



**IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI [3327]
(Special Original Jurisdiction)**

**WEDNESDAY, THE FIRST DAY OF APRIL
TWO THOUSAND AND TWENTY SIX**

**PRESENT
THE HONOURABLE SRI JUSTICE K SREENIVASA REDDY**

CRIMINAL PETITION NO: 5829/2023

Between:

**Sathavahana Seeds Private Limited ...PETITIONER/ACCUSED(S)
and Others**

AND

**Kesina Venkateswara Rao ...RESPONDENT/COMPLAINANT(S)
and Others**

Counsel for the Petitioner/accused(S):

1. KAMBHAMPATI RAMESH BABU

Counsel for the Respondent/complainant(S):

**1. MADHAVA RAO NALLURI
2. PUBLIC PROSECUTOR (AP)**

The Court made the following:

THE HON'BLE SRI JUSTICE K. SREENIVASA REDDY**CRIMINAL PETITION No. 5829 OF 2023****ORDER :**

This Criminal Petition is filed challenging the Order dated 02.06.2023 passed in CrI.M.P.No.607 of 2023 in C.C.No.796 of 2017 on the file of the II Additional Judicial Magistrate of First Class, Eluru, whereby petition filed by 1st respondent/complainant under Section 91 CrPC to direct the petitioners/accused to produce before the Court, the original challans pertaining to supply of maize by 1st respondent/complainant, was allowed.

2. Heard the learned counsel for the petitioners/accused and the learned counsel for 1st respondent/complainant. Perused the record.

3. Pursuant to a complaint filed by 1st respondent/complainant, the subject C.C. has been registered against the petitioners/accused for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881. It is at the stage of trial. At that stage, 1st respondent/

complainant filed the aforesaid petition under Section 91 CrPC seeking a direction to the petitioners/accused to produce the original challans pertaining to supply of maize by 1st respondent/complainant. It is the case of 1st respondent/complainant that photocopies of the said documents were supplied to 1st respondent/complainant and the originals thereof, are with the petitioners/accused, and that the said original challans are necessary to prove his case regarding supply of maize. The petitioners / accused filed counter before the trial Court stating that Section 91 CrPC does not contemplate issuance of summons to the accused person and summons to produce document(s) cannot be issued to the accused person. It is also the case of the petitioners/accused that 1st respondent /complainant is taking contradictory stands viz. earlier he filed a petition vide CrI.M.P.No.3046 of 2022 in the present C.C. to send for, the alleged original documents from the Principal District Court, West Godavari district, lying in O.S.No.10 of 2020, to the Court below, which was allowed by the Court below, and now the present petition is filed

seeking a direction to the petitioners/accused to produce the said documents. The trial Court, vide the impugned Order, allowed the petition and directed the petitioners / accused to produce the said delivery challans. Challenging the same, the present Criminal Petition is filed by the petitioners/accused.

4. It is the contention of the learned counsel for the petitioners/accused that Section 91 CrPC has no application to an accused person and the word 'person' used in the said Section does not include an accused. He submits that no notice under Section 91 CrPC can be issued to an accused person to produce any document, which is allegedly in his possession, relating to a crime or a criminal case, and therefore, the Court below committed error in allowing the petition. Hence, he prays to set aside the impugned Order.

In support of his contention, he relied on decisions in (a) *State of Gujarat v. Shyamlal Mohanlal Choski, Manubhai*

*Motilal Patel*¹, and (b) *Kadiyala Simhachalam Vijay Kumar v. State of A.P.*².

5. On the other hand, it is the contention of the learned counsel for 1st respondent/complainant that the original challans pertaining to supply of maize by 1st respondent /complainant are with the petitioners/accused, and that the said original challans are necessary to prove his case regarding supply of maize, and hence, for effective adjudication of the *lis* involved in the case, the Court below rightly allowed the petition. It is his contention that the petitioners/accused are in possession of certain documents, which may throw light on the controversy involved, and directing them to produce the same does not amount to testimonial compulsion. He submits that there is no infirmity in the impugned Order passed by the Court below.

