

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL REVISION APPLICATION NO. 364 OF 2024

Central Bureau Investigation

Anti Corruption Branch

... Applicant

Versus

Vidyadhar Digambar Pednekar & Anr.

... Respondents

Mr. Amit Munde a/w Mr. Sunil Chavan *for the Applicant-CBI-ACB,Pune.*

Mr. Nitin Dhumal *for the Respondents.*

CORAM : SANDEEP V. MARNE, J.

DATE : 23 SEPTEMBER 2024.

P.C. :

1) The Revision Application challenges order dated 30 March 2024 passed by the learned Special Judge (CBI-ACB), Pune allowing application filed by Respondent/Accused No.2 and directing the Central Bank of India to produce written communication made by CBI-ACB to the Competent Authority of the Bank regarding prosecution sanction against Accused No. 2.

2) Mr. Munde, the learned Special P.P. appearing for Applicant-CBI would invite my attention to the orders passed by the Apex Court in ***State of Rajasthan Vs. Swarn Singh @ Baba***¹, in which the Apex Court has made reference to its judgment in ***State of Orissa Vs. Debendra Nath Padhi***². Paragraph 6 of the order in the case of ***State of Rajasthan Vs. Swarn Singh @ Baba*** reads thus:

"6. The learned counsel for the Appellant- State has rightly drawn the attention of this Court to the legal position settled by this Court in the case of ***State of Orissa Vs. Debendra Nath Padhi***, (2005) 1 SCC 568, in which a Three Judge Bench of this Court has held as under: -

"25. 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. Insofar 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 a 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."

1. Criminal Appeal No. 856 of 2024 decided on 12 February 2024

2 (2005) 1 SCC 568,

3) Thus, the law expounded by the Apex Court in ***Debendra Nath Padhi*** (supra) is that the Court has to first consider the stage at which the production of document under Section 91 of the Code of Criminal Procedure is ascertain and to state the purpose for which production of the document is sought. If the Court arrived at a conclusion that the document is sought for defence of the accused, the same cannot be supplied before the turn of the accused for production of his defence arrives. In the present case the Respondent/Accused No.2 has sought production of correspondence between CBI-ACB and sanctioning authority of the Bank for the purpose of ascertaining the exact reasons why the sanctioning authority proceeded to issue prosecution sanction in the light of initial disinclination expressed by the sanctioning authority.

4) It appears that in pursuance of order dated 30 March 2024 the Central Bank of India has produced the communication dated 19 October 2020 made by the sanctioning authority to the Chief Vigilance Officer as well as the order of prosecution sanction. The communication dated 19 October 2020 made to the Chief Vigilance Officer would indicate that the sanctioning authority, after considering the entire material on record had expressed disinclination to issue prosecution sanction against Accused No. 2. Despite such opinion of the sanctioning authority, it appears that the sanction for prosecution of Accused No. 2 is finally issued by the authority.

5) The learned counsel appearing for Respondent/Accused No. 2 would submit that the communication between CBI-ACB and

sanctioning authority is sought for the purpose of ascertaining the exact reasons why the sanctioning authority changed its mind. He submits that there is a possibility of CBI-ACB pressurizing the sanctioning authority for issuance of the prosecution sanction. He would further submit that the correspondence between CBI-ACB and Competent Authority is needed for the purpose of demonstrating illegality in the sanction order. He would submit that the production of the said document is not sought for the purpose of defence of accused No. 2 in the Trial. He would submit that on the basis of the said correspondence Accused No.2 would be in a position to demonstrate illegality in the sanction order and if the sanction order is found to be defective, Accused No. 2 would be entitled to apply for discharge.

6) Considering the above purpose for which production of correspondence between CBI-ACB and sanctioning authority is sought, it cannot be stated that such production is desired by accused No. 2 for the purpose of proving his defence in the trial. Therefore, the judgment in ***Debendra Nath Padhi*** and ***Swarn Singh @ Baba*** (supra) would have no application to the present case. For the same reason the judgment passed by this Court in ***Mukesh P. Meena Vs. CBI ACB Mumbai***³ would also have no application to the facts of the present case where the Applicant therein sought production of series of documents and the production was clearly aimed at establishing defence of the accused. Mr. Munde would submit that the said communication being confidential correspondence cannot be directed to be produced. However, part of the correspondence is already produced

3. Criminal Application No.544 of 2021, decided on 26 November 2021

by the bank in pursuance of impugned order and therefore the element of confidentiality no longer survives.

7) In my view, therefore, no serious error is committed by the learned Judge in directing production of the written communication between CBI-ACB and prosecution sanctioning authority. The Revision Application filed by CBI-ACB is accordingly **rejected**.

[SANDEEP V. MARNE, J.]