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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Reserved on: 02.11.2023***Pronounced on: 05.02.2024***

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CRL M.C.101/2020 & CRL.M.A. 457/2020**SHRI B. SAMBI REDDY****..... Petitioner****Through: Mr. Raju Mohan and Ms.
Aranya Sinha, Advocates****versus****CBI****..... Respondent****Through: Mr. Rajesh Kumar, SPP for the
CBI along with Mishika
Pandita, Advocate****CORAM:****HON'BLE MS. JUSTICE SWARANA KANTA SHARMA****JUDGMENT****MS. SWARANA KANTA SHARMA, J.**

1. The present petition has been filed under Section 482 of the Code of Criminal Procedure, 1973 ('Cr.P.C') by the petitioner, seeking setting aside of the impugned order dated 16.11.2019 passed by learned Special Judge, Rouse Avenue Court, New Delhi ('learned Trial Court') in case titled as '*CBI v. B. Sambhi Reddy & Anr.*', whereby the learned Trial Court had dismissed the application of the petitioner to summon relevant documents under Section 91 of Cr.P.C. Therefore, petitioner has preferred the present petition.

2. Briefly stated, facts of the present case are that on 04.01.2015,



CBI had registered a case bearing no. RC No. 217-2015 A 0001/ACU-V under Section 7 of the Prevention of Corruption Act, 1988, ('PC Act'), against the petitioner herein on the basis of complaint made by one Sh. K.V. Singh i.e., the complainant. It had been alleged that a case was under investigation against the complainant with CBI and for showing favour to the complainant in the ongoing investigation, the petitioner had demanded an amount of Rs. 25 lakhs as bribe from him, which had been later reduced to 10 lakhs by the petitioner. As per the demand the bribe amount of Rs. 10 lakhs had to be given to him in two instalments of Rs 5 lakhs each, first was to be given on 04.01.2015. Since the complainant was not willing to give the bribe, he had lodged a written complaint against the petitioner herein with SP, CBI, ACU-V, New Delhi for taking necessary legal action against him. Though, Rs. 5 lakhs had been demanded in first instalment, the complainant was only able to arrange Rs. 1 lakh. After that, on the receipt of aforementioned complaint CBI constituted, a Trap team including two independent witnesses and the accused was caught red-handed while demanding and accepting bribe amount of Rs. 1 lakh at Mayur Vihar, Delhi on 04.01.2015.

3. During interrogation, the petitioner had disclosed that he had demanded bribe on behalf of one Sh. Sanjay Jha, Investigating Officer in RC No. BD1/2013/E/002 dated 28.02.13 registered in BS &FC Delhi of CBI. The investigation disclosed that since the petitioner had demanded bribe from the complainant, who did not want to give bribe, therefore, the complainant had decided to record



conversation of the petitioner on his mobile phone. During the said period, petitioner had made various calls on 14.12.2014, 15.12.2014, 16.12.2014, 22.12.2014, 29.12.2014 and 03.01.2015 for demanding bribe from the complainant. The investigation further disclosed that there was ample reliable evidence in the form of incriminating telephonic conversations between the present petitioner and the complainant, wherein it was established that the petitioner had demanded bribe from the complainant for showing him favour in the case investigated by CBI against him. After completion of investigation, CBI had filed a chargesheet on 03.03.15, against the petitioner and Sanjay Kumar Jha for offences punishable under Sections 120-B of IPC read with Section 7, 8 and 13(2), 13 (1)(d) of the PC Act, before the learned Trial Court. Thereafter, learned Trial Court had framed charges against the petitioner on 09.05.2016. The petitioner had moved an application under Section 91 of CrPC and the same was disposed of by the Ld. Trial Court vide impugned order dated. 16.11.2019.

