IN THE HIGH COURT OF JUDICATURE AT MADRAS

[Reserved on : 30.03.2021]

[Pronounced on : 01.06.2021]

CORAM :

THE HON'BLE MR. JUSTICE A.D.JAGADISH CHANDIRA

Crl.O.P.No.231 of 2021
and
Crl.M.P.No.116 of 2021

R.Subramanian
S/o.G.S.Ramaswami ... Petitioner / 1st Accused

Vs.

Central Bureau of Investigation
(BS & FC), Bangalore
Rep. by its Inspector of Police
No.36, Bellary Road, KGH Layout, Ganganagar
Bangalore, Karnataka 560 032
... 1st respondent / complainant

Bank of Baroda
Zonal Office
Mylapore, Chennai ... 2nd Respondent defacto complainant

PRAYER: Criminal Original Petition is filed under Section 482 of Criminal Procedure Code to set aside the order of the learned Additional Chief Metropolitan Magistrate, Egmore, Chennai dated 09.12.2020 dismissing Petitioner's Crl.M.P.No.13212 of 2020 in C.C.No.9635 of 2014 on the file and consequently allow the Crl.M.P.No.13212 of 2020 and direct the respondents to furnish copies of the documents as set out in the petition.

For Petitioner : Mr.R.Subramanian
Party in Person

For Respondents : Mr.K.Srinivasan
Special Public Prosecutor
(C.B.I Cases)

O R D E R

The Criminal Original Petition has been filed seeking to set aside the order of the learned Additional Chief Metropolitan Magistrate, Egmore, Chennai, dated 09.12.2020 dismissing the Crl.M.P.No.13212 of 2020 in C.C.No.9635 of 2014 and consequently allow the Crl.M.P.No.13212 of 2020 and direct the respondents to furnish copies of the documents as set out in the petition.

2.The petitioner is the 1st accused in C.C.No.9635 of 2014 pending on the file of the learned Additional Chief Metropolitan Magistrate, Egmore, Chennai for the alleged offence u/s.420 IPC and along with two others viz. K.P.Vairavan, the then Assistant General Manager & Branch Head, Bank of Baroda, Corporate Financial Services Branch, Chennai and M/s.Subhiksha Trading Services Ltd., and other unknown persons. During the course of the trial, the petitioner had filed Crl.M.P.No.13212 of 2020 u/s.91 Cr.P.C. (i) to direct the respondent No.1 to produce the records relating to the complaint of the 2nd respondent dated 30.08.2012 and all the records arising there from including the communications and correspondences with the 2nd respondent till the complaint of the 2nd respondent dated 18.06.2013 and (ii) to direct the respondent No.2 to produce the complete records with it from 31.03.2009 in respect of the default of Subhiksha Trading Services Ltd., upto the filing of the complaint dated 18.06.2013 with the 1st respondent including the complaint dated 30.08.2012.

3.In the petition it was averred by the petitioner that the charge sheet in C.C.No.9635 of 2014 was based on the F.I.R. registered by the 1st respondent on the complaint dated 18.06.2013, which is subsequent to the earlier complaint lodged by the 2nd respondent viz. Bank of Baroda on 30.08.2012. Based on the complaint dated 30.08.2012 the 1st respondent had registered a case in PE 1(E)/2012/CBI/BS&FC and a detailed investigation was conducted and the petitioner had appeared before the 1st respondent for enquiry in respect of the same. The fact of enquiry being conducted in respect of the complaint dated 30.08.2012 of the 2nd respondent was also admitted by the 1st respondent in pleadings before the High Court in other proceedings. The further averment was that P.W.1 was examined in chief on 06.11.2020 and his cross examination had been deferred. It was further averred by the petitioner that P.W.1 in his examination in chief had suppressed the fact relating to the earlier complaint, preliminary enquiry and the facts leading to the declaring of the account of the petitioner's company as Non Performing Asset. The accounts of the petitioner had been declared as Non Performing Asset during the year 2007-2008 and that there was no reason for the 2nd respondent to give a complaint in the year 2013 in respect of the alleged offence claimed to have been committed during the year 2007-2008, thereby the petitioner stating that the complaint dated 30.08.2012 and records connected thereto with the 2nd respondent till complaint dated 18.06.2013 and the complete records relating to the 2nd respondent bank setting out the steps taken by the 2nd respondent from 31.03.2009 in respect of the default of M/s.Subhiksha Trading Services Ltd., till 18.06.2013 when the complaint was filed, was required to enable the petitioner to effectively cross examine P.W.1. and thereby petition u/s.91 Cr.P.C. was filed for production of documents.

