

Pawan Duggal Vs. State

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Court : Delhi

Decided On : Apr-24-2001

Reported in : 2001VAD(Delhi)657; 2001CriLJ3918; 92(2001)DLT262; 2001(59)DRJ645

Judge : R.C. Chopra, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 91 and 482

Appeal No. : Crl. M. (M) No. 370/2001

Appellant : Pawan Duggal

Respondent : State

Advocate for Def. : S.K. Saxena, Adv.

Advocate for Pet/Ap. : Rajesh Harnal, Adv

Judgement :

R.C. Chopra, J.

1. The petitioner who is facing trial under Sections 302/307/212/201 read with Sections 120B and 34 IPC as well as Section 25/27 of the Arms Act has come to this Court under Section 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as the 'Code' only) challenging the orders dated 12.1.2001 passed by

the learned Trial Judge rejecting his application under Section 91 of the Code.

2. I have heard learned counsel for the petitioner and learned counsel for the State. I have gone through the records.

3. The facts relevant for the disposal of this petition, briefly stated, are that the petitioner vide his application dated 6th December, 2000 requested the Trial Court to require the (X) to produce in Court the original Along with a copy of the inspection, form/report No. 582 dated 7.11.1999 submitted by PW Subhash Chander SI of Crime Team in regard to the inspection of the Arms/Ammunition and other articles found at the place of occurrence, produce in the Court a pistol as well as revolver that were found lying at the spot as mentioned in the PCR form dated 7.11.1999 and the original PCR record relating to the receipt/sending of the PCR calls made on 7.11.1999 from Police Headquarters to DCP North West/PS Model Town in regard to the incident. The prosecution opposed this request mainly on the ground that all those documents on which the prosecution was relying had already been supplied to the accused and as such the application was merely with a view to delay the trial of the case. The learned Additional Sessions Judge dismissed the application holding that it was without any merit.

4. It is true that according to Section 207 of the Code in any case where the proceedings have been instituted on a police report, the Magistrate is under an obligation to furnish free of cost and without any delay the copies of the documents enumerated in the said section. The prosecution is under no obligation to furnish the copies of those documents on which it does not rely for proving its case against an accused. However, Section 91 of the Code confers very wide powers on the Court for issuing summons for the production of any document or thing which appears to be necessary or desirable for the purposes of any investigation, inquiry, trial or other proceedings under the Code. Learned counsel for the petitioner relying upon a judgment State of Kerala v. Babu and Ors. 1999 IV AD SC 31, has argued that Section 91 was fully attracted in this case and the Trial Court ought to have issued orders there under to summon the documents mentioned in the petitioner's application.

5. Learned counsel for the respondent has opposed the submissions made by learned counsel for the petitioner mainly on the ground that the prosecution could not be compelled to supply those documents to the petitioner which were not being relied upon by it and the Court was also not under any obligation to assist the petitioner in getting him documents which were required for defense purposes in As much as the case was still at the stage of framing charge only. Learned counsel for the State submits that at the appropriate stage when the accused enters upon his defense, he may summon and use those documents which were required by him for meeting the prosecution case and as such the learned Trial Judge was fully justified in declining his request. In support of his submissions, learned counsel for the State has relied upon the judgment of the Apex Court in *Parkash v. Central Bureau of Investigation* : 2000 CriLJ3478 .

6. Section 91 of the Code, upon which the petitioner relies for seeking the relief, reads as under :-

Summons to produce document or other thing

(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.

7. In the judgment *Slate of Kerala v. Baby* (Supra) relied upon by the learned counsel for the petitioner a question arose as to whether the case diaries recorded in some other case could be summoned for the purposes of cross examination of the witnesses and as to whether the accused was entitled or not to the copies thereof under Section 207 thereof. Their Lordships after considering rival contentions of the parties were of the view that although under Section 207 of the Code the accused could not get the copies of case diaries under Section 172 of the Code and the Court also could not look into the case diaries pertaining to some other case but came to the conclusion (para 13) that the scope of Section 91 of the Code was much wider and as soon as Court comes to the conclusion that the production of a document is necessary or desirable then the court is entitled to summon the case diaries of another case even under the said section dehors the provisions of Section 172. The judgment cited by learned counsel for the respondent also *Om Parkash v. Central Bureau of Investigation* referred above clearly held that powers conferred on the Courts under Section 91 of the Code are enabling in nature and are aimed to empower the Courts to enforce and ensure the production of any document or other thing necessary or desirable for the purpose of inquiry, trial or proceedings under the Code. The language of this Section itself indicates that the powers are quite wide. The request of the accused in the said case was declined for the reason that the two Courts below had come to the conclusion that at the pre-charge stage of the case the production of the documents sought to be produced was not necessary. Their lordships of the Supreme Court were of the view that the Trial Court as well as the High Court seemed to have exercised their discretion on proper grounds and as such there were no reasons for interference by the Court. However, in this judgment itself the Apex Court did not negate the powers of the Courts under Section 91 of the Code for summoning any document or things which appears to be necessary or desirable for the purposes of investigation, inquiry or trial

