

**In Re: Somiah and ors.**

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**Court :** Andhra Pradesh

**Decided On :** Feb-16-1968

**Reported in :** 1970CriLJ618

**Judge :** Kondaiah, J.

**Appellant :** In Re: Somiah and ors.

**Judgement :**

ORDER

**Kondaiah, J.**

1. This is a revision against the order of the Munsif Magistrate, Sanga-reddy, refusing to call for 22 documents at the instance of the accused at the enquiry in P. R. C. 6 of 1960.

2. The short question that arises in this revision is as to the scope, interpretation and the application of the provisions of Section 94 of the Criminal P. C. to the present case.

3. The accused petitioners have been charge-sheeted by the Police under Sections 381, 467, 409 read with 109, 102B, 414, 471 read with 109, I. P. C. and the enquiry in P. R. C. 6 of 1966 was pending before the Magistrate, who has examined some witnesses. Criminal M. P. 436/65 by the petitioners under Section 94, Criminal P. C. requesting to call for the production of documents mentioned

therein was allowed on 7-12-1966, Thereafter, on 6-2-1967, an application under Section 207-A, Criminal P. C. to summon and examine Sri Seshachalpathi Rao was allowed by the Magistrate. P. Ws. 1 to 4 were examined by 18-4-1967. As Sri Seshachalpathi Rao was absent for some adjournments, he could not be examined and the enquiry was posted to 12-9-1967, when the present application was filed. The committal Court rejected the application as it was belated and not bona fide and there was no necessity or desirability to call for those documents at that stage. The revision to the Sessions Court to make a reference to this Court to set aside the order of the Magistrate was also dismissed.

4. Mr. Dixit, for the accused, strenuously and emphatically contended (a) that the Magistrate should have exercised the power under Section 94 of the Code in favour of the accused and called for the documents, and (b) that his failure to exercise the jurisdiction in favour of the accused is illegal, improper and unjust and (c) that the order is liable to be quashed. The Public Prosecutor contended contra.

5. The question for determination is, whether on the facts and in the circumstances of the case, the accused-petitioners are entitled under Section 94 of the Code to call for the production of the 22 documents as prayed for by them at this stage.

6. For a proper appreciation of the question, it is profitable and necessary to consider the provisions of Section 94 of the Code which read thus:-

(1) Whenever any Court or in any place beyond the limits of the towns of Calcutta and Bombay, 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 proceedings 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. x x x x x

By Section 94 of the Code, the Court whenever it considers that the production of any document is necessary or desirable for the purpose of any investigation, inquiry, trial or other proceeding under the Code by or before such Court, is

entitled to call for the production of such documents from the person in whose possession or power such document is believed to be. The use of the words 'whenever' in Section 94 postulates that the Magistrate can call for the production of any document at the stage of enquiry, before the framing of the charge, provided he considers that the documents, whose production was sought for, were necessary or desirable for the purpose of enquiry.

7. The existence of power and jurisdiction to call for the documents by the Magistrate under certain circumstances as contemplated in Section 94 of the Code, cannot be equated to his being compelled to exercise that power whenever the accused prays for the production of certain documents. Unless and until the Court is satisfied in each case, taking into consideration the facts and circumstances, that it is necessary and desirable to call for the documents, the Court is not bound or obliged to send for such documents. The consideration or satisfaction contemplated under Section 94 is a proper, reasonable and objective one and the Court has to give justiciable reasons for its conclusion, to enable the appellate or revisional Court to know whether the Court has applied its mind to the point at issue and decided the same in accordance with law.

8. In *Yusuff Sahib v. Hayagriva Rao* 1955 Andh WR 409 it was held that the right of the accused to call for the production of any documents accrues to him only after he is called upon to enter his defence. The learned Judge rejected the contention of the counsel that Section 94 of the Code conferred an overriding power on a Court to compel the production of documents.

9. In *re Raghotham* : AIR 1963 AP362 , a Division Bench of this Court had to consider the scope and effect of the provisions of Section 94 of the Criminal Procedure Code. In that case, the accused had to face an enquiry before a Magistrate for a charge under Section 408, I.P.C. for embezzlement of certain amounts entrusted to him in his custody as an officer-in-charge of a maternity home. In the course of the enquiry, the accused requested to call for the production of certain documents in the custody of the District Magistrate which, according to him, would show that the prosecution case launched on a previous occasion in respect of the very same amounts, had been withdrawn against him.

Though the Magistrate considered it necessary and desirable to call for the production of the documents, the application under Section 94 was dismissed, as he felt that in view of the decision of the High Court in 1955 Andh WR 409 (cited supra), he has no power to do so. In those circumstances, a Division Bench of this Court has held that the Court has power, even before framing of the charge, to call for production of the documents, if it is satisfied that the production of the documents was necessary or desirable and in the interests of justice, and observed at p. 364 thus:-

'In that case, though the prosecution evidence was concluded, no charge was framed; but the Magistrate had ordered the calling of three documents at the instance of the accused. In so far as the right of the accused to ask for the calling of such documents is concerned, he had no such right at that stage, and the Judgment of Subbarao, C.J. cannot on that ground be assailed.

As the Magistrate found that it was necessary and desirable to call for the production of the documents, it was held that the order of the Magistrate cannot be sustained. In the present case, the Magistrate has felt that it was not necessary or desirable at that stage to call for the production of those documents. The Sessions Judge also found that it was not necessary or desirable at that stage to call for the production of the documents in question, and the accused will have an opportunity to call for the same at the stage of the trial.

10. In a recent judgment in *V. R. Sarma v. Union of India* CrI. R. C. No. 551 of 1967 (Andh Pra), Mohamed Mirza, J. under similar circumstances, has held that the request of the petitioners to summon the documents has not been altogether turned down but rightly postponed by the Magistrate to a later date.

11. The Criminal Court has ample power and jurisdiction to call for the production of documents, if it considers that there is necessity or desirability of the production of the same, at the stage of enquiry and before the framing of the charge, but the accused cannot compel the Court to do so, unless it is satisfied that the provisions of Section 94 of the Code are attracted. In the present case, admittedly the stage when the accused would be called upon to enter upon his defence has not yet come. The enquiry is still going on. After the enquiry, if the Magistrate finds on the

evidence on record that there is prima facie material for committing the accused, he will commit the accused to take their trial before the trial Court; otherwise, they will have to be discharged. In case the accused had to take their trial before the trial Court, the accused would certainly have their right to call for the production of any documents or adduce evidence by calling any witnesses, and the accused can certainly avail that right at that stage. The accused cannot compel the Magistrate at this stage to call for the production of the documents as prayed for in the instant case. The request of the accused has not been rejected once and for all, but has been postponed to a later stage. In the circumstances, it cannot be said that the impugned order of the magistrate is illegal, improper or un-just, justifying the interference of this Court in this revision petition.

12. In the result, this revision petition fails and is dismissed.

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