4.The 1st respondent had filed a counter.

5.It has been stated in the counter that the 1st respondent registered a case in RC 4(E)/2013-CBI/BS&FC/BLR u/s.120-B r/w 420 IPC and Section 13(2) r/w 13(1)(d) of IPC, 1988 on 26.07.2013, on the basis of the complaint dated 18.06.2013 received from the General Manager and Zonal Head Office (TN & Kerala), Bank of Baroda, Baroda Pride, New No.41, III Floor, Luz Church Road, Mylapore, Chennai 600 004, against the petitioner, the Managing Director of M/s.Subhiksha Trading Services Ltd., and two others viz. K.F.Vairavan, the then Assistant General Manager & Branch Head, Bank of Baroda, Corporate Financial Services Branch, Chennai and M/s.Subhiksha Trading Services Ltd., and other unknown persons. The allegation against the accused is that the petitioner / A1, in collusion with Shri K.F.Vairavan /A2 (Bank official) and others got Term Loan of Rs.50 Crores sanctioned from Bank of Baroda, Corporate Financial Services Branch, Chennai, for the purpose of implementation of the expansion programme of the company and CC limit of Rs.25 Crores towards take over of its existing CC limit with Axis Bank Ltd., Chennai and had not utilized the funds for the purpose for which it was sanctioned and disbursed, and diverted the funds for personal benefits through accounts of several benami companies floated by the petitioner, resulting in wrongful loss of Rs.77.39 Crores to the Bank of Baroda as on 31.03.2009.

It has been further stated that based on the above information, a preliminary enquiry was conducted in accordance with the case of Lalitha Kumari Vs. State of U.P. and others and thereafter a regular case was registered based on the complaint of Bank of Baroda dated 18.06.2013.

It has been further stated in the counter that the petitioner / accused had moved similar petitions on earlier occasions in Crl.M.P.No.317 of 2015, Crl.M.P.No.1951 of 2016, Crl.M.P.No.1563 of 2016 and Crl.M.P.No.1756 of 2019 and that all the earlier petitions were dismissed and that the present petition had been filed only to protract and delay the progress in trial.

6.The trial Court after hearing the petitioner and the complainant had dismissed the petitions on the ground that the petitioner had not preferred any revision against the dismissal of the earlier petitions filed for similar reliefs u/s.91 Cr.P.C and that the petitioner had preferred a quash petition before the High Court and it was dismissed by the High Court on 03.06.2020, wherein the High Court had categorically stated that since the voluminous documents were to be scrutinized to find out the genuineness of the transactions, complicity of the bank officials and others in the offence, it took considerable time due to which a preliminary enquiry which is permissible in law was conducted and only after the preliminary enquiry F.I.R. was registered based on the complaint dated 18.06.2013 and thereby it was not necessary for the 1st respondent to produce the records relating to the complaint dated 30.08.2012 and the records arising therefrom including the connected documents were not necessary to be produced, since the petitioner was aware of the earlier communications between him and the Bank. The trial Court had held that it was not necessary or desirable to order for production of documents and had dismissed the petition, against which, the present petition has been filed.

7.Mr.R.Subramanian, the party in person would submit that he is the petitioner and the 1st accused in this case and the Managing Director of the 3rd accused Company M/s.Subhiksha Trading Services Ltd., which has borrowed money from the 2nd respondent bank. The petitioner had sent legal notice against the top officials in the Bank and that the Bank officials got antagonized by the same and they took action against the petitioner's company and the account of the petitioner's company was declared as Non Performing Asset during the year 2007-2008. Thereafter, the respondent had preferred a complaint against the petitioner dated 30.08.2012, based on which, a preliminary enquiry was conducted by the 1st respondent and the petitioner had attended the enquiry. After the enquiry, at the instance of the 1st respondent, the 2nd respondent was made to give a complaint dated 18.06.2013, based on which, a regular case was registered by the 1st respondent. Further, even prior to the earlier complaint dated 30.08.2012 and subsequent to that there had been series of correspondences between the petitioner's Company and the 2nd respondent bank which are necessary and desirable for the purpose of trial and for cross examining P.W.1. P.W.1, who is aware of the earlier complaint dated 30.08.2012 has deliberately suppressed about the same and thereby in order to effectively cross examine P.W.1 based on the documents, the petitioner had preferred the petition for production of documents, whereas, the trial Court wrongly referring to the earlier dismissals had dismissed the petition filed by the petitioner u/s.91 Cr.P.C.

