

THE HON'BLE SRI JUSTICE CHEEKATI MANAVENDRANATH ROY

Writ Petition No.28470 of 2021

ORDER:-

This Writ Petition for a mandamus is filed to declare the notice issued under Section 91 Cr.P.C. to the petitioner to produce the original sale agreement of the year 1998 before the Police in connection with investigation in a case registered in Crime No.434 of 2021 of Prakash Nagar Police Station, Rajahmahendravaram Urban, as illegal and without jurisdiction and consequently, prayed to quash the said notice, dated 17.10.2021.

2) Factual matrix of the Writ Petition may be stated as follows:-

(a) The petitioner is the accused in Crime No.434 of 2021 of Prakash Nagar Police Station, Rajahmahendravaram Urban. A person by name Gurrula Venkata Krishna Rao lodged a report with the Station House Officer of Prakash Nagar Police Station, Rajahmahendravaram Urban, stating that Sri Naidu Veera Venkata Satya Pratap is the original owner of the vacant site in an extent of 311.11 sq. yards covered by Plot No.B-2, situate in Prakash Nagar-2, Near AKC College of Rajamahendravaram. It is stated that he purchased the said land in the year 1994 and, thereafter, left for America. He came to Rajamahendravaram about 3 months back and

executed a General Power of Attorney in favour of the complainant viz., Gurrala Venkata Krishna Rao in respect of the said land. It is stated that the petitioner Sri Kadiyala Simhachalam @ Vijay Kumar of Rajamahendravaram created a fake document as if the said Naidu Veera Venkata Satya Pratap, the original owner of the said site, executed a sale agreement in respect of the said land in favour of the petitioner with the forged signature of the said Naidu Veera Venkata Satya Pratap and on the strength of the said document that he has leased out the said site to a person by name Baji to do chicken business in the said land.

(b) The said report was registered against the petitioner as a case in Crime No.434 of 2021 for the offences punishable under Sections 420, 468, 471 and 506 r/w. Sec.34 of IPC and the said case is now under investigation.

(c) During the course of investigation, the Investigating Officer has served the impugned notice under Section 91 Cr.P.C. on the petitioner, who is the accused in the said crime, to produce the original sale agreement, said to have been executed by Sri Naidu Veera Venkata Satya Pratap in the year 1998 in favour of the petitioner agreeing to sell the said land to the accused for a sum of Rs.12,44,000/- and also to produce other documents in proof of the right of the accused over the said land. Also to produce copy of the

caveat petition along with documents produced by the accused with the said caveat petition in the District Court, Rajamahendravaram.

(d) Assailing the legal validity of the impugned notice issued under Section 91 Cr.P.C., the instant Writ Petition has been filed.

3) Heard learned counsel for the petitioner and learned Government Pleader for Home for the respondents.

4) Learned counsel for the petitioner would contend that as per the language employed in Section 91 Cr.P.C., the word “person” is used stating that if the Court or any officer in charge of the police station considers that the production of any document is necessary for the purpose of investigation or other proceeding, that the Court may issue summons or the police officer may issue a written order to the “**person**” in whose possession or power such document is believed to be, requiring him to attend and produce the said document. He would contend that the word “person” used in the said Section does not include an accused and Section 91 Cr.P.C. has no application to the accused in a crime or in a criminal case and no such notice under Section 91 Cr.P.C. can be issued to the accused to produce any document, which is in his possession relating to the said crime or the criminal case. Therefore, he would contend that the impugned notice under Section 91 Cr.P.C., which is, admittedly,

issued to the accused in Crime No.434 of 2021 of Prakash Nagar Police Station, is, *ex facie*, illegal. In support of his contention, he mainly relied on the judgment of the Five-Judge Bench of the Apex Court rendered in the case of **State of Gujarat v. Shyamlal Mohanlal Choksi**¹, wherein it is held that Section 94(1) Cr.P.C. (of old Cr.P.C.) does not apply to accused person. He also relied on the judgments of various High Courts rendered on the point in similar lines, which will be referred to later on. Therefore, he would pray to declare the impugned notice as illegal and to set aside the same.

