IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION (AGAINST ORDER PASSED BY SUBORDINATE COURT) NO. 851 of 2016

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR.JUSTICE S.G. SHAH

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?	
2	To be referred to the Reporter or not ?	
3	Whether their Lordships wish to see the fair copy of the judgment ?	
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	

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VIJAY NATVARLAL TANK....Applicant(s)

Versus

STATE OF GUJARAT & 1....Respondent(s)

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Appearance:

MR ASHISH M DAGLI, ADVOCATE for the Applicant(s) No. 1

D B GOHEL, ADVOCATE for the Respondent(s) No. 1

MR RC KAKKAD, ADVOCATE for the Respondent(s) No. 1

MR.MANAN MEHTA, ADDL. PUBLIC PROSECUTOR for the Respondent(s) No. 1

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CORAM: **HONOURABLE MR.JUSTICE S.G. SHAH**

Date : 17/01/2018

CAV JUDGMENT

1. Heard learned advocate Mr.Ashish M. Dagli for the applicant whereas learned APP Mr.Manan Mehta for the respondent no.1 - State and prosecuting agency and learned advocate Mr.R.C.Kakkad and Mr.D.B.Gohel for the respondent no.2. Perused the record.

2. Applicant herein has challenged the order dated 18.07.2016 below Exh.48 in Sessions Case No.48 of 2015 passed by the Special Judge (POCSO) and 4th Additional Sessions Judge, Rajkot, whereby such application at Exh.48 whereby, applicant has called for several documents has been rejected.

3. The sum and substance in the applicant's case is to the effect that he is facing charges under Sections 376 and 506 (2) of the Indian Penal Code, pursuant to complaint filed before the Rajkot Mahila Police Station as C.R.No.I 29 of 2014. It would be appropriate not to disclose the name of victim and witnesses since, complaint is under Section 376 of the Indian Penal Code and therefore, I have referred them either as a complainant or victim, as the case may be since tiral is pending. It is submitted by the applicant that considering his nature of duties he has

to remain present in office from 10:30 a.m. to 6:10 p.m. and therefore, it is not possible for him to commit such offence as alleged against him. It is further contended that complaint was investigated by C.I.D. Crime Branch of Rajkot and thereafter, by detective police of Jamnagar but when he has called for their report under Right to Information Act, the same was denied and therefore, applicant has no option but to approach the Trial Court in pending case. It is further submitted that practically the applicant is facing charges only because he is serving in the Court and complainant who is an advocate had appeared through her advocate against him in every proceedings including bail application and that both the investigating agency as well as Lower Court has failed to call for the relevant documents and evidence which applicant has referred and relied upon to prove his innocence. It is further submitted that initially when complaint was filed, there was no allegation under Section 376 of Indian Penal Code and that all such documents are lying with the judicial branch of the District Court but neither investigation agency nor the Trial Court is interested to verify and look into first version of story of the complainant and wants to proceed

further against the applicant, based upon chargesheet which is selective step by the investigating agency to initiate proceeding under Section 376 of Indian Penal Code also. It is further submitted that some documents, though asked for under Right to Information Act, were denied for no valid reason and therefore, applicant is unable to prove his innocence through such documents if they are not produced on record. It is submitted that it would be necessary for the investigating agency, at-least to look into those evidence before filing chargesheet. It is further submitted that by rejecting the application at Exh.48, the Trial Court has not only refused to call for the documents but pre-supposed that such documents are not necessary or material and thereby, closed the right of applicant to prove it and even access to such documents by the applicant has been denied. It is further submitted that there would be no prejudice to the prosecution if such documents are produced on record and therefore, applicant has prayed to quash the impugned order.

4. The sum and substance of the complaint before the Trial Court is to the effect that applicant being accused has no right to adduce any evidence till his statement is

recorded under Section 313 of the Code of Criminal Procedure 1973 (“code”for short) and that they cannot be directed to produce any documents, irrespective of the defence of the accused.