8.The petitioner, party in person, would further submit that the petitioner had made two prayers viz.

1. to produce the records relating to the complaint dated 30.08.2012 of the 2nd respondent and all records arising from including all the communications and correspondences with the 2nd respondent till the complaint of the 2nd respondent dated 18.06.2013 and
2. to direct the 2nd respondent bank to produce complete records with it from 31.03.2009 in respect of the default of M/s.Subhiksha Trading Services Ltd., upto the filing of the complaint dated 18.06.2013 including the complaint dated 30.08.2012. Based on the complaint of the 2nd respondent dated 30.08.2012 a preliminary enquiry was conducted, whereas P.W.1 the officer of the bank had suppressed about it in his chief examination.

9.The petitioner (Party in person) would further submit that though conducting of preliminary enquiry is permissible as per Regulation 10.3 of the C.B.I's manual, whenever it has been decided with the approval of the competent authority to register an F.I.R. after conclusion of a preliminary enquiry, which might have been taken upon receipt of a complaint, the information originally received along with the summary of consequence arrived at after completion of the preliminary enquiry should be incorporated in the body of the 1st report, whereas in this case, no such reference has been made.

10.The petitioner (Party in person) would further submit that right to defend flows from the fundamental right to "life" and "personal liberty" enshrined in Article 21 of the Constitution and thereby power u/s.91 Cr.P.C., which is required to discover the truth is available to the petitioner. The petitioner has to be vigilant and he has to build the defence from the day one of the trial. The trial Court without properly applying its mind with regard to the necessity and desirability of production of the records sought for by the petitioner had rejected the same in a mechanical manner. The petitioner /party in person would also further submit that the 2nd respondent is a necessary party, however, the trial Court without even issuing notice to the 2nd respondent and hearing the 2nd respondent has passed the impugned order. The trial Court failed to see that the dismissal of the earlier petitions were at a different stage, that is prior to framing charges and thereby the petitioner had not challenged the same, now the stage has come, where the documents are very much required for setting up a defence and to effectively cross examine the official of the bank who has suppressed about the earlier complaint and the earlier preliminary enquiry conducted by the 1st respondent and would pay for setting aside the impugned order and for direction for production of documents.

11.In support of his submission, the petitioner / party in person, relied on the judgment of the Delhi High Court in Suresh Kalmadi V.CBI reported in (2015)SCC Online Del 9639.

12.Mr.K.Srinivasan, the learned Special Public Prosecutor (CBI Cases) appearing for the 1st respondent would submit that the petition has been filed with an intention to delay the progress of the trial and the trial Court had rightly finding the intention of petitioner in delaying the trial and finding that the production of the documents sought for were not necessary or desirable for the purpose of trial, had rightly dismissed the petition. The 1st respondent based on certain information had conducted preliminary enquiry as permitted and contemplated under law based on information. In appropriate cases, the police officers have a duty to make a preliminary enquiry so as to find out as to whether allegations made had any substance or not. Thereafter, after completion of preliminary enquiry finding out the veracity and the truthfulness of the allegations, based on the complaint dated 18.06.2013, had registered a regular case and continued with the investigation. The respondent has followed the procedure under the CBI manual and also followed the mandate of the judgment of the Hon'ble Apex Court in Lalitha Kumari Vs. State of U.P. and others. The petitioner has been given all the relevant documents relied on by the prosecution in the case in accordance with Section 207 Cr.P.C. P.W.1 had let in evidence in chief in adherence to his statement recorded during investigation after registration of the regular case and there is no suppression of facts and the petitioner even without cross examining P.W.1 had filed the petition u/s.91 Cr.P.C. to delay the trial.The trial Court after hearing the petitioner and observing that Order u/s.91 Cr.P.C. is discretionary in nature and also finding that the production of the documents was neither necessary nor desirable, had dismissed the petition. Further, the trial Court had taken into consideration that the petitioner had filed similar petitions earlier and that there were dismissed and that the petitioner had not challenged the earlier orders of dismissals. In respect of the 2nd prayer, the petitioner was not clear and had not disclosed any relevance for production of the documents. The petitioner is bound to show the relevancy, necessity and desirability for production of documents and no where in the petition, the petitioner has pleaded about the necessity or desirability. Section 91 Cr.P.C. does not give an absolute right for the accused to ask for summoning of any documents and the discretion lies with the trial Court on consideration of facts. He would further submit that Order u/s.91 Cr.P.C. being discretionary in nature this Court has to see whether the trial Court had judicially exercised its discretion while disposing the petition filed u/s.91 Cr.P.C. When the trial Court has rightly exercised its discretion, the superior Court cannot lightly or in a routine fashion intervene in such decision arrived by the trial Court.

