



HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (Cr.) No.483 of 2022

Order reserved on: 20-1-2023

Order delivered on: 3-2-2023

Ku. Urja Jain, D/o Ajay Jain, aged about 25 years, R/o 5B/C, 109, Marlin Jaishree Vihar, Pandri Tarai, Devendra Nagar, Raipur (C.G.)

---- Petitioner

Versus

1. State of Chhattisgarh, Through Superintendent of Police, District Raipur (C.G.)

2. Station House Officer/Thana In-charge, Police Station Telibandha, District Raipur (C.G.)

---- Respondents

AND

Writ Petition (Cr.) No.484 of 2022

Ajay Jain, S/o Late Anoop Chand Jain, aged about 58 years, R/o 5B/C, 109, Marlin Jaishree Vihar, Pandri Tarai, Devendra Nagar, Raipur (C.G.)

---- Petitioner

Versus

1. State of Chhattisgarh, Through Superintendent of Police, District Raipur (C.G.)

2. Station House Officer/Thana In-charge, Police Station Telibandha, District Raipur (C.G.)

---- Respondents

For Petitioners: Mr. Kishore Bhaduri, Senior Advocate with
Mr. Sabyasachi Bhaduri, Advocate.

For Respondents / State: -

Mr. Sudeep Verma, Deputy Government Advocate
and Mr. Avinash Singh, Panel Lawyer.

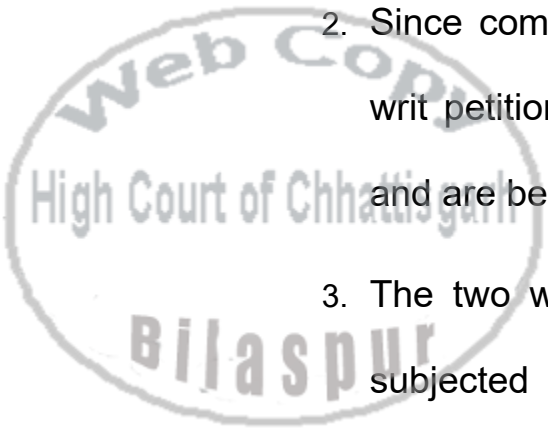


**Hon'ble Shri Sanjay K. Agrawal and
Hon'ble Shri Radhakishan Agrawal, JJ.**

C.A.V. Order

Sanjay K. Agrawal, J.

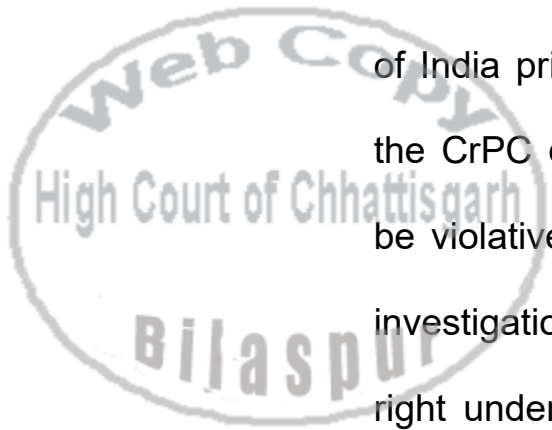
1. Can a summons to produce a document as contemplated under Section 91(1) of the CrPC be issued to a person accused of an offence standing investigation calling upon him to produce documents considered necessary and desirable for the purpose of investigation under the Code of Criminal Procedure, 1973, is the short question involved in this batch of two writ petitions.
2. Since common question of fact and law is involved in both the writ petitions, they have been clubbed together, heard together and are being disposed of by this common order.
3. The two writ petitioners being daughter and father have been subjected to first information report by the complainant and against them an offence under Sections 420, 409 & 120B of the IPC has been registered by Police Station Telibandha, Raipur. During the course of investigation, they have been subjected to notice dated 13-5-2022 (Annexure P-3) under Section 91 of the CrPC for production of 21 documents and other information to which the two writ petitioners have replied separately vide Ex.P-4 stating that since they are standing investigation for the aforesaid offences, they are protected against self-incrimination by constitutional and legal right guaranteed under Article 20(3) of the Constitution of India and therefore notice under Section 91 of the CrPC be dropped against them. Thereafter, again, notice





