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

Reserved on: 05.02.2021
Pronounced on: 16.02.2021

\+ CRL.M.C. 2348/2020 & Crl.M.A.16549-51/2020

ASHOK KUMAR AGARWALA & ANR. ..... Petitioners
Through Ms. Priya Hingorani, Sr. Adv. with Mr. Sarvesh Chowdhry and Mr. Himanshu Yadav, Advs.

versus

CENTRAL BUREAU OF INVESTIGATION (CBI) ..... Respondent
Through Mr. Nikhil Goel, SPP with Mr. Vinay Mathur, Advs.

CORAM:
HON'BLE MR. JUSTICE SURESH KUMAR KAIT

J U D G M E N T

Crl. M.A. 16549-50/2021 (Exemptions)

1. Allowed, subject to all just exceptions.

2. Applications are disposed of.

Crl.M.C. 2348/2020 & Crl.M.A. 16551/2020

3. Present petition has been filed under section 482 Cr.P.C. seeking setting aside of the order dated 11.11.2020 passed by learned Special Judge (PC Act), CBI-07, Rouse Avenue Courts, New Delhi in IA No.7/2020 in CC No.122/2019.

4. Given the limited nature of the present petition impugning an interim order, the relevant and brief facts of the case, as narrated in the present petition, are given hereunder:

a. On 24.04.1992, Odisha Mineral Development Company Limited (hereinafter referred to as ***OMDC***) and Usha Rectifier Corporation India Ltd. (hereinafter referred to as ***URCIL***) later changed as ***UIL*** to form the Joint Venture Company (***JVC***) entered into a Memorandum of Understanding (hereinafter referred to as ***MoU***) for the purpose of setting up a crushing and screening plan including mining, processing and marketing of iron ore in order to meet the growing demand of processed ore for Steel Industry. Accordingly, a Joint Venture Company in the name of East India Minerals Limited (hereinafter referred to as ***EIML***) was formed on 18.08.1992 with URCIL and OMDC being its co-promoters.

b. On 25.02.2005 Mr. Ashok Kumar Agarwala, petitioner no.1 herein became the Director of M/s Selehium Trading Private Limited (hereinafter referred to as STPL) (petitioner no. 2 herein).

c. On 24.03.2005, Usha India Ltd ('UIL') one of the promoters of the Joint Venture Company (EIML) holding 23,99,940 shares in EIML had transferred these shares to STPL.

d. The Annual Returns for the year 2005-06 filed by the OMDC with RoC, Kolkata clearly showed that during the period of alleged offence, the Government of India held only 14.20% shares and other Government Companies held NIL equity shares in OMDC, thus legally recognising it as a Non-Government Company under Section 617 of the Companies Act, 1956 since the cumulative government shareholding in the said company was less than the required norm of 51% and the same is annexed as Annexure P2.

e. The OMDC in its own 'Annual Report and Accounts' for the year ended on 31.03.2010 (Financial Year 2009-10) notified that it was converted to a Government Company effective from 19.03.2010 under Section 617 of the Companies Act pursuant to the restructuring scheme duly approved by the Ministry and Union Cabinet. It is further notified that the Ministry of Steel, Government of India vide its letter No. 8(14)2007-RMII

(Pt.File) (Vol III) dated 30.09.2009 communicated that the Union Cabinet in its meeting held on 10.09.2009 had approved the 'Restructuring Scheme' of Bird Group of Companies including the OMDC. The said Restructuring Scheme had also received the approval of the Board as well as shareholders. It has been further notified that upon EIL becoming a Government Company, the OMDC also became a Government Company being subsidiary of EIL as per provision of Section 617 of the Companies Act, 1956 with effect from 19.03.2010 and the same is annexed hereto as Annexure P3.

f. The Ministry of Steel, Government of India, vide its Office Memorandum No.1(86)/2010-RIC dated 17.08.2010 intimated in its reply to an RTI application that "*Based on the extant definition of Central Public Sector Enterprises (CPSEs) the Orissa Minerals Development Company Ltd has become CPSE with effect from 19.03.2010.*" and the same is annexed as Annexure P4.

g. The Deputy Secretary, Ministry of Steel, Government of India vide its Office Memorandum No.1(86)/2010-RM II dated