Learned Special Public Prosecutor would further submit that based on information a preliminary enquiry was conducted in the matter and when the preliminary enquiry had established the genuineness of the case an F.I.R. Was registered u/s.154 Cr.P.C. Only when the F.I.R. is registered, the criminal law is set in motion then the investigation is carried out u/s.167 Cr.P.C. based on the F.I.R. The report of the preliminary enquiry is not a legal term within the meaning of Cr.P.C. and it is not necessary for the respondent to furnish details of the preliminary enquiry conducted and the accused has no right to demand a copy of the preliminary enquiry report.

He would further submit that in this case as stated above the petitioner had been filing repeated applications before the trial Court as well as the High Court right from the inception of the case and taking into consideration the conduct and finding that the intention of the petitioner was only to delay the proceedings, the trial Court had dismissed the petition. The trial Court finding that the 2nd respondent is not a necessary party had not issued notice to the 2nd respondent. The trial Court rightly finding that the petitioner was aware of the circumstances and was also aware of the communications between the 3rd accused company and the 2nd respondent bank did not find it necessary to issue notice and hear the 2nd respondent. Further, it is not the case of the petitioner that the correspondences were not available with him or that he had applied for the copies of the same from the 2nd respondent and that he was not furnished with the same. He would thereby pray for dismissal of the Criminal Original Petition.

13.In support of his contentions, the learned Special Public Prosecutor would rely on the following judgments

- Rajender Singh Katoch V. Chandigarh Admn. and Others reported in (2007) 10 SCC 69,
- Ram Chandra Singh V. Superintendent of Police, CBI, Crime Branch, Kolkata reported in (2009) SCC Online Crl.LJ 3526
- Om Prakash Sharma V. Central Bureau of Investigation Delhi reported in (2000) 5 SCC 679
- Md.Muzam @ Thambi V.The lntelligence Officer, N.C.B. Reported in (2004) 5 CTC 568

14.Heard the counsels. Perused the material on record.

15.In this case, the petitioner is A1, facing trial along with two other accused for the offence u/s.120-B r/w 420 IPC and Section 13(2) r/w 13(1)(d) of IPC, 1988. It is the case of the petitioner that based on an earlier complaint dated 30.08.2012, a preliminary enquiry was conducted and it is the further case of the petitioner that he is the Managing Director of M/s.Subhiksha Trading Services Ltd., the 3rd accused in this case and that the company had borrowed money from the 2nd respondent Bank and since the petitioner had sent legal notice against the top officials of the bank, the officials of the bank got antagonized and declared the account of the petitioner's company as Non Performing Asset during 2007-2008. Further antagonized by the action of the petitioner the 2nd respondent bank had preferred a complaint dated 30.08.2012 based on which a preliminary enquiry was conducted by the 1st respondent and that consequent to the preliminary enquiry, the 2nd respondent was made to prefer another complaint dated 18.06.2013 based on which a regular case was registered. The petitioner had sought for the documents relating to the complaint dated 30.08.2012 of the 2nd respondent and all the records arising there from, including all communications and correspondence with the 2nd respondent till the complaint of the 2nd respondent dated 18.06.2013 and direct the 2nd respondent to produce the complete records with it from 31.03.2009 in respect of the default of Ms.Subhiksha Trading Services Ltd.,upto filing of the complaint dated 18.06.2013 with the 1st respondent, including the complaint dated 30.08.2012.

