Ashok Chawla Vs Ram Chander Garvan, Inspector CBI

Court: Allahabad High Court

Date of Decision: Feb. 28, 2011

Acts Referred: Constitution of India, 1950 â€" Article 226, 227
Criminal Procedure Code, 1973 (CrPC) â€" Section 227, 91

Hon'ble Judges: Mukta Gupta, J

Final Decision: Dismissed

Judgement

Mukta Gupta, J.
A complaint under Section 13 of the Official Secrets Act, 1929 (in short "the OS Act") was filed by Shri Ram Chander

Garvan, Inspector of Police, CBI against the Petitioner herein and one Ms. Vijaya Rajgopal. The complaint is pending since 20th November, 2000

and not even a single witness has been examined so far. On the petitioner filing a petition being Criminal M.C. 1927/2009 this Court vide order

dated 15th February, 2010 exempted the Petitioner from personal appearance subject to certain conditions and directed the learned Trial Court to

expedite the recording of precharge evidence and conclude the same within one year from that date. Soon thereafter on 20th February, 2010 the

Petitioner moved an application under Section 91 Cr.P.C. for summoning of documents/reports/final reports before the learned Trial Court. The

prayer in the application was not for the supply of documents relied upon by the prosecution but the Final ReportI (FRI) and Final ReportII (FRII)

prepared by the erstwhile Investigating Officer DSP Ram Chandra who carried out the investigation of the case from September, 1996 to April,

1997. The contention of the Petitioner was that these final reports showed that the searches were motivated and there were circumstances under

which the planting of documents cannot be ruled out and therefore the recovery and possessions of the documents itself was in serious doubt. Shri

Ram Chandra DSP, CBI who conducted the investigation from September, 1996 to April, 1997 recorded the statements of the Petitioner, his

employees and other income tax Officials and submitted his Final Report I and further Final ReportII not recommending the prosecution of the

Petitioner and the other accused because he was of the view that the recovery of the document itself could not be proved beyond doubt and any

further investigation particularly examination of defence personal etc. would not be fruitful. It was thus, the view of the Investigating Officer that a

closure report be filed.

2. The learned Trial Court after hearing the arguments dismissed the application of the Petitioner inter alia for the reasons; that no doubt the Court

has power to call for the record and peruse the same but the satisfaction has to be of the Court and the accused is entitled to be supplied with the

copies of the material used by the prosecution against the accused so that he can defend himself properly. It was held that the documents sought by

the Petitioner were not meant to be used against him as they were not being relied upon by the CBI and thus, the Petitioner was not entitled to the

production of the said documents. Challenging this order the Petitioner first filed a Criminal Revision Petition bearing No. 381/2010 before this

Court which was dismissed as withdrawn vide order dated 3rd August, 2010. The Petitioner has thereafter filed the present petition challenging the

impugned order dated 30th April, 2010.

3. Learned counsel for the Petitioner contends that the scope of provision of Section 91 Cr.P.C. is much wider than Sections 207 or Section 208

Cr.P.C. According to Section 91 of the Code, whenever a Court considers that the production of any document or other thing is necessary or

desirable for the purpose of investigation, inquiry, trial or other proceedings before the Court, such Court may issue summons to the person in

whose possession or power such document or thing is believed to be, requiring him to attend and produce it. Under Section 91 of the Code, the

Court has power to call documents not even relied upon by the prosecution. It is stated that under Section 3 of the Evidence Act a final report

prepared by the Investigating Officer is a "Document"; and the "Evidence" under the said Section means and includes all documents produced for

the inspection of the Court; such documents being called Ã¯Â¿Â½documentary evidenceÃ¯Â¿Â½. The prosecution in this case has taken contrary stands;

first stating that no such report was prepared and then taking legal objections. Once the privilege claimed by CBI of those documents in terms of

the CBI manual has been turned down by the learned Trial Court, and the Respondent having not challenged the said finding, the same has attained

finality and cannot be allowed to be reopened in this writ petition. The prosecution cannot also claim recourse to Section 124 of the Indian