dated 28-5-2022 (Annexure P-5) was issued stating that non-compliance of notice under Section 91(1) of the CrPC would be non-compliance of the order of anticipatory bail granted to them on 21-3-2022 and therefore the documents as desired be submitted and they should appear before the Station House Officer, Police Station Telibandha, Raipur for recording their statements.

4. The aforesaid two notices dated 13-5-2022 (Annexure P-3) & 28-5-2022 (Annexure P-5) have been called in question by way of these writ petitions preferred under Article 226 of the Constitution of India principally on the ground that invoking Section 91(1) of the CrPC directing the petitioners to produce documents would be violative of their right to remain and maintain silence during investigation which is the guaranteed constitutional and legal right under Article 20(3) of the Constitution and the petitioners cannot be compelled to be a witness in their own cause and as such, the notices issued directing production of documents deserve to be quashed.
5. Return has been filed by the State stating inter alia that the notices issued by the Station House Officer requiring the petitioners to produce documents are in accordance with law. It has also been submitted that after completion of due investigation, charge-sheet dated 19-7-2022 under final report has also been filed against the accused persons including the petitioners herein for the offences punishable under Sections



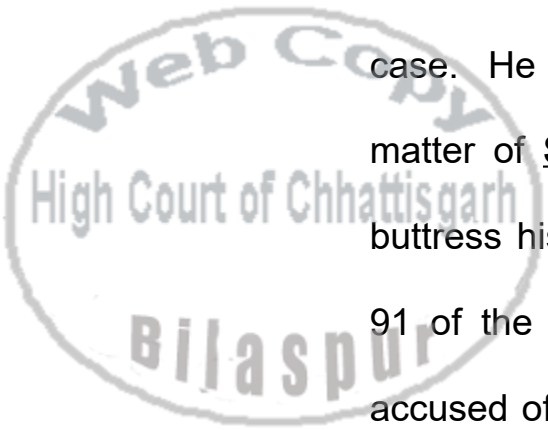


420, 409, 120B, 201, 467, 468 & 471 of the IPC. No rejoinder has been filed on behalf of the petitioners.

6. Mr. Kishore Bhaduri, learned Senior Counsel appearing for the petitioners, would submit that offences under Sections 420, 409 & 120B of the IPC have already been registered against the petitioners, they were facing investigation at particular point of time and notices Annexures P-3 & P-5 are violative of the right to maintain silence during the investigation being the guaranteed legal right under Article 20(3) of the Constitution and the petitioners cannot be compelled to be witnesses in their own case. He relied upon the decision of the Supreme Court in the matter of **State of Gujarat v. Shyamlal Mohanlal Choksi**¹ to buttress his submission that the provisions contained in Section 91 of the CrPC are not applicable to the petitioners who are accused of the offences under Section 420, etc., of the IPC and therefore notices Annexures P-3 & P-5 deserve to be quashed.

7. Mr. Sudeep Verma, learned Deputy Government Advocate appearing for the State / respondents, would submit that the petitioners are bound by the terms and conditions by which they have been admitted to the privilege of anticipatory bail and enjoying the privilege of anticipatory bail, they cannot deny to produce the documents which they are otherwise required to produce. As such, the petitioners have no legal and constitutional right not to produce the documents and not to

