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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

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CRM-M-18847-2019

Reserved on: 21.11.2024

Pronounced on: December 20, 2024

CENTRAL BUREAU OF INVESTIGATION**-PETITIONER****V/S****GURMEET RAM RAHIM AND ANOTHER****-RESPONDENTS****CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI**

Present: Mr. Ravi Kamal Gupta, Advocate
for the petitioner.

Mr. Archit Rana, Advocate for
Mr. Aman Arora, Advocate
for the respondent No.2.

Mr. S.P. Arora, Advocate with
Mr. Deepak Sharma, Advocate
for the respondent No.3.

KULDEEP TIWARI, J. (ORAL)

1. The instant petition cast under Section 482 of the Cr.P.C. aims at acquiring an affirmative order from this Court for setting aside the order dated 16.02.2019 (Annexure P-1), wherethrough, the learned Special Judicial Magistrate, CBI Haryana at Panchkula, has allowed the applications dated 25.01.2019 and 31.01.2019, as preferred respectively by the respondents No.1 and 2, under Section 91 of the Cr.P.C.

2. The author of the impugned order (Annexure P-1) has directed the petitioner (hereinafter referred to as the 'C.B.I.') to place on the judicial record and to supply to the defence counsel for respondent No.1: (i) the statements of the persons/witnesses mentioned in paragraphs No.7 and 12;



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(ii) the two documents mentioned in paragraph No.14 of the application dated 25.01.2019. Moreover, the C.B.I. has also been directed to place on the judicial record and to supply to the defence counsel for respondent No.2: (i) the statements of the persons/witnesses mentioned in paragraph No.5; (ii) the three documents mentioned in paragraph No.7 of the application dated 31.01.2019.

3. The present case has a chequered history, therefore, in order to give quietus to the controversy at hand once for all, it is deemed imperative to dive deep into the factual matrix of the case.

FACTUAL MATRIX

4. The respondents have been facing trial in FIR No. RC1(S)/2015/SCU.V/SC.II/CBI/New Delhi, dated 07.01.2015, under Sections 120-B, 326, 417 and 506 of the IPC, registered at P.S. CBI, SC-II/New Delhi. The genesis of the present FIR is embodied in the order dated 23.12.2014, as passed by this Court upon CWP-13395-2012.

5. The petitioner, in the writ petition (supra), levelled allegations of causing grievous injury(ies) of castration to him and 400 other males at the Dera Sacha Sauda headed by Sant Gurmeet Ram Rahim (respondent No.1 herein). To be precise, the allegations against the respondent No.1 are that, he induced the petitioner and several others with the hope that such emasculation would lead to realisation of God. In this way, under the influence of the respondent No.1, the petitioner underwent the surgery of castration, however, upon his weaning out from the influence of the respondent No.1 and objectively seeing the harm caused to himself, he approached this Court by filing the writ petition (supra), thereby praying for



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making an enquiry to C.B.I.

6. Resultantly, taking into consideration: (i) the medical report, which was conducted on the directions of this Court; (ii) the serious allegations of mass castration, victims whereof were allegedly muted by fear; (iii) the allegations (supra) being voiced against a highly acclaimed person and the clout that he enjoyed; this Court, speaking through K. Kannan, J., drew the order dated 23.12.2014 and directed the C.B.I. to register the case and to take over the investigation. The relevant portion of the order dated 23.12.2014 is reproduced hereunder:-

“15. This court had not found anyone guilty. That is just not the scope of the writ petition. However, I have materials before me that the complaint is serious. It is at the instance of a person who has suffered a privation of an organ. The abnegation of his own sexual identity has cast a serious psychological scar to the person. He narrates his own misery not to be confined to him but to several other persons, who are muted by fear that if they raise their voice, they will be done away with. There had been such a fear expressed in this court and the court has provided police protection. A large number of persons, who are said to have been affected, are spread over several States. The victims are from Punjab, Haryana and Rajasthan. It is not known whether the persons belonged to other States are also involved. The imperatives for tightening the rigour of investigation is unexceptional. The State police has done no credit to itself by allowing grass to grow under its feet and nibbling at the periphery and conducting investigation which is worthless. I am not surprised at the petitioner's apprehension that they feel overwhelmed by the large following that the 5th respondent has within or without the State. In a democracy, numbers mean everything. The clout that a person enjoys with patronage lying outside the spiritual circles can make even a powerful police force go limp and effete. The Court processes have already suffered in its attempt to prosecute the 5th respondent in three other cases. 12 years on and still no hope for a



