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* **IN THE HIGH COURT OF DELHI AT NEW DELHI*****Date of decision: 07.02.2024***+ **CRL.M.C. 2321/2022 & CRL.M.A. 9816/2022**

MATER DEI SCHOOL THROUGH SISTER SHEEBA
ANTONY SECRETARY SOCIETY OF THE FRANCISCAN
SISTERS OF MARY DELHI Petitioner

Through: Ms.Rebecca M. John, Sr. Adv.
with Mr.Tushar Mahajan, Mr.P.
Singh & Mr.Bhaavan Mahajan,
Advs.

versus

STATE GOVT OF NCT OF DELHI & ORS. Respondents

Through: Mr.Aman Usman, APP.
SI Uttam Singh, PS Tilak Marg.
Mr.B. Vinodh Khanna,
Mr.Nikhil Kapoor, Mr.Shagufa
Khan & Ms.Shradha Gupta,
Advs. for R-3.

CORAM:**HON'BLE MR. JUSTICE NAVIN CHAWLA****NAVIN CHAWLA, J. (ORAL)**

1. This petition has been filed under Section 482 of the Code of Criminal Procedure, 1973 (in short, 'Cr.P.C.') challenging the order dated 16.04.2022 passed by the learned Metropolitan Magistrate-07, New Delhi District, Patiala House Court, New Delhi in Cr. Case No. 1792/2021, titled ***Harihara Ravi Iyer v. Sheeba Anthony & Ors.***, by which the learned Metropolitan Magistrate has been pleased to allow the



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application filed by respondent no.3 herein under Section 91 of Cr.P.C., and directed the concerned SHO to take appropriate steps for the preservation of the documents mentioned in the said application.

2. Pursuant to the above order, a notice dated 20.04.2022 under Section 91/160 of the Cr.P.C. has been issued by the IO/concerned SHO Police Station: Tilak Marg, calling upon the petitioner to produce the documents mentioned in the said notice at the Police Station, at the given time and date. The list of documents itself runs to over four pages and includes all the documents starting from the original society registration documents, original chapter affiliation agreement, membership application forms and approval documents, financial statements and documents pertaining to bank accounts operations and foreign currency transactions, Income Tax Returns and FCRA registration and annual returns, etc..

Submissions of the learned senior counsel for the petitioner:

3. The learned senior counsel for the petitioner submits that the above Criminal Complaint, that is, Cr. Case No. 1792/2021, has been filed by respondent no.3 *inter alia* alleging that in a Revision Petition earlier filed by respondent no.3 arising out of Complaint Case No. 5136/2017, titled ***Harihara Ravi Iyer v. Lakshmi Venugopal & Ors.***, the petitioner herein had filed a resolution of the Society of the Franciscan Sisters of Mary (Delhi) giving the registration number as '443G59/70', which



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was incorrect, while the correct registration number of the said Society is '4436/69-70'.

4. She submits that in the above complaint, to the knowledge and belief of the petitioner, the learned Metropolitan Magistrate vide an order dated 02.06.2023, has dismissed the application filed by respondent no.3 under Section 156(3) of the Cr.P.C..

5. She submits that in the said complaint, the petitioner then filed the application under Section 91 of the Cr.P.C., which in a vague manner gave the reason for calling and preserving the documents in question. She submits that the learned Metropolitan Magistrate by the Impugned Order, without even considering whether the calling of the said documents was necessary or desirable for the purposes of the inquiry, has directed the SHO of the concerned Police Station to take appropriate steps for the preservation of the same, thereby directing a fishing and roving inquiry. She submits that the Impugned Order, therefore, cannot be sustained. In support, she places reliance on the judgment of this Court in *Motilal Vora v. Subramanian Swamy & Anr.*, (2016) SCC OnLine Del 3792 and *Sukhmohinder Singh Sandhu v. CBI*, ILR (2010) VI Delhi 407.

Submissions of the learned counsel for the respondent no. 3:

6. On the other hand, the learned counsel for respondent no.3 submits that in the present case, the Police have also found



discrepancy in the title, registration number, designation of the signatories of the Society, and the registered address of the Society which purportedly runs the Mater Dei School. He has drawn my attention to the Status Report dated 27.01.2022, 31.05.2022, and 09.12.2022 in this regard.

