

Hon'ble Apex Court sets a reminder that taking cognizance of the offence is an area exclusively within the domain of a Magistrate. At this stage, the Magistrate has to be satisfied whether there is sufficient ground for proceeding and not whether there is sufficient ground for conviction. Whether the evidence is adequate for supporting the conviction, can be determined only at the trial and not at the stage of inquiry. At the stage of issuing the process to the accused, the Magistrate is not required to record reasons.

16. Further, the Hon'ble Apex Court in the case of **Ramesh Chandra Vaishya vs. State of U.P. and another, (2023) 17 SCC 615** has been pleased to observe that the first question that calls for an answer is whether it was at a place within public view that the appellant hurled caste related abuses at the complainant with an intent to insult or intimidate with an intent to humiliate him.

17. In view of the aforesaid discussion, I am of the opinion that there is no force in the submissions made by the learned counsel for the appellant. The Court concerned did not err in taking cognizance into the matter and thereby to summon the accused / appellant to face trial for the offences made out prima facie. There is no illegality, infirmity or perversity in the impugned order. The prayer made in the appeal is refused. The criminal appeal being devoid of merits is liable to be dismissed and the same is accordingly dismissed.

(2025) 4 ILRA 892
REVISIONAL JURISDICTION
CRIMINAL SIDE
DATED: LUCKNOW 23.04.2025

BEFORE
THE HON'BLE SUBHASH VIDYARTHI, J.

Criminal Revision No. 1089 of 2024

Dr. Gomati Dwivedy **...Revisionist**
Versus
C.B.I./A.C.B. Branch, Lko. **...Respondent**

Counsel for the Revisionist:
Navneet Awasthi, Gaurav Chand Kaushik

Counsel for the Respondents:
Anurag Kumar Singh

Criminal Law - Criminal Procedure Code, 1973 – Section 91 – Application for production of document by accused at the stage prior to defence – Rejection justified – Order refusing sanction for prosecution of co-accused neither relevant nor necessary at pre-charge stage – Not a document falling under Section 91 Cr.P.C. when invoked by accused at framing of charge – Section does not confer an enforceable right on the accused to summon documents for defence before charge is framed – Verification of affidavit filed with the application found incomplete and casual – Judicial disapproval expressed.

Held, in light of St. of Orissa Vs Debendra Nath Padhi, (2005) 1 SCC 568, the right of the accused under Section 91 Cr.P.C. ordinarily arises only at the stage of defence. A document refusing sanction for prosecution of a co-accused is not one which can be compelled for production under Section 91 at the pre-charge stage. The revision was devoid of merit and was rightly rejected.

Case Law Discussed:

1. St. of Orissa Vs Debendra Nath Padhi, (2005) 1 SCC 568.
2. Criminal Trials Guidelines Regarding Inadequacies and Deficiencies, In Re Vs St. of Andhra Pradesh & ors., (2021) 10 SCC 598.

(Delivered by Hon'ble Subhash Vidyarthi,
J.)

1. Heard Sri Navneet Awasthi, the learned counsel for the revisionist, and Sri

Anurag Kumar Singh, the learned counsel for the respondent- CBI.

2. By means of the instant revision filed under Section 397/401 Cr.P.C., the revisionist has challenged the validity of an order dated 01.06.2024 passed by the Special Judge (Prevention of Corruption Act) C.B.I. Court No.3, Lucknow in Criminal Case No.2370 of 2018, arising out of R.C. No. 0062015A0017, under Sections 120B, 409 and 420 IPC and Sections 23(2) read with Section 13(1)(D) of the Prevention of Corruption Act, 1988, lodged at Police Station CBI/ACB, Lucknow, whereby an application under Section 91 Cr.P.C. filed by the revisionist seeking a direction to the Secretary, National Informatics Centre for production of an order refusing sanction for prosecution of another co-accused person Naseem Ahmad has been rejected.

3. A copy of the application under Section 91 Cr.P.C. has been annexed as Annexure No.11 to the affidavit filed in support of the revision. This application is supported by an affidavit of the revisionist. The affidavit runs into as many as 52 paragraphs and numerous judgments have been referred to and extracts of the judgment have been quoted in the affidavit of the revisionist. The verification clause of the affidavit filed before the learned trial court is being quoted below:-

“Verification

I, the deponent above named do hereby verify that the contents of paragraphs _____ to _____ of the affidavit are true to my own knowledge, those of paragraphs _____ to _____ are on the basis of legal advice and those of

paras _____ to _____ are based on record.

No part of it is false and nothing material has been concealed, so help me God.”

4. It is very disturbing to note that even when cases are filed on the basis of affidavits, the advocates treat verification and swearing of affidavits as an empty formality and they even do not fulfill that formality before filing the affidavit in a court. It is also very disturbing that the Oath Commissioner has verified the affidavit without even taking care to have a look at it and without ascertaining as to whether the deponent has in fact verified the contents of the affidavit. This casual approach of the learned Counsel for the revisionist as well as that of the oath commissioner cannot be appreciated by the Court, to say the least.