16.It is the contention of the petitioner that the official of the bank was examined as P.W.1. and that he had suppressed about the earlier complaint, based on which a preliminary enquiry was conducted and thereby for effective cross examination of P.W.1 and the documents were sought to be produced and hence the petition u/s.91 Cr.P.C. was filed.

17.The petitioner had relied on the judgement of the Delhi High Court in Suresh Kalmadi V.CBI reported in (2015)SCC Online Del 9639 wherein it has been held that

> " 21.The defence has to be built up from day one of the trial. The right to defend, which flows from the fundamental right to "life" and "personal liberty" enshrined in Article 21 of the Constitution of India, is not an illusionary right, but a substantive one. The tool given in the hands of the court to discover the truth of the controversy before it. The power under Section 91 Cr.P.C. to discover the truth and to do complete justice

to the accused. Naturally, the discretion vested in the Court must be applied judiciously, while keeping in mind the constitutional mandate, and the purpose of Section 91 Cr.P.C. The Court is not expected to reject the application in a mechanical manner and without assigning reasons that these documents are not relevant and required, therefore, the prayer cannot be allowed. There must be finding to the effect that why these are not relevant and required."

18.It is the contention of the 1st respondent that preliminary enquiry was conducted in accordance with procedure contemplated to find out the truthfulness and veracity of the information and after finding the genuinity of the allegations, the 1st respondent had registered a case based on the complaint dated 18.06.2013. It is the further contention of the respondent that the discretion to order for production of documents vests with the concerned Court and that only when the discretion has not been exercised judicially, a superior Court can interfere in it and further that the petitioner had earlier filed similar petitions and they were dismissed by the Court and that the petitioner had not challenged the same earlier. Further, the High Court in an earlier petition had held that taking into consideration the voluminous documents in the case, preliminary enquiry had been conducted and finding prima facie material agaisnt the accused a case was registered based on the complaint. The trial Court while dismissing the application has held that the petitioner had earlier filed petitions for production of documents prior to framing charges and that were dismissed and that he had not preferred any revision against the dismissal of the earlier petitions and the trial Court has also held that the High Court has not found fault with the conducting of preliminary enquiry and held that the case was registered based on the complaint dated 18.06.2013 is permissible in law. Further, the trial Court has also held that other than mentioning about the earlier preliminary enqruiry, the petitioner has not pointed out any material to show that the investigation is tainted, behest or suffers from any irregularities and that it is the own admission of the petitioner that he was aware of the earlier proceedings between him and the bank and that the documents are available th him for perusal.

19.Learned Special Public Prosecutor had relied on the following Judgments.

In Md.Muzam @ Thambi V.The Intelligence Officer, N.C.B. (2004) 5 CTC 568, this Court has held that

"13. It is purely the discretion of the trial Courts to exercise such powers in calling for the documents under

Section 91, Crl.P.C. Pointing out that the Superior Court cannot lightly or in a routine fashion intervene in such exercise of discretion of the trial Court, in, the Supreme Court has held thus:

"The Court concerned must be allowed a large latitude in the matter of exercise of discretion and unless in a given case the Court was found to have conducted itself in so demonstrably an unreasonable manner unbecoming of a judicial authority, the Court superior to that Court cannot intervene very lightly or in a routine fashion to interpo or impose itself even at that stage. The reason being, at that stage, the question is one of mere proprieties involved in the exercise of judicial discretion by the Court and not of any rights concretized in favour of the accused".

14. When the Trial Court has felt that the Log Book is not necessary (because of its non-availability). the High Court cannot lightly interfere with the same in calling for the Log Book. It is also to be pointed out that the petition filed by the petitioner/A.1 does not also indicate the "Necessity or desirability of the Log Book, which had been summoned under Section 91, Crl.P.C. All that has been averred is that the petitioner/A.1 is in requirement of the Log Book to establish his defence. When he has not stated the "Necessity" or "Desirability", the learned Special Judge has rightly dismissed the petition.

