

: ORDER BELOW EXH.21 :
(Passed on 4.4.2018)

1. Instant application Exh.21 has been filed by accused person u/s 91 of Cr.P.C for issuance of summons to the concerned authority of post office for being produced documents which are reflected in detail in paragraph no.2 of application (exh.21), inter-alia contending that those documents are essential for being established their defence during trial and for confronting those documents to the concerned complainant Amar Kambale during cross examination. Therefore it is prayed for allowing their application.

2 Learned APP has opposed said application by contending that no such alleged documents are available with concerned authority. Therefore no direction can be issued by way of summons to the concerned authority. Therefore it is prayed for rejecting the application.

3 I have heard learned APP and learned counsel of accused.

4 According to accused, prosecution case is that on the complaint of one Amar Kambale, I.O had conducted raid and allegedly seized an amount of Rs.30,000/- from accused. Thereafter immediately accused submitted his explanation in writing and same was taken by I.O. As per his explanation complainant Amar Kambale had been to the post office and expressed his desire to deposit the amount of Rs.30,000/- for 5 years as a time deposit. In such light of material, applicant is intending to call following documents which are in the custody of Superintendent of Post Office, Akola Division, Akola, in order to confront the complainant Amar Kambale in the cross examination. Those documents are-

1) Account opening form of T.D. for 5 years of Rs.30,000/- submitted by Amar Kamble dated 27.5.2015, 2) Self attested xerox copy of Amar

Kamble, election identity card, 3) Deposit slip of Rs.30,000/- of Amar Kamble dated 27.5.2015, 4) Specimen signature of Amar Kamble on plain paper, 5) Receipt no.33 book no.24379 dated 27.5.2015.

5 Learned counsel of accused has placed his reliance on the judgment reported in **Kamal Ahmed Mohammed Vakil Ansari and others .v. State of Maharashtra, 2014 ALL M.R (Cri.) 5055**. In the said judgment Hon'ble Bombay High Court has considered the scope of Section 91 of Cr P C by considering various judgments of Hon'ble Supreme Court. It's relevant paragraph 33 is reproduced as under:

33. Section 91 of the Code empowers a Court to issue summons to a person 'to produce before the Court, a document or thing believed to be in possession of such person if the Court considers the production of such documents or other things necessary or desirable for the purpose of any inquiry, trial or other proceedings under the Code.' The scope of section 91 is very wide and obviously, it cannot be restricted only to the documents on which the prosecution relies, nor to the stage contemplated by Section 233 or 243 of the Code. There may be cases where for an effective cross-examination of a witness, the cross-examiner would require certain documents in his hand. Without the availability of such documents, the rights and obligations of a cross-examiner under Sections 155(3) and 145 of the Evidence Act, cannot be effectively discharged or exercised by him. To overcome such a situation, he can urge the court to supply such documents to him. If they are in the court, copies thereof can be supplied, but if they are not, the court would be expected to use the powers under Section 91 of the Code, whenever it finds it necessary or desirable. To overcome an unfair or unjust result, the court certainly would be entitled to exercise the powers under Section 91 of the Code, which section is widely framed and contains nothing to indicate

otherwise. It is not that the documents called for by the accused, must be called by the court, just for asking but, surely, that the prosecution is not relying on such documents cannot be a consideration that should weigh in deciding such application made by an accused.

6 He placed his reliance on other judgment reported in **Ramdas Shrihari Munjekar .v. State of Maharashtra 2017 ALL M.R. (Cri.) 647**. In such judgment also, scope of section 91 of Cr.P.C was considered by Hon'ble Bombay High Court. It's relevant paragraph no.7 is reproduced as under:

“ 7..... I must say, these documents are certainly required by the applicant to effectively cross-examine the prosecution witnesses. Otherwise, a blame would be placed upon his shoulders that no specific defence, rather no foundation for taking a defence was led by the applicant.”.....

7 Ratio laid down in above both the judgments is that power u/s 91 of Cr P C can be exercised by the accused for putting his defence while cross examining prosecution witnesses, whenever it is found that documents called in such application filed under the above stated provision is essential and desirable to be called for cross examining concerned witness of prosecution effectively.

8 In the present case in hand, documents which are to be called by the accused from concerned authority appears to be relevant and they appears to be essential for confronting complainant Amar Kambale with the help of those documents at the time of his cross examination. Learned counsel of accused has filed document to show that documents mentioned by him in his application are in custody of concerned authority, but concerned authority is unable to hand over those documents to the accused due to his own official restrictions.

Under such circumstances, if documents which are mentioned by accused in his application are not called by exercising power u/s 91 of Cr P C, then learned counsel of accused would not be in a position to discharge his right and obligations in the capacity of cross examiner effectively. If application u/s 91 of Cr P C of accused is rejected, then it would amount to depriving the opportunity from accused for cross examining prosecution witnesses effectively as per law. Therefore in order to have equal opportunity and for conducting the case fairly, power u/s 91 of Cr P C, in the light of observations of above referred two judgments needs to be exercised at this stage.

9 So far as citation submitted by learned APP is concerned, that judgment is reported in **State of Orissa .v. Devendranath Padhi AIR 2005 S.C. 359**. I have gone through such judgment. Facts appearing in such judgment was that case was fixed for framing charge and court was to decide discharge application filed u/s 227 of Cr.P.C. At that relevant time, accused moved application u/s 91 of Cr. P. C. for calling documents in order to prove his innocence i.e. at the stage of framing of charge. In such peculiar facts and circumstances, Hon'ble Supreme Court has observed that at the time of framing charge, material produced by prosecution alone is to be considered and depriving the accused to produce the material of sterling quality at the stage of framing charge is not violative of Art. 21 and 14 of Constitution of India. Therefore lastly it was concluded by Hon'ble Supreme Court that in given peculiar set of facts and circumstances, section 91 of Cr P C cannot be invoked for compelling production of documents in order to show his innocence.

10 But in present case in hand, perusal of record will show that charge is already framed and accused is not intending at this stage to

prove his innocence. Only request of accused is that in order to confront the documents which are mentioned in his application to the complainant, those documents are essentially to be called from concerned authority in order to have effective cross examination to the prosecution witnesses. Under such circumstances, judgment on which learned APP has placed his reliance appears to be not helpful to him so as to reject the application of accused, with due respect.

11 Sum and substance of above made discussion is that documents which are mentioned by accused in his application which are to be called from concerned authority appears to be important and relevant one for putting their defence at the time of cross examination of prosecution witnesses. Therefore power u/s 91 of Cr P C needs to be exercised here. In the result, following order is passed.

ORDER

1 Application (Exh.21) is allowed.

2 Issue summons u/s 91 of Cr P C for calling documents mentioned in his application from concerned authority i.e. Superintendent of Post office, Akola Division, Akola on P.F.

Sd/-

Date : 04.04.2018

(R.N. Mehare)
Assistant Sessions Judge, Washim

CERTIFICATE

I affirm that the contents of this P.D.F. File Judgment/Order are same word to word, as per the original order.

Name of Stenographer	: A.H. Barve, Stenographer (HG)
Court Name	: Court of Asstt.SessionsJudge, Washim.
Date:	: 04.04.2018
Order signed by Presiding Officer on	: 04.04.2018
Order uploaded on	: 04.04.2018