5) On the contrary, learned Government Pleader for Home appearing for the respondents, would contend that the word “person” used in Section 91 Cr.P.C. is wide enough to include even accused in a crime or in a criminal case and it cannot be restricted to witnesses or any other person and no such narrow construction is permissible in interpreting the said expression “person”. He would vehemently contend that if any such narrow interpretation is given to the said word “person” and if it is restricted to persons other than the accused, or only to a witness, it would affect fair investigation and the Investigating Officer would be deprived of an opportunity of collecting material evidence relating to the offence of forgery and fabrication of a document, which is involved in this case. He would

¹ AIR 1965 SC 1251

contend that if accused is in possession of the documentary evidence, which may throw light on the controversy and if the document is not containing his statement conveying his personal knowledge relating to the charge against him, then, undoubtedly, he can be called upon by a police officer to produce the document and it does not amount to testimonial compulsion. To prop-up his contention, he relied on the judgment of Eleven-Judge Bench of the Apex Court rendered in the case of **State of Bombay v. Kathi Kalu Oghad**². He would contend that the sale agreement in question, which is fabricated with the forged signature of the original owner of the land, has been in possession and custody of the accused and to ascertain whether the signature of the owner is forged or not and whether the said document is genuine or not, it is essential to examine the signature of the executant of the said document and as such, unless the accused produces the said document before the Investigating Officer, it is not possible for him to ascertain whether it is a forged and fabricated document or not, which is the main allegation ascribed against the accused in the crime. Therefore, he would submit that the Investigating Officer is justified in issuing the impugned notice under Section 91 Cr.P.C. and if the document is not produced before the Investigating Officer, it would hamper fair investigation. So, he prayed to dismiss the Writ Petition.

² AIR 1961 SC 1808

6) The paramount question for consideration, in the light of the aforesaid submissions made by learned counsel appearing for the petitioner and the learned Government Pleader for Home appearing for the respondents, is, whether Section 91 Cr.P.C. applies to an accused person and whether impugned notice issued under Section 91 Cr.P.C. to the accused is valid under law or not?

7) In a way, it calls for interpretation of the term “person” used in Section 91 Cr.P.C. Adverting to the same, at the outset, it is to be noticed that the similar term “person” used in Section 161 Cr.P.C. came up for interpretation before the Three-Judge Bench of the Apex Court in **Nandini Satpathy v. P.L.Dani**³ and it is held that the said term “person” used in Section 161 Cr.P.C. includes an accused person. Relying on the said judgment, the Madras High Court in the case of **Pulavar B.M. Senguttuvan v. The State**⁴ and also this Court in the case of **Devagupthapu Hara Venkata Surya Satyanarayana Murthy v. The State of A.P.**⁵ and various other High Courts held that the term “person” used in Section 160 Cr.P.C. also includes an accused person. But, the law relating to the interpretation of the same term “person” used

³ (1978) 2 SCC 424

⁴ Order, dt.18.09.2003, in Crl.Original Petition No.25945 of 2003 of the Madras High Court.

⁵ Common order, dated 18.10.2022 passed in W.P.Nos.32906 and 33022 of 2022 (APHC)

in Section 91 Cr.P.C. is otherwise and the legal position in this regard will now be discussed.

8) In the case of **Kathi Kalu Oghad**², on which heavy reliance is placed by the learned Government Pleader for Home, the Eleven-Judge Bench of the Apex Court was dealing with admissibility of the evidence of specimen writings contained in the documents marked as exhibits in a criminal trial in the light of Article 20(3) of the Constitution of India. As per the facts of the said case, the accused was tried for the offences punishable under Sections 302 r/w.34 of IPC and Section 19(e) of the Indian Arms Act. Prosecution adduced in evidence Ex.A-5, a chit alleged to be in the handwriting of the accused. To prove that Ex.A-5 was in the handwriting of the accused, police obtained three specimen writings of the accused during the course of investigation on three separate sheets of paper, which were marked as Exs.A-27, A-28 and A-29 and the disputed signature on Ex.A-5 was compared with the admitted handwritings of accused in Exs.A-27, A-28 and A-29 by the handwriting expert, who testified to the fact that they are all writings of a same person.