7. He submits that the preservation of the documents is necessary for effective inquiry/investigation to be carried out. Placing reliance on the judgment of the Supreme Court in *State of Orissa v. Debendra Nath Padhi*, (2005) 1 SCC 568, he submits that the necessity and desirability of a document is dependent on the stage of the inquiry/investigation. He submits that for the present, the application was filed as there was an apprehension that the documents may be destroyed.

Analysis & findings:

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

9. 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.”

10. A reading of the above provision would show that the Court, where it considers any document to be ‘*necessary or desirable*’ for the purposes of any investigation, inquiry, trial or other proceedings before such Court, may issue summons to the person in whose possession or power such document is believed to be, requiring him to attend the Court and produce it before the Court or to produce at the time and place stated in the summons or the order. The pre-condition for issuing such a direction is the satisfaction of the Court that the document sought is ‘*necessary or desirable*’ for the purpose of the investigation or the inquiry.

11. In ***Motilal Vora*** (supra), this Court taking cognizance of the precedents on Section 91 of the Cr.P.C., has observed as under:-

“19. Learned Senior Counsel for the petitioners vehemently argued that the orders passed in the present case do not reflect any necessity or desirability. On this point,



judgment in the case of Ashok Chawla v. Ram Chander Garvan, Inspector CBI, MANU/DE/1243/2011, has been referred in which it was observed that Section 91 Cr.P.C. provides that 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, requiring the person in whose possession or power such documents are believed to be to attend and produce the same. On similar point, various other judgments have also been relied upon:

(i) “The power given under Section 91 of the code is a general and wide power which empowers the court, the production of any document or any other thing at any stage of any investigation, inquiry or other proceedings under the Code of Criminal Procedure It is no doubt true that the legislature has circumscribed this power to be exercised only where the court considers that the summoning of such document or things was necessary or desirable in its view, then the court could pass an order both in favor of the accused as well as the prosecution. It is no doubt true that such power would not be exercised where the documents or thing may not be found relevant or it may be for the mere purpose or delaying the proceedings or the order is sought with an oblique motive.” [Neelesh Jain v. State of Rajasthan MANU/RH/0569/2005]

(ii) “As per Section 91 of the Code of Criminal Procedure, when the Court considers that production of any document is necessary or desirable for the purpose of trial of a criminal case,



such Court may issue summons for the production of the document sought for. The Court has to judicially consider whether production of the document is relevant for the purpose of trial. Section 91 of the Code of Criminal Procedure does not confer an absolute right on the accused to seek for production of any documents. The party who prays for issuance of summons for production of document has to necessarily demonstrate before the Court that production of such document is material for arriving at a just decision in the case. If the petitioners fail to establish that a particular document is necessary and desirable to be summoned, then the Court shall not summon the document." [Alagesan and others v. State (2008) Cri.L.J. 3300 (Madras)]

(iii) "Section 91 Cr.PC envisages production of any document or other thing which according to the court or police officer in charge of the police station is necessary or desirable for the purpose of any investigation, enquiry or trial or other proceedings under the Code. The width of the powers under this section is unlimited. The only limitations are as regards to the such documents or things to be necessary or desirable for the purposes mentioned therein. Though the case of Debendra Nath Padhi (supra) pertained to the stage of framing of charges and the Apex Court held that at that stage, the case of production of documents was not made out, but the plain and literal reading of provisions of section 91 Cr.PC would reveal that the court was empowered to order for production of document or other thing only when that may be necessary or desirable for the purpose of enquiry, trial or other proceedings. The court has to deal with



this issue to satisfy itself as regard to the necessity or desirability of the documents sought to be produced.”
[Ravindra Kuman Chandolia v. CBI 2012 SCC Online Del 1263]

(iv) “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 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, commensurately with the nature of proceedings as also the compulsions of necessity and desirability, to fulfill 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....”
[State of Orissa v. Debendra Nath Padi



(2005) 1 SCC 568]