5. Even on merits of, through the application under Section 91 Cr.P.C., the revisionist has prayed for directing the Secretary, National Informatics Center (NIC) to present before the trial Court the order denying sanction for prosecution of a co-accused person Sri Naseem Ahmad.

6. Section 91 Cr.P.C. provides as follows: -

“91. 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.”

7. The trial court has referred to the decision of the Hon’ble Supreme Court reported in **State of State Of Orissa versus Debendra Nath Padhi**: (2005) 1 SCC 568, wherein it has been held that: -

“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. In so far 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 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.”

(Emphasis added)

8. he learned counsel for the revisionist has relied upon a decision of the Hon’ble Supreme Court reported in **Criminal Trials Guidelines Regarding Inadequacies and Deficiencies, In Re Vs. State of Andhra Pradesh and others**: (2021) 10 SCC 598, wherein the Hon’ble Supreme Court has expressed an opinion that while furnishing the list of statements, documents and material objects under Section 207/208 Cr.P.C. the Magistrate should also ensure that a list of other materials such as statements or objects/documents seized, but not relied on should be furnished to the accused. The Hon’ble Supreme Court formulated the Draft Criminal Rules of Practice, 2021, Rule 4 whereof provides as follows: -

“4. Supply of documents under Sections 173, 207 and 208 CrPC.—(i) Every accused shall be supplied with statements of witness recorded under Sections 161 and 164 CrPC and a list of documents, material objects and exhibits seized during investigation and relied upon by the investigating officer (IO) in

accordance with Sections 207 and 208 CrPC.

Explanation : The list of statements, documents, material objects and exhibits shall specify statements, documents, material objects and exhibits that are not relied upon by the investigating officer.”

9. The aforesaid draft Rule 4 merely provides for supplying statements of witness recorded under Sections 161 and 164 CrPC and a list of documents, material objects and exhibits seized during investigation and relied upon by the Investigating Officer in accordance with Sections 207 and 208 Cr.P.C.

10. An order refusing sanction for prosecution of a co-accused person does not fall in any of the categories of the documents mentioned by the Hon’ble Supreme Court while expressing the aforesaid opinion in **Criminal Trials Guidelines Regarding Inadequacies and Deficiencies, In Re** (Supra). It does not fall in any of the categories of documents mentioned in the Draft Rule 4 relied upon by the learned Counsel for the revisionist. Therefore, the revisionist has no right to seek a direction for production of the order passed by the Secretary, National Informatics Centre refusing sanction for prosecution of a co-accused person under Section 91 Cr.P.C.

11. In view of the foregoing discussion, I am of the considered view that the order dated 01.06.2024 passed by the Special Judge (Prevention of Corruption Act) C.B.I. Court No.3, Lucknow does not suffer from any illegality, warranting interference by this court in exercise of its revisional

jurisdiction. The revision lacks merit and the same is accordingly dismissed.

(2025) 4 ILRA 895

**ORIGINAL JURISDICTION
CIVIL SIDE**

DATED: ALLAHABAD 10.04.2025

BEFORE

**THE HON’BLE MAHESH CHANDRA
TRIPATHI, J.**

THE HON’BLE PRASHANT KUMAR, J.

Crl. Misc. W.P. No. 2611 of 2020

Usman Ali

...Petitioner

Versus

State of U.P. & Ors.

...Opp. Parties

Counsel for the Petitioner:

Md. Aman Khan

Counsel for the Opp. Parties:

A.S.G.I., G.A., Manish Singh, Prahlad Kumar Khare, Sanjay Kumar Yadav, Sikandar Khan, Sushma Singh, Vineet Sankalp

Criminal Law – Constitution of India, 1950 – Section 226 & 243-R(b) - Indian Penal Code, 1860 - Sections 34, 120-B, 147, 148, 149, 302 & 506 - Criminal Procedure Code, 1973 – Sections – 82, 173, 173(2), 173(8), 311, 319 & 482 - National Investigation Agency Act, 2008 - Sections 6, 6(2) & 6(5) - Criminal Law Amendment Act, 1932- Section 7 - Unlawful Activities (Prevention) Act, 1967 - SectionS 10(a)(i) & 15(1) - writ petition - seeks multiple reliefs - primarily challenging the impugned U.P. Government’s order transferring the investigation of Case from local police to the CBCID without considering the petitioner’s demand for invoking the UAPA and further prayed to for transferring the case to a central agency like the NIA or CBI - FIR - offense of murder and rioting – allegations are that petitioner’s brother was murdered – the competent authority passed an order whereby investigation of the case was transferred from