9) A question was raised at the trial and also in the appeal in the High Court regarding admissibility of the evidence pertaining to the said specimen writings contained in Exs.A-27, A-28 and A-

29 in view of the provision of Article 20(3) of the Constitution of India contending that the said specimen writings are taken while the accused was in the police custody and it amounts to testimonial compulsion. Therefore, while dealing with the said question, whether the specimen handwritings taken from the accused while he was in police custody would amount to testimonial compulsion and whether it amounts to securing incriminating evidence against the accused and whether it offends Article 20(3) of the Constitution of India, the Eleven-Judge Bench of the Apex Court held:

That giving thumb impressions or impressions of foot or palm or fingers or specimen writings or showing parts of the body by way of identification are not included in the expression “to be a witness” as envisaged under Article 20(3) of the Constitution of India and it does not amount to testimonial compulsion.

10) It further held as follows:

“An accused person cannot be said to have been compelled to be a witness against himself simply because he made a statement while in police custody, without anything more. In other words, the mere fact of being in police custody at the time when the statement in question was made would not, by itself, as a proposition of law, lend itself to the inference that the accused was compelled to make the statement, though that fact, in conjunction with other circumstances disclosed in evidence in a particular case, would be a

relevant consideration in an enquiry whether or not the accused person had been compelled to make the impugned statement.”

11) Further held as follows:

“...The mere questioning of an accused person by a police officer, resulting in a voluntary statement, which may ultimately turn out to be incriminatory, is not ‘compulsion’.

12) Thus, the main controversy involved in the said case and which was also decided by the Apex Court is that whether taking specimen writings of the accused while he was in police custody amounts to testimonial compulsion and securing incriminating evidence against him and whether it offends Article 20(3) of the Constitution of India or not. The Apex Court held that without there being any proof of compelling the accused, to give the said specimen writings, it does not amount to testimonial compulsion or securing incriminating evidence against him and it does not offend Article 20(3) of the Constitution of India.

13) So, the question whether Section 91 Cr.P.C. is applicable to an accused person and whether an accused can be asked under Section 91 Cr.P.C. to produce a document, which is in his custody, is not the question that fell for consideration before the Eleven-Judge Bench of the Apex Court directly. However, incidentally at para.11 of the judgment, the Apex Court held as follows:

“...The accused may have documentary evidence in his possession which may throw some light on the controversy. If it is a document, which is not his statement conveying his personal knowledge relating to the charge against him, he may be called upon by the Court to produce that document in accordance with the provisions of Section 139 of the Evidence Act, which, in terms, provides that a person may be summoned to produce a document in his possession or power and that he does not become a witness by the mere fact that he has produced it; and therefore, he cannot be cross-examined. Of course, he can be cross-examined, if he is called as a witness, who has made statements conveying his personal knowledge by reference to the contents of the document or if he has given his statements in Court otherwise than by reference to the contents of the documents.”

14) Relying on the said observation made in the aforesaid judgment, learned Government Pleader for Home would now contend that the sale agreement in question, which is in possession of the accused, contains the alleged statement of the owner of the land agreeing to sell the same to the accused and as such, it has to be construed that it is a document which is not containing the statement of the accused and he can be called upon to produce the said document.

15) Although, this Court, *prima facie*, finds some force in the said contention of the learned Government Pleader for Home, but, in view of the clear declaration of law made by the Five-Judge Bench of the Apex Court in **Shyamlal Mohanlal Choksi**¹ while

interpreting the term “person” used in Section 91 Cr.P.C. that it does not include an accused person and Section 91 Cr.P.C. has no application to accused, the said contention of the learned Government Pleader for Home cannot be countenanced. The Apex Court has given a narrow construction to the said word “person” and did not include the accused within the said expression.

16) As already noticed supra, the controversy before the Apex Court in **Kathi Kalu Oghad**² case, is not relating to the legal validity of the notice issued under Section 91 Cr.P.C. to the accused. Therefore, the dictum in the aforesaid judgment cannot be a guiding factor to decide whether Section 91 Cr.P.C. is applicable to accused person or not.

17) It is significant to note that whether Section 91 Cr.P.C. applies to an accused person or not, directly fell for consideration before the Five-Judge Bench of the Apex Court in the case of **Shyamlal Mohanlal Choksi**¹. The above Eleven-Judge Bench judgment of the Apex Court in **Kathi Kalu Oghad**² was considered by the Five-Judge Bench of the Apex Court. Whether Section 94 Cr.P.C. applies to the accused person or not is the question before the Five-Judge Bench of the Apex Court. Section 94 of old Cr.P.C. corresponds to the present Section 91 Cr.P.C. The Five-Judge Bench

of the Apex Court held in unequivocal terms that Section 94 Cr.P.C. does not apply to accused person. After tracing the origin relating to the concept of testimonial compulsion as per the fundamental canons of the British system of Criminal Jurisprudence and American Jurisprudence, the Apex Court held that Section 94 Cr.P.C. cannot be made applicable to an accused person. Also held that even though the words in Section 94 Cr.P.C. are wide enough to include an accused person, but it is well recognized that in some cases a limitation may be put on the construction of the wide terms of a statute and thereby held that it does not include accused person.