1 AIR 1965 SC 1251





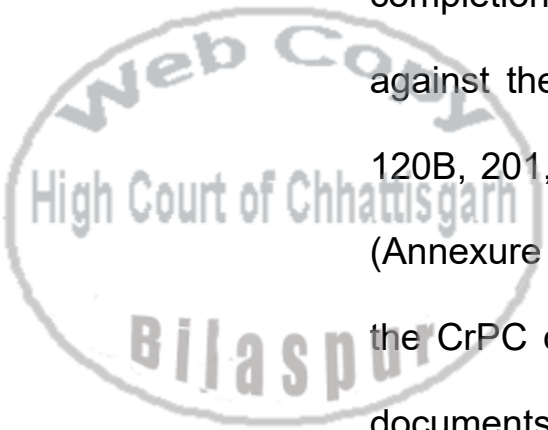
cooperate in the course of investigation. Therefore, the writ petitions deserve to be dismissed.

8. We have heard learned counsel for the parties and considered their rival submissions made herein-above and also went through the record with utmost circumspection.

9. Admittedly, against the petitioners, offence under Sections 420, 409 & 120B of the IPC has been registered by Police Station Telibandha, Raipur being Crime No.36/2022 and thereafter, as per the return filed on behalf of the State / respondents, after completion of investigation, charge-sheet has also been filed against them for offences punishable under Sections 420, 409, 120B, 201, 467, 468 & 471 of the IPC. Notice dated 13-5-2022 (Annexure P-3) has been basically issued under Section 91 of the CrPC calling upon the petitioners to produce the named 21 documents which they claim to be violative of Article 20(3) of the Constitution and thereafter, respondent No.2 has reiterated the same by issuing another notice dated 28-5-2022 (Annexure P-5) stating that non-production of the said documents would amount to violation of the conditions of order granting anticipatory bail to them by this Court.

10. At this stage, it would be appropriate to notice Section 91(1) of the CrPC, which states 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.”

11. Section 91(1) of the CrPC empowers the Court or any officer in charge of a police station if the Court or officer in charge of the police station considers necessary that the production of any document or other thing is necessary or desirable for the purposes of investigation, inquiry, trial or other proceeding under the Code of Criminal Procedure by passing a reasoned order.

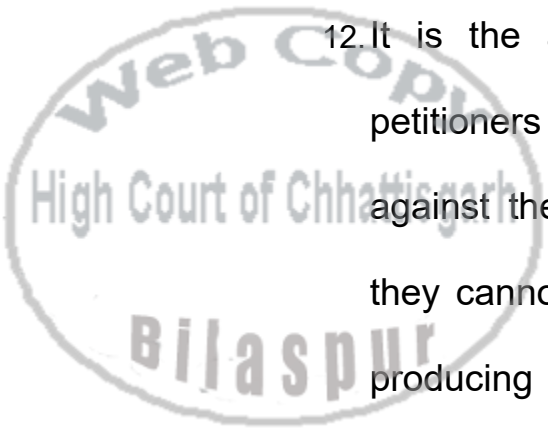
12. It is the argument of the learned Senior Counsel that the petitioners themselves are accused in offences registered against them and by virtue of Article 20(3) of the Constitution they cannot be compelled to be witness against themselves by producing documents as desired by the notices issued under Section 91(1) of the CrPC.

13. At this stage, it would be appropriate to notice Article 20(3) of the Constitution of India which states as under: -

“20. Protection in respect of conviction for offences.—xxx xxx xxx

(3) No person accused of any offence shall be compelled to be a witness against himself.”

14. Article 20(3) of the Constitution is a protection to the accused against compulsory testimonial. It incorporates the theory ‘*Nemo tenetur se ipsum accusare*’. No man is bound to accuse himself. It confers immunity from compelling an accused person to be a





witness against himself by giving self-incriminating evidence and an accused has the right to maintain silence and not to disclose defence.

