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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPLICATION NO.153 OF 2023

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Sanaulla Jauwad Hussain

... Applicant

V/s.

The State of Maharashtra

... Respondent

Mr. Gaurav Bhawnani i/by Khan Abdul Wahab for the applicant.

Mr. Arfan Sait, APP for the respondent/State.

Mr. Madhukar Sanap, PI, Crime Branch Unit-8, Mumbai, is present.

CORAM : AMIT BORKAR, J.

DATED : APRIL 5, 2023

P.C.:

1. The challenge in this criminal application is to the order dated 22nd September 2022 passed by the learned Sessions Judge in Sessions Case No.589 of 2017 rejecting application of the applicant to produce Working Manual for Ballistic Examinations at Forensic Science Laboratory, Kalina. The learned Sessions Judge rejected the application on the ground that the Working Manual of concerned department is not necessary for the purpose of trial.

2. Learned advocate for the applicant invited my attention to the cross-examination of PW-22 to contend that initially he admitted that there are no guidelines nor Working Manual as

regards bullet fired from smooth bored gun. However, later on in the same paragraph he admitted that the Working Manual instructions govern country-made fire arms having smooth bored barrel.

3. The applicant, therefore, filed an application for production of the Manual. At this stage, it is necessary to consider section 91 of the Criminal Procedure Code, 1973 which reads thus:

“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 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 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.”

4. From reading of sub-section (1) of section 91 of the Code, it is clear that the learned Sessions Judge is empowered to issue summons to a person in whose possession the document which is necessary for the purpose of trial is believed to be. The emphasis of the Legislature is on the expression 'necessary' or 'desirable' for the purpose of trial. Before such application is allowed, the learned Sessions Judge needs to record satisfaction that issuance of summons to produce such document is necessary for the trial.

5. According to the learned advocate for the applicant, though such Manual is not fact in issue but it is relevant fact and, therefore, it was necessary to issue witness summons for production of such document.

6. On perusal of the cross-examination and in particular paragraph 21 of the PW-22, it appears that there is inconsistency in the answer. However, such inconsistency by itself does not give rise to a litigant to file an application under section 21 unless he is able to satisfy the Court that such document is necessary for the purpose of trial.

7. In my opinion, whether such Manual is a public document or a literature which can be relied upon by the defence can be adjudicated by the learned Sessions Judge at an appropriate stage. However, in so far as exerciser of power under section 91 is concerned, unless such exercise is perverse or arbitrary, it is not necessary for this Court to interfere with such order unless consequence of such exercise results into miscarriage of justice.

8. The next contention is that such inconsistency affects credibility of the witness. At the stage of exercise of power under section 91 of the Code, credibility of a witness is not an issue which the Court needs to adjudicate. Only relevant issue is whether it was necessary for conduct of trial that such document is necessary. In view of satisfaction recorded by the learned Sessions Judge that such document is not necessary for the trial, in my opinion, there is no reason to interfere with the impugned order.

9. The criminal application is dismissed. No costs.

(AMIT BORKAR, J.)