

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Judgment reserved on: 12th March, 2019
Judgment delivered on: 01st July, 2019

+ CRL.REV.P. 1169/2018

SHYAM MANOHAR SAXENA

..... Petitioner

versus

CENTRAL BUREAU OF INVESTIGATION & ORS..... Respondent

Advocates who appeared in this case:

For the Petitioner : Mr. Siddharth Aggarwal, Mr. Chiraag Khurana and
Ms. Sowjhanya, Advocates.

For the Respondents : Mr. Anupam S. Sharma, Spl.P.P with Mr. Prakash
Airan, Ms. Apoorva Ahuja and Mr. Parikshith
Sharma, Advocates.

CORAM:-

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGEMENT

SANJEEV SACHDEVA, J

CRL.REV.P. 1169/2018 & CrI.M.A.50396/2018 (stay)

1. Petitioner impugns order dated 03.12.2018, whereby, the application of the petitioner under Section 91 read with Section 311 Cr.P.C. has been dismissed.

2. Charge sheet was filed against the petitioner under Section 120(B) read with Sections 420/468/471/409 IPC and Section 13(2) read with Section 13(1)(d) of Prevention of Corruption Act alleging

misuse of Government grants by office bearers of Bhartiya Aadim Jaati Sewak Sangh (BAJSS), Jhandewalan, New Delhi. On 25.02.2017, charge was framed against the petitioner under the said sections. Thereafter the trial commenced.

3. On 06.10.2017, an application under Section 91 read with Section 311 Cr.P.C. was filed by the petitioner seeking production of certain documents *inter alia* decisions/resolutions of the Executive Committee of BAJSS. Said application was filed, when prosecution evidence was still being recorded.

4. The application remained pending till 04.07.2018 when, petitioner sought leave to withdraw the application with liberty to summon the relevant documents at the stage of defence evidence. Accordingly, said application was dismissed as withdrawn.

5. After the prosecution evidence concluded, subject application was filed by the petitioner, under Section 91 read with Section 311 Cr.P.C. seeking production of the documents mentioned therein as also for summoning the witnesses to prove the said documents.

6. Subject application had been dismissed by the impugned order dated 03.12.2018. Trial Court in the impugned order has held that specific particulars of the documents sought to be summoned have not been mentioned. There are no dates of meetings given, of which the record is sought.

7. Further, Trial Court held that the witnesses, i.e., the office bearers of BAJSS had been produced as prosecution witnesses and no cross-examination was conducted of the said witnesses on the said documents and no question was put about the particulars of the documents and as such no effective purpose would be served in allowing the application. Trial Court has further held that allowing of the application would delay the proceedings and the same had been filed at a belated stage.

8. Further, it is held that the name of the persons in whose possession the documents are supposed to be situated has not been mentioned. The Trial Court has further held that the petitioner could have obtained copies of the documents under the Right to Information Act and cross-examined the witnesses at the relevant stage. It is primarily on these grounds that the subject application has been rejected.

9. Section 91 Cr.P.C. reads as under:-

“91. 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 proceedings under this Court 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 things shall be deemed to have complied with the requisition if he causes such document or things to be produced instead of attending personally to produce the same.

(3) Nothing in this section shall be deemed”

10. Section 91 Cr.P.C. empowers a Court to direct production of any document necessary or desirable for the purposes of any investigation and inquiry or trial.

11. Section 311 Cr.P.C. reads as under:-

“311. Power to summon material witness, or examine person present.

Any Court may, at any stage of any inquiry, trial or other proceeding under this Court, summon any person as a witness, or examine any person in attendance though not summoned as a witness, or recall and re-examine any person already examined; and the Court shall summon and examine or recall and re-examine any such person if his evidence appears to it to be essential to the just decision of the case.”

12. Section 311 Cr.P.C. empowers a Court, at any stage of the trial, to summon any person as a witness or examine any person in attendance though not summoned as a witness or recall or re-examine

any person already examined if his evidence appears to be essential to the just decision of the case.

13. Further Section 243 Cr.P.C. reads as under:-

“243. Evidence for defence.

(1) The accused shall then be called upon to enter upon his defence and produced his evidence; and if the accused puts in any written statement, the Magistrate shall file it with the record.

(2) If the accused, after he has entered upon his defence, applies to the Magistrate to issue any process for compelling the attendance of any witness for the purpose of examination or cross-examination, or the production of any document or other thing, the Magistrate shall issue such process unless he considers that such application should be refused on the ground that it is made for the purpose of vexation or delay or for defeating the ends of justice and such ground shall be recorded by him in writing: Provided that, when the accused has crossed-examined or had the opportunity of cross-examining any witness before entering on his defence, the attendance of such witness shall not be compelled under this section, unless the Magistrate is satisfied that it is necessary for the ends of justice.

