



2024:DHC:2806



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

Date of decision: 05.04.2024

+ CRL.REV.P. 453/2024

KULDEEP SINGH

..... Petitioner

Through: Mr.Digvijay Singh, Mr.Hari
Darshan and Mr.Gurpreet
Singh, Advs.

versus

THE STATE OF NCT OF DELHI & ANR. Respondents

Through: Mr. Shoaib Haider, APP with
Insp.Surendra Singh.

Mr.Kanhaiya Singhal,

Ms.Deepali Pawar,

Mr.Prasanna, Mr.Ujawal Ghai,

Mr.Anmol Chopra, Mr.Ajay

Kumar, Mr.Teeksh Singhal,

Mr.Udit Bakshi, Advs. for R-2.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (ORAL)

CRL.M.A. 10500/2024 (Exemption)

1. Allowed, subject to all just exceptions.

CRL.REV.P. 453/2024 and CRL.M.A. 10501-02/2024

2. This petition has been filed under Section 397 read with Section 401 read with Section 482 of the Code of Criminal Procedure, 1973 (in short, 'Cr.P.C.'), challenging the order dated 20.03.2024 (hereinafter referred to as the 'Impugned Order') passed by the learned Additional Session Judge-02, West-District, Tis Hazari



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Courts, Delhi (hereinafter referred to as the 'Trial Court') in SC Case No.126/2022, titled as *State v. Kuldeep Singh & Ors*, dismissing the application filed by the petitioner herein under Section 91 of the Cr.P.C.

3. The above case, that is SC No.126/2016, is registered pursuant to the final report filed by the respondent no.1 / State in FIR No.150/2021 under Sections 498A/304B/406/506/34 of the Indian Penal Code, 1860 (in short, 'IPC') registered at Police Station: Mundka, Delhi. It is the case of the prosecution that the wife of the petitioner herein had committed suicide on 07.03.2021 due to the constant harassment on the part of the petitioner.

4. The petitioner filed the above mentioned application under Section 91 of the Cr.P.C., praying for the following directions:-

- a) that the Investigating Officer (IO) to be directed to file on record the case file with respect to the HMA No.1077/2014 whereby the deceased had been granted divorce from her earlier husband on a petition filed under Section 13-B of the Hindu Marriage Act, 1955 and had also received a sum of Rs.10 lakhs from the family members of the earlier husband;
- b) The CDR's and the Customer Application Form of the other mobile number of the deceased, which has not been investigated by the police be also filed for the period from 01.01.2021 to 08.03.2021;
- c) As it is the case of the applicant that the deceased had obtained a job with the Government of NCT of Delhi on the basis of a forged OBC Certificate, the documents available with the Delhi



Subordinate Services Selection Board (DSSSB) and the Department of Education, Delhi (DoE) such as her photo admit card, attendance sheet, examination sheet (answer sheet), photography and videography of the date of the examination, her biometric verification report & the result thereof and the details of the complaint made to the DSSSB/DOE in respect to the appointment of the deceased be also collected and be filed on record.

5. The learned Trial Court, by the Impugned Order, has dismissed the said application, observing as under:

“It is pertinent to mention that the supplementary chargesheet in terms of the said CDRs has already been filed. So the only issue remains to be decided in the present application is regarding documents regarding divorce proceedings of the previous marriage and victim procuring the job using illegal means. After hearing the arguments and perusal of the record, the present court is of the opinion that both the prayers are meritless as it has no relevance to the facts and circumstances of the case. The documents of previous marriage of the victim are totally irrelevant as it would have no consequences on the facts and circumstances of the present case. The accused has also prayed that documents regarding the job of the victim be summoned as she has secured the job by illegal means, however, there is nothing on record to suggest the same. By way of the present application the accused has sought further investigation regarding that which is not warranted in the present case. The court is of the opinion that further investigation can only be allowed after taking cognizance in rarest of the rare case in which there is grave miscarriage of justice, which is not the case



and, further investigation is unwarranted in the interest of justice. Had the victim secured the job by illegal means, the accused should have made complaint to legal authorities when she was still alive. Chargesheet has been filed and cognizance was taken long back. Further there is no explanation as to why this application was not moved at the earlier stage. Moreover, the applicant can prove his contention by bringing evidence at the appropriate stage. Therefore, there are no sufficient grounds for order for further investigation or production of documents in the present case.”

6. The learned counsel for the petitioner submits that the learned Trial Court has failed to appreciate that the fact of the deceased having obtained divorce by way of mutual consent from her earlier husband and having obtained a sum of Rs.10 lakhs for the same, was relevant and, therefore, in the interest of justice, the said documents should have been placed on record by the IO himself.

7. He submits that it is the case of the petitioner herein that the deceased had committed suicide because of her fear regarding a criminal investigation that would be carried out because of her obtaining a government job based on a fake OBC Certificate. He submits that therefore, the documents from the DSSSB and the DoE were also relevant for a fair and just adjudication of the trial.