13.04.2011 stated that OMDC became a Central Public Sector Enterprise with effect from 19.03.2010 and later on it became a subsidiary to Rashtriya Ispat Nigam Limited (hereinafter referred to as RINL) w.e.f. 05.01.2011 and the same is annexed as Annexure P5.

h. On 30.07.2014, a complaint was made by Shri Umesh Chandra the then Director, RINL holding additional charge of MD, OMDC to the CBI. Thereafter on 05.08.2015, the preliminary enquiry was registered and subsequently the FIR dated 08.03.2016 was registered by the Respondent CBI and a copy of the same is annexed as Annexure P6.

i. The Ministry of Steel, Government of India published its Annual Report for 2015-16 and uploaded on its official website (steel.gov.in). In the said Annual Report, it has been categorically stated that after restructuring as approved by the Union Cabinet, EIL and OMDC became PSU w.e.f. 19.03.2010 and the same is annexed as Annexure P7.

j. On 21.11.2016, the Respondent CBI filed Final Report/ Charge

Sheet under Section 173 Cr.P.C. before the learned CBI Court allegedly disclosing the commission of offence under Section 120-B IPC r/w 406/409/420/467/468/471 IPC and Section 13(2) r/w 13(1)(d) of Prevention of Corruption Act, 1988 ('PC Act'). The Respondent CBI along with the Charge-sheet filed a long list of documents but deliberately did not file the aforesaid documents which categorically prove beyond doubt that the learned CBI Court is devoid of the jurisdiction to entertain the present case since the OMDC was admittedly not a Government Company on the date of alleged offence. The copy of charge-sheet dated 21.11.2016 and the list of documents filed by respondent CBI are annexed as Annexure P8.

k. The learned CBI Court vide Order dated 16.01.2017 was pleased to take cognizance for the alleged offences under section 120-B IPC r/w section 406/409/420/467/468/471 IPC and section 13(2) r/w section 13(1)(d) of PC Act, 1988.

l. The Ministry of Steel, Government of India published its Annual Report for 2016-17 and uploaded on its official website (steel.gov.in). In the said Annual Report, it has been categorically stated that after restructuring as approved by the Union Cabinet, EIL and OMDC became PSU w.e.f. 19.03.2010 and the same is annexed as Annexure P9.

m. The Petitioner No. 1 and another co-accused (Mr. Vinay Rai) filed an application dated 25.09.2017 seeking dropping of charges under the provisions of PC Act. The learned CBI Court vide Order dated 25.09.2017 issued notice in the said application to the Respondent CBI and vide order dated 07.02.2018 directed that the application dated 25.09.2017 of the Petitioner No. 1 for dropping of charges shall be taken into consideration while hearing arguments on charge. The copies of orders are annexed as Annexure P10.

n. The Ministry of Steel, Government of India published its Annual Report for 2017-18 and uploaded on its official website (steel.gov.in). In the said Annual Report, it has been categorically stated that after restructuring as approved by the Union Cabinet, EIL and OMDC became PSU w.e.f. 19.03.2010 and the same is annexed as Annexure P11.

o. The Under Secretary to Ministry of Steel, GoI had intimated under RTI reply vide its letter No. 8(4)/2019-BGC dated 06.08.2019 addressed to the co-accused (Mr. Champak Banerjee) that '*subsequent to the Cabinet approval in 2009, EIL become a Government Company and a majority shareholder in OMDC. OMDC, as a subsidiary of EIL, became Government company as per the provisions of the Companies Act*.' and the same is at Annexure P12.

p. On 19.10.2019, the Petitioner No.1 had filed an Application under Section 294 of Cr.P.C. before the learned CBI Court seeking to consideration of certain documents at the stage of charge which are necessary for determining the preliminary question of jurisdiction of the learned CBI Court. The said application dated 19.10.2019 sought consideration of the certified copies of the following documents:

i) Memorandum and Articles of Association of OMDC;

ii) The Bird and Company Limited (Acquisition and Transfer of Undertakings and other Properties) Act, 1890;

iii) The RTI reply from GoI, Ministry of Steel vide communication dated 17.8.2010, the communication of Ministry of Heavy Industries and & Public Enterprises dated 22.8.2019 and Annual Report of the Ministry of Steel, Government of India for the year 2015-16;

iv) The RoC documents of the year 2005 upto 2009;

v) The RoC record along with the 92nd Annual Report and Accounts.