15. Section 91, Crl.P.C. does not give an absolute right for the accused to ask for "summoning any document and it is only when the Court on a consideration of the facts and circumstances, considers that the production of the document or thing sought for is necessary or desirable for the purpose of the trial, enquiry or proceedings, would summon the same but not otherwise. At this stage, when the defence was closed and the matter is posted for arguments, the accused cannot insist upon production of the document - Log Book, which was not available with the Department. No reasonable or valid grounds are put forth by the accused warranting interference in the impugned order. This petition is bereft in merits and is bound to fail”.

In Ram Chandra Singh V. Superintendent of Police, CBI, Crime Branch, Kolkata reported in (2009) SCC Online Crl.LJ 3526 it has been held that

“11.Upon hearing the learned Counsel for the parties I fail to find out any point in any of the revisional applications. Sometimes an anonymous complaint is made against a public authority and to test the veracity of the complaint, a preliminary enquiry is conducted into the matter and when preliminary enquiry establishes the genuineness of the complaint then an FIR is registered under section 154 of the Cr. PC. When an FIR is registered the criminal ball is set into the motion and then investigation is carried out under section 167 of the Cr. PC on the FIR, and investigation may either culminate into chargesheet or a final report praying for termination of the prosecution. When a charge sheet is submitted, the accused gets copy of the FIR and all documents under section 173 of the Cr. PC accompanying the chargesheet on the basis of which the prosecution intends to prosecute the accused. The report of preliminary enquiry is not a legal term within the meaning of the Criminal Procedure Code. For the CBI there is no other separate Code of Criminal Procedure. Some times CBI instead of registering a case may choose to departmentally proceed against a delinquent servant. Now in Shashikant (supra) what we find is that an anonymous complaint was lodged against the appellant. CBI conducted a preliminary enquiry, the Investigating Officer was of the opinion that it was not necessary to register an FIR and it recommended for holding a departmental proceeding against the officers concerned and this recommendation found favour with the higher officers and further the instruction of the Central Vigilance Commission was also obtained. The question was whether it was obligatory on the part of the CBI in that case to lodge an FIR and carry out a full fledged investigation about the genuineness or otherwise of the allegations made in the said anonymous complaint. Their Lordships held that when a anonymous complaint is received no Investigating Officer would initiate investigating process immediately thereupon and it may for good reasons carry out a preliminary enquiry to find out the truth or otherwise of the allegations contained therein; but registration of a case is sine qua non for starting investigation. Thus a distinction is made between a preliminary enquiry proceeding the registration of an FIR and a regular case initiated through an FIR and it was held that a preliminary enquiry in terms of paragraph 9.1 of the CBI Manual may be converted into a regular case as soon as sufficient material becomes available to show prima facie that there has been commission of a cognizable offence. This decision thus in no way become applicable to the present case. It is a case where preliminary enquiry has been converted into R.C. under the aforesaid sections of the law. The accused has no right to demand a copy of the report of preliminary enquiry."

In Om Prakash Sharma V. Central Bureau of Investigation, Delhi reported in (2000) 5 SCC 679 it has been held

> 6.The powers conferred under Section 91 are enabling in nature aimed at arming the court or any officer in charge of a police station concerned to enforce and to ensure the production of any document or other things "necessary or desirable" for the purposes of any investigation, inquiry, trial or other proceeding under the Code, by issuing a summons or a written order to those in possession of such material. The language of Section 91 would, no doubt, indicate the width of the powers to be unlimited but the inbuilt limitation inherent therein takes its colour and shape from the stage or point of time of its exercise, commensurately with the nature of proceedings as also the compulsions of necessity and desirability, to fulfil the task or achieve the object. The question, at the present stage of the proceedings before the trial court would be to address itself to find whether there is sufficient ground for proceeding to the next stage against the accused. If the accused could produce any reliable material even at that stage which might totally affect even the very sustainability of the case, a refusal to even look into the materials so produced may result in injustice, apart from averting an exercise in futility at the expense of valuable judicial/public time. It is trite law that the standard of proof normally adhered to at the final stage is not to be insisted upon at the stage where the consideration is to be confined to find out a prima facie case and decide whether it is necessary to proceed to the next stage of framing the charges and making the accused to stand trial for the same. This Court has already cautioned against undertaking a roving inquiry into the pros and cons of the case by weighing the evidence or collecting materials, as if during the course or after trial vide Union of India v. Prafulla Kumar Samal. Ultimately, this would always depend upon the facts of each case and it would be difficult to lay down a rule of universal application and for all times. The fact that in one case the court thought fit to exercise such powers is no compelling circumstance to do so in all and every case before it, as a matter of course and for the mere asking. The court concerned must be allowed a large latitude in the matter of exercise of discretion and unless in a given case the court was found to have conducted itself in so demonstrably an unreasonable

