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(2018) 2 Supreme Court Cases 93

(BEFORE ADARSH KUMAR GOEL AND UDAY U. LALIT, JJ.)

Criminal Appeal No. 2114 of 2017†

NITYA DHARMANANDA ALIAS K. LENIN AND ANOTHER .. Appellants;

Versus

GOPAL SHEELUM REDDY ALSO KNOWN AS NITHYA BHAKTANANDA AND ANOTHER .. Respondents.

With

Criminal Appeal No. 2115 of 2017‡

STATE OF KARNATAKA .. Appellant;

Versus

GOPAL SHEELUM REDDY ALSO KNOWN AS NITHYA BHAKTANANDA .. Respondent.

Criminal Appeals No. 2114 of 2017 with No. 2115 of 2017, decided on December 7, 2017

Criminal Procedure Code, 1973 — S. 91 — Summons to produce document or other thing — Invocation of S. 91 by accused, at the stage of framing of charge — No right to, dehors satisfaction of court — For exercising such power, court has to be satisfied, that material available with investigator, which was not made part of charge-sheet has crucial bearing on issue of framing of charge

— Respondent-accused was charge-sheeted for offences, inter alia, under S. 376 IPC — His prayer before High Court, that entire material available with investigator, which was not made part of charge-sheet, ought to be summoned under S. 91 CrPC, was allowed, reversing the contrary view of trial court — Validity of

— Held, at the stage of framing of charge, accused cannot ordinarily invoke S. 91 CrPC — However, court being under obligation to impart justice and to uphold law, is not debarred from exercising its power, if interest of justice in a given case so require, even if accused may have no right to invoke S. 91 — To exercise such power, court has to be satisfied that material available with investigator, not made part of charge-sheet, has crucial bearing on the issue of framing of charge — Thus, while ordinarily court has to proceed on basis of material produced with charge-sheet for dealing with the issue of charge, but if court is satisfied that there is material of sterling quality which has been withheld by investigator/prosecutor, court is not debarred from summoning or relying upon the same, even if such document is not a part of charge-sheet

† Arising out of SLP (Crl.) No. 8279 of 2016. Arising from the Judgment and Order in *Gopal Sheelum Reddy* v. *State of Karnataka*, 2016 SCC OnLine Kar 8449 (Karnataka High Court, Bengaluru Bench, Crl. Petition No. 938 of 2016, dt. 21-7-2016)

‡ Arising out of SLP (Crl.) No. 1176 of 2017

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— It does not mean that defence has a right to invoke S. 91 CrPC dehors the satisfaction of court, at the stage of framing of charge

— Accordingly, view to the contrary in impugned judgment of High Court cannot be sustained and is set aside — Trial court to proceed with issue of framing of charge in light of observations made hereinabove — Penal Code, 1860, S. 376 (Paras 5 to 9)

State of Orissa v. *Debendra Nath Padhi*, (2005) 1 SCC 568 : 2005 SCC (Cri) 415; *Hardeep Singh* v. *State of Punjab*, (2014) 3 SCC 92 : (2014) 2 SCC (Cri) 86, *relied on*

Gopal Sheelum Reddy v. *State of Karnataka*, 2016 SCC OnLine Kar 8449, *reversed*

Y-D/59523/CR

Advocates who appeared in this case :

Devadatt Kamat, Additional Advocate General, Sidharth Luthra (Amicus Curiae), Shekhar Naphade, C.V. Nagesh and Ms Kiran Suri, Senior Advocates (Gautam K., Ashwin Vaish, Vinod Pandey, Kunal Awana, Sekh Zakir Hussain, Nitin Kr. Thakur, Joseph Aristotle S., Rajesh Inamdar, Ms Priya Aristotle, Ashish Yadav, Javedur Rahman, Aditya Bhat, Anand Sanjay M. Nuli, Dharm Singh, S.J. Amit, Saket Gogia, Suraj Kaushik, M/s Nuli & Nuli, V.N. Raghupathy, Parikshit P. Angadi, Md. Apzal Ansari and M/s Aditya Bhat, Advocates) for the appearing parties.

