

**IN THE COURT OF THE III ADDL. DISTRICT AND
SESSIONS JUDGE, RAMANAGARA**

:Present:

Smt.S.Nagashree, B.A., L.L.M.,
III Addl. District and Sessions Judge,
Ramanagara

Dated this the 28th day of January 2016

S.C.86/2014

Complainant : State of Karnataka by
Bidadi P.S.
Ramanagara Dist.

(Rep. Special Public Prosecutor, Ramanagara)

Accused : 1. Nityananda Swamy and others

(A1 & A2 by Sri.E.R.G.N./C.V.N., Adv.)
(A3 & A5 by Sri.R.B.N./M.M., Adv.)
(A4 & A6 by Sri.S.G.M./M.M., Adv.)

**ORDERS ON APPLICATIONS FILED BY THE ACCUSED 1 TO
3 AND 5 U/S 91 OF Cr.P.C.**

These applications are filed by the accused 1 to 3 and 5 both u/s 91 of Cr.P.C. As the contents of the two applications and also the averments therein are verbatim the same, therefore they are taken together for consideration.

2. The averments of the petition in brief is that the Bidadi police have registered a case against the accused for the

offence u/s 376, 377, 295A, 420 and 506 r/w 120B of IPC. The investigation was done by CID, Bangalore. During the investigation of this case, the IO has recorded the statement of Ranjita Menon which has not been furnished to the accused. The IO during the investigation has also given report to the Hon'ble High Court of Karnataka during hearing of the bail application of the accused 1 and 2 that he has recorded the statement of 48 witnesses, but the copy of the same is not furnished to the accused. In the final report filed by the IO though it is stated that one Arati Rao has been subjected to medical examination, the copy of the report given by the Doctor is not furnished to the accused. The IO has also taken accused 1 and 2 for a medical examination during the crime stage and they are examined by the District Surgeon, Ramanagara but though the report contains 5 pages, only one page has been given to the accused and the remaining 4 pages are not furnished to the accused.

3. Likewise, during the investigation the IO has received the statement of 20 to 25 witnesses and recorded the same in a book called notes and orders and the same has not been furnished to the accused in spite of their RTI application. The IO has also recorded the statement of the Doctor one Krishna Shyama Rao which is not furnished to the accused. The 1st accused was also sent to potency test by the IO and that report is also not furnished to the accused. The accused are

entitled to make use of the same to make out a case of the falsity of the accusations leveled against them and also to seek their discharge u/s 227 of Cr.P.C. Hence, the accused 1 to 3 and 5 have sought for a direction to the IO and CID for production of documents as shown in the two applications to meet the ends of justice.

4. The learned Spl.P.P., on the contrary has filed his objections to the application filed u/s 91 Cr.P.C. which in brief is that the application is not maintainable and it is without any merits and liable to be dismissed. As per provisions and Section 207 of Cr.P.C. and also Section 217 and 273(5) the prosecution has followed the formalities and filed the charge sheet after giving copies to the accused. The prosecution does not rely on the statement given by Ranjita Menon and therefore her statement need not be furnished as it is not required for the case. During the investigation the IO has recorded the statement of 43 + 7 witnesses which is annexed with the charge sheet and furnished to the accused. The accused have already received the copy of the charge sheet and the annexed documents. But they have filed this application without any reasons. The examination by the Doctor of accused 1 and 2 at the time of their arrest was only according to the Supreme Court guidelines that had to be followed when the accused were arrested and the same is in the charge sheet and supplied the accused. Only to help the

1st accused some persons have sent some documents to the office of CID which are not relevant to the case and which are not taken for consideration during the investigation. As those documents are sent from the side of the accused, the question of giving those copies does not arise. There are no notes and orders or a book contained in the CID office as per the report of the IO. The investigation of this case is still is not completed and it is still going on u/s 173(8) of Cr.P.C. The prosecution has not withheld any documents intentionally. After the examination of the 1st accused regarding his potency test, there is only a report received from Victoria hospital, but the report is yet awaited from Forensic examination and from the laboratory and on receipt it would be furnished with a copy to the accused. Therefore, it is prayed that the application filed by the accused 1 and 2 is liable to be dismissed as not maintainable.

5. Heard the arguments of learned advocates Sri.C.V.N., and Sri.M.M., for the accused and the learned Special PP for the prosecution.

