2026:DHC:226

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

% ***Reserved on: 18th August, 2025***
Pronounced on: 12th January, 2026

\+ **CRL.M.C. 1852/2021**

CBI

CGO, Complex,
AC-II , New Delhi .....Petitioner

Through: Mr. Atul Guleria, SPP with Mr. Aryan Rakesh and Mr. Prashant Upadhyay, Advocates.

versus

I M QUDDUSI
R/o N-7, 3rd floor,
Greater Kailash, Part- l, New Delhi .....Respondent

Through: Mr. Prashant Chari and Mr. Ayush Jindal, Advocates.

CORAM:
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J.

1. The present Criminal Miscellaneous Petition under Section 482 of the Code of Criminal Procedure, 1973 (Cr.P.C.) has been filed by the Central Bureau of Investigation (hereinafter, "the Petitioner" or "CBI") seeking to challenge the Order dated April 1, 2021, of the Learned Special Judge (CBI), New Delhi, whereby the Application filed by the petitioner for setting aside Notice under S.91 Cr.P.C. issued by the CBI, has been allowed.

2. The genesis of the matter is the registration of **FIR No. RC 217/2019/A/0009 dated 04.12.2019,** by the CBI/AC-II, New Delhi, against the Respondent, a retired Judge of the Hon'ble High Court of Chhattisgarh, along with Justice Shri Narayan Shukla (Judge of the Allahabad High Court, Lucknow Bench), *M/s. Prasad Education Trust*, and others, for offences under S. 120-B of the IPC read with Ss. 7, 8, 12, and 13(2) read with 13(1)(d) of the Prevention of Corruption Act, 1988.

3. The gist of the allegations in the FIR was that a criminal conspiracy was hatched between the co-accused to obtain a favorable order from Justice Shri Narayan Shukla for *M/s. Prasad Educational Trust* (PET), whose college was debarred by the Ministry of Health and Family Welfare (MoHFW). This conspiracy allegedly involved the Respondent managing the matter and delivering illegal gratification to the Hon'ble Justice.

4. The CBI, in the course of its investigation, a **Notice under S. 91 Cr.P.C. dated 11.02.2020 was** issued to the Respondent/Accused No. 2, seeking certain information deemed necessary for the investigation. The information sought included:

I. *Details of mobile numbers being used during the year 2017.*
II. *Details of all bank accounts (including closed accounts) with statements for the period May 2017 to October 2017.*
III. *Details of drivers/servants employed during May 2017 to October 2017.*

5. The Respondent challenged the Notice by filing **Miscellaneous Application No. 1 of 2020** before the Special Judge for CBI Cases, contending that the Notice violated the fundamental right against self-

incrimination guaranteed under Article 20(3) of the Constitution of India, as S. 91 Cr.P.C. is not applicable to an accused person.

6. The CBI filed a Reply opposing the Application, contending that the bar under S. 91 was not absolute, and the non-incriminating information sought was required for a fair investigation.

7. The Learned Special Judge, *vide the impugned Order dated 01.04.2021,* , relying solely on the majority opinion of the Constitution Bench in *State of Gujarat v. Shyamlal Mohanlal Choksi*, (AIR 1965 SC 1251), holding that Section 94 of the Old Cr.P.C. (S.91 under Cr.P.C. 1973) does not apply to an accused person, and the Notice was bad in law and violative of Article 20(3) and *allowed the Respondent's Application*.

8. The CBI, in challenging the impugned order under S. 482 Cr.P.C., has **agitated the grounds** that the Ld. Special Judge committed a grave error in law by summarily allowing the Respondent's Application, without appreciating the correct and nuanced legal position.

9. The Ld. Special Judge failed to appreciate that a perceived conflict exists between the decision in *Shyamlal Choksi*, which held Section 94 Cr.P.C. does not apply to the accused, and the larger Bench decision in *The State of Bombay v. Kathi Kalu Oghad and Ors.* (AIR 1961 SC 1808) which held that the prohibition in Article 20(3) of the Constitution against "being a witness" means giving testimony based on personal knowledge, and does not include the mechanical process of producing non-incriminating documents in court.