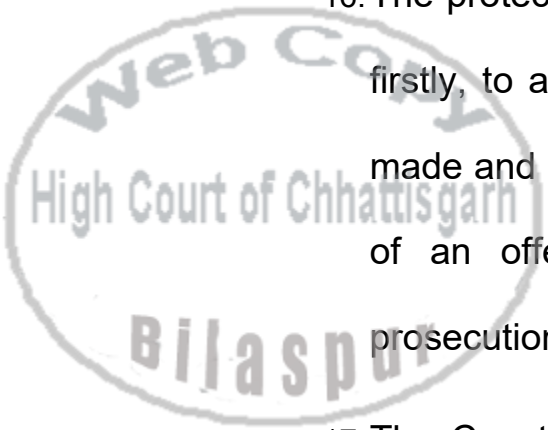
15. In order to invoke the constitutional right against testimonial compulsion guaranteed under Article 20(3) of the Constitution it must appear that a formal accusation has been made against the party pleading the guarantee and that it relates to the commission of an offence which in the normal course may result in prosecution. (See **Narayanlal v. Maneck**².)

16. The protection under Article 20(3) of the Constitution is available firstly, to a person against whom a formal accusation has been made and secondly, if such accusation relates to the commission of an offence which in the normal course may result in prosecution.

17. The Constitution Bench of the Supreme Court in the matter of **M.P. Sharma and others v. Satish Chandra, District Magistrate, Delhi and others**³ has held that analysing the terms in which this fundamental right has been declared in our Constitution, it may be said to consist of the following components. (1) It is a right pertaining to a person “accused of an offence”. (2) It is protection against “compulsion to be a witness” and (3) It is a protection against such compulsion resulting in his giving evidence “against himself”. Further, it has been held that the constitutional protection guaranteed under

2 AIR 1961 SC 29

3 AIR 1954 SC 300





Article 20(3) would be available to the petitioners against whom a First Information Report has been recorded as accused therein. It would extend to any compulsory process for production of evidentiary documents which are reasonably likely support a prosecution against them. Their Lordships observed as under: -

“(10) Broadly stated the guarantee in Art. 20(3) is against "testimonial compulsion". It is suggested that this is confined to the oral evidence of a person standing his trial for an offence when called to the witness-stand. We can see no reason to confine the content of the constitutional guarantee to this barely literal import. So to limit it would be to rob the guarantee of its substantial purpose and to miss the substance for the sound as stated in certain American decisions. The phrase used in Art. 20(3) is "to be a witness". A person can "be a witness" not merely by giving oral evidence but also by producing documents or making intelligible gestures as in the case of a dumb witness (see S. 119, Evidence Act) or the like. "To be a witness" is nothing more than "to furnish evidence", and such evidence can be furnished through the lips or by production of a thing or of a document or in other modes.

* * *

The phrase used in Art. 20(3) is "to be a witness" and not to "appear as a witness". It follows that the protection afforded to an accused in so far as it is related to the phrase "to be a witness" is not merely in respect of testimonial compulsion in the Court room but may well extend to compelled testimony previously obtained from him. It is available therefore to a person against whom a formal accusation relating to the commission of an offence has been levelled which in the normal course may result in prosecution. Whether it is available to other persons in other situations does not call for decision in this case.”

18. The question as to whether Section 91 of the CrPC applies to an



accused or not directly fell for consideration before the Constitution Bench of the Supreme Court in **Shyamlal Mohanlal Choksi's** case (supra) and the question before the Constitution Bench was, whether Section 94 of the Code of Criminal Procedure, 1898 applies to the accused person or not? (Section 94 of the CrPC, 1898 is now corresponding to Section 91 of the present Code of Criminal Procedure, 1973.) The Five Judges Bench of the Supreme Court held in unequivocal terms that Section 94 of the CrPC (old) does not apply to an accused person. Their Lordships after relying upon the fundamental canons of the British system of Criminal Jurisprudence and the American Jurisprudence held that Section 94 cannot be made applicable to an accused person and observed in paragraphs 31, 32, 33 & 34 of the report as under: -