6. The points that arise for my consideration are:

1. Whether the accused No.1 to 3 and 5 have made out grounds to issue summons for production of documents as provided u/s 91 of Cr.P.C.?
2. What order?

7. My answer to the above are:

Point No.1: In the Negative

Point No.2: As per the final order for the following

REASONS:

8. Point No.1: The sum and substance of the two applications filed by the accused No.1 to 3 and 5 is with a prayer to summon about 7 documents in all. The documents that they intend to call for production under the two applications are:

- (1) The statement of one Ranjita
- (2) Statement of 48 witnesses
- (3) medical examination of Arati Rao
- (4) Medical examination of accused 1 and 2
- (5) Notes and orders
- (6) Statement of Doctor Krishna Shama Rao
- (7) Potency Test report of 1st accused

9. So, all these above 7 documents are sought in the application for being summoned from the Investigation Officer. The reasons assigned for these documents to be summoned as per their applications is that they want to show the falsity of the accusations leveled against them by the prosecution and also to establish grounds for their discharge in the case as provided under Section 227 of Cr.P.C.

10. To the contrary, the learned Special PP has submitted that the production of these documents is not at all necessary and filed serious objections to the two applications. The answers to the two applications is that:

- (1) Statement of Ranjita is not basis for the prosecution and hence not required
- (2) Statement of witnesses recorded is already given along with the charge sheet
- (3) The medical report of Arati Rao is already furnished to the court
- (4) The medical examination of accused No.1 and 2 is also annexed with the charge sheet
- (5) Statement of Doctor Krishna Shama Rao has not been recorded
- (6) There are no documents in the office of the CID maintained as notes and orders
- (7) Potency report is yet to be received from the laboratory and it is awaited

These are the answers given in his objections for the documents sought by the accused No.1 to 3 and 5.

11. The court has to decide u/s 91 of Cr.P.C., and consider whether these documents are necessary and whether they are to be summoned. However, the learned counsels for the accused No.1 to 3 and 5 have referred to a number of decisions to support their applications. Similarly, the learned

Special Public Prosecutor has also referred to a few decisions on the point that the applications are liable to be dismissed. Therefore, I would like to refer to those decisions and the principles laid therein before deciding as to whether the applications are maintainable and whether there is a need for calling of any or all of the documents sought in the applications. Firstly, I would take up the arguments addressed and decisions referred by the learned counsels for the accused No.1 to 3 and 5.

12. The learned advocates Sri.C.V.N., and Sri.M.M., for the accused 1 to 3 and 5 submitted during their arguments that the statement of Ranjita and other 48 + 13 witnesses has not been furnished and the medical report of the 1st accused is also not completely given, and a book called as notes and orders maintained by CID is also to be summoned because it is necessary to decide for the discharge of the accused. The prosecution has deliberately withheld the documents. The accused has filed these applications with a prayer to direct the IO for production of those documents shown in the applications and hence it is prayed to allow the applications. In support of their arguments and the applications the learned counsels Sri.C.V.N., and Sri.M.M., has referred to the following decisions which are as follows:

(1) AIR 1955 S.C. 196 between H.N.Rishbud and another v/s. State of Delhi. I have perused this decision wherein the Hon'ble Supreme Court has held that when there is breach on the part of the investigation and it is brought to the notice of the court at an early stage of the trial, the court will have to consider the nature and extent of the violation and pass appropriate orders for such reinvestigation.

(2) 1998 CRI.L.J. 369 between Kalpnath Rai v/s. State through CBI. I have perused this decision wherein the relevant para 94 has been referred by the counsel to explain that daily diary is a document which is used in police station and no prosecution is expected to produce such dairies in every case but it is open to the defence to move the court for getting down such dairies if the defence wants to make use of it. I have perused the decisions referred above, but the facts of that case and the stage referred by their lordships was not while considering the application u/s 91 of Cr.P.C., and therefore these principles are not applicable to the case on hand.

(3) AIR 1999 SUPREME COURT 2161 between State of Kerala v/s. Babu and others. I have perused this decision wherein it is held that use of case diary of another case not pertaining to the trial in hand can be summoned if the court trying the case considers that production of such a case diary is necessary for the purpose of trial.

(4) (2013) 1 Supreme Court Cases (Cri) 475 between Manubhai Ratilal Patel v/s. State of Gujarat and others. I have perused this decision wherein the scope of investigation has been discussed which includes examination of various persons and recording of their statement and filing of charge sheet.

