

MHPA010012172023.



IN THE COURT OF ADDITIONAL SESSIONS JUDGE, PARBHANI.
(Presided over by Gautam G. Bharne)

Sessions Case No.86/2023.
State Vs. Kaveribai and others.

Order below Exh.85.

Perused the application and say of accused Exh.87. Heard Ld. Special APP Mr. Deshmukh for the prosecution and Ld. Adv. Mr. M.E.Bhosle for the accused.

02. This application is filed by Special APP Mr. Deshmukh for grant of permission to produce the document. It is the contention of the Ld. Special APP that the prosecution / the State wants to submit the letter issued by Tehsildar to panch witnesses Nandkishor Shelate and Shrikant Kokane. Hence, the document may kindly be accepted.

03. The Ld. Special APP has filed the document along with list of document Exh.86. The document is issued by Tehsildar in the name of the witness Nandkishor Shelate directing him to act as a panch witness in Crime No.05/2023.

04. Resisting the application, it is the say of accused that the prosecution has examined seven witnesses. During the trial, no application was moved by prosecution for further investigation under Section 173(8) of the Cr.PC.. Their submission is that as per the

provision of Section 173(5) of the Cr.P.C., charge-sheet is to be filed along with documents or oral and documentary evidence collected by the Investigating Officer. But I.O. has not filed any document to show that the then Tehsildar had issued any letter to the witness to act as a panch. Therefore, now when the witness step-up in the witness box the Special Prosecutor has filed the application for acceptance of the document. The application is silent about under what provision of Cr.P.C. the application is filed. Hence, the application is deserved to be rejected. Secondly the application is very cryptic. It never reveals any reason for not filing the document by I.O. As per Cr.P.C. under Section 173 the I.O. who shall collect the document and filing the same along with charge-sheet. It is the submission of accused that I.O. can further investigate and file further investigation if he has finds that he has collected some documentary evidence in support of the prosecution case and then he shall submit the document along with his report by stepping into the witness box. Except I.O., no one can file such document. It has submitted by the accused that Special Prosecutor on his own cannot investigate into the offence nor can file any document. There is no such provision, which empowers the prosecutor to file any document at any stage on its own. Hence the application be rejected.

05. Ld. Special APP has relied upon AIR 2002 Supreme Court, 1644 **Central Bureau of Investigation Vs. R.S.Pai and another** and has argued that the prosecution can file the document with permission of the Court. I have gone through the citation. In the citation, the provision of Section 173(5) and Section 173(8) of Cr.P.C. have been discussed and it has observed that "*if further investigation is not*

precluded then there is no question of not permitting the prosecution to produce additional documents which were gathered prior to or subsequent to investigation. In such cases, there can not be any prejudice to the accused. Hence, the impugned order passed by the Special Court cannot be sustained”.

06. It has argued by Ld. Adv. Mr. Bhosle that as per the provision of Section 173 of Cr.PC I.O. has right to submit documentary evidence after filing of charge-sheet, but his submission is that the Special Prosecutor cannot do it.

07. The Hon'ble Supreme Court in the aforesaid case has observed that *“From the aforesaid sub-sections, it is apparent that normally, the Investigating Officer is required to produce all the relevant documents at the time of submitting the charge-sheet. At the same time, as there is no specific prohibition, it cannot be held that the additional documents cannot be produced subsequently. If some mistake is committed in not producing the relevant documents at the time of submitting the report or charge-sheet, it is always open to the Investigating Officer to produce the same with the permission of the Court. In our view, considering the preliminary stage of prosecution and the context in which Police Officer is required to forward to the Magistrate all the documents or the relevant extracts thereof on which prosecution proposes to rely, the word 'shall' used in sub-section (5) cannot be interpreted as mandatory, but as directory. Normally, the documents gathered during the investigation upon which the prosecution wants to rely are required to be forwarded to the*

Magistrate, but if there is some omission, it would not mean that the remaining documents cannot be produced subsequently". From the above discussion, it is clear that investigating officer can file documents with permission of Court even after filing of charge-sheet.

08. In the case in hand the I.O. has not applied for production of document.

09. In the case in hand before me the document proposed to be filed on record is brought by the witness PW 8 Nandkishor Shelate. In the witness box, the witness has submitted that Tehsildar had issued an order directing him to act as a panch witness. Ld. Special APP had asked the witness whether he can submit the order to which he replied that he can submit the document. Thereafter, the Ld. Special APP has filed this application Exh.85.

10. Section 91 of the Cr.P.C. provides as under -

(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.

11. From the provision of Section 91 of Cr.P.C. it is clear that the person in possession of a document or thing can be directed to produce the same by issuing summons. In the case in hand before me the order issued by Tehsildar has already brought by the witness along with him for giving evidence. The document proposed to be produced on record is issued to the witness directing him to act as a panch witness. Therefore I am of the view that there is no necessity to issue summons to him for production of the document. Considering the provision of Section 91 of Cr.P.C., I am of the view that production of document can be allowed. In the result, I pass the following order.

Order

1. Permission is granted for production of the document filed along with list of document Exh.86.
2. As such, the application is disposed of.

Date : 20.12.2024.

(Gautam G. Bharne)
Additional Sessions Judge,
Parbhani.