Accordingly, the learned CBI Court vide Order dated 19.10.2019 issued notice of the said Application to Respondent State and directed that the reply be filed within 10 days. Copy of the application and order dated 19.10.2019 are annexed as Annexure P13 & P14.

q. The Respondent CBI eventually filed the reply to the said Application only on 05.12.2019. The reply is at Annexure P16.

r. Thereafter, the Respondent CBI did not advance any arguments on the said Application dated 19.10.2019 despite availing several opportunities on 21.12.2019, 17.01.2020 and

05.02.2020. The copies of ordersheets are annexed as Annexure P17.

s. The learned CBI Court had earlier on 07.02.2018 dismissed the Application of the Petitioner No. 1 seeking inter-alia supply of complaint dated 30.07.2014. On being challenged, this Court vide order dated 17.02.2020 in appeal directed the Respondent CBI to supply copies of said documents to the Petitioners herein. A copy of order is annexed as Annexure P18.

t. On 12.03.2020, the Respondent CBI through its IO denied all the documents filed by the Petitioner No. 1 vide his Application dated 19.10.2019 without any reason. The said documents being denied by the Respondent CBI are public documents of impeccable quality and most of them have been issued by the Government of India itself, being the original author and creator of the said documents. However, the learned CBI Court vide its order 12.3.2020 directed the IO/HIO to comply with the Order dated 17.02.2020 of this Court and supply the documents to the Petitioners/Accused Persons within two weeks. The Respondent CBI, despite repeated Court directions on 22.09.2020, 14.10.2020 and 23.10.2020, failed to supply the documents to the petitioners/accused persons till October 2020, however, the copies of the said documents have been recently provided in November, 2020 which are annexed as Annexure P19.

u. From March, 2020 onwards, in light of the current pandemic COVID-19, all the cases listed before the Courts were adjourned en-bloc.

v. The General Manager of OMDC vide its Letter dated 06.07.2020 addressed to the co-accused (Mr. Champak Banerjee) communicated the Order passed in Appeal No. 3/2020 by the Managing Director of OMDC (being 1st Appellate Authority under RTI Act). The said Order has very categorically clarified the status of OMDC at para number (C)(iv) of the Order sheet in very clear terms which is quoted below:

> *"However, for the sake of clarity, it is clarified that OMDC was an 'Indian non-Government Company' upto 19.03.2010 and became a 'Government Company' w.e.f. 19.03.2010."*

w. In light of denial of the public documents by the Respondent CBI and the subsequent discovery of additional public documents, the Petitioners filed an Application dated 09.11.2020 (registered as IANo. 7/2020) (annexed as Annexure P21) before the learned CBI Court seeking exercise of its powers under Section 91 Cr.P.C. to summon the relevant officials for the production of the certain documents necessary for determining the preliminary question of jurisdiction of the learned CBI Court to entertain the present case. The said Application sought production of the following documents:

i) The Annual Returns of OMDC duly certified by the ROC;

ii) The relevant pages of the Balance Sheet / Annual Report of OMDC;

iii) The letter No. OMDC/HO/PERS/RTI/2020-07(3) dated 06.07.2020 issued by OMDC;

iv) The Office Memorandum dated 17.08.2010 issued by Ministry of Steel, Government of India, New Delhi;

v) The Office Memorandum dated 13.04.2011 issued by Ministry of Steel, Government of India, New Delhi;

vi) The letter No. 8(4)/2019-BGC dated 06.08.2019 issued by Ministry of Steel, Government of India, New Delhi;

vii) The relevant pages of the three years' Annual Reports of the Ministry of Steel, Government of India.

However, the learned CBI Court vide its Order dated 11.11.2020 in IA No. 7/2020 dismissed the said Application of the Petitioners and directed them to positively address arguments on charge on the next date of hearing.

