

REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 2114 OF 2017

(Arising out of Special Leave Petition (Crl.)No.8279 of 2016)

NITYA DHARMANANDA @ K. LENIN & ANR. ...APPELLANT(S)

VERSUS

SRI GOPAL SHEELUM REDDY ALSO KNOWN
AS NITHYA BHAKTANANDA AND ANR. ...RESPONDENT(S)

WITH

CRIMINAL APPEAL NO. 2115 OF 2017

(Arising out of Special Leave Petition (Crl.)No.1176 of 2017)

STATE OF KARNATAKA ...APPELLANT(S)

VERSUS

GOPAL SHEELUM REDDY ALSO KNOWN
AS NITHYA BHAKTANANDA ...RESPONDENT(S)

O R D E R

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 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 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 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, 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 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.

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 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 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 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 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 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.

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.

.....J.
(ADARSH KUMAR GOEL)

.....J.
(UDAY UMESH LALIT)

NEW DELHI;
DECEMBER 7, 2017.