

IN THE HIGH COURT AT CALCUTTA

CRIMINAL REVISIONAL JURISDICTION

Appellate Side

Present:

The Hon'ble Justice Jay Sengupta

CRR 2326 of 2021

Amanatus Siddika

Versus

The State of West Bengal & Anr.

For the petitioner : Mr. Arindam Jana
Mr. Samim Ahmed
Mr. Souvik Maji
..... Advocates

For the opposite party no. 2 : Ms. Minoti Gomes
Md. Hafiz Ali
..... Advocates

For the State : Mr. Sudip Ghosh
Mr. Bitasok Banerjee
..... Advocates

Heard on : 24.03.2022

Judgment on : 16.06.2022

Jay Sengupta, J.:

1. This is a revisional application challenging an order dated 08.10.2021 passed by the learned Additional Sessions Judge, Kandi, Murshidabad in Criminal Revision No. 17 of 2021, thereby affirming an order passed by the learned Magistrate rejecting an application of an accused under Section 91 of the Code praying for preservation of CCTV footages and phone call records.

2. The petitioner is an accused in GR Case No. 898 of 2021 pending before the learned Additional Chief Judicial Magistrate, Kandi, Murshidabad corresponding to Salar Police Station Case No. 104 dated 13.06.2021 under Section 498A of the Penal Code and Sections 3, 4 of the Dowry Prohibition Act. She filed an application dated 24.08.2021 under Section 91 of the Code praying for preservation of CCTV footages and phone call records. It is the petitioner's claim that on a particular date of occurrence, neither the informant nor the petitioner or her sister was present at the place of occurrence. The petitioner prayed that the CCTV footages dated 12.06.2021 from the cameras installed at Hattala, Masundi and Binodia bus-stand and the phone call records between the concerned parties would bear out the truth.

3. By an order dated 18.09.2021, the learned First Court dismissed the application under Section 91 of the Code as premature and devoid of merits. The matter was pending at the stage of supply of copies.

4. The learned revisional Court affirmed the order passed by the learned Magistrate primarily on the ground that it was the duty of the concerned

police authorities to preserve the relevant seized articles and for that no direction was required to be given.

5. Learned counsel appearing on behalf of the petitioner submitted as follows. The call detail records (CDR) and the relevant CCTV footages would be the best evidence to show about whether the informant and the accused were present at the relevant place at the relevant time. Relying on the decision of the Hon'ble Supreme Court in *Arjun Panditrao Khotkar vs. Kailash Kushanrao Gorantyal*, (2020) 7 SCC 1, it was submitted that the power under Section 91 of the Code could be exercised by a Court at any stage before a judgment is delivered. The parties concerned could then summon such records at the stage of evidence. Moreover, in *Sidhartha Vashisht vs. State*, AIR 2010 SC 2352, it was held that a direction was required to preserve CDR so as to ensure fairness in trial. Upon instruction, it was submitted that the relevant CCTV footages would not be available anymore as the same were not preserved earlier. However, a direction might be passed at least to preserve the call detail records. Reliance was also placed on *Nitya Dharmananda alias K. Lenin and Anr. vs. Gopal Sheelum Reddy also known as Nithya Bhaktananda and Anr.*, (2018) 2 SCC 93. In the alternative, it was prayed that the proceeding should be expedited.

6. Learned counsel appearing on behalf of the State relied on the case diary and submitted as follows. A *prima facie* case was made out against the accused as would be evident from a plain reading of the First Information Report and the charge sheet. First, an accused did not have any right to dictate the manner in which an investigation of a criminal case was to be

conducted. Neither the CCTV footages in question nor the call detail records would strictly prove that the individuals in question were absent at the place of the relevant time. In any event, the necessary CCTV footages were admittedly not available.

7. Learned counsel appearing on behalf of the opposite party no. 2 submitted as follows. As rightly pointed out on behalf of the State, an accused could not dictate the fashion in which an investigation should be done, even in the disguise of a prayer under Section 91 of the Code. The decisions relied upon on behalf of the petitioner were distinguishable on facts.

8. I heard the submissions of learned counsels appearing on behalf of the parties and perused the revision petition, the case diary and the written notes.

9. First, it is true that an accused has no right to dictate the manner in which an investigation into a criminal case is to be carried out. However, this is quite different from a prayer to preserve relevant materials in terms of Section 91 of the Code of Criminal Procedure. As was held in the case of Arjun Panditrao Khotkar (supra), the power under Section 91 of the Code can be exercised anytime before delivery of judgment.

10. As was laid down by the Hon'ble Supreme Court in Nitya Dharmananda alias K. Lenin & Another (supra), if the Court is satisfied that there is a material of sterling quality which has been withheld by the investigator/prosecutor, the Court is not debarred from summoning or relying upon the same even if the document is not a part of the charge sheet. However, it was also clarified that the defence had no right to invoke

Section 91 of the Code de-hors the satisfaction of the Court, at the stage of charge.

11. However, in the present case, there is nothing to show that the investigating agency deliberately withheld any material of sterling quality.

12. Admittedly, the relevant CCTV footages are not available any more. Even if they were available, it is quite doubtful that those would have helped the defence any bit. The relevant places including the bus stand as supposedly contained in the purported footages may not be the only places through which the persons in question would have commuted.

13. In the instant case, at pages 10 and 11 of the case diary there are two statements of independent local witnesses who purportedly saw the victim being harassed by two accused on a road (later, found to be the husband and father-in-law). Also, at pages 16 and 17 of the case diary, there are statements of neighbours who saw the victim at the bus stand. All these appear to substantially corroborate the version of the victim given in the FIR. These, along with other materials collected during investigation, tend to make out a prima facie case.

14. As regards the call detail records, the same are perhaps more relevant to aid the investigation in an appropriate case, which would primarily involve one or few particular incidents where in the normal course of business it would be expected that the phones are carried by the concerned persons and where the call records would have a more direct bearing on the alleged offence. However, it can fairly happen that a phone is kept at home or an accused deliberately keeps the phone at a different place. Moreover, here there are allegations of cruelty for dowry demand against all the

accused and not a mere mention of one or few particular incidents. In a case of this nature, which is under Section 498A of the Penal Code and Sections 3 and 4 of the Dowry Prohibition Act, it is indeed debatable whether such call detail records would have much bearing. Even if they have any bearing, allowing such prayer in the present facts at this stage would only amount to indulging in a roving and fishing inquiry and in protracting the proceeding.

15. The learned Trial Court too was not satisfied to invoke the power under Section 91 of the Code, at least at the present stage. The learned revisional Court was also of the view that the requirement of production of such documents as prayed for by the defence can best be assessed during trial.

16. In view of the above discussions, at this stage this Court finds no worthwhile reason to allow the instant second revision, or for that matter, the prayer made by the petitioner in terms of Section 91 of the Code.

17. Accordingly, the revisional application is dismissed although there shall be no order as to costs.

18. However, the petitioner shall be at liberty to make a similar prayer in respect of the call detail records at the stage of trial, if the same commences as against her.

19. The learned trial Court is requested to conclude the proceeding as expeditiously as possible without granting any unnecessary adjournment to any of the parties.

20. Urgent photostat certified copies of this judgment may be delivered to the learned Advocates for the parties, if applied for, upon compliance of all formalities.

(Jay Sengupta, J.)

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