5. Ms.Priya Hingorani, learned senior counsel appeared on behalf of the petitioners and submitted that the limited question that arise for consideration before this Court is whether the learned CBI Court was justified in dismissing the Application (Annexure P21) of the Accused Nos. 3 and 8 (Petitioners herein) and thereby refusing to exercise its powers under Section 91 Cr.P.C. to summon and sought production of documents and materials, as detailed therein, and to rely thereupon at the stage of framing of charge when the said documents are:

a) public documents of sterling and impeccable quality;

b) available with the Respondent CBI (Investigator) but deliberately not made part of the Chargesheet;

c) necessary for determining the preliminary question of jurisdiction of the learned CBI Court to take cognizance of the alleged offence under the provisions of Prevention of Corruption Act, 1988 ('PC Act');

d) relied upon the Accused Persons not for their defence but only to the limited extent of ascertaining the jurisdiction of the learned CBI Court to proceed with the case;

e) denied by the Respondent CBI despite the same having been issued by the Government of India itself or its Public Sector Enterprises, being the original author and creator of the said documents. The said summary denial of the documents by the Respondent CBI is simply devoid of any merits and clearly show the biased manner in which investigation has been carried out by the concerned IO.

6. Learned senior counsel submitted that the CBI has invoked the jurisdiction of learned CBI Court to entertain the present case under the PC

Act based on its assertion that the OMDC was a Government company on the date of alleged offence on 24.03.2005. The UIL was one of the promoters of the EIML, a Joint Venture company of the OMDC and UIL, had on 24.03.2005 transferred its 23,99,940 shares in EIML to STPL, Petitioner No. 2 herein, which was allegedly in contravention of the MoU dated 24.04.1992. However, vide the Application dated 09.11.2020 the documents sought to be produced under the directions of the learned CBI Court under Section 91 Cr.P.C. which are the Annual Returns/ Balance Sheets/ Letters of OMDC itself and the Office Memorandums/ Letter/ Annual Reports issued by Ministry of Steel, Government of India. The said documents clearly establish the admitted case of the Government that OMDC was categorized as an *'Indian Non-Government Company'* prior to 19.03.2010 and during the period of alleged offence in March, 2005, the Government held only 14.20% and other Government Companies held NIL equity shares in OMDC, thus legally recognising it as a Non-Government Company under Section 617 of the Companies Act, 1956. Thus, the learned CBI Court is ex-facie devoid of the jurisdiction to invoke the provisions of the PC Act. Moreover, the Respondent CBI in the Chargesheet dated 21.11.2016 (Annexure P8) concluded that the alleged offence of transferring shares on 24.03.2005 was committed at Kolkata as the concerned meeting of the Board of Directors of EIML was held at Kolkata on the said date. Thus admittedly, even the territorial jurisdiction to entertain the present case is not vested in the learned CBI Court at New Delhi. Accordingly, present petition deserves to be allowed.

7. The respondent CBI has filed reply to the present petition whereby submitted that the present petition is filed assailing the order dated 11.11.2020 of the ld. CBI Court whereby the application under section 91 of the Cr.P.C. for summoning of documents came to be dismissed with a finding that the said application was made with a view to delay the framing of charge. The court further held that most of the documents that were sought to be summoned were already on record and that documents which would constitute the defence of the accused should not be seen at the stage of charge.

8. The gist of the prosecution case is that on the basis of a complaint filed by one Umesh Chandra on 30.07.2014, an FIR came to be filed on 08.03.2016 against the petitioners and other accused persons. After investigation the CBI filed final report on 21.11.2016 therein charging the accused under Sections 405/409/420/468/471 of the IPC and S. 13(2) r/w

Section 13(l)(d) of the Prevention of Corruption Act 1988. Accordingly, the cognizance was taken by the CBI Court on 16.01.2017. During investigation, it was found that OMDC which is a PSU and UIL entered into a joint venture through MoU to set up a crushing and screening plant (CSP) by the name of EIML. The MoU which was signed at New Delhi gave the right to first refusal to the promoters with regard to the safe of shares in EIML as well as stipulated the need for prior consent of other promoters before sale. On 24.03.2005 UIL sold 23.99 lakh shares in EIML to the petitioner no.2 company of which Petitioner No. 1 was for Rs.52 lakhs through fraudulent means without offering it to OMDC and without prior consent of the OMDC. The said sale was approved in board meeting dated 23.05.2005 which was attended by the officials of OMDC who have been arrayed as Accused Nos. 1 and 2 in the present case. As the officers of OMDC neither objected to the persons nor protected the interest of OMDC. However, it was found during investigation that the said transaction was a sham one with a view to cheat the creditors of UIL without any consideration transferred.