Chronological list of cases cited ***on page(s)***

1. 2016 SCC OnLine Kar 8449, *Gopal Sheelum Reddy* v. *State of Karnataka* **(reversed)** 94*f*, 96*b-c*
2. (2014) 3 SCC 92 : (2014) 2 SCC (Cri) 86, *Hardeep Singh* v. *State of Punjab* 95*g*
3. (2005) 1 SCC 568 : 2005 SCC (Cri) 415, *State of Orissa* v. *Debendra Nath Padhi* 94*f-g*, 95*b*

ORDER

1. Delay condoned. Leave granted. We have heard the learned counsel for the State, the complainant, the accused and the learned Amicus Curiae Mr Sidharth Luthra, Senior Advocate.

2. The respondent, Gopal Sheelum Reddy alias Nithya Bhaktananda, was charge-sheeted for offences, inter alia, under Section 376 of the Penal Code, 1860. The respondent approached the High Court with the prayer that the entire material available with the investigator, which was not made part of the charge-sheet, ought to be summoned under Section 91 CrPC. The High Court[1], reversing the contrary view of the trial court, allowed the said application.

3. The contention raised on behalf of the appellants is that the view of the High Court is contrary to law laid down by this Court in *State of Orissa* v. *Debendra Nath Padhi*[2] and reiterated in the subsequent decisions. The defence could not be considered at the stage of framing of charge so as to avoid a mini trial.

4. The learned counsel for the defence, on the other hand, submitted that if the investigator is not fair and the material of sterling quality, though seized during investigation and available with him, is deliberately left out from the charge-sheet, there is no bar for the court to summon the said material.

1 *Gopal Sheelum Reddy* v. *State of Karnataka*, 2016 SCC OnLine Kar 8449
2 (2005) 1 SCC 568 : 2005 SCC (Cri) 415

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5. It is settled law that at the stage of framing of charge, the accused cannot ordinarily invoke Section 91. However, the court being under the obligation to impart justice and to uphold the law, is not debarred from exercising its power, if the interest of justice in a given case so require, even if the accused may have no right to invoke Section 91. To exercise this power, the court is to be satisfied that the material available with the investigator, not made part of the charge-sheet, has crucial bearing on the issue of framing of charge.

6. In *Debendra Nath Padhi*[2], it was observed: (SCC pp. 579-80, para 25)

> "*25.* 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 record 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. Section 91 presupposes that when the document is not produced process may be initiated to compel production thereof."

7. In *Hardeep Singh* v. *State of Punjab*[3] a Bench of five Judges observed: (SCC pp. 115-16, para 19)

> "*19.* The court is the sole repository of justice and a duty is cast upon it to uphold the rule of law and, therefore, it will be inappropriate to deny the existence of such powers with the courts in our criminal justice system where it is not uncommon that the real accused, at times, get away by

2 *State of Orissa* v. *Debendra Nath Padhi*, (2005) 1 SCC 568 : 2005 SCC (Cri) 415
3 (2014) 3 SCC 92 : (2014) 2 SCC (Cri) 86

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manipulating the investigating and/or the prosecuting agency. The desire to avoid trial is so strong that an accused makes efforts at times to get himself absolved even at the stage of investigation or inquiry even though he may be connected with the commission of the offence."

8. Thus, it is clear that while ordinarily the Court has to proceed on the basis of material produced with the charge-sheet for dealing with the issue of charge but if the court is satisfied that there is material of sterling quality which has been withheld by the investigator/prosecutor, the court is not debarred from summoning or relying upon the same even if such document is not a part of the charge-sheet. It does not mean that the defence has a right to invoke Section 91 CrPC dehors the satisfaction of the court, at the stage of charge.

9. Accordingly, the view to the contrary in the impugned[1] judgment cannot be sustained and is set aside. The trial court may now proceed to deal with the issue of framing of charge in the light of the observations made hereinabove and also to proceed with the matter expeditiously in accordance with law. The parties are directed to appear before the trial court for further proceedings on Monday, 12-2-2018.

10. We record our deep appreciation for the valuable assistance rendered by Mr Sidharth Luthra, learned Senior Counsel, as Amicus Curiae. The appeals are accordingly disposed of.

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1 *Gopal Sheelum Reddy* v. *State of Karnataka*, 2016 SCC OnLine Kar 8449