

(1998) 08 MP CK 0025

In the Madhya Pradesh High Court

Case No : Criminal Rev. No. 310 of 1998 & Criminal Revision No. 310/98

Gayatri Bais and Another

APPELLANT

Vs

State of Madhya Pradesh and Others

RESPONDENT

Date of Decision : 19-08-1998

Acts Referred:

Constitution of India, 1950 — Article 20(3)
Criminal Procedure Code, 1973 (CrPC) — Section 91

Citation : (1999) 1 MPLJ 444

Hon'ble Judges : Jayant Govind Chitre, J

Bench : Single Bench

Advocate : Seetaram Saraf, for the Appellant; Ajay Ukas, for Respondent Nos. 2 to 5 and 7, Prakash Verma, Dy. Govt. Advocate, Sonali Gupta and Jaisingh, for the Respondent

Judgement

J.G. Chitre, J.

While making reference to the Annexures, answering the query, Shri Saraf submitted that the Courts in the State generally do not entertain the applications, if moved for the purpose of production of document relevant to the trial before framing of the charge. He submitted that on accounts of that the petitioners did not move an application for production of those documents through Superintendent of Police, Indore or the concerned Police Officers in whose possession or control those documents are, as per the instructions given by his clients.

Such difficulties should not arise at all because the provisions of Section 91 of the Code of Criminal Procedure, 1973 (hereinafter referred to as the "Code" for convenience) are very clear. According to Section 91(1) of the Code, 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, 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. Sub-section (2) of it provides that 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. Needless to point that such order or summons would be subject to limitations provided by Sub-section 3(a)(b) and provisions of Article 20(3) of the Indian Constitution.

Public prosecutors are prosecutors appointed for prosecuting the offenders or prosecuting them for safeguarding the interest of the public. If the accused makes a prayer for production of any document which is necessary for the purposes of finding out the truth in a trial being conducted by them, they should not withhold such document merely because the investigating agency does not like it to be produced in the Court on the ground that it may help the defence. After all, Public Prosecutors' duty is to safeguard the interest of the public in prosecution or connected with the prosecution, and that includes the accused also. It has to be remembered that none can be punished without following the due process of law. It cannot be also forgotten that when in trial, the Court is searching the truth all that is relevant and necessary for that purpose should not be withheld.

But if the said document is not in possession or under the control of the Public Prosecutor in his capacity as Public Prosecutor, the defence is at liberty to move an appropriate application in view of the provisions of Section 91 of the Code for the purpose of getting such person having the custody or powers over such document be summoned to attend the Court for the purposes of production of such document. He can be summoned even for arranging the production of such document. Needless to say that it is for the Court to consider whether such document is necessary for the purpose of finding out the truth in context with the guilt or innocence of the accused, and for that purpose, the person moving such an application has to satisfy the Court that such order is necessary to be issued in the interest of justice. Such application can be moved at any stage of the trial. But preferably such applications should be moved before framing of the charge, by prosecution or the defence so as to see that no prejudice is caused to the adversary and no inconvenience is caused to the Court.

Thus, this application stands disposed of with the observations made above. The petitioners may move an appropriate application in view of the provisions of Section 91 of the Code before the trial Court, if they find it necessary to do so with full details and information.

Certified copy of this order may be supplied to the parties on payment of charges.