9. Learned SPP appearing on behalf of the respondent submitted that as per the petitioner, the object of summoning the documents is to prove that

the government was only having 14.20% stake in OMDC in 2005 and the same would not be a government company at the time the offence took place and hence the offences under the Prevention of Corruption Act, 1988 would not apply as there being no public servant involved. It is submitted that the said contention is misplaced and unfounded in law as well as on facts. The government has a much higher share in the company than is alleged. OMDC was once a part of the Bird group of companies that was nationalised by way of The Bird and Company Limited (Acquisition and Transfer of Undertakings) Act, 1980 wherein the government had acquired the stake in the company '*for the purpose of ensuring the continuity of production of goods which are vital to the needs of the country.......'* As on 2005 the shareholding as per the annual reports for 2005-2006 shows that the government had a direct stake of 14% LIC, which is a 100% owned government company had 17% share in the company. Also Eastern Investments Limited (EIL) company further had 33 % share in the company. EIL is a PSU company and was also one of the companies that was part of the big group of companies which was nationalised. Hence it would come to pass that the government, directly or indirectly would be the largest shareholder in the company and the government exercised control over the company.

10. It is further submitted that if the documents prove that the government had only 14 % stake in the company the same would not affect the applicability of the Prevention of Corruption Act. The definition of Public servant is not restricted to the employees of a government companies as alleged. Section 2(c) of the Prevention of 'Corruption Act gives an elaborate definition of the phrase 'Public Servant' and the wide nature of the definition can be seen from Section 2(c)(iii) of the Act which is reproduced as follows:

> *"S. 2(c) Public servant is defined as:*
>
> *(i).......*
>
> *(ii) ......*
>
> *(ii) any person in the service or pay of a corporation established by or under a Central, Provincial or State Act, or an authority or a body owned or controlled or aided by the Government or a Government company as defined in section 617 of the Companies Act, 1956".*

11. Learned counsel submitted that as per the above definition the employees of those companies which are controlled and aided by the government or a government company would be covered under the definition of public servant and hence would be covered under the Act. The

petitioners herein have admitted that 14 % of the company was owned by the government would at the very least come under the definition of aid by the government. The word *'aids'* used in S. 2(c)(iii) of the Act though not defined has been interpreted liberally in several cases including the case of ***State of Maharashtra and Ors. vs. Brijlal Sadasukh Modani 2016 (4) SCC 417*** wherein it was held thus:

> *"As we notice, the High Court has really been swayed by the concept of Article 12 of the Constitution, the provisions contained in the 1949 Act and in a mercurial manner taking note of the fact that the multi-state society is not controlled or aided by the Government has arrived at the conclusion. In our considered opinion, even any grant or any aid at the time of establishment of the society or in any construction or in any structural concept or any aspect would be an aid. We are inclined to think so as the term `aid' has not been defined. A sprinkle of aid to the society will also bring an employee within the definition of `public servant'. The concept in entirety has to be understood in the backdrop of corruption. In Shri Ram Singh (supra), this Court had to say this:-*
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> *"Corruption in a civilised society is a disease like cancer, which if not detected in time, is sure to maliganise (sic) the polity of the country leading to disastrous consequences. It is termed as a plague which is not only contagious but if not controlled spreads like a fire in a jungle. Its virus is compared with HIV leading to AIDS, being incurable. It has also been termed as royal thievery. The socio-political system exposed to such a dreaded communicable disease is likely to crumble under its own weight. Corruption is opposed to democracy and social order, being not only anti-people, but aimed and*

targeted against them. It affects the economy and destroys the cultural heritage. Unless nipped in the bud at the earliest, it is likely to cause turbulence - shaking of the socio-economic-political system in an otherwise healthy, wealthy, effective and vibrating society."

21. We share the said perception, and reiterate with agony. The ingemination has to be realised with sanctity. Therefore, we are of the convinced opinion that it was entirely unnecessary on the part of the High Court to enter into elaborate deliberation to arrive at the conclusion that the respondent was not a public servant. Regard being had to the facts of the case, we think it would be apposite that it is left to be dealt with in the course of trial whether the society concerned has ever been granted any kind of aid or not.

22. In view of the aforesaid premises, we allow the appeal, set aside the judgment and order passed by the High Court and direct that the issue i.e. whether the respondent is a public servant or not, shall be gone into during the trial."