18) It is apposite to extract relevant paras.31 and 32 of the said judgment and it is held as follows:

“31. There is one other consideration which is important. Article 20(3) has been construed by this Court in **Kalu Oghad**'s case (AIR 1961 SC 1808), 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, Cr. P.C. 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 Art. 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.**

32. We may mention that the question about the constitutionality of Section 94(1), Cr.P.C., 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 S.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 S. 94(1) would not contravene Art. 20(3). Even so, since we thought that S. 94(1) should receive a narrow construction, we did not require the advocates to pursue the constitutional point any further.”

19) Thus, the Five-Judge Bench of the Apex Court has set at rest the controversy and clearly held that Section 91 Cr.P.C. has no application to accused person. The said judgment of Five-Judge Bench of the Apex Court still holds the field on the said legal position and it is a binding precedent on the said legal issue.

20) Further, as **Kathi Kalu Oghad**² case relied on by the learned Government Pleader for Home was subsequently considered by the Five-Judge Bench of the Apex Court to decide whether Section 94 Cr.P.C., corresponding to present Section 91 Cr.P.C., applies to accused person or not and held that it does not apply to accused person, the said judgment of **Kathi Kalu Oghad**² case, relied on by the learned Government Pleader for Home, will not advance his case further and it is not of any avail to the case of the prosecution.

21) Relying on the aforesaid judgment of the Five-Judge Bench of the Apex Court in **Shyamlal Mohanlal Choksi**¹ and also after considering the **Kathi Kalu Oghad**² case, the Madras High Court in the case of **K.Senthamarai v. State**⁶ held that Section 91 Cr.P.C. has no application to the accused person. Even the High Court for the State of Telangana in the case of **A.Srinivas Reddy v. The State of Telangana**⁷ also held that notice issued under Section 91 Cr.P.C.

⁶ 1988 (1) Crimes 319 (Mad.) = 1997 (3) CTC 196

⁷ 2021(4) ALD 291 = 2021 (2) ALD (Cri) 685

to accused person is not valid under law and thereby quashed the same. Not only the aforesaid two High Courts, but the erstwhile High Court of Andhra Pradesh in the case of **L.Hemalatha v. T.Suryachandra Reddy**⁸; the common High Court of Judicature at Hyderabad for the State of Telangana and for the State of Andhra Pradesh in the case of **Garika Nagalakshmi v. State of Andhra Pradesh**⁹; the Apex Court in the cases of **Rajesh Talwar v. Central Bureau of Investigation**¹⁰; **Om Prakash Sharma v. CBI, Delhi**¹¹; and **State of Orissa v. Debendra Nath Padhi**¹² have also taken the same view that Section 91 Cr.P.C. cannot be invoked against a person accused of an offence and it does not apply to the accused person. Thus, the Apex Court and various High Courts have consistently held that Section 91 Cr.P.C. cannot be invoked against an accused person and it has no application to the accused person.

22) Therefore, in view of the ratio laid down in the aforesaid judgments, the legal position whether Section 91 Cr.P.C. applies to the accused person is no more *res integra* and the same has been well settled.

⁸ 2007 (1) ALD (Cri.) 658 (AP) = 2006(3) RCR (Criminal) 340

⁹ 2016 (1) ALD (Cri.) 320

¹⁰ (2014) 1 SCC 628

¹¹ (2000) 5 SCC 679

¹² (2005) 1 SCC 568

23) In view of the law expounded in the aforesaid judgments, it is held that Section 91 Cr.P.C. cannot be invoked against the accused person and it does not apply to accused.