Evidence Act as no public interest would suffer by the production or disclosure of the documents asked for. The CBI manual cannot override the

provisions of Cr.P.C. and in any case the same cannot take away the fundamental right of the accused guaranteed under Article 21 of the

Constitution of India of a proper defence of his case. Reliance is placed on Neelesh Jain vs. State of Rajasthan, 2006 Crl. L.J. 2151 wherein the

Court directed production of documents like photos, love letters between the prosecutrix and the accused petitioner, some STD bill slips and the

ledger book which were though recovered but not filed by the police along with the charge sheet.

4. It is contended that the prosecution is not expected to collect onesided evidence and present it to the Court. A fair investigation is the hallmark

of rule of law. The right to defend which follows from the fundamental right to "life" and "personal liberty" enshrined in Article 21 of the

Constitution of India is not an illusionary right but a substantive one. Reliance is place on Navin Ramji Kamani vs. Shri K.C. Shekhran, Dy. Chief

Controller of Imports & Exports, 1981 RCC 218 and Rajesh Prasad vs. State of Rajasthan, 1998 (Supp) Crl.L.R. (Raj.) 265.

5. It is next contended that in case the Final ReportI and II are made available the Petitioner would be in a position to find out whether

reinvestigation was conducted or further investigation was conducted. According to the Petitioner a fresh investigation as held by the Hon"ble

Supreme Court in Ramchandran vs. R. Udayakumar, AIR 2008 SC 3102 and Virender Prasad Singh vs. Rajesh Bhardwaj, 2010 (9) SCC 171,

is illegal.

6. On the contrary, learned Standing Counsel for the Respondent contends that the jurisdiction under Section 91 Cr.P.C cannot be invoked by the

Petitioner at the preliminary stage of framing of the charge. At the stage of framing of charge the Trial Court can only evaluate the material and

documents on record placed by the prosecution. It is a settled principle of law that for an order under Section 91 Cr.P.C. the concerned Court has

to look into the necessity and desirability for invoking the provision. The necessity and 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 charge would not arise since defence of the accused is not relevant at that stage. When the section states

of the 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 an order under Section 91 would ordinarily not come till the stage of defence. When the section states about the

document being necessary and desirable, it is implicit that necessity and desirability is to be examined considering the stage when such prayer for

summoning and production is made and the party who makes it, whether the police or the accused. Since at the stage of discharge or framing of

charge under Section 227/228 Cr.P.C only the material relied upon by the prosecution has to be looked into, the request made by the accused for

producing documents in defence is totally irrelevant in the context of the stage of trial. Reliance is placed on State of Orissa vs. Debendra N.

Padhi, 2005 (1) JCC 109 : 2005 (1) SCC 568 and Om Prakash Sharma vs. CBI, 2000 (5) SCC 679 to canvass that invocation of Section 91

Cr.P.C at the preliminary stage of trial is not permissible.

7. It is contended that the Petitioner is not entitled to ask for the documents which are not relied upon by the CBI and that the Petitioner is only

entitled to the documents which are referred to in Section 207 or 208 Cr.P.C. The right of the accused with regard to the disclosure of documents

is a limited right and the accused cannot claim an indefeasible legal right to claim documents of the police file or even the portions which are

permitted to be excluded from the documents annexed to the report under Section 173 (2) Cr.P.C. as per the order of the Court. In the present

case the complaint was filed under Section 13 (3) of the OS Act and the provisions of Section 208 Cr.P.C. are applicable which reads, Ã¯Â¿Â½Any

documents produced before the Magistrate on which the prosecution proposes to relyÃ¯Â¿Â½ and thus what is referred in Section 208 (iii) are the

documents filed along with the complaint under Section 13 (3) of the OS Act and nothing more than that. Sections 207 and 208 Cr.P.C. pertains

to the documents which are commonly known as police report which are to be supplied to the accused with the objective to make him aware of

the materials which are sought to be utilized against him. In this regard reliance is placed on Sidhartha Vashisth @ Manu Sharma vs. State, 2010

(6) SCC 1, Suptd. & Remembrance of Legal Affairs, West Bengal vs. Satyen Bhowmick and others, 1981 (2) SCC 109 and Naresh Kumar

Yadav vs. Ravindra Kumar and Ors. 2008 (1) SCC 632.