12. Further submitted that the question of whether or not the accused has a right to produce documents at the stage of framing of charge was the issue of reference in the case of ***State of Orissa vs. Debendra Nath Padhi: 2005 (l) SCC 568*** wherein it was held that the accused had no right to produce documents at the stage of framing of charges. The Hon'ble Supreme Court in the said judgement while dealing with section 91 of the Act had stated thus:

"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, the 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 issued 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 possession to prove his defence. Section 91 presupposes that when the document is not produced process may be initiated to compel production thereof."

13. It is submitted that that the judgement relied upon by the petitioner of

Nitya Dharmananda and Ors. vs. Gopal Sheelum Reddy: (2018) 2 SCC 93

will not help the petitioners as the judgement qualifies the discretion of the court to summon the documents under Section 91 of the Act with certain criteria for the exercise of such discretion. As per the judgement in order for a document to be summoned the following criteria have to be satisfied:

a. *That the material available with the investigator and is not made part of the charge sheet;*

b. *That the material has a crucial bearing on the issue of framing of charge;*

c. *That the material which has been withheld by the investigator/ prosecutor of sterling quality.*

14. Learned SPP submitted that in the present case, the petitioners have not shown as to how the documents which are sought will have a crucial bearing on the dispute at hand. Even if the convention of the petitioners is accepted fully and it is shown that OMDC was not a government company as per section 617 of the Companies Act, 2013, the same would not prove that the Accused Nos. 1 and 2 were not public servants in light of the wide definition of public servant as provided in the Prevention of Corruption Act, 1988. Thus the question of whether or not the said accused where public

servants can only be decided through trial and not at the stage of framing of charge wherein only the documents produced by the prosecution is to be considered. Furthermore the same comes in conflict with the judgement in ***State of Orissa vs. Debendra Nath Padhi(supra)*** which was decided by a full bench which would have to prevail.

15. Further submitted that the case of ***Rajiv Thapar and Ors. vs. Madari Lal Kapoor*** being relied upon by the petitioner will not help the petitioner as it is clear from the records of the company that it was either controlled/aided by the government. The court in the said case had held that:

> *"23. Based on the factors canvassed in the foregoing paragraphs, we would delineate the following steps to determine the veracity of a prayer for quashing, raised by an accused by invoking the power vested in the High Court under Section 482 of the Cr.P.C.:-*
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> *(i) Step one, whether the material relied upon by the accused is sound, reasonable, and indubitable, i.e., the material is of sterling and impeccable quality?*
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> *(ii) Step two, whether the material relied upon by the accused, would rule out the assertions contained in the charges levelled against the accused, i.e., the material is sufficient to reject and overrule the factual assertions contained in the complaint, i.e., the material is such, as would persuade a reasonable person to dismiss and condemn the factual basis of the accusations as false.*
>
> *(iii) Step three, whether the material relied upon by the accused, has not been refuted by the*

prosecution/complainant; and/or the material is such, that it cannot be justifiably refuted by the prosecution/complainant?

(iv) Step four, whether proceeding with the trial would result in an abuse of process of the court, and would not serve the ends of justice?"

16. Learned SPP for CBI submitted that the petitioner has made a further challenge stating that territorial jurisdiction of the said offence would not be at Delhi as the alleged board meeting took place at Kolkata. However, this contention is misplaced as the MoU between OMDC and UIL whereby the joint venture company, EIML incorporated was entered into at Delhi. The shares of EIML being at the centre of the dispute the jurisdiction is rightly at Delhi. This contention however, is not relevant to the present petition as the documents sought to be summoned would have no bearing to the issue of territorial jurisdiction. In addition, the petitioner has also made a claim that the documents that are being sought for are in the custody of the CBI. It is stated that these documents are not in the possession of the CBI and that all documents that are being relied upon and which is legally required to be given to the petitioner has been served upon the petitioner a long time ago. It is furthermore stated that section 91 cannot be used to make the investigating agency fetch evidence for the accused who does not have a right to lead defence at the time of framing of charge.