(3) The Magistrate may, before summoning any witness on an application under sub-section (2), require that the reasonable expenses incurred by the witness in attending for the purposes of the trial be deposited in Court. B- Cases instituted otherwise than on police report.”

14. Under Section 243 Cr.P.C., after the prosecution evidence is over, the Magistrate is required to call upon the accused to enter his defence or produce his evidence. Under Section 243(2) Cr.P.C. if an accused after entering his defence applies to the Magistrate to issue any process for compelling the attendance of any witness for the purposes of examination or cross-examination or seeks production of any document or other thing, the Magistrate is obliged to issue such process unless he considers that the application has been made for the purpose of vexation or delay or for defeating the ends of justice, in which case, he may refuse such application for the reasons to be recorded.

15. It is further provided that when the accused had the opportunity to cross-examine any witness before entering his defence, attendance of such witness shall not be compelled under said section unless the Magistrate is satisfied that it is necessary for the ends of justice.

16. In the subject case, the Trial Court has rejected the application on the ground that no specific particulars have been mentioned of the documents that are sought to be summoned and further that the witnesses, who were office bearers of BAJSS, have already been cross-examined and no question or particulars with regard to the documents or particulars were put to them. The Trial Court has held that no effective purpose would be served in summoning the said documents and it would delay the proceedings. Further, the reasons given by the Trial Court is that the petitioner could have sought the

documents under Right to Information Act and then cross-examined the witnesses on the said documents.

17. Clearly, the impugned order does not hold that the documents, production of which is sought or the witnesses, who are sought to be summoned, are irrelevant or not essential for the just decision of the case.

18. Even before this Court it is not the contention of the respondent CBI that said documents are not relevant or not necessary for the just decision of the case. The admitted position is that the documents are relevant and would have a bearing on the just decision of the case.

19. The allegations against the petitioner, *inter alia*, are of misuse of Government grant by the office bearers of BAJSS. Petitioner was then the Secretary General of the said association.

20. The petitioner by the subject application has sought production of the following :-

S.No.	Particulars of the documents to be summoned.	Address of the Witness to bring the relevant documents
1.	<i>Certified copy of the Minutes of the Executive Committee Meeting and the resolutions passed in the meeting held during the year 2006-2007,2007-2008 & 2008-09 to show that allotment of creches along with other necessary</i>	<i>President/General Secretary and Secretary General, Bhartiya Adim Jaati Sewak Sangh,Near Jhandewalan Metro Station, New Delhi-110055</i>

	<p><i>proposals was approved by the executive committee of BAJSS AS HAS BEEN DEPOSED BY THE Prosecution witness namely B.L.Gaur and the I.O. of the case Mr. Paramjeet Singh but the same is not part of the record by way of relied or unrelid documents.</i></p>	
2.	<p><i>The Certified Copy of the Bye Laws of the Bhartiya Adim Jaati Sewak Sangh to prove that there was no bar to allot crehes to the Accused Sanjay Saxena.</i></p>	<p><i>President/General Secretary and Secretary General, Bhartiya Adim Jaati Sewak Sangh, Near Jhandewalan Metro Station, New Delhi-110055</i></p>
3.	<p><i>The copy of the Rajiv Gandhi National Cretch Scheme for Children of Working Mothers to prove that there was no bar to allot creches to life members such as Accused Sanjay Kumar Saxena.</i></p>	<p><i>President/General Secretary and Secretary General, Bhartiya Adim Jaati Sewak Sangh, Near Jhandewalan Metro Station, New Delhi-110055</i></p>
4.	<p><i>The certified copy of the Allotment policy approved by Bhartiya Adim Jaati Sewak Sangh to allot cretches under Rajiv Gandhi National Cretch Scheme for Children of Working Mothers</i></p>	<p><i>President/General Secretary and Secretary General, Bhartiya Adim Jaati Sewak Sangh, Near Jhandewalan Metro Station, New Delhi-110055</i></p>
5.	<p><i>The Annual Report of Bhartiya Adim Jaati Sewak Sangh for the year 2006-2007 and 2007-2008 and 2008-</i></p>	<p><i>President/General Secretary and Secretary General, Bhartiya Adim Jaati Sewak Sangh, Near Jhandewalan</i></p>

	<i>2009 to prove that there was no wrong doing in the functioning and administration of BAJSS.</i>	<i>Metro Station, New Delhi-110055</i>
6.	<i>The certified copy of the Proceeding register of Bhartiya Adim Jaati Sewak Sangh for the year 2006-2007 and 2007-2008 and 2008-2009 to prove the way of functioning and due process of ratification of Proposals, Audits and Day to Day working of the BAJSS.</i>	<i>President/General Secretary and Secretary General, Bhartiya Adim Jaati Sewak Sangh, Near Jhandewalan Metro Station, New Delhi-110055</i>

21. Petitioner had earlier filed an application under section 91 read with section 311 Cr.P.C., at the time when prosecution evidence was still being led, seeking production of these very documents.

