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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **CRL.M.C. 2464/2021 & CrI.M.A.No.16232/2021**

AADIT PALICHA

..... Petitioner

Through : Mr.Dayan Krishnana, Sr Advocate
with Mr.Sanjeevi Seshadri, Mr.Ankur
Chawla, Mr.Madhav Khurana,
Mr.Ankit Bhait and Mr.Aamir Khan,
Advocates.

versus

STATE GOVT. OF NCT DELHI

..... Respondent

Through : Mr.Amit Ahlawat, APP for the State
with SI Sanjeev, PS Defence Colony.
Mr.Vikas Pahwa, Sr Advocate with
Mr.Manu Sharma, Ms.Anandrana
Handa Wadhwa and Ms.Anushree
Malviya, Advocates for complainant.

CORAM:

HON'BLE MR. JUSTICE YOGESH KHANNA

ORDER

11.10.2021

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1. The hearing has been conducted through Video Conferencing.

2. This petition is filed with following prayers:

A. Pass an order quashing / setting aside the notices u/s 91 CrPC dated 07.09.2021, 13.09.2021 & 17.09.2021 arising out of FIR 151 of 2021 dated 09.08.2021 P.S Defence Colony New Delhi;

B. Pass an order of stay of the Section 91 Notices dated 07.09.2021, 13.09.2021 & 17.09.2021 arising out of FIR NO 151 dated 09.08.2021 Police Station Defence Colony New Delhi, until the final hearing and disposal of the present petition;

C. Pass an order thereby directing that during the pendency of the present Petition, the Respondents are restrained from taking any further coercive action against the Petitioner;

3. The core issue raised by the learned senior counsel for the petitioner is – *Can a notice under Section 91 Cr P C be issued to an accused person?*

He refers to various notices issued by the Investigating Officer to the petitioner herein viz 09.09.2021, 13.09.2021, 17.09.2021 and 30.09.2021 which are annexed with the petition. Admittedly, the petitioner herein is arrayed as accused No.1.

4. The learned senior counsel for the petitioner submits under the provision of law, no notice under Section 91 Cr P C can be issued to the accused person and refers to *State of Gujarat vs Shyamlal Mohanlal Choksi & Ors* (1965) 2 SCR 457 as also *V S Kuttan Pillai vs Ramakrishnan & Anr* (1980)1 SCC 264 which read the following:-

8. xxx *Whatever that may be, it is indisputable that according to the majority opinion the expression 'person' in s. 91(1) (new Code) does not take within its sweep a person accused of an offence which would mean that a summons issued to an accused person to produce a thing or document considered necessary or desirable for the purpose of an investigation, inquiry or trial would imply compulsion and the document or thing so produced would be compelled testimony and would be violative of the constitutional immunity against self-incrimination.*

9. *There appears to be some conflict between the observations in M. P. Sharma's case (supra) as reconsidered in Kothi Kala Oghad's case (supra) and the one in the case of Shyamlal Mohanlal (supra). However, as this case is not directly relatable to a summons issued under s. 91(1), we do not consider it necessary to refer the matter to a larger Bench to resolve the conflict.*

10. *In view of the decision in Shyamlal Mohanlal's case (supra) one must proceed on the basis that a summons to produce a thing or document as contemplated by s. 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.*

5. Issue notice. Learned APP accepts notice and seeks to file status report. As sought, status report be filed before the next date of hearing with

an advance copy thereof to the learned counsel for petitioner through email. The learned counsel for the complainant may assist the learned APP for the State in this regard.

6. List on 22.10.2021 and in the meanwhile, the Investigating Officer shall hold his hands qua the notice under Section 91 Cr P C. However, there shall be no stay on investigation.

YOGESH KHANNA, J.

OCTOBER 11, 2021

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