

HIGH COURT OF MADHYA PRADESH

BENCH AT GWALIOR

SINGLE BENCH

MISCELLANEOUS CRIMINAL CASE No.23456/2018

Manvendra Singh alias Ramu

Vs.

State of Madhya Pradesh

Shri D.K. Katare and Shri R.K. Shrivastava, learned counsel for the petitioner.

Shri Avnish Singh, learned Public Prosecutor for the respondents/State.

Shri Pratip Visoriya and Shri Abhishek Singh, learned counsel for the complainant.

Present : Hon. Mr. Justice Anand Pathak

ORDER

{Passed on 16th day of November, 2018}

Present petition under Section 482 of the Code of Criminal Procedure, 1973 has been preferred by the petitioner for quashing the order dated 02-06-2018 passed by Additional Sessions Judge, Seondha District Datia in S.T.No.02/2018 whereby the application under Section 91 of Cr.P.C. preferred by the petitioner for recalling of the statements and documents collected by the enquiry officer -Addl. Superintendent of Police, District Datia during enquiry was rejected.

2- It is grievance of the petitioner as echoed in the present petition that a false case has been registered against him. On 24-09-2017 complainant Kuldeep lodged a written complaint in Police Station, Deepar District Datia against the present petitioner and other co-accused persons with the allegations that when the complainant along with his father (deceased Kailash) were going to their village, they were intercepted by the accused and other persons armed with gun and other weapons, opened fire and caused injuries by *Lathi* to them. His father succumbed to the

injuries and died. Case was registered under Sections 147, 148, 149, 294, 307, 336 and 302 of IPC. During investigation, an application by Sanjay Dixit was preferred on behalf of accused persons, namely, Sonu alias Janak Singh, Pan Singh, Parmal Singh and Narayan Singh before the Inspector General of Police for fair and impartial enquiry on which, Addl. Superintendent of Police, District Datia given the task to enquire under Section 36 of Cr.P.C. Enquiry conducted and Addl. Superintendent of Police, Datia submitted his report before the Superintendent of Police, Datia. Enquiry report indicates the presence of accused Sonu alias Janak Singh at Gwalior, on the basis of tower location of his mobile number. Similarly, CCTV footage of Parmal Singh Gurjar, Narayan Singh and Pan Singh indicate that they were at some different places and not at the place of incident when incident allegedly occurred as per the investigating officer. Therefore, the petitioner wants call details and location of the petitioner by way of calling record in this regard. Petitioner submits that the enquiry conducted under Section 36 of Cr.P.C. by the Addl. Superintendent of Police, Datia raises doubt over the investigation because of presence of some of the accused persons at different location. Learned counsel for the petitioner relied upon the judgment rendered by the Hon'ble Apex Court in the matter of **Kishan Lal Vs. Dharmendra Bafna and another, (2009) 7 SCC 685**, in the matter of **Rajiv Thapar and others Vs. Madan Lal Kapoor, (2013) 3 SCC 330** and the judgment of Maharashtra High Court in the matter of **Azija Begum Vs. State of Maharashtra, 2012 (II) MPWN 29** and judgment of this Court in the matter of **Shriram Sharma Vs. State of M.P., 2012 (III) MPWN 34**.

3- On the other hand, learned Public Prosecutor for the respondent/State opposed the prayer made by the petitioner and submitted that charge-sheet has been filed and petitioner has to contest and face trial on the basis of charge-sheet. Thus, prayed for dismissal of petition.

4- Learned counsel for the complainant also opposed the prayer made by the petitioner. While relying upon the judgment of Hon'ble Apex Court in the matter of **State of Orissa Vs. Debendra**

Nath Padhi, 2005 SCC (Cri) 415 it is submitted that petitioner cannot seek production of documents and cannot compel the prosecution to file a particular document. Enquiry report has also been procured by the petitioner under Right to Information Act and as per the mandate of Debendra Nath Padhi (supra) accused can place the report at stage of defence and not prior to it. Besides that, counsel for the complainant vehemently submitted that the legal sanctity of enquiry report prepared by the Addl. Superintendent of Police under Section 36 of Cr.P.C. is doubtful in law and relied the judgment rendered by this Court in the case of **Amit Chaturvedi and others Vs. State of M.P. and another, 2017 (2) MPLJ (Cri) 362**. He prayed for dismissal of petition.

5- Heard learned counsel for the parties and perused the documents appended with petition.