8. It is further contended that the documents referred by the Petitioner are the internal communication between the officers of the Respondent. FRI

and FRII which are the opinions of the Investigating Officer and the Law Officer and which are not being relied upon by the prosecution, are for

the in house use of the CBI, not supposed to be discussed or quoted outside. Reference is made to Sunita Devi vs. State of Bihar, 2005 (1) SCC

608. The present petition deserves to be dismissed as the same seeks a relief which cannot be granted by this court in a Writ Jurisdiction.

9. I have heard learned counsel for the parties. The first and foremost issue would be the scope of consideration of the impugned order in a writ

petition. The Hon''ble Supreme Court in Surya Devi Rai vs. Ram Chander Rai and others, 2003 (6) SCC 675 following the Constitution Bench in

T.C. Basappa vs. T. Nagappa, AIR 1954 SC 440 observed as under:

Ã¯Â¿Â½14.....That certiorari may be and is generally granted when a court has acted (i) without jurisdiction, or (ii) in excess of its jurisdiction. The

want of jurisdiction may arise from the nature of the subjectmatter of the proceedings or from the absence of some preliminary proceedings or the

court itself may not have been legally constituted or suffering from certain disability by reason of extraneous circumstances. Certiorari may also

issue if the court or tribunal though competent has acted in flagrant disregard of the rules or procedure or in violation of the principles of natural

justice where no particular procedure is prescribed. An error in the decision or determination itself may also be amendable to a writ of certiorari

subject to the following factors being available if the error is manifest and apparent on the face of the proceedings such as when it is based on clear

ignorance or disregard of the provisions of law but a mere wrong decision is not amendable to a writ of certiorari.Ã¯Â¿Â½

10. I would now proceed to examine the impugned order passed by the learned Trial Court in the light of the above mentioned decision rendered

by the Constitution Bench. The learned Trial Court discarding the plea of privilege raised by CBI, held that from a perusal of the decisions

rendered by the Hon''ble Supreme Court and this Court it was clear that copies of all the documents which are to be used against the accused

must be supplied to him whether the prosecution terms them to be classified or not. It was held that in the present case the documents sought in the

application under Section 91 Cr.P.C. are not being relied upon by the CBI, thus not being used against the accused during the course of the trial

and so the accused is not entitled to their production.

11. Section 91 Cr.P.C. states:

Ã¯Â¿Â½(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.

(2) XXXX XXXX XXXX

(3) Nothing in this section shall be deemed

(a) to affect sections 123 and 124 of the Indian Evidence Act, 1872,(1 of 1872) or the Bankers'' Books Evidence Act, 1891,(13 of 1891) or

(b) XXXX XXXX XXXXÃ¯Â¿Â½

Thus, this Section provides that 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, requiring the person in whose possession or power such

documents are believed to be to attend and produce the same.

12. The stage of trial in the present case is precharge evidence. This Court vide order dated 15th February, 2010 while permitting the Petitioner to

withdraw the petition that is Criminal M.C. 1927/2009 directed that the precharge evidence should be recorded expeditiously and to be concluded

within one year from that date. The case of the Petitioner is that he requires the said FRs for the purpose of his defence to show that he has been

falsely implicated. A final report prepared after investigation is an opinion rendered by the Investigating Officer. The said opinion cannot bind either

his Superior Officer or any other person much less the Court. By the impugned application the Petitioner does not seek the statements of the

witnesses but the final opinions of the Investigating Officer. These opinions are not statements of facts and thus not relevant. They are not even