5. If we peruse the application at Exh.48, it can certainly be said that probably applicant has wrongly mentioned Section 91 of the Criminal Procedure Code in the title of the application and probably application is not well drafted. However, law is well settled that disclosure of improper section in any such application or pleadings would not be prejudicial and the dispute shall be decided in accordance with law and similarly, if drafting is poor, then it may not be a ground to reject the genuine, legal request and to deny appropriate judicial relief in favour of the litigant. In such case, practically sum and substance in the proceedings or application is to be considered. Perusal of the application makes it clear that there was some previous FIR which was investigated by the C.I.D. Crime Branch, Rajkot and therefore, applicant has requested the Court to call for papers of investigation of C.R.No.I 61 of 2013 registered with A Division Police Station, Rajkot and to provide him copy so as to enable him to prove his innocence. Similarly,

applicant has called for his reply and statement of his brother recorded by the Court. Pursuant to application by the complainant, applicant has also referred some application preferred by the complainant before this High Court contending that therein also there are no allegations regarding rape and copy of such application is lying both, with the High Court and in the office of District Court, since, High Court has called upon remarks of the District Court. Therefore, it is submitted that such application and remark or report thereon are certainly relevant documents which would disclose material information and evidence with regard to the incident and allegation for which applicant is to be tried.

6. Therefore, prima facie if there are certain documentary evidence in control of different agency/officers including office of this High Court, which may ultimately throw any light on the issue which is under consideration before the Trial Court, irrespective of its nature, all such evidences and its effect i.e. whether it would help the accused or not; atleast, information of such evidence is material and vital for the proceedings against the accused – applicant. In support of his submission, applicant is relying upon provisions of Section 91 of

Criminal Procedure Code so also following decisions:

1. In the case of Mahesh Trivedi V/s. State of Gujarat reported in 2000 (1) GLR 701,
2. In the case of Vicky V/s. State of Maharashtra reported in 1990 Criminal Law Reporter 553,
3. In the case of Pravin Kumar Lalchand Shah V/s. State and Anr. 1982 (1) GLR 116,
4. Ranjeet Singh V/s. State of U.P. And another 1998 Criminal Law Journal 1297,
5. Pathan Faridkhan Usmanbhai V/s. The State of Gujarat 2005 (2) GLH (UJ) 12,
6. 2013 Criminal Law Journal 177 (V.K.Sasikala),
7. 2010 (2) SCC (CRI.) 1385

7. As against that, learned advocate Mr.Kakkad for the respondent no.2 - complainant has vehemently argued the matter and contended that accused has no right to adduce the evidence before the stage of recording his further statement under Section 313 of the Code. In support of his submission, respondent is relying upon decision of Hon'ble Supreme Court of India in the case of Nitya Dharmananda@ K. Lenin and Anr. V/s. Sri Gopal Sheelum Reddy also known as Nithya Bhaktananda and Anr.in Criminal Appeal No.2114 of 2017 dated 07.12.2017.

8. It is undisputed that applicant is facing serious charges in the case filed by the complainant who is an advocate. It is also undisputed fact that applicant is serving in judicial department i.e. District Court at Rajkot and his service is transferable within the districts. It is submitted by the applicant that he was serving as a Court Master and therefore, his presence in Court-room during the Court hours is must and unless proved otherwise it is admitted position and therefore, there is no question of adducing any false evidence on plea of alibi by him. It is also undisputed fact that pursuant to application against him by the complainant to the employer of the applicant i.e. District Court, there was some investigation and thereby, there is information available with the administrative branch of the Court regarding incident and defence. It is also undisputed fact that applicant was alleged against one previous complainant under Section 363 of the Indian Penal Code though there is no clarity available on record that it is in respect of the same victim or some other person but when applicant is calling for documents of that case, alleging that there was no complaint about the rape at such previous stage, it becomes clear that all such

material and evidence is certainly relevant and necessary either to prove guilt of the applicant accused or to prove his innocence.

9. It is a settled legal position that neither the investigation agency nor the Court has to complete the investigation and trial respectively only for sake of completing it and against wrong person or without having any substantial evidence against any such persons. In other words, it is settled principle of jurisprudence that the Court has to find out nothing but the truth with reference to any dispute and charges filed before it. It is also settled legal position that pleading generally of the litigation and in particular in Criminal proceedings, where Trial Court's decision would be disturbed in as much as it would affect the personal freedom of the individual pursuant to his conviction, the accused must be given proper and reasonable opportunity to prove his innocence. It is also well settled that for proving such innocence, accused are certainly entitled to adduce appropriate evidence which may be in their favour to prove them innocence. It is also well settled that for this purpose, the accused may not be denied either the opportunity to produce any information and evidence or to call upon the same, may

be with only restriction that it must be in accordance with law and subject to following proper procedure so that other side i.e. victim, complainant, investigating agency and prosecuting agency are having reasonable opportunity to know such evidence and to rebut it if they can. In view of above settled legal position, it becomes clear that disclosure of improper sections in any application and disclosure of some information may not be in requisite form but if such information or material is otherwise relevant to the issue under consideration of the Court, then failing to disclose such information on record or to call for such information and documentary evidence from person where it is lying would result into material irregularity which may ultimately result into illegality and therefore, it is to be avoided. It is also clear that not allowing the accused to prove his case would ultimately result into bright chance of admitting his appeal against conviction and ultimately it may be required to be remanded back. Therefore, to avoid all such situations, one has to look into the rival submissions and law point at this stage only so as to avoid multiplicity of proceedings of either side.

