

Through Video Conference via Cisco WebEx

FIR No. : RC-DAI-2018-A-0025

Under Section: 120-B IPC read with Section 7 of the PC Act
(as amended up to date) & Sections 201 & 204 IPC & substantive offences thereof.
CBI v. Dalip Singh & Ors.

24.08.2020.

Present: Ms. Shashi Vishwakarma, PP for the CBI with Consultant Sh. C.K. Sharma.

Accused No. 1 Dalip Singh on bail.

Accused No. 2 Pranjal Joshi on bail.

Accused No. 3 Harbans Rai Singhal on bail.

Ms. Tusharika Mattoo, counsel for accused No. 1.

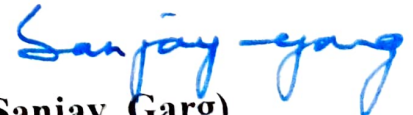
Sh. Shankar Singh, , counsel for accused Nos. 2 & 3.

Vide separate order of even date, the applications dated 24.01.2020 and 15.02.2020 both under Section 91 Cr.P.C. filed on behalf of accused Nos. 2 & 3 have been disposed of.

Put up for the compliance report on 14.09.2020.

A copy of the order be sent to the computer branch for uploading the same on website. Copy thereof be also provided to the CBI as well as the counsel for accused Nos. 2 & 3 through approved electronic mode.

Original signed order has been retained by the undersigned, which shall be placed on record on resumption of normal functioning of courts or as and when the undersigned visits the court.



(Sanjay Garg)

Special Judge (PC Act) (CBI) -18,
Rouse Avenue District Courts,
New Delhi/24.08.2020.

IN THE COURT OF SH. SANJAY GARG, SPECIAL JUDGE (PC ACT)(CBI)-18,
ROUSE AVENUE DISTRICT COURTS , NEW DELHI.

FIR No: RC-DAI-2018-A-0025
Under Section: 120-B IPC read with Section 7 of the
PC Act (as amended up to date) & Sections 201 &
204 IPC & substantive offences thereof.

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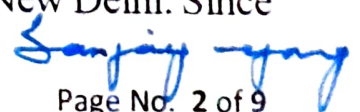
ORDER

1. By this common order, I shall dispose of the following two applications:

- (i) Application dated 24.01.2020 under Section 91 Cr.P.C. filed on behalf of accused Nos. 2 & 3 i.e. Sh. Pranjali Joshi and Sh. Harbans Rai Singhal seeking direction to the prosecuting agency to supply the mobile phone numbers used by Inspector/TLO Sh. Dharmendra Kumar, Inspector Sh. Sanjay Upadhyay, Inspector Sh. Harnam Singh and Dy. SP Sh. Atul Hajela at the time of trap so that a direction may be given to the concerned service providers to provide the call details record with base tower location and cell site data for the period 08.08.2018 to 31.08.2018;
- (ii) Application dated 15.02.2020 under Section 91 Cr.P.C. filed on behalf of accused Nos. 2 & 3 seeking direction to the concerned service providers to provide the call details record with base tower location and cell site data of the mobile phones of the applicants as well as that of the complainant Sh. Abdul Lateef, independent witnesses Sh. Mohan Sharma, Sh. Mritunjay Kumar and Sh. Ram Ved and SI Sh. Umesh Kaushik for the period 08.08.2018 to 31.08.2018.

2. The brief facts of the case of the prosecution relevant for the disposal of the instant applications are that the FIR No. RC-DAI-2018-A-0025 under Section 7 PC Act was registered on 30.08.2018 against accused No. 1 Sh. Dalip Singh, who was posted as Head Havaldar in the office of Commissioner Customs, Terminal-3, IGI Airport, New Delhi, on the basis of complaint dated 24.08.2018 of Sh. Abdul Lateef and its verification proceedings. It has been alleged that on 08.08.2018, when the complainant arrived at IGI Airport, New Delhi from