17. Further submitted that the directors of OMDC being arrayed as accused nos.1 & 2 are the public servants in the case and would have been most aggrieved party by virtue of the inclusion of charges under the Prevention of Corruption Act. However, the said accused persons have not raised any grievance before the court and it is only the petitioner who has done so. Thus in light of the above, it can be seen that the section 91, petition is an obvious attempt on the part of the petitioner to delay the proceedings without any basis and thereby delay justice being served. The objection of the CBI is not an issue of prejudice to the petitioner but rather a question of stage at which the purported defence of the accused can be raised and section 91 has been interpreted consistently not on the test of prejudice but only on the test of right. Accordingly, the present petition deserves to be dismissed.

18. I have heard learned counsel for the parties and perused the material available on record.

19. The case of the petitioners is that they, vide Section 91 Cr.P.C. Application (Annexure P 21) filed by them, sought production of documents which are necessary for determining the preliminary question of jurisdiction of the learned CBI Court to take cognizance of the alleged offence under the

provisions of PC Act and the same are not relied upon by them for their defence but only to the limited extent of ascertaining the said jurisdiction. The documents sought to be produced through the said Section 91 Cr.P.C. Application are inter-alia in the nature of the Annual Returns/ Balance Sheets/Letters of OMDC itself and the Office Memorandums/ Letter/ Annual Reports issued by Ministry of Steel, Government of India. The said documents clearly establish the admitted case of the Government that OMDC was categorized by it as an *'Indian Non-Government Company'* prior to 19.03.2010 and during the period of alleged offence in March, 2005, the Government held only 14.20% and other Government Companies held NIL equity shares In OMDC, thus legally recognising it as a Non-Government Company under Section 617 of the Companies Act, 1956. The said documents clearly prove that the Trial Court is *ex-facie devoid* of the jurisdiction to invoke the provisions of the PC Act.

20. Whereas, the Respondent CBI has relied upon the judgement of the Hon'ble Supreme Court in ***'State of Orissa vs. Debendra Nath Padhi': 2005 (1) SCC 568*** to plead that the Petitioners cannot produce documents at the stage of framing of charges. However, the Hon'ble Supreme Court has inter-alia held that Section 91 Cr.P.C. cannot be invoked by the accused at the

initial stage of framing of charge to produce any document which is considered necessary or desirable for the defence of the accused. However, in the present matter, the documents sought to be produced by the Petitioners, vide their Section 91 Cr.P.C. Application, are solely for the purpose of determining the jurisdiction of the learned CBI Court to take cognisance of the matter under PC Act. The relevant extract is reproduced below:

> *"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."*

21. The Hon'ble Supreme Court has settled the law regarding allowing the accused to produce materials and documents before the Courts at an early stage of the Trial. Reliance is placed on the judgement in ***'Rajiv Thapar vs. Madan Lal Kapoor': (2013) 3 SCC 330***, wherein it has held that if the accused by producing documents of sterling and impeccable quality

which cannot be justifiably refuted, is able to show that it is not necessary to proceed with the Trial since the said material would rule out the assertions contained in the charges levelled against the accused as being false, then the Court should not shut out those documents as the same can save a lot more time of the Court from being wasted in the name of Trial proceedings.

22. Further, in ***'Nitya Dharmananda @ K. Lenin vs. Sri Gopal Sheelum Reddy': AIR 2017 SC 5846*** has settled the law in relation to allowing the accused to invoke Section 91 Cr.P.C. to place on record before the stage of framing of charge certain documents of sterling quality, which are withheld by the investigator, and have a crucial bearing on the issue of framing of charge.

23. However, in the present case, petitioners themselves have admitted in the application filed before the Trial Court that most of these documents are already available on judicial file and during admission/denial of documents, CBI has already denied these documents. Accordingly, the Trial Court rightly opined that once the documents/copies thereof are already produced on record and admission/denial of documents have been conducted, the application under section 91 Cr.P.C. is not maintainable.

24. Whereas, case of the petitioner is that CBI has disputed genuineness of these documents which are issued by the Government of India, hence, production of these documents is necessary.

25. The case before the Trial Court is at the stage of arguments on charge. So far as the denial of genuineness/authenticity of documents cannot be decided at the stage of charge as the same would require trial.

26. In view of above facts, the judgments relied upon by the petitioners are not applicable, thus, the petition has no merit.

27. Finding no merit in the present petition, the same is, accordingly, dismissed.

28. Pending applications also stand disposed of.

(SURESH KUMAR KAIT)
JUDGE

FEBRUARY 16, 2021
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