10. As recorded, sum and substance of the

complainant's case is quite simple that Section 91 is not applicable in facts and circumstances of the present case and that accused has no right to adduce any evidence until his statement is recorded under Section 313 of the Code.

11. For the purpose initially reference to Section 91 of the Code is material which reads as under:-

"91.Summons to produce documents 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."*

Bare reading of the section makes it clear that every Court has power to issue summons to the person in whose possession or power any document or thing is believed to be, if the Court considers that the production of any documents or thing is necessary or desirable for the purpose of any investigation, inquiry, trial or other proceedings and direct such person to attend and produce such documents before the Court. It is also made clear in sub-section (2) that any person required merely to produce documents or things, it shall be deemed to have complied with the requisition if he causes such documents or things to be produced instead of attending personally to produce the same. Therefore, practically, Section 91 is a basic provisions regarding calling the witness to produce certain documents or other things whenever, such document or other thing is necessary or desirable for the purposes of any investigation, inquiry, trial or other proceeding. Therefore, Court has wide powers to call for production of any documents without examining the person who has

brought such documents with only condition that such documents would be necessary or desirable. Therefore, Section is wide enough, it is not contemplated that such necessity or desirability should be for effective determination of the Trial, but, therefore, it is wide enough that if any documents or other thing is capable of throwing light on an issue which is in dispute and is pending before the Court, then such documents or things are certainly to be considered as necessary and desirable to be brought on record in appropriate means. Therefore, though it is contended that Section 91 is not applicable in the present case, irrespective of reference of the section in such application, when documents sought by the applicant are able to throw some light on the dispute which is pending before the Court then those documents are certainly necessary and desirable to be brought on record and therefore, there is nothing wrong if order is issued under Section 91 of the Code for calling such documents, However, Trial Court has refused to do so and hence, this petition.

12. The respondent is relying upon the decision in the case of Nitya Dharmananda (Supra) but unfortunately

applicant wants to read only one line from such judgment which reads that ordinarily the Court produce with the chargesheet for dealing with the issue of charge. The reference to the decision in the case of State of Orissa V/s. Debendra Nath Padhi reported in (2005) 1 SCC 568 is not much material for the simple reason that in that case the dispute was with reference to the stage when such documents may be called upon i.e. at the stage of framing of charge or not, whereas even after referring Debednra Nath Padhi (supra) in such recent judgment Hon'ble the Supreme Court has categorically observed and held that 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 requires, even if the accused may have no right to invoke Section 91 and it is further held that to exercise this power, the Court is to be satisfied that the material available with the investigator, which is not made part of the chargesheet, has crucial bearing on the issue of framing of charge. It is further held that 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 documents are not a part of the chargesheet. What is considered in all such cases is there may not be mini trial at the stage of framing the charge, but facts would be different after framing of charge and more particularly, when some witnesses are in witness box, it is certainly necessary for the accused to refer certain documents and contradict such witnesses with such documents and pleadings and therefore, such documents are required to be brought on record.

13. Whereas in the present case, now it is not in dispute that charge is already framed and deposition of as many as seven witnesses have been already recorded and therefore, before the initiating further proceeding, if applicant accused has asked the Court to call for certain documents so as to contradict the further witness and more particularly when such documents are related to such further witnesses including complainant and the victim, there is no bar to call upon such documents from person who is in possession of documents irrespective of fact that such person or authority is the Registry of this High Court or other police station. It is also undisputed fact that few of the witnesses have turned hostile.

14. Though such evidence is not to be considered at this stage, it would be appropriate to recollect that atleast one of the witness being PW no.7 has admitted that first husband of the complainant, advocate has renounced the world and two other husbands have committed suicide.