8. He submits that the CDR of the mobile phone of the deceased were also necessary. He submits that, on the investigation of the other mobile phone of the deceased, a supplementary charge sheet came to be filed and two new witnesses were also found who could have thrown light on the reasons as to why the deceased had committed suicide. He submits that a similar result is expected on the



examination of the CDR of other mobile phone of the deceased. The same was, therefore, also relevant.

9. In support of the above submissions, he places reliance on the judgment of this Court in ***Suresh Kalmadi v. CBI***, 2015 SCC OnLine Del 9639.

10. On the other hand, the learned APP, on instruction from the IO, submits that as far as the CDR of the other mobile phone of the deceased are concerned, the same cannot be retrieved because of the passage of time. He submits that, in any case, all the documents that are prayed for by the petitioner to be brought on record, are in the nature of his defence; the petitioner would get adequate opportunity to lead the defence in the course of evidence, when he may produce these documents. He submits that the petitioner is merely praying for a fishing and roving inquiry and cause delay in the trial.

11. I have considered the submissions made by the learned counsels for the parties.

12. Section 91 of the Cr.P.C. reads as under:-

“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 such 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."

13. It must be remembered here that the trial in the present case is still at the stage of framing of charge. The maintainability of an application under Section 91 of the Cr.P.C. by an accused at this stage has been explained by the Supreme Court in various judgments. I may refer to a few of those hereinunder.

14. In ***State of Orissa v. Debendra Nath Padhi***, (2005) 1 SCC 568, the Supreme Court, with regard to the scope and ambit of Section 91 of the Cr.P.C., 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.

26. *Reliance on behalf of the accused was placed on some observations made in the case of Om Parkash Sharma v. CBI [(2000) 5 SCC 679 : 2000 SCC (Cri) 1014] . In that case the application filed by the accused for summoning and production of documents was rejected by the Special Judge and that order was affirmed by the High Court. Challenging those orders before this Court, reliance was placed on behalf of the accused upon Satish Mehra case [(1996) 9 SCC 766 : 1996 SCC (Cri) 1104] . The contentions based on Satish Mehra case [(1996) 9 SCC 766 : 1996 SCC*



(Cri) 1104] have been noticed in para 4 as under: (SCC p. 682)

“4. The learned counsel for the appellant reiterated the stand taken before the courts below with great vehemence by inviting our attention to the decision of this Court reported in Satish Mehra v. Delhi Admn. [(1996) 9 SCC 766 : 1996 SCC (Cri) 1104] laying emphasis on the fact that the very learned Judge in the High Court has taken a different view in such matters, in the decision reported in Ashok Kaushikv. State [(1999) 49 DRJ 202] . Mr Altaf Ahmed, the learned ASG for the respondents not only contended that the decisions relied upon for the appellants would not justify the claim of the appellant in this case, at this stage, but also invited, extensively our attention to the exercise undertaken by the courts below to find out the relevance, desirability and necessity of those documents as well as the need for issuing any such directions as claimed at that stage and consequently there was no justification whatsoever, to intervene by an interference at the present stage of the proceedings.”

27. Insofar as Section 91 is concerned, it was rightly held that the width of the powers of that section was unlimited but there were inbuilt, inherent limitations as to the stage or point of time of its exercise, commensurate with the nature of proceedings as also the compulsions of necessity and desirability, to fulfil the task or achieve the object. Before the trial court the stage was to find out whether there was sufficient ground for proceeding to the next stage against the accused. The application filed by the accused under Section 91 of the Code for summoning and production of document was dismissed and order was upheld by the High Court and this Court. But observations were made in para 6 to the effect



that 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 look into the material so produced may result in injustice, apart from averting an exercise in futility at the expense of valuable judicial/public time, these observations are clearly obiter dicta and in any case of no consequence in view of conclusion reached by us hereinbefore. Further, the observations cannot be understood to mean that the accused has a right to produce any document at the stage of framing of charge having regard to the clear mandate of Sections 227 and 228 in Chapter 18 and Sections 239 and 240 in Chapter 19.

28. We are of the view that jurisdiction under Section 91 of the Code when invoked by the accused, the necessity and desirability would have to be seen by the court in the context of the purpose — investigation, inquiry, trial or other proceedings under the Code. It would also have to be borne in mind that law does not permit a roving or fishing inquiry.”

15. The above view has been reiterated by the Supreme Court in ***V.L.S. Finance Ltd. v. S.P. Gupta*** (2016) 3 SCC 736.

16. Recently, the Supreme Court vide its order dated 12.02.2024 in ***Rajasthan v. Swarn Singh @ Baba*** passed in Criminal Appeal No.856/2024, again reaffirmed its earlier judgement in ***Debendra Nath Padhi*** (supra), and held as under:-

“7. The learned counsel for the respondent has relied upon the decision in the case of Nitya Dharmananda Vs. Gopal Sheelum Reddy, (2018) 2 SCC 93, to submit that the court being under the obligation to impart justice, is not debarred from exercising its power under Section 91 Cr.P.C., if the interest of justice in a given case so requires. However the said



decision is not helpful to the respondent. In the said decision also, it has been observed that the accused cannot invoke and would not have right to invoke Section 91 Cr.P.C. at the stage of framing of charge. In view of the law laid down by the Three Judge Bench in State of Orissa Vs. Debendra Nath Padhi, (supra), we are inclined to accept the present appeal.”