(v) “Section 91 Cr.P.C. envisages the production of any document or other thing which is required or desirable for the purpose of any investigation, inquiry, trial or other proceedings under the Code, if the Court is satisfied that such documents are essential and required at the relevant stage of proceedings. For allowing the application for production of documents or other things under Section 91 Cr.P.C., the Court has to deal with the issue of their necessity and relevancy and also whether such documents are required at the stage when they are sought to be summoned by the applicant. Summoning of documents cannot be allowed on a mere asking by the applicant or as a matter of routine. Section 294 Cr.PC provided for admission/denial of the documents filed in the Court by the prosecution or the accused. It also provided that where the genuineness of any document is not disputed, such document may be read in evidence in any inquiry trial or other proceeding under this Code without proof of the signature of the person to whom it purports to be signed and that the court may, in its discretion, require such signature to be proved.”
[Chandgiram v. State 2012 SCC Online 1740]

(Emphasis supplied)

12. In **Sukhmohinder Singh Sandhu** (supra), this Court 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."

13. As far as the judgment of the Supreme Court in ***Debendra Nath Padhi*** (supra) is concerned, the same also reiterates that the first and foremost requirement of Section 91 of the Cr.P.C. is about the document being '*necessary or desirable*' for the purpose of investigation, inquiry or trial.

14. In the present case, the respondent no.3 in his application filed under Section 91 of the Cr.P.C. had explained the necessity and desirability of preservation of the documents sought, by contending as under:-

"6. That to expedite the process of trial regarding the illegal and unlawful activities committed by the Founder Members & their associates and the concerned alleged as well as subsequent office bearers, it is very necessary that the following documents (both Physical & Electronic) are immediately seized



by IO/SHO and custody is handed over to the Hon'ble Court in the interest of justice. That the following documents which are to be immediately taken into custody are :-

xxxxxx

7 That it is the duty and responsibility of the Accused persons to ensure the compliances with the Society Registration Act, 1860 & other Statutory Laws of India in the Registered Society and therefore placing on record the above mentioned documents will aid in investigation and also search of the actual wrong doers.

8 That it is pertinent to mention that the alleged persons are also involved in tampering/destroying the official records and documents of the said society and thereby using means of forgery of documents and cheating to safeguard themselves. That immediate action is required in national interest and interest of the case.”

15. The learned Metropolitan Magistrate by the Impugned Order has allowed the above application in a cryptic order, which is reproduced hereinunder: -

“This is an application u/s 91 CrPC moved on behalf of the applicant/ complainant for passing necessary directions to IO/SHO PS Tilak Marg for preserving documents/files/ records and other related documents.

Arguments heard. Record Perused.

In view of the averments made in these application and in the interest of justice the application is allowed.

The SHO concerned is directed to take appropriate steps for preservation of documents mentioned in the application, if existing and not already destroyed and file compliance report on date already fixed i.e. 25.04.2022

The applicant/ complainant is directed to file spare copy of application within two



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working days from today.

Copy of this order be sent to the SHO concerned for compliance.

Copy of this order be given dasti to the applicant/ complainant.

This application is accordingly stands disposed off.”

(Emphasis supplied)

16. A bare reading of the Impugned Order would show that it does not reflect the satisfaction of the learned Metropolitan Magistrate to the ‘*necessity or desirability*’ of production or preservation of the documents that have been directed to be preserved by the Impugned Order. In fact, as noted hereinabove, the application of the respondent no.3 itself was vague and did not give any reasons for the production of the documents that were being sought to be produced by the petitioner. The documents sought to be preserved start from the original society registration documents, original chapter affiliation agreement, membership application forms and approval documents, financial statements and documents pertaining to bank accounts operations and foreign currency transactions, Income Tax Returns and FCRA registration and annual returns, etc. What is the relevance of these documents to the Complaint Case, is neither explained nor considered. The Impugned Order has been passed in a rather casual manner and would in fact, result into a fishing and roving inquiry into the affairs of the petitioner.

17. In my view, the Impugned Order does not satisfy the test laid down in Section 91 of the Cr.P.C. and the same is,



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therefore, set aside. As the notice dated 20.04.2022 issued by the SHO Police Station Tilak Marg is an action consequent to the Impugned Order dated 06.04.2022, the same is also quashed.

18. However, it is made clear that the above order would not prevent the respondent no.3 from moving an appropriate application before the learned Metropolitan Magistrate for seeking the production of documents by the petitioner. Such application, if made, shall be considered by the learned Metropolitan Magistrate in accordance with law.

19. The petition is allowed in the above terms. The pending application is also disposed of as infructuous.

NAVIN CHAWLA, J

FEBRUARY 7, 2024/rv/AS

Click here to check corrigendum, if any