relevant under Section 45 of the Evidence Act which makes the opinion evidence relevant as the opinion so envisaged under the Section is that of

an expert upon a point of (a) foreign law, (b) science, (c) art, (d) identity of handwriting, and (e) finger impression. An Investigating Officer can by

no stretch be considered to be an expert and thus his opinion is not relevant. Even if considered as the statement of Investigating Officer, these

opinions cannot be used except for the limited purpose of confronting the Investigating Officer as no other witness is bound by it. It is not the case

of the petitioner that DSP Ram Chandra is cited as a witness and these documents are required to confront him. There is yet another fallacy in the

argument of the learned counsel for the Petitioner. It is settled law that the Court while recording evidence has to examine the relevant and

admissible statements and documents and not the opinion of the Investigating Officer.

13. In Mohammed Ankoos & Ors. vs. Public Prosecutor, HC of Andhra Pradesh, Hyderabad (2010) 1 SCC 94, it has been held by the Hon''ble

Supreme Court:

Ã¯Â¿Â½A criminal court can use the case diary in the aid of any inquiry or trial but not as an evidence. This position is made clear by Section 172(2) of

the Code. Section 172(3) places restrictions upon the use of case diary by providing that the accused has no right to call for the case diary but if it

is used by the police officer who made the entries for refreshing his memory or if the court uses it for the purpose of contradicting such police

officer, it will be so done in the manner provided in Section 161 of the Code and Section 145 of the Evidence Act. The court"s power to consider

the case diary is not unfettered. In light of the inhibitions contained in Section 172(2), it is not open to the court to place reliance on the case diary

as a piece of evidence directly or indirectly.Ã¯Â¿Â½

14. In Sidhartha Vashisht @ Manu Sharma v. State (NCT of Delhi), 2010 (6) SCC 1 it was held:

Ã¯Â¿Â½220. The right of the accused with regard to disclosure of documents is a limited right but is codified and is the very foundation of a fair

investigation and trial. On such matters, the accused cannot claim an indefeasible legal right to claim every document of the police file or even the

portions which are permitted to be excluded from the documents annexed to the report under Section 173(2) as per orders of the Court. But

certain rights of the accused flow both from the codified law as well as from equitable concepts of constitutional jurisdiction, as substantial variation

to such procedure would frustrate the very basis of a fair trial. To claim documents within the purview of scope of Sections 207, 243 read with the

provisions of Section 173 in its entirety and power of the Court under Section 91 of the Code to summon documents signifies and provides

precepts which will govern the right of the accused to claim copies of the statement and documents which the prosecution has collected during

investigation and upon which they rely.

221. It will be difficult for the Court to say that the accused has no right to claim copies of the documents or request the Court for production of a

document which is part of the general diary subject to satisfying the basic ingredients of law stated therein. A document which has been obtained

bonafidely and has bearing on the case of the prosecution and in the opinion of the public prosecutor, the same should be disclosed to the accused

in the interest of justice and fair investigation and trial should be furnished to the accused. Then that document should be disclosed to the accused

giving him chance of fair defence, particularly when nonproduction or disclosure of such a document would affect administration of criminal justice

and the defence of the accused prejudicially.

222. The concept of disclosure and duties of the prosecutor under the English System cannot, in our opinion, be made applicable to Indian

Criminal Jurisprudence stricto senso at this stage. However, we are of the considered view that the doctrine of disclosure would have to be given

somewhat expanded application. As far as the present case is concerned, we have already noticed that no prejudice had been caused to the right

of the accused to fair trial and non furnishing of the copy of one of the ballistic reports had not hampered the ends of justice. Some shadow of

doubt upon veracity of the document had also been created by the prosecution and the prosecution opted not to rely upon this document. In these

circumstances, the right of the accused to disclosure has not received any set back in the facts and circumstances of the case. The accused even

did not raise this issue seriously before the Trial Court.Ã¯Â¿Â½

15. In Sunita Devi (supra) while dealing with Section 207 and 208 of the Code as regards the documents to be supplied to the accused it was

held:

Ã¯Â¿Â½27. The supervision notes can in no count be called. They are not a part of the papers which are supplied to the accused. Moreover, the

informant is not entitled to the copy of the supervision notes. The supervision notes are recorded by the supervising officer. The documents in terms

of Sections 207 and 208 are supplied to make the accused aware of the materials which are sought to be utilized against him. The object is to

enable the accused to defend himself properly. The idea behind the supply of copies is to put him on notice of what he has to meet at the trial. The

effect of nonsupply of copies has been considered by this Court in Noor Khan v. State of Rajasthan and Shakila Abdul Gafar Khan (Smt.) v.

Vasant Raghunath Dhoble and Anr. It was held that nonsupply is not necessarily prejudicial to the accused. The Court has to give a definite finding

about the prejudice or otherwise. The supervision notes cannot be utilized by the prosecution as a piece of material or evidence against the

accused. At the same time the accused cannot make any reference to them for any purpose. If any reference is made before any court to the

supervision notes, as has noted above they are not to be taken note of by the concerned court. As many instances have come to light when the

parties, as in the present case, make reference to the supervision notes, the inevitable conclusion is that they have unauthorized access to the official

records. We, therefore, direct the Chief Secretary of each State and Union Territory and the concerned Director General of Police to ensure that

the supervision notes are not made available to any person and to ensure that confidentiality of the supervision notes is protected. If it comes to

light that any official is involved in enabling any person to get the same appropriate action should be taken against such official. Due care and

caution should be taken to see that while supplying police papers supervision notes are not given.Ã¯Â¿Â½

16. The reliance of the Petitioner on the decision in the case of Neelesh Jain (Supra) is misconceived. In the said case the investigating agency had

recovered documents like photos, love letters between the prosecutrix and the accused Petitioner, some STD bill slips and a ledger book. The

Petitioner therein was facing prosecution for offences under Section 342/376 (g)/323/328 IPC. The photos, the love letters and the STD bills

being that of the prosecutrix were certainly documents which were relevant for confronting the prosecutrix when she would have entered the

witness box. It is for this reason the Court held those documents to be necessary and desirable. In Neelesh Jain (Supra) the Court also noted

Navin Ramji Kamani vs. Shri K.C. Shekhran, Dy. Chief Controller of Imports & Exports (supra) and held:

Ã¯Â¿Â½The power given under section 91 of the code is a general and wide power which empowers the court, the production of any document or any

other thing at any stage of any investigation, inquiry or other proceedings under the Cr.P.C. It is no doubt true that the legislature has circumscribed

this power to be exercised only where the court considers that the summoning of such document or things was necessary or desirable in its view,

then the court could pass an order both in favor of the accused as well as the prosecution. It is no doubt true that such power would not be

exercised where the documents or thing may not be found relevant or it may be for the mere purpose or delaying the proceedings or the order is

sought with an oblique motive."" Similar view has also been expressed in Rajesh Prasad v. State of Rajasthan 1998 (Supp) Cri.L.R.265Ã¯Â¿Â½.

17. The case of the Petitioner is that according to him he believes that DSP Ram Chandra exonerated him and since he had exonerated him the

subsequent handing over of the investigation to Inspector Ram Chander Garvan was a reinvestigation and not a further investigation. It is

contended that the Hon''ble Supreme Court in Ram Chandra (supra) and Virender Prasad Singh (supra) has held that under Section 173 (8)

Cr.PC the police has a right to further investigate and not reinvestigate. This contention of the Petitioner is at the outset fallacious. In the present

case no charge sheet has been filed. A complaint has been filed by Inspector Ram Chander Garvan who is the complainant, along with the list of

witnesses and documents. The decision referred to applies in a case where after filing of the charge sheet, that is, a report under Section 173