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conclusion of the trial. Not in one single instance could the accused be brought before court. On the other hand, we had reports of the State police complaining of law and order situation if the accused were to be brought to court; there were incidents of persons claiming to be disciples who shot themselves in court complex or died in pitiful state under the gaze of public, after slogan raising that they cannot bear the agony of their master being taken to court. Acts of breast beating and public wailing are occurrences, we have seen aplenty in the near past when public bigwigs were incarcerated. Leaders for whom persons are prepared to die are persons who are cringing for attention that it is in the show of their loyalty that salvation lies. It is a leader who must show the correct way to his own disciples and interrogation, if it may become essential of the 5th respondent, he cannot leave a trail of destruction and public display of anger by misguided persons. I have fortunately in this case the 5th respondent supported through a responsible senior counsel who assures the court that he will give full cooperation to the investigation. If I may add the cooperation would include even an exhortation to the disciples of the spiritual guru that they shall maintain calm and no harm is made while carrying out investigation. The disciples must know that the allegations made are serious and the investigation to be therefore serious. They cannot be derailed by threats or activities which can vitiate the atmosphere. The course of action could have been merely to direct the State police to register a complaint and carry own with the investigation. In this case, however, the materials brought out show that the victims spread over several States. The person against whom allegations are made is a highly acclaimed person and at least a person who has a large public following. The past experience has been that his presence in court is seen as a torture to the disciples who have killed themselves. If the matter transcends the State boundaries and the imputation is serious, then it would be only appropriate that the matter is entrusted to CBI to register a complaint and carry out the investigation in the light of the observations made above.....”

7. After registration of the present FIR and conducting



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investigation regarding the incident of castration of devotees in Dera Sacha Sauda, the C.B.I. concluded that Dr. Pankaj Garg (respondent No.2 herein) is one of the doctors, who conducted castration surgery on devotees at the behest of the respondent No.1. On completion of investigation, charge sheet was filed on 01.02.2018 before the learned Special Judicial Magistrate.

8. Thereafter, the respondent No.1 moved an application dated 28.03.2018, under Sections 207 and 91 of the Cr.P.C., before the learned Special Judicial Magistrate. The prayer embodied in this application appertained to supply of statements of some witnesses, but, the said prayer was declined vide order dated 05.05.2018. Fetching grievance from this declining order, the respondent No.1 assailed it before this Court by filing CRM-M-22639-2018, but, he failed in his endeavour and this petition was also dismissed. However, liberty was granted to respondent No.1 to avail appropriate remedy.

9. Subsequently, the respondent No.1 again moved an application dated 28.09.2018, under Section 91 of the Cr.P.C., before the learned Special Judicial Magistrate, thereby seeking issuance of directions upon the C.B.I. to place on record and to supply him the copies of statements of witnesses, however, this application was also dismissed vide order dated 29.09.2018. This dismissal order caused pain to the respondent No.1 and triggered him to institute thereagainst CRM-M-45571-2018 before this Court. This time, the efforts of the respondent No.1 reaped benefits inasmuch as, vide order dated 03.12.2018, the petition (supra) was partly allowed by this Court and the trial Court was directed to allow the respondent No.1/petitioner therein, through his counsel, to inspect the



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whole record, including the file of unmarked and unexhibited documents. The detailed directions encapsulated in the concluding paragraphs of the order dated 03.12.2018 are extracted hereinafter:-

“After hearing the arguments of learned counsel for the parties and the observations made in various judgments, no conclusion can be drawn at this stage as the matter needs to be reconsidered further by the trial Court. However, in case, after reconsideration of the matter in case the trial Court comes to the conclusion that the Investigating Agency is in possession of documents which are required by the accused petitioner, his prayer be considered.

In view of the above, the present petition is partly allowed and impugned order dated 29.09.2018 (Annexure P-1) passed by the Special Judicial Magistrate, CBI Haryana at Panchkula in case FIR No.RC1(S)/2015 SCU.V/SCII/CBI/New Delhi dated 07.01.2015 registered under Sections 120-B, 326, 417 and 506 IPC at Police Station SCII/CBI New Delhi titled as “CBI vs Gurmeet Ram Rahim and others” is hereby set aside with a direction to the trial Court to allow the accused-petitioner through his counsel to inspect the whole record including the statements recorded under Section 161 of the Code and to supply the same, in case, there is relevancy and admissibility on moving such application by him. The petitioner be also allowed to inspect the file of the unmarked and unexhibited documents referred to in the application moved by the accused in the Court of Special Judicial Magistrate, CBI Haryana at Panchkula. Such inspection be completed within a period of two weeks from the date of moving of such application. The venue of such inspection and the persons by whom the inspection is to be done will be decided by the learned trial Court. It is also made clear that the right of inspection will not affect the validity of any part of the trial including the examination of the accused.”