10. The CBI submits that the documents/information sought are non-incriminating information, often public in nature, and do not amount to

"*conveying information based upon the personal knowledge*" of the accused as would fall under the protection of Article 20(3).

11. The fundamental right of the accused must be weighed against the practical necessity of efficient and effective investigation into crime. The information sought is necessary to connect links in the investigation, and denial of production constitutes an obstacle to bringing criminals to justice.

12. The impugned Order failed to adjudicate upon the nature of the information requested and should not have invoked the principle of testimonial compulsion without verifying if the requested material was indeed incriminating or based on the personal statement/knowledge of the accused.

13. Thus, it is prayed that the Petition be allowed and the Respondent be directed to comply with the Notice under S.91 Cr.P.C.

14. The **Respondent, in defense of the impugned Order and vehemently opposed the CBI's petition.**

15. Relying on the Constitution Bench judgment in *Shyamlal Choksi*, (supra), the Respondent contends that the law is settled that Section 91 Cr.P.C. *(and its analogous predecessor, Section 94)* does not apply to an accused person. This view has been consistently followed by various High Courts.

16. The information sought i.e. the mobile numbers, bank accounts, servants/drivers is the information within the **personal knowledge** of the Respondent. Compelling the accused to provide this information or documents/statements based on this knowledge, tantamounts to *testimonial compulsion* and directly violates the immunity guaranteed under Article 20(3) of the Constitution.

17. The Respondent contends that the alleged conflict between *Kathi Kalu Oghad* (supra) and *Shyamlal Choksi* (supra), has been addressed by Bombay High Court in *Vinayak Purushottam Kalantre v. Vikram Balwantrao Deshmukh*, 1979 CRI LJ 71, holding that the ratio of *Shyamlal Choksi* (supra), which directly deals with the applicability of Section 91 to an accused, is the binding precedent on the point. The question of calling upon an accused to produce an incriminatory document was not directly posed in *Kathi Kalu Oghad* (supra).

18. Since the law prohibits compelling an accused to be a witness against himself, the CBI cannot use the mechanism of Section 91 Cr.P.C. to indirectly extract self-incriminating information that the law bars them from obtaining directly, thereby violating the fundamental rights of the Respondent.

19. The Respondent further contends that if the information sought is genuinely "public in nature" as claimed by the CBI, then the Investigative Agency should procure these documents directly from public domain or concerned authorities i.e. the Banks & Service providers, through regular investigative channels, as a Notice under Section 91 Cr.P.C. is not maintainable for easily accessible public documents.

20. *Thus, it is prayed that the Petition be dismissed.*

Submissions heard and record perused.

21. The Petitioner/CBI challenges the Order of the Learned Special Judge setting aside the Notice under Section 91 Cr.P.C. seeking documents from the respondent. The primary contention of the CBI is that the material sought i.e. details of Bank Accounts, Mobile Numbers, and details about

Servants/employees, is *merely documentary and public in nature*; thus, not attracting the protection against "*testimonial compulsion*" under Article 20(3) of the Constitution.

22. Before considering the scope of S.91 Cr.P.C. and its challenge to the Notice under S.91, it would be relevant to first consider the constitutional protection of Article 20(3) Constitution of India in respect of being a witness against oneself. The Full Court of Apex Court in the case of *M. P. Sharma vs. Satish Chandra*, (1954) S.C.R. 1077, explained that "*to be a witness'* includes oral as well as documentary evidence. It was observed as under:

> "*Broadly stated the guarantee in Article 20(3) is against "testimonial compulsion". It is suggested that this is confined to the oral evidence of a person standing his trial for an offence when called to the witness stand. We can see no reason to confine the content of the constitutional guarantee to this barely literal import. So to limit it would be to rob the guarantee of its substantial purpose and to miss the substance for the sound as stated in certain American decisions. The phrase used in Article 20(3) is 'to be a witness'. A person can 'be a witness'* ***not merely by giving oral evidence but also by producing documents or making intelligible gestures as in the case of a dumb witness*** *(see Section 119 of the Evidence Act) or the like. '****To be a witness' is nothing more than 'to furnish evidence', and such evidence can be furnished through the lips or by production of a thing or of a document or in other modes.*** *So far as production of documents is concerned, no doubt Section 139 of the Evidence Act says that a person producing a document on summons is not a witness. But that section is meant to regulate the right of cross-examination. It is not a guide to the connotation of the word 'witness', which must be understood in its natural sense i.e. as referring to a person who furnishes evidence. Indeed, every positive volitional act which furnishes evidence is testimony, and testimonial compulsion connotes coercion which procures the positive volitional evidentiary acts of the person, as*

> *opposed to the negative attitude of silence or submission on his part. Nor is there any reason to think that the protection in respect of the evidence so procured is confined to what transpires at the trial in the court room. The phrase used in Article 20(3) is 'to be a witness' and not 'to appear as a witness'. It follows that the protection afforded to an accused insofar as it is related to the phrase* ***'to be a witness****' is not merely in respect of testimonial compulsion in the court room but may well extend to compelled testimony previously obtained from him. It is available therefore to a person against whom a formal accusation relating to the commission of an offence has been levelled which in the normal course may result in prosecution. Whether it is available to other persons in other situations does not call for decision in this case.*"

23. It was thus, observed that "***to be a witness against himself***" is nothing more than ***"to furnish evidence***", and includes not only oral testimony or statement in writing of the accused, but also production of a thing or evidence by other modes.

24. Now, Section 91 Cr.P.C. may be considered in the light of constitutional protection guaranteed under A.20 (3) Constitution of India. S.91 Cr.P.C. empowers a Court or officer to issue a summons for the "*production*" of any "*document or other thing*". It reads as under:

> *"**91. Summons to produce document or other thing**.*
> *(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) Any person required under this section merely to* ***produce a document*** *or other thing shall be deemed to have complied with the requisition if he causes such document or thing to be produced instead of attending personally to produce the same.*
>
> *(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 Banker's Books Evidence Act, 1891(13 of 1891); or*
>
> *(b) to apply to a letter, postcard, telegram or other document or any parcel or thing in the custody of the postal or telegram authority."*

25. 11 Judges Constitutional Bench in the case of *State of Bombay vs. Kathi Kalu Oghad*, 1961 SCC OnLine SC 74, considered the question as to *whether the accused can be said to be a witness against himself, if asked to produce* ***the handwriting specimen and whether mere fact of giving specimen in writing while in police custody*** *by itself would amount to an compulsion, which is in contravention of Article 20(3) of the Constitution of India*, which provides that no person accused of any offence shall be compelled to be a witness against himself.

26. In *Kathi Kalu Oghad* (*supra*), it was observed that in *M. P. Sharma* (*supra*), the issue was not of calling an accused to give impressions of his thumbs, palm or fingers or of sample handwriting or signature comes within the ambit of *"to be a witness"* which has been equated to *"to furnish evidence"*.

27. The Court focused on the natural language of Article 20(3), interpreting "to be a witness" as "to furnish evidence." It distinguished between testimonial evidence, which involves imparting personal knowledge through oral or written statements, and material evidence, such as fingerprints or specimen writings.

28. The Court reasoned that while testimonial evidence directly implicates the individual by revealing personal knowledge, material evidence like fingerprints serves as auxiliary identification and does not, in itself, convey testimonial evidence against the accused. The decision emphasized that compulsion must involve coercion or duress, not merely the act of requesting or directing the accused to provide such material evidence.

29. Moreover, the Court highlighted legislative intent, acknowledging that the Constitution-makers did not intend to impede law enforcement's ability to obtain non-testimonial evidence crucial for effective criminal investigations.

30. The *taking of impressions or parts of the body of an accused person*, very often becomes necessary to help the investigation of a crime. It is as much necessary to protect an accused person against being compelled to incriminate himself, as to arm the agents of law and the law courts with legitimate powers to bring offenders to justice.