(5) IN THE HIGH COURT OF GAUHATI REV.PET.22/2010, DT.03-01-2013 between The State of Assam v/s. Moslem Mondal. I have perused this decision wherein the Hon'ble High Court of Gauhati has held that the referral authority has to apply its mind on the materials collected by the IO during investigation and make the reference on being satisfied that there are grounds for making such reference.

(6) DELHI HIGH COURT between Shakuntala v/s. The State of Delhi dt.26-02-2007. I have perused this decision wherein it is held that fair investigation is the right of accused and those rights can be exercised by the accused at the time of charge and the accused can insist upon the court to consider the evidence collected by the IO but not made part of the charge sheet.

(7) (2014) 2 Supreme Court Cases (Cri) 86, (2014) 3 Supreme Court Cases 92 between Hardeep Singh v/s. State of Punjab and others. I have perused this decision of the Hon'ble Supreme Court wherein the meaning of trial has been

discussed which means determination of the issues adjudging the guilt or the innocence of a person, the person has to be aware of what is the case against him and it is only at the stage of framing of the charges that the court informs him of the same, the trial commences only on charges being framed. So, the act conducted under Cr.P.C., by the magistrate is an enquiry before commencement of trial. So, it is something other than the actual trial.

(8) An unreported decision of the High Court of Karnataka, in Criminal Petition No.6135/2009, between Mrs.Princes Franklyn v/s. Mr.D.Babu. I have perused this unreported decision of the Hon'ble High Court of Karnataka wherein his lordship has discussed the scope of Section 91 of Cr.P.C., and observed as follows:

“it clearly indicates that at any stage of the proceedings such powers can be exercised by the magistrate. So, when a complaint is presented enquiry starts and the magistrate has not committed any error in issuing summons to the witnesses for production of documents and thereafter recording the statement of the witnesses.”

13. The above case was filed under 200 Cr.P.C., a private complaint filed by the complainant and in those

circumstances his lordship has made an observation as to Section 91 of Cr.P.C., and held as above.

(9) AIR 2009 SUPREME COURT 1013 between Rukmini Narvekar v/s. Vijaya Satardekar and others. I have perused this decision wherein the Hon'ble Supreme Court has held that there is no scope for the accused to produce any evidence in support of the submissions made on his behalf at the stage of framing of charge and only such material as are indicated u/s 227 of Cr.P.C., can be taken into consideration by the magistrate at that stage. However, in a proceeding taken their from u/s 482 of Cr.P.C., the court is free to consider material that may be produced on behalf of the accused to arrive at a decision whether the charge as framed could be maintained.

.....

it only means hearing the submissions of the accused on the records of the case filed by the prosecution and document submitted there with and nothing more hearing the submissions of the accused cannot mean an opportunity to file material to be granted to the accused and thereby changing the settled law. It was held that ordinarily defence material cannot be looked into by the court while framing of the charge but there may be some very rare and exceptional cases where some defence material which convincingly demonstrates that the prosecution version is totally absurd or totally concocted.

(10) AIR 2005 SC 359 between State of Orissa v/s. Debendra Nath Padhi. I have perused this decision of the Hon'ble Supreme Court and the principles laid down therein. The Hon'ble Supreme Court in this decision has elaborately discussed the scope and limitations of Section 91, 227, 228, 239 and 240 of Cr.P.C. It is evidence that the record of the case and the documents submitted there with as postulated in Section 227 relate to the case and the documents referred in Section 209. That is the plain meaning of the Section 227 read with Section 209 of the Code. No provisions in the code grants to the accused any right to file any material or document at the stage of framing of charge. That right is granted only at the stage of the trial.

The Hon'ble Supreme Court has held in the relevant paras as follows:

“Where considering the scope of Sections 239 and 240 of the Code it was held that at the time of framing of charge, what the trial court is required to, and can consider are only the police report referred to under Section 173 of the Code and the documents sent with it. The only right the accused has at that stage is of being heard and nothing beyond that (emphasis supplied).
.....

That would defeat the object of the Code. It is well-settled that at the stage of framing of charge the defence of the accused cannot be put forth.

The expression ‘hearing the submissions of the accused’ cannot mean opportunity to file material to be granted to the accused and thereby changing the settled law.

To put it differently, once charges are framed under Sections 240 CrPC the High Court in its revisional jurisdiction would not be justified in relying upon documents other than those referred to in Sections 239 and 240 CrPC.