manner unbecoming of a judicial authority, the court superior to that court cannot intervene very lightly or in a routine fashion to interpose or impose itself even at that stage. The reason being, at that stage, the question is one of mere proprieties involved in the exercise of judicial discretion by the court and not of any rights concretised in favour of the accused.

7. Therefore, it is to be only seen as to whether the trial court has judiciously and judicially exercised its discretion. The trial court as also the High Court, seem to have properly applied their minds by going into the nature of the documents sought to be summoned, their bearing and relevance for the nature of consideration to be made at that stage of the proceedings before the Special Judge as well as the necessity and desirability whereof. The consideration so made by the courts below in rejecting the claim of the appellant, could not be held to either condemnable or constitute any gross or improper failure to exercise their jurisdiction and consequently, it does not call for any interference in our hands. Therefore, the appeal fails and shall stand dismissed.

In Rajender Singh Katoch V. Chandigarh Admn. and Others reported in (2007) 10 SCC 69, the Hon'ble Apex Court has held that in an appropriate case, the police officers have a duty to make preliminary enquiry so as to find out as to whether allegations made had any substance or not.

20.Now what is to be seen is whether the trial Court has properly exercised discretion in dismissing the petition.

21.In this case P.W.1 has been examined. The petitioner other than stating that P.W.1 has suppressed about the earlier complaint and the preliminary enquiry, had not pleaded anything with regard to the necessity and desirability of the documents. Further, nothing had been averred with regard to the relevancy, requirement and need for production of the 2nd set of documents sought for in the petition. The Trial Court rightly finding that the documents are only correspondences which the petitioner was aware of and that it is not necessary or desirable for production of the documents and finding that the petition had been filed only to delay the proceedings had exercised discretion and dismissed the petition.

22.Perusal of the impugned order shows that the trial Court had judicially / judiciously exercised its discretion. Evidence of P.W.1 could be in adherence to the statement recorded from him during investigation and there is no suppression of facts, whereas the petitioner even without waiting to cross examine P.W.1 with regard to the alleged earlier complaint, preliminary enquiry and alleged connected documents had deferred cross examination and had filed the petition u/s.91 Cr.P.C. As pointed out by the trial Court the intention of the petitioner was only to delay the trial. This Court does not find any infirmity in the impugned order.

23.In the result this Criminal Original Petition stands dismissed. Consequently, the connected miscellaneous petition is also dismissed.

After the pronouncement of the order, a request was made by the petitioner / party-in-person that liberty may be granted to him to file appropriate petition to call for documents at the stage of defence. It is made clear that this Court cannot curtail the rights of the petitioner which are available to him under the Code of Criminal Procedure. Liberty is always available to the petitioner to move a petition u/s.243 Cr.P.C., provided that he satisfies the trial Court with regard to the conditions thereunder.

Sd/-
Assistant Registrar(AR CCC)

//True Copy//

Sub Assistant Registrar

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To.

1. Central Bureau of Investigation
(BS & FC), Bangalore
Rep. by its Inspector of Police
No.36, Bellary Road, KGH Layout, Ganganagar
Bangalore, Karnataka 560 032

2. Bank of Baroda
Zonal Office
Mylapore, Chennai

3. The Additional Chief Metropolitan Magistrate,
Egmore, Chennai 600 008.

4. The Public Prosecutor
   High Court of Madras
   Chennai 600 104

5. The Special Public Prosecutor for CBI Cases
   High Court of Madras
   Chennai 600 104

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BS(CO)
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