24) To sum up, in **Nandini Satpathy**³, one of the points formulated by the Apex Court is “Does ‘any person’ in Section 161 Cr.P.C. include an accused person or only a witness?”. Answering the point, the Three-Judge Bench of the Apex Court held that the word “person” used in Section 161 Cr.P.C. includes an accused person. Relying on the said judgment, the Madras High Court in the case of **Pulavar B.M. Senguttuvan**⁴ held that the term “any person” mentioned in Section 160(1) Cr.P.C. relating to summoning a person for investigation means and includes “any accused person” and they could be summoned by the Investigating Officer to appear before him for examination and it is not violative of Article 20(3) of the Constitution of India. Relying on the above two judgments, this Court also in the case of **Devagupthapu Hara Venkata Surya Satyanarayana Murthy**⁵, recently held that “person” includes accused for the purpose of Section 160 Cr.P.C. Thus, while interpreting the similar word “person” used in Section 160 Cr.P.C. and Section 161 Cr.P.C., the Courts have given wide interpretation and included accused person in it also. However, while interpreting the word “person”

used in Section 91 Cr.P.C., the Apex Court has restricted its meaning and has put on a narrow construction on it and held that it does not include an accused person.

25) Before parting with the case, it is made clear that the Court is not expressing anything on the merits of the case. As held by the Madras High Court in the case of **K.Senthamarai**³, 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 Investigating Agency deems fit to find out the truth in the accusation made by the complainant. The allegation against the accused is that he has fabricated the sale agreement with the forged signature of the owner of the land. While giving reply to the notice issued under Section 91 Cr.P.C., the accused did not even say in specific terms that it is a genuine document or that the signature of the owner of the land was not forged on it. He simply parried the said material question. It would have a bearing on the accusation made against him. Therefore, the Investigating Officer is at liberty to secure evidence in this regard by adopting the methods permissible under law.

26) Resultantly, the Writ Petition is allowed and the impugned notice issued under Section 91 Cr.P.C. to the petitioner, who is an accused in a crime, is quashed. No costs.

As a sequel, miscellaneous petitions, if any, pending in the Writ
Petition, shall stand closed.

JUSTICE CHEEKATI MANAVENDRANATH ROY

Date:01.11.2022.

Note:

L.R. copy to be marked.

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***HON'BLE SRI JUSTICE CHEEKATI MANAVENDRANATH ROY**

+ Writ Petition No.28470 of 2021

% Dated 01-11-2022

Kadiyala Simhachalam @ Vijay Kumar

..... Petitioner

Vs.

\$ The State of Andhra Pradesh rep. by its Principal Secretary, Home Department, AP Secretariat, Velagapudi, A.P. & Ors.

.....Respondents

! Counsel for the petitioner :

Sri Challa Dhanamjaya, learned Senior Counsel,
and Sri Dheera Kanishka, learned counsel.

^ Counsel for respondents: Learned Government Pleader for Home.

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? Cases referred:

1. AIR 1965 SC 1251
2. AIR 1961 SC 1808
3. (1978) 2 SCC 424
4. Order, dt.18.09.2003, in Crl.Original Petition No.25945 of 2003 of the Madras High Court.
5. Common order, dated 18.10.2022 passed in W.P.Nos.32906 and 33022 of 2022 (APHC)
6. 1988 (1) Crimes 319 (Mad.) = 1997 (3) CTC 196
7. 2021(4) ALD 291 = 2021 (2) ALD (Cri) 685
8. 2007 (1) ALD (Cri.) 658 (AP) = 2006(3) RCR (Criminal) 340
9. 2016 (1) ALD (Cri.) 320
- 10.(2014) 1 SCC 628
- 11.(2000) 5 SCC 679
- 12.(2005) 1 SCC 568

IN THE HIGH COURT OF THE STATE OF ANDHRA PRADESH**Writ Petition No.28470 of 2021**

Kadiyala Simhachalam @ Vijay Kumar

..... Petitioner

Vs.

The State of Andhra Pradesh rep. by its Principal Secretary, Home
Department, AP Secretariat, Velagapudi, A.P. & Ors.

.....Respondents

ORDER PRONOUNCED ON: 01-11-2022

HON'BLE SRI JUSTICE CHEEKATI MANAVENDRANATH ROY

1. Whether Reporters of Local newspapers
may be allowed to see the Judgments? --
2. Whether the copies of judgment may be marked
to Law Reporters/Journals -Yes-
3. Whether Their Ladyship/Lordship wish to see
the fair copy of the Judgment? -Yes-

JUSTICE CHEEKATI MANAVENDRANATH ROY