10. Post the drawing of the order dated 03.12.2018, the applications dated 25.01.2019 and 31.01.2019 were preferred respectively by the



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respondents No.1 and 2, under Section 91 of the Cr.P.C., before the learned Special Judicial Magistrate and an affirmative order, which is enclosed in Annexure P-1, was rendered thereon.

11. In this way, the drawing of the impugned order (Annexure P-1), wherein becomes embodied directions for the C.B.I. to place on the judicial record and to supply to the defence counsel for respondents No.1 and 2 some statements and documents, has propelled the C.B.I. to challenge the validity thereof by filing the instant petition.

SUBMISSIONS OF THE LEARNED COUNSEL FOR THE C.B.I.

12. The principal argument of the learned counsel for the C.B.I. is clothed in the claim that, the making of alike applications by the respondents, and that too one after another, is merely a dilatory tactic. Elaborating this argument, he submits that, while transferring the investigation to the C.B.I., even this Court had observed that, in a previous case wherein the respondent No.1 had/has been facing trial in respect of a heinous offence, the latter remained successful in prolonging the trial. In the present case also, the respondents have been adopting all tactics to prolong the criminal proceedings against them, origin whereof was possible only with the intervention of this Court. Therefore, he claims the impugned order (Annexure P-1) to be drawn in utmost oblivion and disdain to the mandate enclosed in *“P. Ponnusamy V/s. The State of Tamil Nadu”, 2023(1) R.C.R. (Criminal) 307.*

13. Another argument constructed by the learned counsel for the C.B.I. is that, the direction passed by the learned Special Judicial Magistrate for supplying to the respondents the unrelayed upon statements recorded



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under Section 161 of the Cr.P.C., for enabling them to cross-examine PW1 and PW2, is totally against the object of Section 162 of the Cr.P.C. He argues that, a statement recorded under Section 161 of the Cr.P.C. can only be used to confront the maker thereof, and except that, the said statement cannot be used for any other purpose either by the prosecution or by the accused.

14. The learned counsel for the petitioner next argues that, the status reports dated 30.01.2015 and 30.06.2015, as filed before this Court in sealed covers, were neither the part of investigation, nor of any case diary, rather the said reports were only informatory in nature regarding progress of the investigation. Therefore, when these reports are not necessary or desirable to build up the defence, hence supply thereof is totally unwarranted. Consequently, he argues that the impugned order (Annexure P-1) suffers from gross violation of the mandate enclosed in Section 172 of the Cr.P.C. and is liable to be set aside.

15. Concluding his arguments, the learned counsel for the C.B.I. submits that, without assessing the relevancy and legal admissibility of the statements of 87 witnesses and of police case diary, an omnibus direction has been rendered by the Special Judicial Magistrate, which is specifically contrary to the directions issued by this Court, vide order dated 03.12.2018.

SUBMISSIONS OF THE LEARNED COUNSELS FOR THE RESPONDENTS

16. The prayer made in the instant petition is vociferously opposed by the learned counsels for the respondents. They submit that, the allegations levelled in the present FIR appertain to mass castration of



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devotees, but, the C.B.I. has relied upon and made part of the Final Report only the statements of those witnesses who supported its case, whereas, the statements of 87 witnesses, who denied the allegations (supra), have not been made available to the respondents/accused. They claim that, the statements of those 87 witnesses are very much essential to confront PW1 during cross-examination.

17. Furthermore, by citing an example, the learned counsels for the respondents submits that, in his examination-in-chief, the PW-1 alleged that he was given a Pepsi drink by one Rinku before castration surgery, whereupon, he became unconscious. However, the said allegation does not find spoken to by said Rinku in his statement recorded under Section 161 of the Cr.P.C. Likewise, although the PW-1 also deposed in his examination-in-chief that he along with one Rajinder underwent castration, however, the statement of said Rajinder does not support the claim of PW-1. Therefore, the statements of Rinku and Rajinder are of utmost importance for the respondents/accused to build their defence.

18. The learned counsels for the respondents submit that, the documents, which although became seized by the C.B.I. during the course of investigation, however, did not become relied upon or placed on record, carry dire significance for the respondents to prove their innocence and to discredit the evidence of PW-1 and the investigating officer concerned. He argues that the prosecution agency is duty bound to furnish all the relied/non-relied upon documents, so that the accused can effectively defend themselves.