8. The petitioner, who is facing trial for an offence which entails even capital punishment, is not asking for any document or thing which appears to be irrelevant

or unconnected with the case against him. He is seeking production of only those documents and things which according to prosecution records even appear to be in existence and which he feels shall help him in defending himself. It also cannot be said that the petitioner in making any roving or fishing inquiry or is making a request which is unreasonable. In a criminal trial the prosecution, which is conducted by the State, has to be absolutely fair and impartial as the purposes of a criminal trial is not to get some one convicted even if he is innocent. The object is to discover the truth and punish the accused if found guilty. The prosecution, therefore, which is now no longer a limb of the police must act in an impartial manner and must not play a game of hide and seek with an accused.

9. Every accused for the purpose of preparing his defense and effective cross examination of the witnesses must be given all support and assistance so that he feels reassured that the trial against him has been just and fair. In case any document in possession of the prosecution or any other person, except a document, which is privileged and cannot be supplied to him, must be made available to him at the earliest opportunity so that he knows where he stands and what is the evidence that incriminates him or exonerates him of the charges leveled against him. The documents or things which he himself cannot procure for the purposes of putting his defense have to be requisitioned by invoking Section 91 of the Code, if the Court is satisfied that those are necessary or desirable for the purpose of trial. It is also true that defense evidence cannot be summoned at pre-charge stage but documents tending to support defense can be brought on record so as to enable the accused to put up his defense and cross examine the prosecution witnesses effectively. Fishing enquiries, in regard to a document or a thing, which may or may not be in existence or which may or may not be connected with the subject matter of the case, cannot be allowed to be made by invoking the provisions of Section 91 of the Code, but when a document or a thing appears to be connected with the subject matter of the case and is not in possession of a party, the Court can always invoke this provision and help the party with a view to advance the interests of justice.

10. In the present case the petitioner had prayed for the production and supply of a copy of Form No. 1 dated 7.11.1999 of Police Control Room containing

information given in regard to the firing incident resulting in the registration of a case and the trial of the petitioner. Since this document is a part of police records and contains the earliest information in regard to incident its requisition by the accused petitioner cannot be termed a fishing inquiry or the request for summoning some irrelevant and unconnected document having no bearing on the case. thereforee the learned Trial Judge was not justified in ignoring this request simply on the ground that the request was being made to delay the trial of the case and as such was without any merit. Similarly the request of the petitioner for the production of a report of the Finger Prints Expert was also well founded as the report could help him in establishing his defense and effectively cross examining the prosecution witnesses. If this document is not made available to an accused at the initial stage and he is left to summon and prove the same at the stage of his defense only his right to cross-examine the prosecution witnesses on the basis of the facts contained in this document may get jeopardised and may even result in failure of justice. Thus the request of the accused-petitioner to make available to him and requisition the report of the Finger Prints Expert was also fully justified and should not have been declined without any reason.

11. However, the request of the petitioner to produce in the Court a pistol and revolver which were allegedly found at the spot soon after the occurrence as reflected in the PCR Form cannot be allowed for the reason that the prosecution is denying the recovery of these things and as such no direction can be issued under Section 91 of the Code for the production thereof. The accused may cross-examine the witnesses on this point and raise his defense in the manner deemed fit so as to show if there was any manipulation by the police.

12. In view of the foregoing reasons, this Court is of the considered view that the impugned order dated 12.1.2001 passed by learned Trial Judge cannot be sustained and the request of the petitioner as discussed above has to be allowed for securing the ends of justice. As such, the impugned order is set aside and the Trial Court is directed to issue orders under Section 91 of the Code for the production of the PCR records as well as the report of the Finger Prints Expert as prayed by the petitioner and supply the copies thereof to him.

13. The petition stands disposed of accordingly.

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