years, R/o Village Birkona, Tahsil & District Bilaspur (C.G.)

---- Petitioner

Versus

1. State of Chhattisgarh, Through Secretary, Department of Home, Naya Raipur (C.G.)
2. Director General of Police, Police Headquarters, Near Mantralaya, Sector 19, Naya Raipur (C.G.)
3. Superintendent of Police, Bilaspur, Tahsil & District Bilaspur (C.G.)
4. Station House Officer, Police Station Sarkanda, Tahsil & District Bilaspur (C.G.)
5. Munij Deshmukh, R/o Rama Valley, Tahsil Bilha, District Bilaspur (C.G.)
6. Mukesh Agrawal, Director, C.G. Institute of Education, R/o Jal Vihar Colony, Raipur (C.G.)

---- Respondents

For Petitioner: Mr. Sourabh Sharma, Advocate.

For Respondents No.1 to 4 / State: -

Mr. Ravi Kumar Bhagat, Deputy Govt. Advocate.

For Respondents No.5 and 6: -

Mr. Abhishek Sinha, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

C.A.V. Order

1. This case was reserved for orders on 9-4-2021, but with effect from 14-4-2021, lock-down was imposed, consequently, this Court also remained closed and during the continuance of lock-down and closure of courts, summer vacation commenced with effect from 10-5-2021, therefore, the order is pronounced today i.e. 7-6-2021 after

reopening of the court after summer vacation.

2. Proceedings of this matter have been taken-up through video conferencing.
3. The petitioner herein calls in question the notice / order dated 11-12-2020 issued under Section 91 of the CrPC vide Annexure P-1 by which the Station House Officer, Police Station Sarkanda, Bilaspur – respondent No.4 herein, has asked the petitioner to produce certain documents within two days from the date of its receipt.
4. The aforesaid challenge has been made principally on two grounds that Section 91 of the CrPC is not applicable where the petitioner is alleged to be the prospective accused and neither there is enquiry nor there is trial or investigation initiated against him and therefore, Section 91 is not attracted.
5. Return has been filed by the State as well as the private respondents opposing the writ petition stating inter alia that the petition is merit-less and is liable to be dismissed.
6. Mr. Sourabh Sharma, learned counsel appearing for the petitioner, would submit that Section 91 of the CrPC is applicable only to investigation, inquiry, trial or other proceeding 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. Since neither investigation has been initiated against the petitioner under Section 2(h) of the Code nor there is any inquiry pending against the petitioner in terms of Section 2(g) of the Code and admittedly, there is no trial going on against the petitioner and it is also not the case that any FIR or criminal case has been registered against

him, the notice impugned Annexure P-1 is bad in law. It is also argued that Section 91 of the CrPC is not applicable neither to the accused nor to the prospective accused in view of the decision of the Supreme Court in the matter of State of Gujarat v. Shyamlal Mohanlal Choksi¹.

7. Mr. Ravi Kumar Bhagat, learned State counsel appearing for the State / respondents No.1 to 4, would submit that on the report of respondents No.5 & 6, as a preliminary enquiry, notice under Section 91 of the CrPC has been issued to the petitioner in order to find out whether cognizable offence is made out against him and as such, enquiry is initiated against the petitioner, therefore, the petition has no force and it deserves to be dismissed.
8. Mr. Abhishek Sinha, learned counsel appearing for respondents No.5 & 6, would submit that preliminary enquiry is permissible in terms of para 119 of the decision rendered by the Supreme Court in the matter of Lalita Kumari v. Government of Uttar Pradesh and others², in order to find out whether cognizable offence has been committed or not by the accused person, and as such, it is not the case where notice under Section 91 of the CrPC deserves to be quashed.
9. I have heard learned counsel for the parties and considered the rival submissions made herein-above and also went through the material available on record with utmost circumspection.
10. Section 91 of the CrPC 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

1 AIR 1965 SC 1251

2 (2014) 2 SCC 1

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. At this stage, it would be appropriate to notice the definitions of “inquiry” and “investigation” contained in clauses (g) and (h) of Section 2 of the CrPC, which are as follows: -

“(g) “inquiry” means every inquiry, other than a trial, conducted under this Code by a Magistrate or Court;

(h) “investigation” includes all the proceedings under this Code for the collection of evidence conducted by a police officer or by any person (other than a Magistrate) who is authorised by a Magistrate in this behalf;”

12. A careful perusal of the aforesaid definitions would show that “inquiry” means every inquiry, other than a trial, conducted under the CrPC by a Magistrate or Court, as such, inquiry must be by Magistrate or Court. The Supreme Court in the matter of Raj Kishore Prasad v. State of Bihar and another³, held that committal proceedings do not fall squarely within the ambit of “Inquiry” as defined in Section 2(g) of the Code of Criminal Procedure. Similarly, “investigation” includes all

the proceedings under the CrPC for the collection of evidence conducted by a police officer or by any person (other than a Magistrate) who is authorised by a Magistrate in this behalf.

13. Reverting to the facts of the present case, it is quite vivid that in the present case, there is no such inquiry or investigation pending against the petitioner and also there is no offence registered against him under the IPC or under any other law for the time being in force. Therefore, on 11-12-2020 when notice under Section 91 of the CrPC has been issued to the petitioner by respondent No.4 herein, neither any inquiry is pending against the petitioner nor any investigation is being carried out against him and admittedly, trial is also not pending against the petitioner.

14. Now, the question is, whether alleged preliminary inquiry can be said to be the other proceeding within the meaning of Section 91 of the CrPC?