15. Therefore, this is not a case at the stage of framing charge and therefore, decision of Nitya Dharmannanda (supra) so also Devendra Nath Padhi (supra) would not be applicable but observations in Nitya Dharmananda (supra) would be applicable which confirms that the Court has ample power to call upon production of documents in such case to avoid irregularity and illegality and therefore, there is reason to interfere with the impugned order.

16. To that extent, even if such previous application either at the stage of bail or any other stage has been rejected, it would not result into res-judicata against the applicant for claiming those documents again because at present only the prayer by the applicant is to call upon certain documents before recording evidence of few

witnesses so as to enable him to contradict those witnesses with those documents.

17. In Maheshchandra K. Triveri (supra), the Court has observed and held that accused can request the Court for production of the document from the prosecution side and he can legitimately refer such document, even while cross-examination of any witness by referring such documents. If, it is not permitted at the relevant time then he may recall the witnesses who are examined and such recalling may be subject to permission by the Court and therefore, it would be appropriate to bring on record such documents very well in time. It is further observed and held that principle of criminal jurisprudence of this country says that the prosecution should be fair enough and there shall be no privilege to put a curtain on any oral or documentary evidence. Therefore, if privilege given under Section 91 of the Criminal Procedure Code, is not used at proper time or stage, then the defence can be prejudiced. Though view of the learned Sessions Judge to call for the papers even at the stage of framing of charges has been negetivated by the few judgments of Hon'ble Supreme Court, the fact remains that denial of production of documents, can open another window to

the defence side.

18. In the present case, also it is important to note that it was not the say of the prosecution at the time of resisting the application filed by the accused, that the documents asked by the accused are irrelevant nor is it the finding of the learned Sessions Judge that this application is moved only with a view to delay the proceedings or that he is not satisfied about the relevance of the documents asked by the applicant. It is also obvious that unless documents are brought on record is relevance, cannot be confirmed and that in a given case such production may work as a boomerang against the accused but that is his choice.

19. In Vikas @ Vicky Ramchandra Goel (supra), Bombay High Court has held that Court is bound to take statement recorded by the police in his custody, when defence is requested to produce it on record and Court must allow the defence to use it, when prosecution has failed to disclose and produce any such statement with chargesheet.

20. In Pravinkumar Lalchand Shah (supra), Division Bench

of this Court has observed and held that basic principle of criminal jurisprudence is fair trial and that first part of Article 39 (A) of the Constitution, clearly says that operation of the legal system must promote justice on the basis of equal opportunity and therefore, if few documents are relevant to the issue raised before the Court, thereby, if applicant has asked to produce those documents on record, in fact, it is his right to call for such documents and to that extent, even technicality should not come in his way because, practically, it is bounden duty of the prosecution and the Court to see that all material information and evidence is brought on record which is relevant to the incident because ultimately the Court does not have to punish the accused only because he was chargesheeted but the Court has to find out the truth based upon evidence available on record and therefore, opportunity to the accused to adduce evidence even in form of production of documents and to cross examine the prosecution witnesses to contradict him, cannot be denied.

21. In Ranjeet Singh (supra), Allahabad High Court made it clear that accused is entitled to copies of all such statements recorded by the investigating officer,

even, there may be contradictions in such documents and accused may like to utilise the same for his benefit and the ends of justice in that behalf can be secured by providing to him the copies of all such statements. Therefore, also applicant is entitled to call for the documents.

22. In Pathan Faridkhan Usmanbhai (supra), coordinate Bench of this Court has relying upon the case of Mahendrabhai K. Trivedi (supra), allowed the application for summoning the witness to produce documents.

23. In V.K.Sasikala (supra), the Hon'ble Supreme Court has held that documents though unexhibited or unmarked, ought to be disclosed to accused if demanded, relying upon doctrine of free and fair trial, making it more precise and clear that absence of any claim on the part of accused to any such documents at earlier point of time, cannot affect such right of the accused.

24. Petitioner has also relied upon the decision in the case of ***State of Gujarat V/s. Fulesh @ Fulo Amthabhai Desai reported in 2014 (3) GLR 2739,***

wherein this Court has observed and held as under:

> *Even if we do not enter into the factual details and merits of the case, it cannot be ignored that as per FIR and charge-sheet, probably there is no eye witness and entire case is based upon the circumstantial evidence only. If it is so, there is a reason for the accused to call for certain documents to prove their innocence when there is a material contradiction in the charge-sheet itself that though FIR is filed with Vastrapur Police Station, the allegation in column no. 5 of the charge-sheet specifically disclosed that the victim was taken to Vayna village of Kalol Taluka and accused have beaten him. If it is so, there is certainly a question regarding jurisdiction of the concerned IO.*
>
> *In view of above, I do not see any illegality or irregularity in the impugned order so as to interfere with it in revisional jurisdiction because the trial Court is always well concerned with the facts and circumstances at particular point of time during investigation to realize and understand that whether such documents should be allowed to be produced or not. Therefore, the trial Court has allowed production and when the complainant has withdrawn his revision and the State has no specific reason to put forward that why such application should not be allowed, only on the ground that such application is filed simply to delay the proceedings, cannot be ground for rejection of the application and thereby interfering with the impugned order by allowing the revision.*
>
> *As usual, both the sides have referred several citations in support of their submissions. I have gone through all such citations, which are referred hereinafter. However, over-all scrutiny of all such citations makes it clear that there is no rule of thumb to hold that the accused has no right whatsoever to call for the production of certain documents and information either to disprove the prosecution case or to*

prove his innocence. Some of the citations referred by the petitioner is practically relating to the production of documents at pre-trial stage i.e., before framing charges; whereas in case on hand, when the trial has not only started, but several witnesses are examined, it cannot be said that to challenge the veracity of the witnesses or to prove certain facts which are otherwise connected with such witnesses, but not disclosed or produced with the charge-sheet by the investigating agency, such documents cannot be allowed to be called for and produced on record at the behest of the accused.

The list of citations are as under and its outcome is summarized as under.

I In the case of P. Chhaganlal Daga v. M. Sanjay Shaw reported in [2003] 11 SCC 486 the Honble Apex Court held that grant of such permission by trial Court even at the fag end of the trial, is within the powers of the Court and the High Court erred in interfering therewith on the assumption that production of the said document at that belated stage was only to fill up a lacuna.

II In the case of Manjeet Singh Khera v. State of Maharashtra reported in [2013] 9 SCC 276 the Honble Apex Court held that non-supply of copy of the document to accused by prosecution would result into prejudice to accused and thereby principle of fair trial would violate.

III In the case of State of Kerala v. Babu reported in [1999] 4 SCC 621, additional documents was called for the purpose of establishing the contradiction in the evidence of the witness and in order to impeach the said witness. The defence made an application for summoning the case diary of that case invoking section 172 of the Code with a consequential prayer for recalling of the witness. The Honble Apex Court held that in view of Section 145 of the Evidence Act it is the right of a party in

a trial to use the previous statements of a witness either for the purpose of establishing a contradiction in his evidence or for the purpose of impeaching the credit of the witness. This right given to a party in a trial under Section 145 of the Evidence Act is somewhat controlled in criminal trials by the provisions made in the Criminal Procedure Code.

IV In the case of Lakshmi v. Chinnammal reported in [2009] 13 SCC 25, the Honble Apex Court held that if bringing on record a document is essential for proving the case by a party, ordinarily the same should not be refused; the Courts duty being to find out the truth. The procedural mechanics necessary to arrive at a just decision must be encouraged though the court in the said process would not encourage any fishing enquiry.

V In the case of Om Prakash Sharma v. CBI reported in [2000] 5 SCC 679, the Honble Apex Court held that ultimately, this would always depend upon the facts of each case and it would be difficult to lay down a rule of universal application and for all times. The court concerned must be allowed a large latitude in the matter of exercise of discretion and unless in a given case the court was found to have conducted itself in so demonstrably an unreasonable manner unbecoming of a judicial authority, the court superior to that court cannot intervene very lightly or in a routine fashion to interpose or impose itself even at that stage.

VI In the case of Aloke Nath Dutta v. State of W.B reported in [2007] 12 SCC 230, the Honble Apex Court held that the trial Judge should not have closed the case. He should have invoked his jurisdiction under Section 311 in the interest of justice and instead of blaming the defence for non-examination of the Superintendent of Presidency Jail, the court itself should have called upon authorities to produce the document.

VII In the case of State [Inspector of Police] v. Surya Sankaram Karri reported in [2006] 7 SCC 172, the Honble Apex Court held that the document in possession of a public functionary, who is under a statutory obligation to produce the same before the court of law and for his failure to produce it before the court, adverse inference may be drawn against him.