31. Furthermore, Section 73 of the Evidence Act or Sections 5 and 6 of the Identification of prisoners Act (XXXIII of 1920) authorises a Magistrate to direct any person to allow his measurements or photographs to be taken, if he is satisfied that it is expedient for the purposes of any investigation or proceeding under the Code of Criminal Procedure. It is further contemplated that if such person allows his measurements or photographs to be taken resists or refuses to do so, all necessary measure to secure the taking of the measurements or photographs may be lawfully taken in terms of Section 6 of the Evidence Act. Section 73 of the Evidence Act also authorises the Court to permit the taking of finger impression or a specimen handwriting or

signature of a person present in Court, if necessary for the purpose of comparison.

32. It was further noted that *giving finger impression or specimen signature or handwriting, strictly speaking, is not 'to be a witness'*, which means imparting knowledge in respect of relevant fact, by means of oral statements or statements in writing, by a person who has personal knowledge of the facts to be communicated to a court or to a person holding an enquiry or investigation. Such person is said to be a witness, to a certain state of facts which has to be determined by a Court or authority authorised to come to a decision, by testifying to what he has seen, or something he has heard which is capable of being beard and is not hit by the rule excluding hearsay or giving his opinion, as an expert, in respect of matters in controversy.

33. ***Evidence has been classified into three categories, namely, (1) oral testimony; (2) evidence furnished by documents; and (3) material evidence.***

34. 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.

35. Furthermore, Clause 3 of Article 20 of the Constitution of India is directed against self-incrimination by an accused person. Self-incrimination

must mean *conveying information based upon the personal knowledge of the person giving the information and cannot include merely the mechanical process of producing documents in Court which may throw a light on any of the points in controversy.* The production of such a document, with a view to comparison of the writing or the signature or the impression, is **not** the statement of an accused person which can be said to be of the nature of a personal testimony. His finger impressions or handwriting, in spite of efforts at concealing the true nature of it by dissimulation, cannot change their intrinsic character. Therefore, the giving of finger impressions or of specimen writing or of signatures by an accused person, in the larger sense, is not included within the expression 'to be a witness'.

36. A specimen handwriting or signature or finger impressions by themselves are no testimony at all by themselves being wholly innocuous because they are unchangeable except in rare cases where the ridges of the fingers or the style of writing have been tampered with. They are only materials for comparison in Order to lend assurance to the Court that its inference based on other pieces of evidence is reliable. ***They are neither oral nor documentary evidence but belong to the third category of material evidence, which is outside the limit of 'testimony'.***

37. The giving of a personal testimony must depend upon his volition. He can make any kind of statement or may refuse to make any statement. In the case of *Kathi Kalu Oghad* (*supra*), it was further observed that *a testimony by an accused person may be said to have been self-incriminatory, the compulsion of which comes within the prohibition, of the Constitutional provision. It must be of such a character, that by itself it should have the tendency of incriminating the accused, if riot also of actually doing so. In*

other words, it should be a statement, which makes the case against the accused person at least probable, considered by itself.

38. Similarly, during the investigations of a crime by the police, if an accused person points out the place where the *corpus delicti* was lying concealed and in pursuance of such an information being given by an accused person, discovery is made within the meaning of Section 27 Evidence Act, such information and the discovery made as a result of the information, may be proved in evidence even though it may tend to incriminate the person giving the information, while in police custody.

39. The validity of Section 27 of the Evidence Act was also considered by the Hon'ble Apex Court in the case of *State of U. P. vs. Deomen Upadhyaya*, AIR 1960 SC 1125, wherein it was observed that Section 27 of the Evidence Act did not offend Article 14 of the Constitution of India. In *Kathi Kalu Oghad* (*supra*), in Paragraphs 15 & 16, it was observed as under:

> *"**15.** In order to bring the evidence within the inhibitions of clause (3) of Article 20 it must be shown not only that the person making the statement was an accused at the time he made it and that it had a material bearing on the criminality of the maker of the statement, but also that he was compelled to make that statement. **"Compulsion" in the context, must mean what in law is called "duress".** In the Dictionary of English Law by Earl Jowitt, "duress" is explained as follows:*
>
> > *"Duress is where a man is compelled to do an act by injury, beating or unlawful imprisonment (sometimes called duress in strict sense) or by the threat of being killed, suffering some grievous bodily harm, or being unlawfully imprisoned (sometimes called menace, or duress per mines). Duress also includes threatening, beating or imprisonment of the wife, parent or child of a person."*