4. Learned Counsel appearing on behalf of the petitioner vehemently argues that the complainant in the year 2011 had been posted as Zonal Manager, North India Region of Dena Bank having his office at Panchkula, Haryana. It is submitted that during the said period various irregularities had been committed by the complainant and that the co-accused herein had recommended the complainants name for prosecution of the complainant of serious irregularities by misusing his official position. It is further submitted that earlier the petitioners had filed an application under Section 91 Cr.P.C, which



the learned Special Judge, Karkardooma Court had allowed *vide* order dated 17.12.2018 for summoning the relevant documents as per application of the petitioner. Thereafter, *vide* order dated 15.04.2019 the learned Trial Court had directed the IO and the accused to visit concerned court at Panchkula, Haryana and apply for certified copy of the same. However, upon examining of such documents petitioner had found out that the IO did not provide him certain relevant documents required to cross examine the complainant herein. Subsequently, petitioner had filed second application under Section 91 Cr.P.C for summoning relevant documents required for cross examination of the complainant. The learned Trial Court *vide* impugned order dated 16.11.2019 without considering the relevancy of the documents required by the petitioner for cross examination of the complainant had dismissed the said application.

5. Learned Counsel for the petitioner argues that at this stage of trial, it is relevant for the petitioner to examine certain documents related to the complainant, as the petitioner herein had filed a written complaint with the CBI to investigate into the irregularities by the complainant while he was the Zonal Manager at Dena Bank, Panchkula, Haryana. It is argued by the counsel for petitioner that these documents are important for the petitioner to examine so that questions can be put to the complainant at the stage of cross-examination. Learned Counsel for the petitioner has placed reliance on *P. Ponnusamy v. State of Tamil Nadu* 2022 SCC OnLine SC 1543, *Nitya Dharmananda v. Gopal Shellum Reddy* (2018) 2 SCC 93, *Sanjev Narula v. Woodcrafts Furnishers* 2023 SCC OnLine



DEL 4381 and Sundar@Sundarrajan v. State by Inspector of Police 2023 SCC Online SC 310. Therefore, learned counsel for the petitioner prays that the application filed under Section 91 of Cr.P.C. be allowed.

6. On the other hand, learned Special Counsel for CBI opposes the present petition and submits that the petitioner is trying to delay the Trial by filing multiple applications under Section 91 of Cr.P.C despite being provided with all documents as requested vide order dated 15.04.2019. Learned Special Counsel submits that as per directions given by the learned Trial Court vide *order* dated 15.04.2019, the IO had visited the concerned court at Panchkula and had filed application before the concerned Special Judge, CBI for inspection of court file with the assistance of the accused and the same had been allowed. Thereafter, the petitioner after inspecting the files and identifying the documents had applied for certified copies and the same had been provided to the petitioner. It is submitted that the right to seek documents is not an absolute right available to the accused persons. It is stated that the documents which are relied upon by the prosecution to make out a case against the petitioner have already been supplied to him and that it is settled law that at the stage of Prosecution Evidence accused can only rely upon the documents relied upon by the prosecution to prove its case beyond reasonable doubt. It is during the defence evidence stage, that the accused can request the summoning of documents that he believes to be essential to substantiate his case. Reliance has been placed on the judgment passed by thrHon'ble Supreme Court in *State of Orissa V. Debender*



Nath Padi, (2005) 1 SCC 568 and by this Court in *Sukhmohindar Sandhu & Ors. V. CBI 2010 VII AD (Delhi) 617*.

7. This Court has heard arguments on behalf of the applicant as well as the state and has perused the material placed on record.

8. This Court has perused order dated 17.12.2018 passed by learned Special Judge, Karkardooma Courts, Delhi, whereby application filed under Section 91 Cr.P.C by the petitioner was allowed by the Court. Relevant portion of the same is reproduced as under:

“The IO of this case is hereby directed to confirm as to where the said 14 documents are at present and if they are part of the charge-sheet in the said case at Panchkula Court, CBI, being a party in the said case, is directed to apply for certified copies of those documents and produce the same on the next date of hearing before this Court or if the same are not part of the charge-sheet, the CBI is directed to produce the documents in the Court and copies of the same be supplied to the applicant/accused. The application stands disposed of....”.

9. This Court has gone through order dated 15.04.2019 passed by learned Trial Court and the same is reproduced as under:

“After considering the submissions it is deemed appropriate that accused B.Sambi Reddy be directed to go with the concerned CBI officials to the concerned Court at Panchkula, Haryana, where the CBI official can file an application for inspection and inspect the court file with the assistance of accused so that the page number / number of the documents which were permitted to be supplied to the accused persons vide order dated 17.12.2018, can be noted and certified copies thereof can be applied for and obtain by the CBI officials. Learned Additional PP CBI to ensure compliance by communicating this order to concerned SP so that 10/ HIO or any other official of CBI is deputed to coordinate with accused B.Sambi Reddy to inspect the file pending before the CBI court at Panchkula, Haryana”.