6. In the light of the aforesaid submissions, the point that arises for consideration is whether Section 91 CrPC

¹ 1964 LawSuit(SC) 332

² 2022 (3) Law Summary 135

applies to an accused person and whether the summons issued to the petitioners/accused under Section 91 CrPC is valid under law or not ?

7. The legal position in regard to the aforesaid issue is no longer *res integra*. Whether 91 CrPC applies to an accused person or not, directly fell for consideration before a five Judge Bench of the Hon'ble Apex Court in *State of Gujarat v. Shyamlal Mohanlal Choski, Manubhai Motilal Patel* case (1 *supra*), wherein the Hon'ble Apex Court in unequivocal terms held, while interpreting the term 'person' used in Section 91 CrPC, that it does not include an accused person, and that Section 91 CrPC has no application to the accused. The Hon'ble Apex Court gave a narrow construction to the said word 'person' used in Section 91 CrPC and did not include the accused within the said expression. A perusal of the said decision goes to show that 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 Hon'ble Apex Court held that Section 94

of Old CrPC (corresponding to Section 91 of New CrPC, 1973) cannot be made applicable to an accused person. Therefore, the five Judge Bench of the Hon'ble Apex Court set at rest the controversy. This Court and the common High Court have been consistent in holding so, by following the said decision and the said decision holds the field.

In *Kadiyala Simhachalam Vijay Kumar v. State of A.P.*, learned single Judge of this Court, after considering the aforesaid five Judge Bench decision of the Hon'ble Apex Court and also the various judgments, held as under:

“21) Relying on the aforesaid judgment of the Five-Judge Bench of the Apex Court in *Shyamlal Mohanlal Choksi* (1 *supra*) and also after considering the *Kathi Kalu Oghad* case (AIR 1961 SC 1808), the Madras High Court in the case of *K.Senthamarai v. State* (1988(1) Crimes 319(Mad.)) 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* (2021 (2) ALD (Cri) 685) also held that notice issued under Section 91 Cr.P.C. 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* (2007 (1) ALD (Cri.) 658 (AP)); 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* (2016 (1) ALD (Cri.) 320); the Apex Court in the cases of *Rajesh Talwar v. Central Bureau of Investigation* {(2014) 1 SCC 628}; *Om Prakash Sharma v. CBI, Delhi* {(2000) 5 SCC 679}; and *State of Orissa v. Debendra Nath Padhi* {(2005) 1 SCC 568}, 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.”

In view of the law laid down in the aforementioned cases, the legal position as to applicability of Section 91 CrPC to the accused person is settled. Section 91 CrPC cannot be invoked against an accused person. In view of the same, the impugned order does not sustain in the eye of law.

8. The Criminal Petition is, accordingly, allowed, setting aside the impugned Order dated 02.06.2023 passed in CrI.M.P.No.607 of 2023 in C.C.No.796 of 2017 on the file of the II Additional Judicial Magistrate of First Class, Eluru, and consequently, CrI.M.P.No.607 of 2023 stands dismissed. However, this Order does not preclude 1st respondent/complainant from securing the said documents through other methods permissible under law.

Miscellaneous petitions pending, if any, in the Criminal Petition shall stand closed.

JUSTICE K. SREENIVASA REDDY

01.04.2026
DRK

THE HON'BLE SRI JUSTICE K. SREENIVASA REDDY

CRIMINAL PETITION No. 5829 OF 2023

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Between:

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AND

Kesina Venkateswara Rao & Others

...RESPONDENT(S)

Counsel for the Petitioner(S):

Kambhampati Ramesh Babu

Counsel for the Respondent(S):

1. Madhava Rao Nalluri

2. Public Prosecutor

DATE OF ORDER PRONOUNCED : 1.4.2026

SUBMITTED FOR APPROVAL:

THE HONOURABLE SRI JUSTICE K. SREENIVASA REDDY

**1. Whether Reporters of Local Newspapers
may be allowed to see the Order?**

Yes/No

**2. Whether the copy of Order may be
marked to Law Reporters/Journals?**

Yes/No

**3. Whether His Lordship wish to see the
fair copy of the Order?**

Yes/No

JUSTICE K.SREENIVASA REDDY

*** HONOURABLE SRI JUSTICE K.SREENIVASA REDDY**

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> Head Note:

? Cases referred:

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