19. Resting their arguments, the learned counsels for the



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respondents make dependence upon the verdict rendered by the Rajasthan High Court in “*Neelesh Jain Vs. State of Rajasthan*”, (2006) *Crl. L.J. 2151*, to claim that, the defence of the accused is not built at stage of defence evidence and actually the defence of the accused is to be built right from the day one and that is from the time of filing of the charge sheet and compliance under Section 207 of the Cr.P.C.

PROCEEDINGS BEFORE THIS COURT

20. The instant petition has been pending before this Court since 2019. When this petition came up for hearing on 31.05.2019, this Court had directed the trial Court to adjourn the case beyond the date fixed before this Court. In the meantime, the C.B.I. instituted a miscellaneous application CRM-12304-2021 before this Court, which resulted in this Court drawing the order dated 29.04.2021, thereby directing the Special Judicial Magistrate not to press for implementation of the directions embodied in the impugned order.

21. Thereafter, vide order dated 13.09.2022, this Court directed the C.B.I. to keep the case diary and other records available with them. On 17.01.2023, this Court directed the C.B.I. to make the record available on the next date of hearing. However, on 01.05.2023, a clarification was rendered by this Court that, the documents supplied in pursuance of the order made by this Court, cannot be relied upon till the next date of hearing. The order dated 01.05.2023 is reproduced hereunder:-

“List on 31.10.2023.

It is clarified that the documents which were supplied pursuant to the last order, cannot be relied up till the next date.

The prayers for the stay mentioned anywhere in the petition and the accompanying application(s), if any, stand disposed. In case, CBI



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wants stay in the matter, it shall be permissible for the CBI to file application for stay.

Given the nature of interim order, it shall be permissible for the accused to seek adjournment before the trial Court, till the next date.”

22. From the above, it clearly transpires that, although documents have been supplied by the C.B.I. to the respondents/accused, however, a specific interim direction also became passed by this Court not to rely upon such documents till the next date of hearing.

ANALYSIS OF THE RELEVANT LEGAL PROVISIONS, AND, JUDICIAL PRECEDENTS GERMANE TO DISPOSAL OF THE INSTANT PETITION

23. Before gauging the merits/demerits of the instant petition and evincing any opinion thereon, it is deemed imperative to, at this juncture, advert to some relevant and significant legal provisions and judicial precedents.

24. The Hon’ble Supreme Court has, in ***Suo Moto Writ (Crl.) No.1 of 2017***, Decided on: 20.04.2021, titled as ***“In Re: To Issue Certain Guidelines Regarding Inadequacies and Deficiencies in Criminal Trials V/s The State of Andhra Pradesh & Ors.”***, observed that, while furnishing the list of statements, documents and material objects under Sections 207/208 of the Cr.P.C., the Magistrate should also ensure that a list of other materials (such as statements, or, objects/documents seized, but not relied on) should be furnished to the accused. The relevant paragraph of this verdict is reproduced hereinafter:-

“11. The amici pointed out that at the commencement of trial, accused are only furnished with list of documents and statements which the prosecution relies on and are kept in the dark about other material, which the police or the prosecution may have in their posses-



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sion, which may be exculpatory in nature, or absolve or help the accused. This court is of the opinion that while furnishing the list of statements, documents and material objects under Sections 207/208, Cr.PC, the magistrate should also ensure that a list of other materials, (such as statements, or objects/documents seized, but not relied on) should be furnished to the accused. This is to ensure that in case the accused is of the view that such materials are necessary to be produced for a proper and just trial, she or he may seek appropriate orders, under the Cr.PC for their production during the trial, in the interests of justice. It is directed accordingly; the draft rules have been accordingly modified....”

25. Moreover, in the ***Suo Moto Writ (supra)***, High Courts were also directed to incorporate the Draft Rules of Criminal Practice, 2021, as became finalized in terms of the discussion made therein, as part of the rules governing criminal trials. Accordingly, the relevant incorporation was made in the “Procedure in Enquiries and Trails by Magistrates”, relevant portion whereof is reproduced hereunder:-

“(c) Procedure in the trial of warrant cases instituted on Police Report.

6. Warrant case on Police report - Police to furnish copies to accused before the trial commences:- In a warrant-case (Chapter XIX of the Code of Criminal Procedure, 1973) the procedure would now depend on whether the case has been instituted on a police report or otherwise. Section 238 to 243 of Code of Criminal Procedure, 1973 govern the procedure in warrant cases instituted on police reports. When the accused appears or is brought before the magistrate, the magistrate should, at the commencement of the trial, satisfy himself that he has complied with the provisions of Section 207 Cr.P.C. Further, every accused should be supplied with statements of witness recorded under Sections 161 and 164 Cr.P.C and a list of documents, material objects and exhibits seized during investigation and relied upon by the Investigating Officer in accordance with Sections 207 and 208 Cr.P.C.