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.

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 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.

14. Keeping aside for a moment the above decisions referred by the counsel for the accused, I would now refer to the arguments and the decisions referred by the learned Spl. PP for the prosecution. The learned Special PP has submitted in his arguments that the application filed by the accused u/s 91 of Cr.P.C., is not maintainable because the witnesses and the documents that the prosecution intends to examine in this case are already on record and the statement of witnesses whom prosecution proposes to examine has been annexed with the charge sheet. Section 91 reads regarding the enquiry or trial and this application filed by the accused is not maintainable because the accused cannot invoke the provisions of Section 91 of Cr.P.C., in this case. It was further argued that as provided u/s 227 of Cr.P.C., the court has to decide either to discharge the accused or to frame charges looking to the records, police report and the documents sent along with the final report but no opportunity could be given to the accused to put-forth his defence by invoking the provisions of Section 91 of Cr.P.C. He has further argued that u/s 227 of Cr.P.C., there cannot be an opportunity given for production of documents or filing of additional documents. In support of his arguments he has referred to a number of decisions which are as follows:

“Where considering the scope of Sections 239 and 240 of the Code it was held that at the time of framing of charge, what the trial court is required to, and can consider are only the police report referred to under Section 173 of the Code and the documents sent with it. The only right the accused has at that stage is of being heard and nothing beyond that.

That would defeat the object of the Code. It is well-settled that at the stage of framing of charge the defence of the accused cannot be put forth.

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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.”

(2) DELHI HIGH COURT between Shakuntala v/s. The State of Delhi dt.26-02-2007. I have perused this decision wherein it is held that fair investigation is the right of accused and those rights can be exercised by the accused at the time of charge and the accused can insist upon in the court to consider the evidence collected by the IO but not made part of the charge sheet.

(3) 1991 Cri.L.J.1114 between Kamal Singh v/s. Resham Singh and another. I have perused this decision wherein the Hon'ble High Court of Allahabad has held that the stage of Section 226 and 227 of Cr.P.C., cannot be equated with that of the trial of the accused. The stage of Section 226/227, Cr.P.C., cannot be equated with that of the trial of the accused. A meticulous examination of the statement of the witnesses which exist in the case diary is not permissible because the opinion which is to be formed at the time of trial will necessarily depend upon the statement of the witnesses to be made in the court.

(4) 1997 Cri.L.J.3145, 1997 (2) MPLJ 220 between S.K.Singhal Fatnechand Singhal v/s. State of M.P. I have

perused this decision wherein the Hon'ble High Court of Madhya Pradesh has observed that the petitioner should give the details of the document which he wants to call for in the cross examination of the complainant and after getting such information the court should direct the complainant to make a statement whether he is in custody of those documents and thereafter the court should summon the complainant to produce those documents which are relevant for the trial.

(5) 1999 Cri.L.J.2442, 1992(2) CTC 252, 2001-2-LW(Crl) 643 between K.Sivanandam v/s. State of Madras. I have perused this decision wherein the scope of Section 91 Cr.P.C., has been discussed in detail and held that it is discretion of the court to be exercised judiciously and then to decide whether to summon a document after satisfying itself as to whether it is relevant or irrelevant to the case. In that case the documents were not necessary and desirable and the application was dismissed against which revision was filed and revision was also dismissed.

(6) 2004 Cri.L.J.623 between M.Sathiamoorthi v/s. State rep. by SPE/CBI/ACB. I have perused this decision wherein the scope of Section 91 of Cr.P.C., has been discussed and the trial court has dismissed an application filed u/s 91 of Cr.P.C. It was held that the court is expected to consider the application u/s 91 of Cr.P.C., for summoning of documents of course depending upon the nature of the documents and

circumstances of the case. It was held that no luxurious prayer can be made on the part of the accused nor is it incumbent on the part of the court to order those petitions. The accused has argued his discharge application based on the materials made available on record since it is not the full trial that is under way.

(7) 2007(2) Guj LR 1380 between Bhikubhai Anakbhai Bayal v/s. State of Gujarat. I have perused this decision wherein the Hon'ble High Court of Gujarat has held that at the stage of framing charge the hearing applications of accused has to be confined to the material produced by the police.

“Any document or other thing envisaged under Section 91 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.”