10. This Court has also gone through the impugned order dated 16.11.2019 and the same is reproduced as under:

“In view of the submissions, applicant/ accused was directed to go to the concerned Court at Panchkula, Haryana, with the CBI officials, to find out the page number/ number of documents which were permitted to be supplied to him.

This Court was informed on 09.05.2019 that documents had been applied for. Later, certified copies were obtained and supplied to applicant/ accused. However, applicant/accused thereafter filed another application u/s 91 CrPC which is under consideration.

Contrary to the submissions made by applicant/accused in the application, it appears that the copies of the documents, which were not supplied to him, were on account of the fact that the Copying Agency at Panchkula declined to supply the same. Though applicant/ accused has given details of the documents which he has not been supplied, he has failed to specify whether the said documents fall within the list of 14 documents, which were permitted to be supplied to him vide order dated 17.12.2018. In any event majority of the documents which applicant/ accused had sought copies of, have already been supplied to him and the remaining cannot be supplied to him as the Copying Agency of concerned Court has declined to do so and the concerned branch of CBI is also not having copies thereof.

Hence, it is deemed appropriate to dispose of the instant application u/s 91 CrPC filed on behalf of applicant/ accused with observation that in the event applicant/ accused finds it necessary to rely upon unavailable documents, to put forth in his defence, he may summon the file from concerned Court, if he so desires.

Application filed on behalf of applicant/ accused B.Sambi Reddy is disposed off accordingly.

Be listed for cross-examination of PW-1 Sh. K.V.Singh on 16.12.2019 and 17.12.2019”.

11. This Court notes that the petitioner herein requires summoning of certain relevant documents for the cross examination of the



complainant, at the stage of Prosecution Evidence. For the said purpose it would be important for this Court to first reproduce and reiterate Section 91 of Cr.P.C:

“Section 91:Summons to produce documents or other things:

(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”.

12. In the case of *V.L.S. Finance Ltd. v. S.P. Gupta* (2016) 3 SCC 736, Hon’ble Supreme Court has reiterated the scope and ambit of the said provision, the same is reproduced as under:

“49. The scope and ambit of the said provision was considered in **State of Orissa v. Debendra Nath Padhi** [State of Orissa v. Debendra Nath Padhi, (2005) 1 SCC 568 : 2005 SCC (Cri) 415] , wherein this Court has held thus : (SCC pp. 579-80, para 25)

“25. ... **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.” **The aforesaid enunciation of law clearly states about the scope of Section 91 CrPC and we are in respectful agreement with the same”.**

13. A comprehensive analysis of Section 91 Cr.P.C, would reveal the following fundamental ingredients:

- I. Section 91 can be invoked for production of documents or other things by way of issuance of summons.
- II. Section 91 can be invoked at any stage of investigation, inquiry, trial, or other proceedings



under the Cr.P.C.

- III. This invocation can take place when the Court or the Police deems the production of documents necessary or desirable for the purpose of investigation, inquiry, trial, or other proceedings under Cr.P.C.
- IV. The satisfaction regarding the necessity or desirability of the Court or the Police is essential for invoking this provision.
- V. The production of documents or other items is to be carried out before the Court if directed by the Court, or before the officer if directed by a Police Officer.

14. This Court notes that in the instant case, the petitioner herein had first moved an application under Section 91 of the Cr.P.C and *vide* order dated 17.12.2018 the application was allowed and relevant documents were to be supplied to the petitioner. After that *vide* order dated 15.04.2019, learned Trial Court had directed the CBI to accompany the petitioner to the concerned Court and mark the relevant documents required by the petitioner and to supply the same to him after applying for the certified copies of the same. Thereafter, again petitioner preferred a second application under Section 91 Cr.P.C seeking summoning of relevant documents to cross examine the complainant. It was further contended in the application that despite an order being passed in his favour, the IO had failed to supply relevant documents to the petitioner. Learned Trial Court *vide* impugned order dated 16.11.2019 had rejected the second application of the petitioner. Aggrieved by which the petitioner is before this Court seeking summoning of relevant documents as prayed for in his application and setting aside the impugned order dated 16.11.2019.