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Explanation: The list of statements, documents, material objects and exhibits shall specify statements, documents, material objects and exhibits that are not relied upon by the Investigating Officer.”

26. Furthermore, by placing reliance upon the observations recorded in ***Suo Moto Writ (supra)***, the Hon’ble Supreme Court has, in its verdict rendered in ***“Manoj and ors. V/s State of Madhya Pradesh”, Criminal Appeal Nos.248-250 of 2015***, Decided on: 20.05.2022, directed that, in all criminal trials, the prosecution should furnish the list of statements, documents, material objects and exhibits, which are not relied upon by the investigating officer and the presiding officers shall ensure compliance with such rules. The relevant paragraph of this verdict is reproduced hereinafter:-

“179. In view of the above discussion, this court holds that the prosecution, in the interest of fairness, should as a matter of rule, in all criminal trials, comply with the above rule, and furnish the list of statements, documents, material objects and exhibits which are not relied upon by the investigating officer. The presiding officers of courts in criminal trials shall ensure compliance with such rules.”

27. The import of the judicial pronouncements (supra) gets further expounded in the verdict rendered by the Hon’ble Supreme Court in case titled as ***“P. Ponnusamy V/s. The State of Tamil Nadu”, 2023(1) R.C.R. (Criminal) 307***, relevant paragraphs whereof are reproduced hereunder:-

“14. The framework that emerges (by reading Section 173, 207, 208 and Draft Rule 4) is that based on the list of statements, documents, etc. received at the commencement of the trial, the accused can seek appropriate orders under Section 91 of the CrPC, 1973 wherein the magistrate on application of judicial mind, may decide on whether it ought to be called for. Additionally, by virtue of Section 391 of the CrPC, the appellate court, if it deems necessary, may take further evidence (or direct it be taken by a magistrate or court of sessions) upon recording reasoning. This safeguards the right of the accused



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in a situation where concern has been raised regarding evidence or material in possession of the prosecution, that had not been furnished, but was material to the trial and disposal of the case.....

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17. As stated earlier, the requirement of disclosure elaborated on in Manoj, not only was premised on the formulation of draft rules, but normatively premised on the ratio of the three-judge bench decision in Manu Sharma (supra). In these circumstances, the proper and suitable interpretation of the disclosure requirement in Manoj (supra) would be that:

- (a) It applies at the trial stage, after the charges are framed.*
- (b) The court is required to give one opportunity of disclosure, and the accused may choose to avail of the facility at that stage.*
- (c) In case documents are sought, the trial court should exercise its discretion, having regard to the rule of relevance in the context of the accused's right of defence. If the document or material is relevant and does not merely have remote bearing to the defence, its production may be directed. This opportunity cannot be sought repeatedly – the trial court can decline to issue orders, if it feels that the attempt is to delay.*
- (d) At the appellate stage, the rights of the accused are to be worked out within the parameters of Section 391 CrPC, 1973.”*

28. The gist of the hereinabove alluded to judicial precedents can be extracted in the following manner:-

- (i) the prosecution is required to furnish only the list of statements, documents, material objects and exhibits, which are not relied upon by the investigating officer;***
- (ii) the court is required to, after the charges become framed, give only one opportunity of disclosure and the accused may choose to avail this facility, but, only once;***



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(iii) in case documents are sought to be produced, the trial court should, after considering the relevancy of the said documents and not merely because it has remote bearing to the defence, direct production thereof. The trial court is at liberty to decline such production, in case it feels that it is a dilatory tactic;

29. The inference stemming from the hereinabove made discussion is that, not merely because any document has remote bearing to the defence, the trial Court should direct production thereof, rather the relevancy and desirability of such document is the most striking aspect for the Court to consider, while making any decision regarding grant of access to such documents. In case, any document has no relevancy or the trial Court perceives any dilatory tactic, it is well within the domain of the trial Court to decline production of such document.