17. This court also, in ***Sukhmohinder Singh Sandhu v. CBI***, 2010 SCC OnLine Del 2481, has held that Section 91 of the Cr.P.C. cannot be used for making a roving and fishing inquiry. I may quote from the judgment as under:-

“11. This provisions of section 91 Cr. P.C. empower a court to summon or order production of any document which it think necessary or desirable for the purpose of inquiry or trial. The word ‘document’ through not defined in Cr. P.C., however, has been defined in section 3 of Evidence Act and would mean any matter expressed or described upon any substance by means of letter, figures or makes, or by more than one of those means. The accused under section 91 Cr. P.C. cannot ask the production of documents as a matter of right. However, while making application he has to specify the document and show its relevance. He cannot ask the court to make roving and fishing enquiry as has been done in the applications under consideration. Only when he discloses the nature of document and its relevance, the court to decide if the documents sought to be summoned was necessary or desirable for the just decision of the case.”

18. Applying the above principle to the facts of the present case, I find no merit in the present petition.

19. The reason why the deceased took divorce from her earlier



husband, and if there was monetary settlement in the same, is not relevant to the charge that is being alleged by the prosecution against the petitioner. In any case, these documents may be relevant for the defence of the petitioner and the petitioner would be fully entitled to produce these documents at the relevant stage, however, at the present stage of the trial, the petitioner cannot take recourse to Section 91 Cr.P.C. to seek the production of these documents.

20. Similarly, allegation with respect to the alleged forgery in the OBC Certificate allegedly made by the deceased at the time of her gaining employment, is an attempt by the petitioner to seek a fishing and roving inquiry into the alleged fears of the deceased and, in a manner, to embarrass the trial. The same cannot be permitted, relying upon Section 91 of the Cr.P.C.

21. As far as the CDRs are concerned, apart from the fact that IO submits that same cannot be retrieved due to passage of time, in any case, again fishing and roving inquiry cannot be conducted at the asking of the petitioner. The petitioner does not even allege the purpose of seeking such inquiry.

22. In **Amit Kapoor v. Ramesh Chander**, (2012) 9 SCC 460, the Supreme Court has reiterated the ambit and scope of the power under Section 397 and Section 482 of the Cr.P.C., holding as under:

“12. Section 397 of the Code vests the court with the power to call for and examine the records of an inferior court for the purposes of satisfying itself as to the legality and regularity of any proceedings or order made in a case. The object of this provision is to set right a patent defect or an error of jurisdiction or law. There has to be a well-founded error



and it may not be appropriate for the court to scrutinise the orders, which upon the face of it bears a token of careful consideration and appear to be in accordance with law. If one looks into the various judgments of this Court, it emerges that the revisional jurisdiction can be invoked where the decisions under challenge are grossly erroneous, there is no compliance with the provisions of law, the finding recorded is based on no evidence, material evidence is ignored or judicial discretion is exercised arbitrarily or perversely. These are not exhaustive classes, but are merely indicative. Each case would have to be determined on its own merits.

13. *Another well-accepted norm is that the revisional jurisdiction of the higher court is a very limited one and cannot be exercised in a routine manner....*

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*20. The jurisdiction of the court under Section 397 can be exercised so as to examine the correctness, legality or propriety of an order passed by the trial court or the inferior court, as the case may be. Though the section does not specifically use the expression “prevent abuse of process of any court or otherwise to secure the ends of justice”, the jurisdiction under Section 397 is a very limited one. The legality, propriety or correctness of an order passed by a court is the very foundation of exercise of jurisdiction under Section 397 but ultimately it also requires justice to be done. The jurisdiction could be exercised where there is palpable error, non-compliance with the provisions of law, the decision is completely erroneous or where the judicial discretion is exercised arbitrarily. On the other hand, Section 482 is based upon the maxim *quando lex aliquid alicui concedit, concedere videtur id sine quo res ipsa esse non potest* i.e. when the law gives anything to anyone, it also gives all those things without*



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*which the thing itself would be unavoidable.
The section confers very wide power on the
Court to do justice and to ensure that the
process of the court is not permitted to be
abused.”*

23. Applying the above test to the facts of the present petition, I find no merit in the present petition. The same is dismissed. There shall be no order as to costs.

24. It is made clear that any observations made in the present order shall not in any manner prejudice the trial.

NAVIN CHAWLA, J

APRIL 5, 2024/Arya/ss

Click here to check corrigendum, if any