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Court : Rajasthan

Decided On : Jan-24-2002

Reported in : 2002(2)WLN728

Judge : D.N. Joshi, J.

Appeal No. : S.B. Criminal Misc. Petition No. 706 of 1995

Appellant : Dharmi Chand

Respondent : State of Rajasthan

Advocate for Pet/Ap. : Mr. Sunil Mehta

Disposition : Petition allowed

Judgement :

D.N. Joshi, J.

1. The instant criminal miscellaneous petition has been filed under Section 482 Cr.P.C. against the order of learned Additional Sessions Judge, Bhilwara dated 28.10.1995 passed in Criminal Sessions Case No. 180/93, by which the application filed by the petitioner dated 22nd March, 1995 for supply of certain documents and statements filed with the charge-sheet was rejected.

2. Heard Mr. Sunil Mehta, learned Counsel for the petitioner and Mr. D.D. Kalla, learned Public Prosecutor for the State.

3. The petitioners wanted the supply of following documents:

(1) photo stat copies of the letters, which were produced by the petitioners during investigation (though, the originals are with them) to show that the letters are not after-thought.

(2) the letters written to Forensic Science Laboratory for removing the defects pointed out by the laboratory.

(3) the letters written to the witnesses by the Dy. Superintendent of Police, Gulabpura in case of non-turning of the witnesses despite their service.

(4) the statements recorded under Section 174 of Cr.P.C. during inquiry of the witnesses Madanlal, Kanchan Bai, Gyan Mal, Anu Devi, Rajendra Kumar and Rakesh Kumar.

4. The learned Counsel for the petitioner submitted that under Section 91 Cr.P.C., these documents are relevant for the purpose of framing charge against the accused-persons. As per his argument, hearing also includes consideration of document, which is to be filed or to be relied by the accused petitioners. Therefore, to convince the learned trial Court that no charge could be framed against them, the summoning of the above documents under Section 91 of Cr.P.C. at the time of framing charge is necessary. Therefore, the petition be allowed and the prosecution be directed to produce the above mentioned documents.

5. The learned Counsel for the petitioners has placed reliance on the following judgments in support of his contention:

(1) Mangi Lal v. State (S.B. Cri. Misc. Pet. No. 262/96, decided on 19.1.1998)

(2) Davendra Kumar v. State of Rajasthan RLR 1990 (2) P. 629

(3) Pradeep and Ors. v. State of Rajasthan XI-1994 (3) Crimes P. 858

6. The petitioners are facing trial under Sections 498 and 304B of the Indian Penal Code before the trial Court. In the Sessions Case when the accused appears before the Court in pursuance of the commitment of the case under Section 209, the prosecutor shall upon his case by describing the charge brought against the accused and stating by what evidence he proposes to prove the guilt of the accused. under Section 227, the accused is to be discharged, if upon consideration of the record of the case and the documents submitted therewith and after hearing the submissions of the accused and the prosecution in this behalf, the Judge considers that there is no sufficient ground for proceeding against the accused. The Sessions Judge would be within his power to consider the materials till the accused may produce at the stage contemplated in Section 227.

7. It has been held in *State of M.P. v. S.B. Joshi* reported in : 2000 CriLJ3504 as under:

In the instant case the High Court by its order in earlier revision petition directed the trial Court that the documents made available by the accused during the investigation be produced and they be taken into consideration by the Court while framing charges. The said order became final, it having not been challenged further. In this situation the parties and the trial Court were bound and governed by the said direction. Its failure to follow the directions resulted in framing charges against the respondent-accused ignoring the documents, which on their face value supported the respondent. Consequently the order framing charge against accused would be liable to be set aside.

In this view of the matter, in the opinion of the Court, the documents, which the petitioners wanted to get produced from the prosecution (except so called letters written by Dy. Superintendent of Police, Gulabpura to witnesses for recording evidence) are relevant and essential for the petitioners and necessary at the time of framing charge.