30. Moreover, the Hon'ble Supreme Court has, in its verdict rendered in "*State of Orissa Vs. Debendra Nath Padhi*", 2005(1) RCR (Criminal) 297, categorically held that, the law does not permit a roving or fishing inquiry under the garb of exercising jurisdiction under Section 91 of the Cr.P.C. The relevant paragraphs of this verdict are reproduced hereunder:-

"27. In so far as Section 91 is concerned, it was rightly held that the width of the powers of that section was unlimited but there were inbuilt inherent limitations as to 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. Before the trial court the stage was to find out whether there was sufficient ground for proceeding to the next stage against the accused. The application filed by the accused under Section 91 of the Code for sum-



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moning and production of document was dismissed and order was upheld by High Court and this Court. But observations were made in para 6 to the effect that if the accused could produce any reliable material even at that stage which might totally affect even the very sustainability of the case, a refusal to look into the material so produced may result in injustice, apart from averting an exercise in futility at the expense of valuable judicial/public time, these observations are clearly obiter dicta and in any case of no consequence in view of conclusion reached by us hereinbefore. Further, the observations cannot be understood to mean that the accused has a right to produce any document at stage of framing of charge having regard to the clear mandate of Sections 227 and 228 in Chapter 18 and Sections 239 and 240 in Chapter 19.

28. We are of the view that jurisdiction under Section 91 of the Code when invoked by accused the necessity and desirability would have to be seen by the Court in the context of the purpose - investigation, inquiry, trial or other proceedings under the Code. It would also have to be borne in mind that law does not permit a roving or fishing inquiry.

29. Regarding the argument of accused having to face the trial despite being in a position to produce material of unimpeachable character of sterling quality, the width of the powers of the High Court under Section 482 of the Code and Article 226 of Constitution of India is unlimited whereunder in the interests of justice the High Court can make such orders as may be necessary to prevent abuse of the process of any Court or otherwise to secure the ends of justice within the parameters laid down in Bhajan Lal's case."

TESTING THE LEGALITY OF THE IMPUGNED ORDER ON THE ANVIL OF THE HEREINABOVE DISCUSSED LEGAL PROVISIONS AND JUDICIAL PRECEDENTS

31. In the application dated 25.01.2019, as preferred by the respondent No.1, under Section 91 of the Cr.P.C., the reason put forth for bringing on record the unrelayed upon statements recorded under Section 161 of the Cr.P.C. was that, the same are necessary and desirable for the purpose of



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cross-examination of PW-1. A similar ground was portrayed by the respondent No.2 also in his application dated 31.01.2019 while beseeching supply of the statements of witnesses. The relevant paragraph of the application dated 25.01.2019 is reproduced hereunder:-

“12. It is stated that during the examination in chief of PW-1, he named few persons allegedly having involvement/knowledge of the alleged fact of castration allegedly done at the behest of the applicant, names of most of which is already mentioned in the list mentioned at para 7 above, however during the inspection it was found out that the aforesaid persons as named by PW-1, do not support the version so stated by PW-1 and thus, the testimony of PW-1 can be tested if the statements of aforesaid witnesses is brought on record before this Hon'ble Court which can never be said to be irrelevant or undesirable for the purposes of cross-examination of the aforesaid witness PW-1. The following person's statements thus would be required whose names have also been taken by PW-1:-

*XX**XX**XX”*

32. The hereinafter extracted paragraph No.14 of the application dated 25.01.2019 carries the reasons for bringing on record the documents, which were not appended with the charge sheet, however, are essential for the respondent No.1 to prove his innocence. Similar reasons were painted by the respondent No.2 in his application dated 31.01.2019 for bringing on record documents (supra).

“14. It is stated that apart from the statements so recorded by the investigating authorities, there are various other documents which have not been filed by the investigating authorities before this Hon'ble Court along with the charge sheet, which have been found to be relevant in the respectful submission of the applicant, once the exercise of inspection was carried out by his Ld. Defence Counsel and as such the same said documents are also required to be brought on record before this Hon'ble Court as they would be required by the accused persons for



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building up their defence in a right and effective manner. The list of the aforesaid documents, with their brief description, is as follows:-

S. No.	Description of Document	Page No. of Police File; and brief substratum
1.	Letter dated 05.02.2015, by Sh. Sudhir Kumar s/o Devi Sahay, received by the CBI vide Diary No.133 dated 25.2.2015	Vol. I, at Page 284; the said letter makes specific allegations against PW1 himself, hence, in order to test the credibility of the said witness, the said document earns relevance
2.	Status Report submitted by the CBI before the Hon’ble High Court dated 30.01.2015 by Sh. Deven-dra Singh, ASP, CBI	Vol. I, at Pages 166-172; in order to confront and contradict the relevant witness and I.O. regarding the allegations

33. The grounds portrayed by the respondents No.1 and 2 in their respective applications found favour with the Special Judicial Magistrate inas-much as the latter penned down a conclusion that the statements/documents sought to be placed on record and supplied to the respondents are relevant, necessary and desirable to put questions/suggestions during the cross-exami-nation of PW-1 and other prosecution witnesses.