15. The word “proceeding” has not been defined in the Code. However, Black’s Law Dictionary (Eighth Edition – page 1241), defines the word “proceeding” as under: -

“proceeding. 1. The regular and orderly progression of a lawsuit, including all acts and events between the time of commencement and the entry of judgment. 2. Any procedural means for seeking redress from a tribunal or agency. 3. An act or step that is part of a larger action. 4. The business conducted by a court or other official body; a hearing. 5. *Bankruptcy.* A particular dispute or matter arising within a pending case – as opposed to the case as a whole.”

16. A careful perusal of the aforesaid definition of the word “proceeding” would show that it also includes administrative proceeding before the agency, tribunal, bureau or like apart from judicial proceeding. Yet, the word used in Section 91 of the CrPC is other proceeding under the

Code of Criminal Procedure which is different from investigation, inquiry and trial. Admittedly, no investigation or no enquiry or no trial is pending against the petitioner in the present case. It has been stated by the respondent / State that preliminary enquiry is pending against the petitioner. In Lalita Kumari (supra), the Supreme Court has though in paragraph 120.6 of the report has laid down the cases in which preliminary inquiry may be made, those are only illustrations and not exhaustive of all conditions which may warrant preliminary inquiry. Paragraph 120.6 of the decision in Lalita Kumari (supra) reads as follows: -

“120.6. As to what type and in which cases preliminary inquiry is to be conducted will depend on the facts and circumstances of each case. The category of cases in which preliminary inquiry may be made are as under:

- (a) Matrimonial disputes/family disputes
- (b) Commercial offences
- (c) Medical negligence cases
- (d) Corruption cases
- (e) Cases where there is abnormal delay/laches in initiating criminal prosecution, for example, over 3 months' delay in reporting the matter without satisfactorily explaining the reasons for delay.

The aforesaid are only illustrations and not exhaustive of all conditions which may warrant preliminary inquiry.”

17. At this stage, Mr. Abhishek Sinha, learned counsel appearing for respondents No.5 & 6, invited my attention towards paragraph 119 of the judgment rendered by the Supreme Court in Lalita Kumari (supra), which states as under: -

“119. Therefore, in view of various counter claims regarding registration or non-registration, what is necessary is only that the information given to the police must disclose the commission of a cognizable offence. In such a

situation, registration of an FIR is mandatory. However, if no cognizable offence is made out in the information given, then the FIR need not be registered immediately and perhaps the police can conduct a sort of preliminary verification or inquiry for the limited purpose of ascertaining as to whether a cognizable offence has been committed. But, if the information given clearly mentions the commission of a cognizable offence, there is no other option but to register an FIR forthwith. Other considerations are not relevant at the stage of registration of FIR, such as, whether the information is falsely given, whether the information is genuine, whether the information is credible, etc. These are the issues that have to be verified during the investigation of the FIR. At the stage of registration of FIR, what is to be seen is merely whether the information given ex facie discloses the commission of a cognizable offence. If, after investigation, the information given is found to be false, there is always an option to prosecute the complainant for filing a false FIR.”

18. Section 91 of the CrPC clearly mandates that it is applicable only in case of investigation, inquiry, trial or other proceeding under the Code. The definition of “inquiry” under Section 2(g) of the CrPC does not include preliminary inquiry. By no stretch of imagination, preliminary inquiry before registering FIR would come within the meaning of “proceeding” under the CrPC, as it is only a sort of verification for the limited purpose of ascertaining whether a cognizable offence has been committed as inquiry within the meaning of Section 2(g) must be conducted under this Code by Magistrate or Court, whereas preliminary inquiry is to be conducted by police officer, otherwise it could have been specifically provided in the CrPC. In my considered opinion, Section 91 of the CrPC has to be construed strictly in order to make it applicable, as the Legislature has confined its applicability to investigation, inquiry, trial or other proceeding under the Code of Criminal Procedure, 1973. Preliminary inquiry, if any, before registration of FIR would not fall within the meaning of other proceeding under Section 91 of the CrPC. The Legislature has

deliberately and consciously applied it and made it applicable to certain specific proceedings specified in Section 91 of the CrPC, such as inquiry, investigation, trial and other proceeding under the Code. Thus, Section 91 of the CrPC cannot be stretched and made applicable to preliminary inquiry that is prior to registration of FIR as recognised by the Supreme Court in Lalita Kumari (supra).

19. Therefore, in the considered opinion of this Court, since there is neither any proceeding nor any trial or any other proceeding pending in the court, issuance of notice to the petitioner vide Annexure P-1 is without jurisdiction and without authority of law. Section 91 of the CrPC is admittedly not applicable to the accused as held by the Supreme Court in Shyamlal Mohanlal Choksi's case (supra) and further followed by the Supreme Court in the matter of Central Bank of India v. State of Kerala and others⁴. But the question that since no offence has been registered against the petitioner and the petitioner is only a prospective accused, whether Section 91 would be applicable or not is purely academic, has to be answered in appropriate proceeding, as in this case it has already been held that Section 91 of the CrPC is not attracted to the facts of the present case.

20. As a fallout and consequence of the aforesaid discussion, the writ petition is partly allowed and notice Annexure P-1 dated 11-12-2020 issued under Section 91 of the CrPC is hereby quashed. No order as to cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge

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HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (Cr.) No.678 of 2020

Rajeshwar Sharma

Versus

State of Chhattisgarh and others

Head Note

Section 91 of the CrPC is not applicable to preliminary enquiry before registration of first information report under Section 154 of the CrPC.

दण्ड प्रक्रिया संहिता की धारा 154 के अंतर्गत प्रथम सूचना प्रतिवेदन दर्ज करने के पूर्व प्रारंभिक जाँच हेतु दण्ड प्रक्रिया संहिता की धारा 91 लागू नहीं होगा।