22. Prosecution had produced Sh. Ajay Kumar Choubey as PW-11, who was the then Secretary of BAJSS. In his cross-examination, he has deposed that approval for allotment of creches used to come when the Executive Committee, BAJSS used to meet. Further, prosecution had produced Mr. Virendra Kumar Kushwaha – PW14, who was the Under Secretary in the Ministry of Housing and Urban Affairs and he in his cross-examination has deposed that there were monitoring agencies to monitor the complete functioning or running of crèches and there were 18 monitoring agencies working under the systems and process developed for monitoring in the Rajiv Gandhi Crèche Scheme

and the monitoring agencies used to monitor as per the mandate given by the Ministry of Women and Child Development.

23. PW-20 Mr. Banwari Lal Gaur in his evidence has deposed that there was an Executive Committee of not more than 21 members of which at least 7 members belonged to Aadim Jaati. He has further referred to Resolutions of the Committee being required for opening bank accounts and for submitting statutory documents. He has also deposed that prior to passing of any resolution a draft resolution was prepared and put up before the Executive Committee. He has deposed that the relevant records of the Executive Committee were lying in the safe custody of BAJSS and the same could be produced if ordered by the Court. He has further deposed that copies of audited reports of all units situated in different states/areas were submitted with the Head Officer of BAJSS, Delhi.

24. Clearly the documents production of which is sought for by the petitioner, are relevant for the just decision of the case. Petitioner had earlier filed an application seeking production of these documents as well as summoning of the concerned witnesses at the stage when prosecution evidence was being led. Said application was permitted to be withdrawn on 04.07.2018, with liberty to summon the relevant record and witnesses at the stage of defence evidence. Once liberty was granted to the petitioner to summon the relevant record and the witnesses at the stage of defence evidence, subject application could

not have been rejected on the ground of delay or having been moved at the belated stage.

25. The reasoning given by the Trial Court that specific particulars or dates of meetings have not been given is *ex-facie* unsubstantiated. The list of documents, as extracted hereinabove, clearly shows that the petitioner has given requisite particulars so as to identify the relevant documents. It may further be noticed that subject application was filed along with an application under Section 315 Cr.P.C filed by the petitioner as well as the other co-accused. Applications under Section 315 Cr.P.C. of the accused were allowed and accused were permitted to examine themselves as witnesses.

26. Under Section 243 Cr.P.C. it is obligatory on the part of the Trial Court to issue process when the accused seeks summoning of any witness or production of any document in his defence. The only ground on which such an application can be refused is if the same was vexatious, delayed or would defeat the ends of justice.

27. In the instant case, no such findings have been returned by the Trial Court. On the contrary, the Trial Court has erred in not noticing that the petitioner had moved an application even at the stage when prosecution evidence was being led and was permitted to withdraw that application with liberty to move an appropriate application at the stage of defence evidence and that is exactly what the petitioner has done.

28. Further, the Trial Court has clearly erred in holding that it is within the discretion of the court, under Section 243 Cr.P.C. to decline such an application. On the contrary, as per section 243 Cr.P.C., it is obligatory on the part of the Trial Court to issue process, unless, it for the reasons to be recorded, holds that the application is vexatious, delayed or defeats the ends of justice.

29. Further reasoning given by the Trial Court, that the petitioner is seeking re-summoning of the witnesses, who have already been examined, is also not correct. Petitioner has not sought summoning of the witnesses, who have already been examined as prosecution witnesses for re-examination/cross-examination. Petitioner has merely sought production of the relevant record of the association from the custodian thereof. Admittedly, the record would come from an undisputed source. Petitioner has not sought re-summoning of any witness already examined, by name but has only sought production of the documents from the custodian thereof. Once the documents are produced, it would be open to the petitioner to prove the same in accordance with the Evidence Act.

30. Further reasoning given by the Trial Court, that the petitioner could have obtained copies of the documents under the Right to Information Act and then cross-examined the witnesses on the said documents, is also erroneous. Even if a person were to obtain copies of the documents under the Right to Information Act, said copies would not become primary evidence in terms of the Evidence Act and

a party would still need to summon the original record from the custodian thereof.

31. Since it is admittedly not the case of the respondent that the documents are not relevant or have no bearing on the just decision of the case, I am of the considered opinion that the Trial Court in the facts, as noticed hereinabove, has clearly erred in dismissing the application of the petitioner filed under Section 91 read with Section 311 Cr.P.C.

32. In view of the above, impugned order dated 03.12.2018 is set aside. Consequently, the application, filed by the petitioner, under Section 91 read with Section 311 Cr.P.C. dated 14.11.2018 is allowed,

33. List the case before the concerned Trial Court on 22.07.2019, for passing appropriate orders in terms hereof.

34. Petition is, accordingly, allowed in the above terms.

35. Order *Dasti* under signatures of the Court Master.

SANJEEV SACHDEVA, J

JULY 01, 2019

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