34. The spark igniting the conclusion (supra) consisted in the Special Judge Magistrate naively purveying weightage to the respondents’ submission regarding necessity and desirability of statements of 87 witnesses, besides purveying weightage to the example cited by the respondents’ that, although PW1 alleged one Rinku to have given Pepsi drink before castration surgery, which made him unconscious, however, said Rinku did not depose even re-motely on the said lines in his statement under Section 161 of the Cr.P.C. The relevant paragraph of the impugned order (Annexure P-1) is reproduced here-under:-

“22. So, in the present case, both the applicants/accused No.1 and 2 have filed the present applications seeking supply of copies of the state-



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ments/documents consisting of statements of witnesses who were examined by the investigation agency during the course of investigation and out of which, 6 victims, who have supported the case of prosecution have been cited as prosecution witnesses and their statements recorded under Section 161 Cr.P.C have already been supplied to the accused persons under Section 207 Cr.P.C. The applicant/accused No.1 has now averred in the present application that they have carried out the inspection of the record as produced by the CBI and had inspected the statements of 118 witnesses and out of the said 118 statements, statements of only 15 witnesses have been supplied to the accused along with the charge-sheet, out of which 6 are the alleged victims and statements of 103 witnesses have not been provided to the applicant and out of these 87 statements are of utmost relevance to the applicants as these statements/documents are necessary and desirable and are required for conducting the fair trial and affording a fair opportunity for putting up their defence to the allegations made in the charge-sheet against them. The statements of 87 witnesses and the copies of which are required by the applicant/accused No.1 are mentioned in para 7 of the application and about the relevancy and the necessity or desirability, it has been averred that these persons have not named the applicant/accused and co-accused persons qua the allegations levelled against them and these statements are required to falsify the charge levelled by the prosecution against the accused persons. It has also been averred that PW1 during his examination in chief has named some persons and the statement of some of these persons, which have been named by the said witness are required to put questions/suggestions during the cross-examination of the said witness at the hands of the defence and one instance has also been cited in para 13 of the application that PW1 had deposed in his examination in chief that before he underwent castration he was given pepsi drink by one witness R (name withheld) but the statement of witness R has been recorded by the CBI under Section 161 Cr.P.C, no where mentions that he ever gave any pepsi drink to PW1 and as such it becomes more relevant, necessary and desirable that the statement of the said witness R is brought on record, so that proper suggestions during the cross-examination can be put to the aforesaid witness PW1, which would also help



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the defence to demolish the allegations made by the aforesaid witness PW1. So, these averments made and instances stated by the applicant/accused no.1 in the application dated 25.01.19 reflects that these statements as prayed for are relevant, necessary and desirable, as required to put questions/suggestions during the cross-examination of the PW1 and other prosecution witnesses as the case is now at the stage of prosecution evidence to be led on behalf of the prosecution/CBI, and to test the truthfulness, veracity, impartiality of the witnesses which is also a necessary requirement and desirable for the purposes as stated in section 155 of the Indian Evidence Act for impeaching the credit of the witness.”

35. Section 161 of the Cr.P.C. enables a police officer, making investigation, to orally examine any person supposed to be acquainted with the facts and circumstances of the case. Sub-section 2 of this Section imposes an obligation upon such person to answer all the questions relating to such case put to him, except the questions which would have a tendency to expose him to the criminal charge or to a penalty or forfeiture. Sub-section 3 of this Section gives discretion to the police officer to reduce the statement in writing, as made to him during examination under this Section. If the police officer does so, he/she is under obligation to make a separate and true record of the statement of each such person whose statement he/she recorded.

36. The law is unambiguously clear that, the statement of a witness recorded under Section 161 of the Cr.P.C. cannot be treated as substantive evidence, as is specifically provided under Section 162(1) of the Cr.P.C. The use of a statement recorded under Section 161 is stipulated in Section 162.

37. A collective reading of Section 162 of the Cr.P.C. (along with its proviso) and Section 145 of the Indian Evidence Act, makes it eloquently vivid that, a statement recorded under Section 161 can only be used for the



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purpose of contradicting the prosecution witness(es) in the manner indicated in Section 145 of the Indian Evidence Act and for no other purpose. It is clearly manifest from the above provisions that, a statement under Section 161 can never be used as substantive evidence in favour of or against either the accused or the prosecution.

