

A NITYA DHARMANANDA @ K. LENIN & ANR

v.

SRI GOPAL SHEELUM REDDY ALSO KNOWN AS NITHYA
BHAKTANANDA AND ANR.

B (Criminal Appeal No. 2114 of 2017)

DECEMBER 07, 2017

[ADARSH KUMAR GOEL AND UDAY UMESH LALIT, JJ.]

C *Code of Criminal Procedure, 1973 – s.91 – Applicability of –*
Respondent charge sheeted for offences, inter alia, u/s. 376 IPC –
Respondent filed application u/s.91 before trial court praying that
the entire material available with the investigator, which was not
made part of the chargesheet, ought to be summoned u/s. 91 –
D *Application was dismissed – High Court reversed the order of trial*
court – On appeal, held: 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
E *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 – However, this does not give the defence a right to
invoke s.91 de hors the satisfaction of the Court at the stage of
charge – Accordingly, contrary view in the impugned judgment
cannot be sustained and is set aside.

F *Hardeep Singh Etc. v. State of Punjab and Ors. etc.*
(2014) 3 SCC 92 : [2014] 2 SCR 1 – followed.

State of Orissa v. Debendra Nath Padhi (2005) 1 SCC
568 : [2004] Suppl. SCR 460 – referred to.

G Case Law Reference

[2004] 6 Suppl. SCR 460 referred to Para 4

[2014] 2 SCR 1 followed Para 8

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CRIMINAL APPELLATE JURISDICTION : Criminal Appeal A
No. 2114 of 2017.

From the Judgment and Order dated 21.07.2016 of the High Court
of Karnataka at Bengaluru in Criminal Petition No. 938 of 2016

WITH

Crl. A. No. 2115 of 2017. B

Sidharth Luthra (AC), Shekhar Naphade, C. V. Nagesh, Ms. Kiran
Suri, Sr. Advs., Devadatt Kamat, AAG, Gautam K, Ashwin Vaish, Vinod
Pandey, Kunal Awana, Sekh Zakir Hussain, Nitin Kumar Thakur, Joseph
Aristotel S, Rajesh Inamdar, Ms. Priya Aristotle, Ashish Yadav, Javedur C
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, M/s. Aditya Bhat, Advs for the appearing
parties.

The following Order of the Court was delivered :

ORDER D

1. Delay condoned. Leave granted.

2. We have heard learned counsel for the State, the complainant,
the accused and the learned amicus, Mr. Siddharth Luthra, Senior E
Advocate.

3. The respondent, Gopal Sheelum Reddy alias Nithya
Bhaktananda, was charge sheeted for offences, *inter alia*, under Section
376 of the Indian Penal Code. The respondent approached the High
Court with the prayer that the entire material available with the
investigator, which was not made part of the chargesheet, ought to be F
summoned under Section 91 of the Cr.P.C. The High Court, reversing
the contrary view of the trial court, allowed the said application.

4. 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 G
Orissa versus Debendra Nath Padhi* (2005) 1 SCC 568 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.

5. Learned counsel for the defence, on the other hand, submitted
that if the investigator is not fair and the material of sterling quality, H

A though seized during investigation and available with him, is deliberately
left out from the chargesheet, there is no bar for the court to summon
the said material.

6. It is settled law that at the stage of framing of charge, the
accused cannot ordinarily invoke Section 91. However, the court being
B 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 chargesheet, has crucial bearing
on the issue of framing of charge.

C 7. In *Debendra Nath Padhi*, supra, it was observed:

“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
D 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
E 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
F 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
G 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

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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."

8. In *Hardeep Singh Etc. versus State of Punjab and ors. Etc.* (2014) 3 SCC 92 a Bench of five-Judges observed:

"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 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."

9. 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 Cr.P.C. *de hors* the satisfaction of the court, at the stage of charge.

10. Accordingly, the view to the contrary in the impugned judgment cannot be sustained and is set aside.

11. 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, the 12th February, 2018.

A We record our deep appreciation for the valuable assistance rendered by Mr. Siddharth Luthra, learned senior counsel, as amicus.

The appeals are accordingly disposed of.

Divya Pandey

Appeals disposed of.