

HIGH COURT OF MADHYA PRADESH:
MAIN SEAT AT JABALPUR

1	Case number	<u>Criminal Revision</u> <u>No.3052/2016</u>
2	Parties Name	T.R. Taunk Vs. State of M. P. & another
3	Date of Judgment	07/09/17
4	Bench Constituted of	HON. SHRI S.K. SETH AND HON. SMT. ANJULI PALO, JJ
5	Judgment delivered by	Hon'ble Shri S.K. Seth, J.
6	Whether approved for reporting	Yes
7	Name of the counsel for parties	Shri Aditya Adhikari, Senior Advocate with Ms. Seema Pushkar, Advocate for the applicant. Shri Pankaj Dubey, Advocate for the respondents/Lokayukt.
8	Law laid down	Relating to Section 91 of the Code of Criminal Procedure
9	Significant paragraph numbers	----

(S. K. SETH)
J U D G E

(SMT. ANJULI PALO)
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HIGH COURT OF MADHYA PRADESH:

MAIN SEAT AT JABALPUR

(DIVISION BENCH: HON. SHRI S.K. SETH
AND HON. SMT. ANJULI PALO, JJ)

Criminal Revision No.3052/2016

Petitioner : T.R. Taunk

V E R S U S

Respondents : State of M. P. & another.

Shri Aditya Adhikari, Senior
Advocate with Ms. Seema Pushkar,
Advocate for the applicant.

Shri Pankaj Dubey, Advocate for the
respondents/Lokayukt.

O R D E R

(07.09.2017)

Per Seth, J.

In this Criminal Revision,
applicant is assailing the order dated
03.09.2016 passed by the Special Judge
(Prevention of Corruption Act), Bhopal
whereby applications filed by the
applicant under Sections 91 and 227/228
of the Code of Criminal Procedure were
rejected.

Few facts which are relevant are as under:-

2. Applicant started his carrier as LDC in the establishment of District and Sessions Judge, Bhind in the year 1964. Later on, in the year 1977 or so, he got selected in the M.P. Secretarial (Class-III) Service. Last post held by him was Under Secretary. After retirement from service, he was appointed as Enquiry Officer in a departmental Enquiry initiated against one Praveen Dubey, Front Office Assistant, Hotel Ashok Lake View Palace Bhopal. A complaint in writing was made by Praveen Dubey that applicant demanded illegal gratification through Presenting Officer in the D.E. to give a report favourable to the delinquent employee.

3. After the FIR was registered, investigation followed and upon completion thereof, charge sheet was filed against the applicant and co-accused for the alleged offences punishable under the Prevention of Corruption Act, 1988.

4. At the time of framing of charges, applicant moved applications, which were rejected by the Special Judge (Prevention of Corruption Act), Bhopal as stated above. Hence this Criminal Revision.

5. In a well considered order, the trial Judge rejected the applications holding that at the stage of framing

charges, Court is required to consider only the material placed by the prosecution, and there is no provision in the Code of Criminal Procedure, 1973 giving right to the accused to place material in defence at the stage of framing of charge. That stage would come later in the trial at the time of defence. We find no fault with the view taken by the trial Court.

6. Under scheme of Code of Criminal Procedure, 1973 there is no provision like Sections 207 and 207A of the Code of 1898. Section 227 of the Code 1973 envisaged hearing submissions of the accused on the record of the case and documents submitted therewith. Expression record of the case and documents postulated in Section 227 relate to the case and documents referred in Section 209. At the stage of framing charge accused cannot invoke Section 91 to seek production of any document to prove his innocence. At the stage of framing charge, the defence of the accused cannot be put forth. Section 91 does not confer any right on the accused to produce document in his possession to prove his defence. We are fortified in taking this stand in view of the decision of the Supreme Court in the case of **State of Orissa Vs. Debendra Nath Padhi** reported in **(2005) 1 SCC 568**, wherein it was held 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. 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 material 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."

7. In view of this, the legal position is clear that the accused cannot at the stage of framing of charge invoke Section 91 of the Code to seek production of any document or submit document in his possession to prove his defence. No such right is conferred by the Code to the accused person to prove his innocence at the stage of framing of charge. We, therefore, find no flaw with the impugned order on this count. This takes us to the next submission that there was no evidence against the applicant.

8. We find no force in this contention of counsel for the applicant for the simple reason that Court has to see whether from material produced on record it could be said that accused might have committed offence. In this connection, Court framing charge is not record to hold a mini trial and come to the conclusion that material produced warrants conviction. At this stage the probative values of the material submitted along with charge sheet is not required to be examined or evaluated under a microscope. That stage would come later on at the time

of trial. Prior to it the Court has only to see that material does make out a *prima facie* case.

9. In view of the aforesaid, we find no merit and substance in the Criminal Revision, same is accordingly **dismissed**.

10. Ordered accordingly.

(S. K. SETH)
J U D G E

(SMT. ANJULI PALO)
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