38. The scope of statement recorded under Section 161 is clearly defined in Section 162 of the Cr.P.C. The scope of Section 145 of the Indian Evidence Act is somewhat larger, which enables the defence to contradict the prosecution witness(es) with his/her former statement made to a police officer during investigation/inquiry, to impeach his/her credit, to corroborate him/her, or, to refresh his/her memory. However, Section 162 of the Cr.P.C. imposes an absolute bar, for the statement recorded under Section 161, for being used for any other purpose than provided under Section 162.

39. Reiteratedly, when the law has evolved that, statement of a prosecution witness under Section 161 of the Cr.P.C. cannot be used for any other purpose except to confront the maker of it, hence this Court does not find that that the reasons assigned by the Special Judicial Magistrate, in the impugned order (Annexure P-1), pass the test of legality. In fact, by authoring an affirmative order (Annexure P-1) upon the applications preferred by the respondents, the Special Judicial Magistrate has, without evincing any observations about the desirability, relevancy and necessity of the statements of 87 witnesses concerned, allowed the production thereof on record. The Special Judicial Magistrate although penned down a detailed order, but, in a perfunctory manner inasmuch as he took into account merely the statements of a couple of witnesses while directing production of statements of all 87 witnesses.



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40. Now, insofar as the direction appertaining to production of documents reproduced in paragraph 32 of this verdict is concerned, the reasons assigned by the Special Judicial Magistrate in this regard are somewhat similar to the ones discussed in the preceding paragraphs of this verdict. The direction for production of documents, as sought by the respondents No.1 and 2, is anchored upon a finding that the said documents are relevant, necessary and desirable for the accused to build their defence and to confront and contradict the relevant witnesses and investigating officer(s). However, to the considered mind of this Court, the direction (supra) is contrary to the mandate enclosed in Section 172(3) of the Cr.P.C., which is reproduced hereunder:-

“172. Diary of proceedings in investigation.—

*XX**XX**XX*

(3) Neither the accused nor his agents shall be entitled to call for such diaries, nor shall he or they be entitled to see them merely because they are referred to by the Court; but, if they are used by the police officer who made them to refresh his memory, or if the Court uses them for the purpose of contradicting such police officer, the provisions of section 161 or section 145, as the case may be, of the Indian Evidence Act, 1872 (1 of 1872), shall apply.”

41. The law on the perusal of case diary is well established. The case diary is not evidence and its production cannot be insisted upon by the accused, except for the reasons prescribed in Section 172(3). However, the Special Judicial Magistrate did not bear in mind this provision while ordering the production of document (case diary).

42. Moreover, the Special Judicial Magistrate has also erred in directing production of the status report, as filed before this Court. The said status report is not a part of the investigation, rather it is informatory in nature and



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filed before this Court to apprise about progress of the investigation. Moreover, since the said status report is a part of the case diary, thus cannot be supplied to the accused until and unless the condition voiced in Section 172(3) is satisfied.

43. It would also be worth to record here that, this Court had, while drawing the order dated 03.12.2018 upon CRM-M-45571-2018, rendered specific directions to the trial Court for supply of the relevant record, including statements recorded under Section 161, only in case there is relevancy and admissibility thereof. (emphasis supplied).

44. This Court is of the opinion that, the Special Judicial Magistrate has, without evaluating the relevancy and desirability of the statements/documents craved by the respondents No.1 and 2, ordered production thereof. It appears that the respondents are attempting for a roving and fishing inquiry by bringing on record the statements and documents (*supra*), which is not at all permissible in view of the law laid down in *Debendra Nath Padhi's case (supra)*.

45. The Special Judicial Magistrate has also observed that, since there was no request made by the C.B.I. at the time of filing charge sheet, not to supply the statement(s) to the defence, therefore, the statement(s) can be ordered to be brought on record. However, this Court is unable to concur with this observation specifically for the reason that, the desirability, admissibility and relevancy are *sine qua non* for bringing the same on record with the aid of Section 91 of the Cr.P.C.

46. In summa, the impugned order (Annexure P-1) fails to pass the test of legality and requires interference by this Court.



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FINAL ORDER

47. For all the reasons evinced hereinabove, the impugned order (Annexure P-1) is **set aside** and the matter is **remanded** to the trial Court/Special Judicial Magistrate for deciding afresh the applications dated 25.01.2019 and 31.01.2019, in view of the legal principles laid down hereinabove. Moreover, since the instant petition has been pending before this Court since 2019, therefore, this Court deems it imperative to direct the trial Court/Special Judicial Magistrate to decide the applications within four weeks from today.

48. It is clarified that, the interim direction issued by this Court on 01.05.2023, which is reproduced in paragraph 21 of this verdict, shall remain in force till the decision of the applications afresh.

December 20, 2024
devinder

(KULDEEP TIWARI)
JUDGE

Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No