Riyadh by flight, a gold biscuit of 50 grams was seized from his possession by the Customs officials. He was issued a receipt against the seizure and was asked to visit the Customs office at IGI Airport on 09.08.2018. Accordingly, he visited the said office on 09.08.2018, where accused No. 1 demanded bribe of Rs. 15,000/- from him by representing that he would get the duty and penalty amount reduced from Rs. 85,000/- to Rs. 60,000/- and asked to meet him on 24.08.2018. As the complainant did not want to pay the bribe, he lodged the complaint with the CBI. On 24.08.2018, verification of the complaint was conducted by SI Umesh in the presence of independent witness Sh. Mohan Sharma. During verification, the conversation between the accused No. 1 and complainant were recorded in a memory card and allegations made in the complaint were found to be genuine. On 30.08.2018, the complainant visited the CBI office with amount of Rs. 15,000/- and a trap team consisting of Dy. SP Sh. Atul Hajela, Inspector/Trap Laying Officer Sh. Dharmendra Kumar, Inspector Sh. Sanjay Upadhyay, Inspector Sh. Harnam Singh, Inspector Sh. Parveen Kumar, Inspector Sh. Kuldeep Sharma, Inspector Sh. Anand Sarup, Inspector Sh. N.C. Nawal, SI Sh. Umesh, complainant Sh. Abdul Lateef and independent witnesses Sh. Mohan Sharma and Sh. Mritunjay Kumar was constituted. During the pre-trap proceedings, the currency notes were treated with phenolphthalein powder and their numbers and denominations were noted. Thereafter, the trap team went to the IGI Airport, New Delhi and upon receiving the pre-decided signal from the complainant at about 8.30 p.m. regarding the completion of transaction of bribe, accused No. 1 Sh. Dalip Singh was apprehended from the office of Commissioner Customs, IGI Airport, New Delhi and part bribe amount of Rs. 9,000/- was recovered from his possession. Accused No. 1 disclosed that out of the bribe amount of Rs. 15,000/-, he had handed over Rs. 6,000/- to the accused No. 2 Sh. Pranjal Joshi on the directions of accused No.3 Sh. Harbans Rai Singhal, both of whom were posted as Inspector/ Air Customs Officer at Terminal-3, IGI Airport, New Delhi. Since



the accused Nos. 2 & 3 had already left the office, part trap team consisting of Inspector Sh. Sanjay Upadhyay, Inspector Sh. Parveen Kumar and Inspector Sh. Kuldeep Sharma along with another independent witness Sh. Ram Ved went to the respective residences of the accused Nos. 2 & 3 to recover the remaining bribe amount. Though the remaining bribe money could not be recovered from the accused Nos. 2 & 3 but the wash taken from their respective shirts, which they were wearing in the office, turned pink. During the raid proceedings, accused No. 3 also got recovered a sum of Rs. 2,30,000/- stating that the same had been received by him from the accused No. 2 in the last four days. The accused Nos. 2 & 3 were taken to the CBI office and after interrogation, both of them were arrested on 31.08.2018.

3. The counsel for the applicants has submitted that the investigation has not been conducted in a fair manner in as much as the applicant Sh. Harbans Rai Singhal (accused No. 3) was apprehended from Fortis Hospital, Shalimar Bagh, Delhi and not from his residence as alleged by the prosecution. He has argued that the record sought qua the applicants, Inspector Sh. Sanjay Upadhyay and independent witness Sh. Ram Ved would show their true location at the time of the raid proceedings and would bring out the falsity of the case of the prosecution. He has further submitted that as per the case of the prosecution, after the complainant came out from the office of Commissioner Customs at IGI Airport, New Delhi on 30.08.2018 at about 8.30 p.m., he gave missed call on the mobile phone of Trap Laying Officer Sh. Dharmendra Kumar indicating the completion of transaction of bribe and that upon receiving the signal, SI Sh. Umesh telephonically informed about the same to Dy. SP Sh. Atul Hajela and Inspector Sh. Harnam Singh. He has urged that the production of the call details record as well as location chart of the mobile phones of the said persons are necessary and would be required for effective cross-examination of the prosecution witnesses and to prove the defence of the applicants.