15. It is the case of the petitioner that RC BD1/2013/E0002 had been registered in BS&FC New Delhi on 28.02.2013 against one Sh. Vijay Kumar Gupta and others. It was alleged in the said RC that the Directors of M/s HRM Exports Pvt. Ltd in connivance with the Branch Manager, Dena Bank, Panchkula Zone, had misused and diverted funds to the tune of Rs 29.94 crores and thereby defrauded the Dena Bank. At that time the complainant had been posted as Zonal Manager, North India Region of Dena Bank having office at Panchkula, Haryana and his role was looked into during the course of investigation of the said case, as he was instrumental, in the capacity of Regional Manager, Dena Bank, Panchkula in processing the proposal of M/s HRM Export Pvt. Ltd. It is the case of the petitioner that the co-accused i.e. Shri Sanjay Kumar Jha had recommended prosecution of the complainant in the present case and therefore it would be relevant to summon certain documents from the said case in order to cross examine the complainant and confront him with the said documents.

16. This Court notes that the documents requested by the petitioner do not pertain to the case file or documents pertaining to the case registered against him, rather are a part of another case alleged to have been registered on the complaint of the co-accused against the complainant in the present case. On the other hand, it is the case of the CBI that said documents which have already been supplied to the petitioner are in no manner related to the case of the prosecution nor have been relied upon by the prosecution to prove its case beyond reasonable doubt. Even then by the orders of the learned Trial Court



documents have been provided to the petitioner earlier. This only implies that the petitioner is trying to delay the Trial.

17. This court observes that establishing the necessity of presenting documents is *sin qua non* for the petitioners to facilitate the further adjudication of the case. In the instant case, the petitioner does not contend that specific documents, crucial for the prosecution's assertion of its case beyond reasonable doubt, have not been disclosed. Instead, the petitioner seeks reference to another case purportedly filed against the complainant. In the court's assessment, at this juncture when the Trial is at the stage of prosecution evidence, the petitioner has not successfully demonstrated to the satisfaction of this court why these documents are pertinent for examination at this stage. In case he needs them, he can file appropriate application before the concerned Court to be provided with certified copies of those documents as they pertain to another State and move appropriate Court of law there in case he fails to get the same.

18. However, this Court notes that in the case of *Manoj v. State of M.P.* (2023) 2 SCC 353, the Hon'ble Supreme Court has read the provision of Section 91 Cr.P.C along with Section 243 of Cr.P.C and the same is reproduced as under:

205.In this context, a reading of Sections 91 and 243 CrPC as done in *Manu Sharma* [*Manu Sharma v. State (NCT of Delhi)*, (2010) 6 SCC 1 : (2010) 2 SCC (Cri) 1385] , is important to refer to : (*Manu Sharma case* [*Manu Sharma v. State (NCT of Delhi)*, (2010) 6 SCC 1 : (2010) 2 SCC (Cri) 1385] , SCC p. 85, para 217)

“217. ... Section 91 empowers the court to summon production of any document or thing which the court considers necessary or



desirable for the purposes of any investigation, inquiry, trial or another proceeding under the provisions of the Code. **Where Section 91 read with Section 243 says that if the accused is called upon to enter his defence and produce his evidence there he has also been given the right to apply to the court for issuance of process for compelling the attendance of any witness for the purpose of examination, cross-examination or the production of any document or other thing for which the court has to pass a reasoned order.”**

19. In view of the above, this Court is of the opinion that right of the petitioner to move an appropriate application before the competent court to summon documents be reserved and the documents which the petitioner wishes to rely upon can be summoned at the stage of defence evidence in accordance with law. At this stage, this Court finds no ground to interfere with the impugned order dated 16.11.2019 passed by learned Special Judge, Rouse Avenue Court, New Delhi.

20. Accordingly, the present petition alongwith pending application, if any stands dismissed.

21. It is however, clarified that the petitioner will be at liberty to avail appropriate remedies at relevant stage of the trial in accordance with law before the competent court of law.

22. The judgment be uploaded on the website forthwith.

SWARANA KANTA SHARMA, J

FEBURARY 5, 2024/zp