VIII In the case of Sk. Meheboob v. State of Maharashtra reported in [2005] 10 SCC 387, the Honble Apex Court held that though the sequence of events narrated by deceaseds father indicated that the written report would be the first contemporaneous document putting on record the true facts of the incident, but that document was not produced by prosecution despite trial courts order for production thereof. Evidence of deceaseds father as an eye witness also not credible in view of inconsistencies between his statement to the police under Sec. 161 of Cr. P.C and his statement before court. It is further held that evidence of deceaseds father and the dying declaration not credible so as to bring home charge of murder against the appellants beyond reasonable doubt. Reasonable doubt arose on evidence led by prosecution and its conduct in suppressing the vital document [viz. The written report given by deceaseds father to police] and witnesses. Therefore, appellants entitled to benefit of doubt.

IX In the case of Ashok Chawla v. Ram Chander Garvan, Inspector CBI reported in 2011 Criminal Law Journal 2353, the Honble Delhi High Court, relying on the decision rendered in the case of Navin Ramji Kamani v. Shri K.C. Shekhran, Cy. Chief Controller of Imports and Exports, reported in 1981 RCC 218 dealt with Section 91 of the Cr. P.C., which provides that 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 purpose 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, requiring the person in whose possession or power such documents are believed to be to attend and produce the same. The powers conferred under Section 91 are enabling in nature aimed at arming the Court or any officer in charge of a Police Station concerned to enforce and to ensure the production of any document or other things necessary or desirable for the purposes of any investigation, inquiry, trial or other proceeding under the Code, by issuing a summons or a written order to those in possession of such material. The language of Section 91 would, no doubt, indicate the width of the powers to be unlimited but the in-built limitation inherent therein takes its colour and shape from the stage or point of time of its exercise, commensurately with the nature of proceedings as also the compulsions of necessity and desirability, to fulfill the task or achieve the object.

X In Navin Ramji Kumani [supra], the Court held that the power given under Section 91 of the Code 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 things 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 no 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 delaying the proceedings or the order is sought with an oblique motive. Similar view has also been expressed in Rajesh Prasad v. State of Rajasthan 1998 [Supp] Cri LR 265.

XI In Sidhartha Vashisht alias Manu Sharma v. State [NCT of Delhi] reported in [2010] 6 SCC 1, it was held that the right of the accused

with regard to disclosure of documents is a limited right but is codified and is the very foundation of a fair investigation and trial. On such matters, the accused cannot claim an indefeasible legal right to claim every document of the police file or even the portions which are permitted to be excluded from the documents annexed to the report under Section 173[2] as per orders of the Court. But certain rights of the accused flow both from the codified law as well as from equitable concepts of constitutional jurisdiction, as substantial variation to such procedure would frustrate the very basis of a fair trial. To claim documents within the purview of scope of Sections 207, 243 read with the provisions of Section 173 in its entirety and power of the Court under Section 91 of the Code of summon documents signifies and provides precepts which will govern the right of the accused to claim copies of the statement and documents which the prosecution has collected during investigation and upon which they rely.

XII In the case of V K Sasikala v. State reported in AIR 2013 SC 613, the Honble Apex Court held that though the power of the investigating agency is large and expansive and the Courts have a minimum role in this regard, there are inbuilt provisions in the Code to ensure that investigation of a criminal offence is conducted keeping in mind the rights of an accused to a fair process of investigation.

XIII In the case of Maheshchandra K Trivedi v. State of Gujarat reported in 2000 [1] GLR 701, this Court held that merely because the trial is on, the weapon which is with the accused under that very Section 91 does not remain suspended. It can be used even strategically if the accused feels that he wants to avoid the formality of leading evidence in defence. He can request the Court for production of the document from the prosecution side. The accused can legitimately refer such document, even while cross examination of any witness by

referring such documents. He can recall the witnesses if examined, provided, permitted by the Court and put such question as to certain documents and can carve out the line or alternative line of defence if such documents are brought on record very well in time. The accepted principle of criminal jurisprudence of this Country says that the prosecution should be fair enough and has no privilege to put a curtain on any oral or documentary evidence. The privilege given under Section 91 of the Code of Criminal Procedure if is not used at proper time or stage then, the defence of the accused might be prejudiced.

25. In view of facts and circumstances, the application is allowed as prayed for whereby, main order dated 18.07.2016 below Exh.48 in Sessions Case No.48 of 2015 by Sessions Judge POSCO and Additional Sessions Judge, Rajkot is hereby quashed and set aside and such application is also allowed ad prayed for. Now, trial Court shall issue witness summons for production of documents as per such application. This application is disposed of. Rule is made absolute to above extent.

(S.G. SHAH, J.)

VARSHA