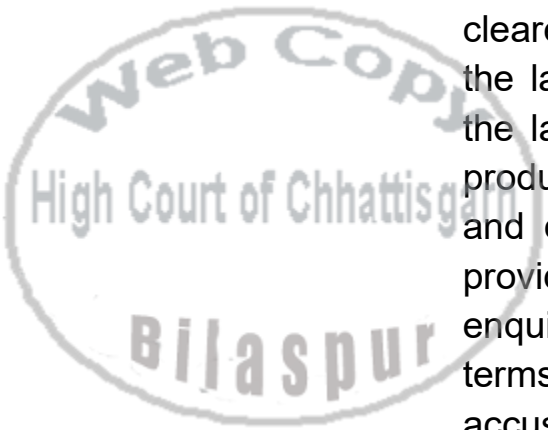
“31. It seems to us that in view of this background the Legislature, if it were minded to make Section 94 applicable to an accused person, would have said so in specific words. It is true that the words of Section 94 are wide enough to include an accused person but it is well-recognised that in some cases a limitation may be put on the construction of the wide terms of a statute (vide *Craies on Statute Law*, p. 177). Again it is a rule as to the limitation of the meaning of general words used in a statute that they are to be, if possible, construed as not to alter the common law (vide *Craies on Statute Law*, p. 187).

32. There is one other consideration which is important. Article 20(3) has been construed by this Court in *Kalu Oghad*⁴ case to mean that an accused person cannot be compelled to disclose documents which are incriminatory and based on his knowledge.



Section 94, Criminal Procedure Code, permits the production of all documents including the above-mentioned class of documents. If Section 94 is construed to include an accused person, some unfortunate consequences follow. Suppose a police officer – and here it is necessary to emphasize that the police officer has the same powers as a Court – directs an accused to attend and produce or produce a document. According to the accused, he cannot be compelled to produce this document under Article 20(3) of the Constitution. What is he to do? If he refuses to produce it before the Police Officer, he would be faced with a prosecution under Section 175 Indian Penal Code, and in this prosecution he could not contend that he was not legally bound to produce it because the order to produce is valid order if Section 94 applies to an accused person. This becomes clearer if the language of Section 175 is compared with the language employed in Section 485 CrPC. Under the latter section a reasonable excuse for refusing to produce is a good defence. If he takes the document and objects to its production, there is no machinery provided for the police officer to hold a preliminary enquiry. The Police Officer could well say that on the terms of the section he was not bound to listen to the accused or his counsel. Even if he were minded to listen, would he take evidence and hear arguments to determine whether the production of the document is prohibited by Article 20(3). At any rate, his decision would be final under the Code for no appeal or revision would lie against his order. Thus it seems to us that if we construe Section 94 to include an accused person, this construction is likely to lead to grave hardship for the accused and make investigation unfair to him.

33. We may mention that the question about the constitutionality of Section 94(1) CrPC, was not argued before us, because at the end of the hearing on the construction of Section 94(1), we indicated to the counsel that we were inclined to put a narrow construction on the said section, and so the question about its constitutionality did not arise. In the course of arguments, however, it was suggested by Mr Bindra that even if Section 94(1) received a broad





construction, it would be open to the Court to take the view that the document or thing required to be produced by the accused would not be admitted in evidence if it was found to incriminate him, and in that sense Section 94(1) would not contravene Article 20(3). Even so, since we thought that Section 94(1) should receive a narrow construction, we did not require the advocates to pursue the constitutional point any further.

34. Keeping the above considerations in mind, let us look at the terms of the section. It will be noticed that the language is general, and prima facie apt to include an accused person. But there are indications that the Legislature did not intend to include an accused person. The words "attend and produce" are rather inept to cover the case of an accused person. It would be an odd procedure for a court to issue a summons to an accused person present in court "to attend and produce" a document. It would be still more odd for a police officer to issue a written order to an accused person in his custody to "attend and produce" a document."