8. Sub-Section (1) of Section 91 reads as follows:

(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.

9. It has been observed in *Navind Ramji Kamani v. Shri K.C. Shekhran*, as follows:

I have given my careful consideration to the arguments advanced by learned Counsel for the parties. In my view Section 91 applies to all kinds of trials under the Cr.P.C. The power given under Section 91 to the Court is a general and wide power which empowers the court, the production of any document or any other thing at any stage of any investigation, inquiry, or other proceedings under the Cr.P.C. It is no doubt true that the legislature has circumscribed this power to be exercised only where the court considers that the summoning of such document or thing was necessary or desirable. This power has to be exercised in a judicial manner and where ever the Court is satisfied in the facts and circumstances of a particular case that the production of any document or thing was necessary or desirable in its, view then the Court could pass an order both in favour of the accused as well as the prosecution. It is not doubt true that such power would not be exercised where the documents or thing may not be found relevant or it may be for the mere purpose of dealing the proceedings or the order is sought with an oblique motive. In the facts of this case it is clear that the learned trial court has not applied its mind about the necessity or desirableness of the documents for the purpose of trial of this case.

10. It has been observed in *Brojendra Nath Kolay and Anr. v. The State* reported in 1991 Cr.L.J. P. 1194, as follows:

The word 'whenever' clearly indicates that even at the stage of consideration of framing of charge the accused may approach the court under Section 91 of the Code of Criminal Procedure for production of a document which is relevant in this connection. It is however needless to mention that it is a matter of discretion of the

court whether any summons should be issued under Section 91 for production of any document and this discretion must be exercised judicially only when the court is convinced that the production of such document is necessary or desirable for the ends of justice. It is needless to mention that such production will not be ordered where there is any legal bar against such production, as for example, the bar of Sections 123 and 124 of the Evidence Act, etc. Such production also shall not be ordered where it appears to the court that the prayer for production has been made for the purpose of vexation or delay or for defeating the ends of justice.

11. In *Devendra Kumar v. State of Rajasthan* reported in 1990(2) R.L.R. P. 629, it has been observed as under:

3. It cannot be disputed that all the evidence mentioned above is in the form of documents and the statement under Section 164 Cr.P.C. must have been recorded at the instance of the police by the learned Judicial Magistrate. This also must be in the case diary that the applicant was admitted in the hospital with burn injuries and the deceased had been removed from the hospital against the advice of the hospital authorities and abortion was got done on her person in a different hospital. The police was bound to place before the Court all this evidence and they having kept it back, it cannot be said that the challan was complete in accordance with Section 173, Cr.P.C., which enables the Court to decide whether to discharge the accused under Section 228 of the Cr.P.C. Since a duty has been casted on the Court to decide whether or not to frame the charge only after hearing the accused, in my view it would be necessary for the Court to peruse all the record that is available with the prosecution and if the prosecution has kept back certain record from the Court, the Court is duty bound to insist that such record should be produced. Consequently, the impugned order cannot be upheld and is hereby set aside. For these reasons, I direct that the learned Sessions Judge should call for the records mentioned in the application and hear the petitioner before the charges against him are framed by him. The petition stands disposed of accordingly.

12. In view of the facts and circumstances of the case and the judgments relied above, the documents required by the petitioners at the time of framing of charge is essential and their non-production and non-consideration would result in miscarriage of justice.

13. Accordingly, the petition under Section 482 of the Code of Criminal Procedure is hereby allowed. The order of the learned Additional Sessions Judge, Bhilwara dated 28.10.1995 is hereby quashed and set aside. The prosecution is directed to file the documents mentioned above (except the letters written by Dy. Superintendent of Police, Gulabpura to the witnesses, which are irrelevant) within a period of two months from today and copies thereof shall be supplied to the petitioners. On production of the documents, the learned trial Court is directed to dispose the case at the earliest according to law. The learned Judge will also look in the case-diary as to the existence of those documents as has been held in *Mangilal v. State* (supra).