Cr.PC the investigating agency proceeds to further investigate the matter under Section 173(8) CrPC, when it cannot reinvestigate. Since no

charge sheet has been filed under Section 173(2) CrPC the stage of Section 173(8) Cr.P.C. has not arrived. Moreover, before a charge sheet is

filed under Section 173 CrPC the Investigating Agency is bound to investigate into all aspects of the matter and file a report thereon. During the

pendency of the investigation there is no bar, if on being not satisfied by one officer the investigation is transferred to another officer by the senior

officer and a final report is filed on being satisfied by the investigation conducted. Moreover, in the present case, since it is proceeding as a

complaint, no charge sheet under Section 173(2) Cr.P.C. is filed but a complaint has been filed.

18. In State of Orissa vs. Debendra N. Padhi (Supra) while considering the scope of Section 91 Cr.P.C. the Hon''ble Supreme Court held:

Ã¯Â¿Â½25. 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.

26. Reliance on behalf of the accused was placed on some observations made in the case of Om Parkash Sharma v. CBI. In that case the

application filed by the accused for summoning and production of documents was rejected by the Special Judge and that order was affirmed by the

High Court. Challenging those orders before this Court, reliance was placed on behalf of the accused upon Satish Mehra''s case (supra). The

contentions based on Satish Mehra''s case have been noticed in para 4 as under:

4. The learned counsel for the appellant reiterated the stand taken before the courts below with great vehemence by inviting our attention to the

decision of this Court reported in Satish Mehra v. Delhi Admn., laying emphasis on the fact the very learned Judge in the High Court has taken a

different view in such matters, in the decision reported in Ashok Kaushik v. State. Mr Altaf Ahmed, the learned ASG for the respondents not only

contended that the decisions relied upon for the appellants would not justify the claim of the appellant in this case, at this stage, but also invited,

extensively our attention to the exercise undertaken by the courts below to find out the relevance, desirability and necessity of those documents as

well as the need for issuing any such directions as claimed at that stage and consequently there was no justification whatsoever, to intervene by an

interference at the present stage of the proceedings.Ã¯Â¿Â½

27. In so far as Section 91 is concerned, it was rightly held that the width of the powers of that section was unlimited but there were inbuilt inherent

limitations as to the stage or point of time of its exercise, commensurately with the nature of proceedings as also the compulsions of necessity and

desirability, to fulfill the task or achieve the object. Before the trial court the stage was to find out whether there was sufficient ground for

proceeding to the next stage against the accused. The application filed by the accused under Section 91 of the Code for summoning and

production of document was dismissed and order was upheld by High Court and this Court. But observations were made in para 6 to the effect

that if the accused could produce any reliable material even at that stage which might totally affect even the very sustainability of the case, a refusal

to look into the material so produced may result in injustice, apart from averting an exercise in futility at the expense of valuable judicial/public time,

these observations are clearly obiter dicta and in any case of no consequence in view of conclusion reached by us hereinbefore. Further, the

observations cannot be understood to mean that the accused has a right to produce any document at stage of framing of charge having regard to

the clear mandate of Sections 227 and 228 in Chapter 18 and Sections 239 and 240 in Chapter 19.

28. We are of the view that jurisdiction under Section 91 of the Code when invoked by accused the necessity and desirability would have to be

seen by the Court in the context of the purpose investigation, inquiry, trial or other proceedings under the Code. It would also have to be borne in

mind that law does not permit a roving or fishing inquiry.

19. As held in Sidhartha Vashisht (Supra) the accused cannot claim an indefeasible legal right to claim every document of the police file. Even

giving an expanded application to the doctrine of disclosure, the Petitioner is neither entitled to these documents, nor is it the stage necessitating

production under Section 91 Cr.P.C. nor the transfer of investigation to another officer amounted to reinvestigation forbidden under Section

173(8) Cr.P.C and does not call for issuance of a writ in terms of the dictate of the Hon"ble Supreme Court in T.C. Basappa (Supra).

20. Writ petition is dismissed.