4. The applications have been opposed by the PP for the CBI. She has contended that the applications are pre-mature as the case is at the stage of framing of charge and the defence of the accused is not relevant at this stage. She has submitted that in the pre-trap and post-trap proceedings, the time and place of proceedings as well as locations of trap team members have been duly mentioned and the same were prepared in the presence of independent witnesses. She has argued that since direct evidence is available on record regarding location of the concerned persons, there is no need to issue directions to the service providers to supply the record sought by the applicants. She has stated that even otherwise, the call details of the CBI officials would contain telephone numbers of their source/informers and the witnesses of the other cases being investigated by them and thus, the disclosure of such information would hamper the investigation of those cases.

5. The relevant portion of Section 91 Cr.P.C. is reproduced 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 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....."

6. Section 91 Cr.P.C. empowers the court to summon production of any document or thing which the court considers necessary or desirable for the purposes of any investigation, inquiry, trial or other proceeding under the provisions of the Code. However, whenever the accused invokes the jurisdiction of the court under this section, the necessity or desirability of the document would have to be seen with reference to the stage at which the prayer is made. If it appears that the purpose of the application is merely a roving or fishing inquiry, the court may decline to

exercise its power under Section 91 Cr. P.C.

7. The present matter is at initial stage and charge is yet to be framed. Hence, the primary question which arises for consideration is whether the applicants can invoke the jurisdiction of the court under Section 91 Cr.P.C. at this stage. In **State of Orissa v. Debendra Nath Padhi**, AIR 2005 SC 359, while considering the scope and ambit of Section 91 Cr.P.C., the Hon'ble Supreme Court has held that Section 91 Cr.P.C. does not confer right on the accused to seek production of document to prove his defence at the stage of framing of charge as under Section 227 Cr.P.C., only the record produced in terms of Section 173 Cr.P.C. is relevant and that his entitlement to seek order under Section 91 Cr.P.C. would ordinarily not come till the stage of defence. The word 'ordinarily' used by the Hon'ble Apex Court signifies that such application of the accused can be considered even prior to the stage of defence evidence, if the facts and circumstances of a case so warrant. Infact, in **Dinesh Puri v. State (Govt. of NCT of Delhi)**, 2016 SCC OnLine Delhi 5551, after considering the law laid down in **Debendra Nath Padhi case** (supra), the Hon'ble High Court of Delhi has observed thus:

“15. it would be contrary to the frame work of Cr.P.C. and Indian Evidence Act that a document which favours the accused is only required to be produced at the stage when he leads defence evidence. It is trite law that the accused can probablize his defence even by cross-examining the witnesses by confronting them with documents which impeach their creditworthiness. Thus, in all cases it cannot be held that a document which is in favour of the accused will be supplied only at the stage of defence evidence. If the nature of the document is such that the accused can confront the prosecution witnesses/complainant witnesses with the said document, he would be within his right to claim those documents under Section 91 Cr.P.C. even when prosecution evidence is being led for a fair and just trial as mandated by Article 21 of the Constitution of India.”

In the case on hand, the applicants are seeking production of call details record and location chart in respect of the mobile phones. It is a matter of

common knowledge that the said record is maintained by the service providers for a limited duration only. If the applications on hand are deferred to be considered at a later stage, there is every likelihood that the said piece of evidence would be lost, which may cause prejudice to the applicants in proving their defence. Considering the same, the applications have to be considered at this stage.

8. As mentioned earlier, the pivotal requirement for invoking Section 91 Cr.P.C. is the necessity or desirability of the document for the purpose of trial. By way of the applications on hand, the applicants are seeking production of call details record with base tower location and cell site data with effect from 08.08.2018 (i.e. the date on which the complainant came to India) to 31.08.2018 (i.e. the date on which the applicants were arrested) in respect of their own mobile phone numbers as well as that of the complainant, independent witnesses and the CBI officials, who remained associated with the trap proceedings and the raids conducted at the residences of the applicants. Since the trap was laid on 30.08.2018, the production of record sought by the applicants for the period prior to 30.08.2018 does not seem necessary. As per the case of the prosecution, the complainant had entered the IGI Airport, New Delhi on 30.08.2018 at about 1.20 p.m. for the trap proceedings and that after the completion of transaction of bribe, he gave a missed call from his mobile No. 08528544165 to Inspector /TLO Sh. Dharmendra Kumar, being the pre-decided signal, at about 8.30 p.m. The trap proceedings at IGI Airport were concluded on 31.08.2018 at about 11.30 a.m. Since the complainant had used his above said mobile phone to give the signal, the production of the call details record and the location chart of his mobile phone appears to be necessary. As the factum of missed call given by the complainant can be ascertained from the said record, the production of the call details record of the mobile phone of the Inspector/TLO Sh. Dharmendra Kumar is not required and it would serve the purpose if the CBI is directed to