(8) 2008 Cri.L.J. Pg.No.3300 between Alagesan v/s. State by the Inspector of Police. I have perused this decision wherein the Hon’ble High Court of Madras has held that Section 91 of the Code of Criminal procedure does not confer an absolute right on the accused to seek for production of any documents.

“Unless the petitioners disclose as to why the document is required, the court will not be in a position to satisfy itself as to the necessity or the desirability of the production of such document in the custody of any other person.”

15. The above are all the decisions referred by the Spl. PP. So, on considering all the decisions referred by the counsel for the accused and also the learned Spl. PP, the principles laid down by the Hon’ble Supreme Court in the decision referred in **AIR 2005 SC 359 between Debendra Nath Padhi v/s. State of Orissa** has to be applied to the case on hand. This decision is delivered by three Hon’ble Judges of the Hon’ble Supreme Court. The learned counsel Sri.C.V.N., for the accused has referred to another decision reported in **AIR 2009 SC 1013 between Rukmini Narvekar v/s. Vijaya Satardekar** which is a decision delivered by two Hon’ble Judges of the Hon’ble Supreme Court. Therefore, the principles laid down by the

Hon'ble Supreme Court reported in **AIR 2005 SC 359** has to be followed by this court.

16. Now, coming to the facts of this case, I am of the opinion that none of the documents sought by the accused 1 to 3 and 5 needs to be called for at this stage because the charge sheet filed is regarding the alleged offences mentioned u/s 376, 377, 420, 114, 201, 417 r/w 415, 506(1), 120(B) of IPC. Therefore, now at the stage of 227 of Cr.P.C., the court has to decide whether a prima facie case is made out for trial of the alleged offences and whether there is participation of accused or whether there is prima facie material to show that they have committed the alleged offences. Even before framing charge the court while considering the materials placed by the IO has to look into the same and decide whether the allegations would make out a case prima facie for the charges alleged in the charge sheet. If there are no materials to attract any of the offences against the accused, automatically the accused would be discharged. So, by applying the principles laid down in the decision of Hon'ble Supreme Court in **Debendra Nath Padhi's** case and following the same principles laid down in para 25, I find that the accused could not invoke Section 91 of Cr.P.C., to seek production of documents as shown in their application.

17. Moreover, even for arguments sake it is taken for consideration, the alleged one Ranjita is not at all cited as a witness as per the charge sheet. To the contrary it is CW3 who is shown to be the witness by name Amala. Her statement is already annexed with the charge sheet. The medical report of A1 and A2 on the first day of their arrest is as per the guidelines given by the Hon'ble Supreme Court and that report is annexed with the charge sheet which I have perused at page 179 to 185. The medical report of CW3 is already supplied to the accused because it was in a sealed cover which has been recently opened in the open court and during arguments the counsel for the accused has submitted that he does not press any more on the prayer for production of that document which is already supplied. As per the potency test of the accused, forensic report and the laboratory report is yet to be furnished to the court by the prosecution. Therefore, I find that the application filed by the accused u/s 91 of Cr.P.C., is not at all maintainable because Section 91 Cr.P.C., is not provided for the accused to go backwards or to undo what has been done by the prosecution till filing of the final report. I reiterate that in view of the principles laid down by the Hon'ble Supreme Court in Devendra Nath Padhi's case this application is not at all maintainable and they cannot invoke Section 91 of Cr.P.C., at this stage. Hence, I answer point No.1 in the negative.

18. Point No.2: For the reasons stated discussed above, I proceed to pass the following

ORDER

The two applications filed by the accused 1 to 3 and 5 u/s 91 of Cr.P.C., is hereby dismissed.

(Dictated to the Stenographer in part and the remaining online, transcribed and computerized by her, corrected, signed and then pronounced by me in the open court on this the 28th day of January 2016)

(S.NAGASHREE)

III Addl. District and Sessions Judge,
Ramanagara.

Date: 28-01-2016

A1 & A2 by Sri.E.R.G.N./C.V.N., Adv.

A3 & A5 by Sri.R.B.N./M.M., Adv.

A4 & A6 by Sri.S.G.M./M.M., Adv.

State by Spl.P.P.

For orders

Order pronounced in the open court and the following order is passed:

ORDER

The two applications filed by the accused 1 to 3 and 5 u/s 91 of Cr.P.C., is hereby dismissed.

**III Addl. District and Sessions Judge,
Ramanagara.**