Lastly, in paragraph 41 of the report, their Lordships concluded as under: -

"41. Therefore, agreeing with the High Court, we hold that Section 94 on its true construction, does not apply to an accused person. The result is that the appeal is dismissed."

19. The principle of law laid down in **Shyamlal Mohanlal Choksi's** case (supra) was followed with approval by Supreme Court in the matter of **V.S. Kuttan Pillai v. Ramakrishnan and another**⁵ and it was held by their Lordships as under: -

"7. What was kept open in *Sharma* case³, whether a person accused of an offence could be served with a summons to produce documents, was decided when it



was observed that immunity from self-incrimination would not comprehend the mechanical process of producing documents in court which may throw a light on any of the points in controversy but which do not contain a statement of the accused based on his personal knowledge.

10. In view of the decision in *Shyamlal Mohanlal case*¹ one must proceed on the basis that a summons to produce a thing or document as contemplated by Section 91(1) cannot be issued to a person accused of an offence calling upon him to produce document or thing considered necessary or desirable for the purpose of an investigation, inquiry, trial or other proceeding under the Code of Criminal Procedure.”

20. Therefore, in view of the principles of law laid down by their

Lordships of the Supreme Court in **Shyamlal Mohanlal Choksi's**

case (supra) followed in **V.S. Kuttan Pillai** (supra), it is fairly well

settled that Section 91 of the CrPC would not apply to the

accused persons and the same is no longer res judicata being

well settled and it is held that Section 91 CrPC cannot be invoked

against the present petitioners / accused persons, as they are

accused of offences under Sections 420, 409, 120B, 201, 467,

468 & 471 of the IPC and formal accusation relating to

commission of offence has already been levelled and it has

resulted in their prosecution before the jurisdictional criminal

court.

21. In the result, the writ petitions are allowed in part. Notices dated

13-5-2022 & 28-5-2022 issued to the petitioners who are

accused of the offences under Sections 420, 409, 120B, 201,

467, 468 & 471 of the IPC, are quashed to the extent of directing



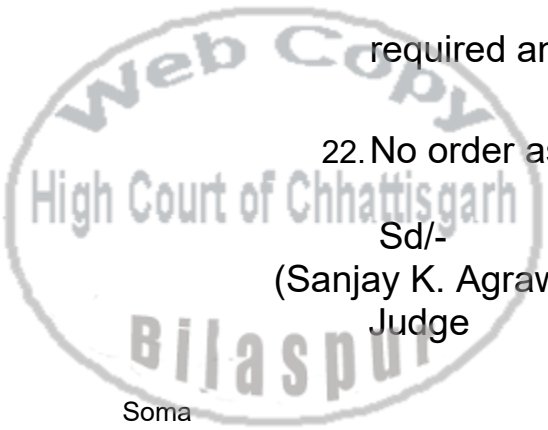


production of documents and they will appear before the Station House Officer for recording their statements. However, it is made clear that this Court has not expressed any opinion on the merits of the matter and this order will not preclude the investigating agency to continue with the investigation by collecting the material from other sources through the suitable methods permissible under law as the investigating agency deems fit to find out the truth in the accusation made by the complainant. The investigating agency is at liberty to secure evidence by adopting the methods permissible under law, if required and necessary.

22.No order as to cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge

Sd/-
(Radhakishan Agrawal)
Judge





HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (Cr.) No.483 of 2022

Ku. Urja Jain

- Versus -

State of Chhattisgarh and another

AND

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- Versus -

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Head Note

Article 20(3) of the Constitution of India is a protection to the accused against compulsory testimonial and consequently, Section 91 of the CrPC is not applicable to accused.

भारतीय संविधान का अनुच्छेद 20(3) अभियुक्त को स्वयं के विरुद्ध साक्ष्य दिये जाने की बाध्यता से संरक्षण प्रदान करता है, फलतः, दण्ड प्रक्रिया संहिता की धारा 91 अभियुक्त पर लागू नहीं होगी।