furnish the mobile phone number on which the Inspector/TLO Sh. Dharmendra Kumar had received the missed call from the complainant during the trap proceedings. With regard to the call details record and location chart of the independent witnesses Sh. Mohan Sharma and Sh. Mritunjay Kumar, who were the members of the trap team, it is pertinent to observe that there is nothing on record to suggest that the said witnesses had used their mobile phones for the purpose of trap proceedings. That being so, the court fails to understand as to what purpose would be achieved by production of the record pertaining to their mobile phones. As far as the request for production of the record pertaining to the mobile phones of SI Sh. Umesh, Dy. SP Sh. Atul Hajela and Inspector Sh. Harnam Singh is concerned, the same appears to be nothing but a fishing inquiry on the part of the applicants. Further, the disclosure of such information is likely to prejudice the investigating agency by exposing their activities and revealing the sources of information/witnesses in other cases. I am fortified in the above view by the decision dated 18.07.2016 rendered by the Hon'ble High Court of Delhi in CRL. M.C. No. 406/2016 titled as '**Attar Singh v. State (NCT of Delhi)**.'

9. The counsel for the applicants has contended that Sh. Harbans Rai Singhal (accused No. 3) was apprehended from Fortis Hospital, Shalimar Bagh, Delhi and not from his residence as alleged by the prosecution and therefore, the production of call details record and location chart of the applicants as well as Inspector Sh. Sanjay Upadhyay and independent witness Sh. Ram Ved, who were members of the team that had conducted raids at the residences of the applicants and apprehended them, are necessary to bring out the falsity of the case of the prosecution and prove the innocence of the applicants. In this regard, it is pertinent to observe that the true location of the applicants during the relevant time can be gathered from the call details record and location chart of the mobile phones of the applicants. If so, the production of the record in

respect of the mobile phones of Inspector Sh. Sanjay Upadhyay and independent witness Sh. Ram Ved does not appear necessary.

10. In the light of the above discussion, both the applications under Section 91 Cr.P.C. moved on behalf of the applicants are disposed of with the following directions:


- (i) CBI is directed to furnish the mobile phone number of Inspector/TLO Sh. Dharmendra Kumar on which he received the missed call from the complainant as the signal of completion of bribe transaction during the trap proceedings on 30.08.2018;
- (ii) Service provider i.e. Bharti Airtel Limited is directed to preserve the call details record and location chart in respect of mobile phone No. 08528544165 of the complainant Sh. Abdul Lateef from 1.20 p.m. on 30.08.2018 to 11.30 a.m. on 31.08.2018;
- (iii) Service provider i.e. Bharti Airtel Limited is directed to preserve the call details record and location chart in respect of mobile phone No. 9971081699 of the accused No. 2 Sh. Pranjal Joshi from 30.08.2018 to 31.08.2018; and
- (iv) Service providers Bharti Airtel Limited and Idea Cellular Limited are directed to preserve the call details record and location chart in respect of the mobile phone Nos. 9818472780 and 9540620100 respectively belonging to the accused No. 3 Sh. Harbans Rai Singhal from 30.08.2018 to 31.08.2018.

11. Before parting with the order, it is pertinent to mention that since the above record would be required by the applicants for the purpose of their defence, the production of the said record would be ordered after the framing of charge.

12. Copy of the order be sent to the concerned service providers through the IO/HIO for information and compliance.



13. With the above directions, both the applications under Section 91 Cr.P.C. preferred by the accused Nos. 2 & 3 stand disposed of.



(Sanjay Garg)
Special Judge (PC Act) (CBI) -18,
Rouse Avenue District Courts,
New Delhi/24.08.2020.