6- Here, the petitioner is seeking production of documents (mobile call details and CCTV footage) through which petitioner wants to assert about his alleged innocence. Scope of application under Section 91 of Cr.P.C. has been taken care of by the judgment of Hon'ble Court in the matter of Debendra Nath Padhi (supra) as under:

“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 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 91 what is necessary and relevant is only the record produced in terms of Section 91 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. Section 91 presupposes that when the document is not produced process may be initiated to compel production thereof. Reliance on behalf of the accused was placed on some observations made in the case of [Om Parkash Sharma v. CBI, Delhi](#)[(2000) 5 SCC 679]. In that case the application filed by the accused for summoning and production of documents was rejected by the Special Judge and that order was affirmed by the High Court. Challenging those orders before this Court, reliance was placed on behalf of the accused upon Satish Mehra's case (*supra*). The contentions based on Satish Mehra's case have been noticed in para 4 as under:

"The learned counsel for the appellant reiterated the stand taken before the courts below with great vehemence by inviting our attention to the decision of this Court reported in *Satish Mehra v. Delhi Admn.* ((1996) 9 SCC 766) laying emphasis on the fact the very learned Judge in the High Court has taken a different view in such matters, in the decision reported in [Ashok Kaushik v. State](#)((1999) 49 DRJ 202). Mr Altaf Ahmed, the learned ASG for the respondents not only contended that the decisions relied upon for the appellants would not justify the claim of the appellant in this case, at this stage, but also invited, extensively our attention to the exercise undertaken by the courts below to find out the relevance, desirability and necessity of those documents as well as the need for issuing any such directions as claimed at that stage and consequently there was no justification whatsoever, to intervene by an interference at the present stage of the proceedings."

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. The application filed by the accused under

Section 91 of the Code for summoning and production of document was dismissed and order was upheld by High Court and this Court. But observations were made in para 6 to the effect that if the accused could produce any reliable material even at that stage which might totally affect even the very sustainability of the case, a refusal to look into the material so produced may result in injustice, apart from averting an exercise in futility at the expense of valuable judicial/public time, these observations are clearly obiter dicta and in any case of no consequence in view of conclusion reached by us hereinbefore. Further, the observations cannot be understood to mean that the accused has a right to produce any document at stage of framing of charge having regard to the clear mandate of Section 227 and 228 in Chapter 18 and Sections 239 and 240 in Chapter 19.

We are of the view that jurisdiction under Section 91 of the Code when invoked by accused the necessity and desirability would have to be seen by the Court in the context of the purpose investigation, inquiry, trial or other proceedings under the Code. It would also have to be borne in mind that law does not permit a roving or fishing inquiry.”

7- So far as the judgment referred or the contents referred in the enquiry report under Section 36 of Cr.P.C. are concerned as held by the Coordinate Bench of this Court in the case of Amit Chaturvedi and others (supra), said report preferred under Section 36 of Cr.P.C. cannot override or overshadow the investigation made by the Investigating Officer. The said report is also required to be proved beyond reasonable doubt and accused cannot be discharged merely on the basis of report submitted by superior officer. Nonetheless, trial Court shall take care of this aspect at the time of decision because this observation is *prima facie* on the basis of arguments advanced by the counsel for the petitioner and not as verdict over the authenticity in evidence.

8- If the above settled legal position is tested on the anvil of present set of facts then, it appears that petitioner shall have the liberty to produce all documents in support of his case at the time of defence evidence. Documents or information as sought by the petitioner at this juncture cannot be acceded to because of the judgment rendered by the Hon'ble Apex Court in the matter of Debendra Nath Padhi (supra). Trial Court rightly rejected the

application preferred by the petitioner.

9- Besides the above submission, any direction given by the trial Court to the investigating officer for collection of call details or CCTV footage would amount to giving direction for further investigation and the trial Court cannot give any direction for further investigation at the instance of accused persons. **{See: Vinay Tyagi Vs. Irshad Ali and others, (2013) 5 SCC 762 and in the matter of Chandra Babu Vs. State Through Inspector of Police and others, (2015) 8 SCC 774)}**.

10- Therefore, the application under Section 91 of Cr.P.C. preferred at the instance of petitioner/accused has rightly been dealt with by the trial Court. Petition sans merits and is hereby dismissed. However, petitioner would always be at liberty to raise all the points available to him in his defence at appropriate stage by pointing out contradiction if any exists in the prosecution case.

Petition stands dismissed.

Anil*

(Anand Pathak)
Judge