

M.Cr.C.No.3883/2017

15.03.2017

Mr.Pradeep Naveriya, learned counsel for the petitioners.

Mr.S.S.Chouhan, learned Government Advocate for the respondent/State.

1. By this petition, the petitioners have voiced their grievance against the order dated 15.02.2017 passed by the learned IXth Additional Sessions Judge, Jabalpur, in Criminal Revision No.13/2017, whereby, the revision preferred by the petitioners herein was dismissed by the revisional Court, thereby, affirming the order dated 20.12.2016 passed in Criminal Case No.16795/2006 by the Court of learned Judicial Magistrate First Class, Jabalpur, by which, an application under Section 91 of the Cr.P.C. was rejected by the learned trial Court.

2. The petitioners in the case aforementioned, are being prosecuted for offences under sections 147, 148, 149, 294, 506, 323 and 325 of IPC. The case as narrated by the learned counsel for the petitioners is, that on account of a spontaneous fight between two groups, the above said case came to be registered against the petitioners. Learned counsel for the

petitioners submits that the petitioners had preferred a report to the police on 19.12.2000 against the complainants, which was registered as non-cognizable report by the police u/s. 155 Cr.P.C. A copy of the said report is Annexure-A/2 at page-8 of the petition.

3. At the stage of the defence evidence, the petitioners moved an application under section 91 of Cr.P.C. praying for the trial Court to exercise its jurisdiction and call for the complaint filed by the petitioner no.7 before the police on 19.12.2000. Learned counsel for the petitioners submits that the relevance of calling of the said documents was to establish that the petitioners had caused injury to the complainant side by way of exercise of the right of private defence as they had been assaulted upon by the complainant party.
4. The learned trial Court was pleased to dismiss the said application vide order dated 20.12.2016 on the sole ground that the document, being one that was generated by the petitioners no.7, he was entitled to receive a copy of the same under the Right to Information Act. It is pertinent to observe here that the learned trial Court did not feel that the said

documents so called for was irrelevant for the conduct of the petitioners' defence.

5. Against the said order, the petitioners approached the Court of Sessions in Criminal Revision No.13/ which was dismissed by the learned Court of Sessions vide order dated 13.01.2017 which is impugned herein, whereby the learned revisional Court held that the petitioners were trying to procrastinate the proceedings before the trial Court. The revisional Court also did not arrive at a finding that the document called for by the petitioners under section 91 of Cr.P.C. was irrelevant for the proper conduct of their defence.
6. Per contra, learned counsel for the State has submitted that the petition is misplaced and deserved to be dismissed as (a) case against the petitioners has been initiated on the basis of an FIR and is over 16 years in pendency, (b) the evidence of the defence itself was closed and thereafter, the case was listed for final hearing on 06.01.2017 and, therefore, it is clear that the petitioners are trying to delay the outcome of the trial, and (c) that the documents itself may not be in the custody of police after such a long time.

7. Heard, learned counsel for the petitioners and learned counsel for the respondent/State and perused the documents filed along with the petition, the order of the learned trial Court dated 16.12.2016 at page 10 of the petition, while giving time to the petitioners to produce their defence witness also notes that the said application under section 91 of the Cr.P.C was filed before the trial Court on that date. Thereafter, on 20.12.2016, the application was dismissed by the trial Court with the observation that the petitioners had the right to secure the said documents under the Right to Information Act. Later on, on the same day, the sole defence witness was examined, cross-examined and discharged by the learned trial Court and it was observed that the petitioners did not have any further defence witnesses to produce. From the proceedings of the learned trial Court, it is evident that the application under Section 91 of Cr.P.C. was filed before the trial Court before the defence witness was examined. Order dated 20.12.2016 makes it further clear that the petitioners were compelled to examine the sole witness for the defence present in Court, even though the application under Section 91 of Cr.P.C. was dismissed on the same day. Under the

circumstances, it cannot be stated that there was any kind of delay in filing the application Section 91 of Cr.P.C. on the part of the petitioners, as the law laid down by the Supreme Court in the ***State of Orissa Vs. Devendra Nath Padhi's case reported in (2005) 1 SCC 568***, makes it clear that the accused is entitled to file an application under Section 91 of Cr.P.C only at the stage of defence evidence and not before that. Under the circumstances, the application under Section 91 of Cr.P.C was filed in accordance with the law laid down by the Supreme Court.

8. The reasoning given by the trial Court for having dismissed the application under Section 91 is unsustainable in the eye of law. The provisions under section 91 of Cr.P.C. is not a substitute or an alternative remedy to a right under the provisions of Right to Information Act, which may or may not be available to the accused. If the trial Court is satisfied on the basis of the application that the documents so sought to be produced by exercising jurisdiction under Section 91 of Cr.P.C is essential for the conduct of the defence of the accused persons then under such circumstances, it must necessarily allow the

application under Section 91 of Cr.P.C. and not decline the same only because a remedy was also available under the provision of Right to Information Act. In fact, asking the accused to exercise his right under the Right to Information Act would, in fact delay the proceedings or defeat the cause of justice as far as the accused is concerned, as police could delay in delivering the information to the accused or not deliver the information at all, as sought for. When an application under Section 91 of Cr.P.C is filed before the trial Court at the stage of defence evidence, the only thing that the trial Court has to see is whether the documents so called for are relevant for conducting the defence of the accused persons, however, remote it may be. In this case, the trial Court did not even consider the relevance of the said documents called for by the accused persons. The revisional Court also erred in wrongly holding that the said application was filed only to delay the proceedings before the trial Court. The documents so sought by the petitioners, is an effort by them to show that they were first in point of time in making the complaint to the police with regard to the incident itself, and that they were not the aggressors. Under the circumstances, the relevance

of the said documents in defence of the accused persons cannot be questioned.

9. On the basis of what has been stated hereinabove, the petition is allowed. Learned trial Court is requested to exercise its jurisdiction under Section 91 of Cr.P.C. and call for the documents so prayed for by the petitioners and, thereafter, proceed with the trial in accordance with the law.

C.C. as per rules.

(ATUL SREEDHARAN)
JUDGE

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