*The **compulsion in this sense is a physical objective act and not the state of mind of the person making the statement**, except where the mind has been so conditioned by some extraneous process as to render the making of the statement involuntary and, therefore extorted. Hence, the mere asking by a police officer investigating a crime against a certain individual to do a certain thing is not compulsion within the meaning of Article 20(3). Hence, the mere fact that the accused person, when he made the statement in question was in police custody would not, by itself, be the foundation for an inference of law that the accused was compelled to make the statement. Of course, it is open to an accused person to show that while he was in police custody at the relevant time, he was subjected to treatment which, in the circumstances of the case, would lend itself to the inference that compulsion was in fact exercised. In other words, it will be a question of fact in each case to be determined by the court on weighing the facts and circumstances disclosed in the evidence before it.*

16. *xxxxxx*

(1) xxxx

(2) 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".

(3) "To be a witness" is not equivalent to "furnishing evidence" in its widest significance; that is to say, as including not merely making of oral or written statements but also production of documents or giving materials which may be relevant at a trial to determine the guilt or innocence of the accused.

(4) 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".

> *(5) "**To be a witness" means imparting knowledge in respect of relevant facts by an oral statement or a statement in writing, made or given in court or otherwise.***
>
> *(6) "To be a witness" in its ordinary grammatical sense means giving oral testimony in court. Case law has gone beyond this strict literal interpretation of the expression which may now bear a wider meaning, namely, bearing testimony in court or out of court by a person accused of an offence, orally or in writing.*
>
> *(7) To bring the statement in question within the prohibition of Article 20(3), the person accused must have stood in the character of an accused person at the time he made the statement. It is not enough that he should become an accused, any time after the statement has been made.*

40. It was observed that the expression '*to be a witness'* must be limited to a statement whether oral or in writing by an accused person imparting knowledge of relevant facts; **but that mere production of some material evidence, whether documentary or otherwise, would not come within the ambit of this expression.**

41. It was further noted that protection of Article 20(3) of the Constitution of India is available even at the stage of investigation. Moreover, it is not only by imparting of his knowledge that an accused person assists the proving of a fact; he can do so even by other means, such as the production of documents which though not containing his own knowledge, would have a tendency to make probable the existence of a fact in issue or a relevant fact.

42. It was further explained that *compulsion is inherent in the receipt of information from an accused person in the custody of a police officer, where an accused in custody is compelled to give the information later on sought to be proved under Section 27 of the Evidence Act. It would be infringement of*

Article 20(3) of the Constitution of India, but there is no such information when he gives the information without any compulsion. Therefore, the compulsion not being inherent or implicit in the fact of the information having been received from a person in custody, the contention that it infringes Article 20(3) of the Constitution of India is not acceptable.

43. A person cannot be said to have been compelled within the meaning of Article 20(3) of the Constitution of India only when there is an element of constraint or coercion in the physical sense, before it can be said that an accused person has been compelled. **So long as there is no such coercion or compulsion on the accused to furnish the information, the apprehension of Article 20(3) of the Constitution of India would not become operative.**

44. This principle was further considered at length in the case of *State of Gujarat vs. Shyamlal Mohanlal Choksi*, 1964 SCC OnLine SC 41, wherein reference was made to Section 94 of the Code of Criminal Procedure, 1898 (Section 91 of Cr.P.C., 1973) and it was observed that ***to apply Section 94 of Cr.P.C., 1898 to an accused person would result in unfortunate consequence***. If the accused refuses to produce the documents before the Police Officer, he would be faced with prosecution under Section 195 IPC and in this process; he cannot contend that he was not legally bound to produce it, because the Order to produce the documents is valid, if Section 94 of Cr.P.C, 1898 is held applicable to an accused person. In paragraph 37 it was observed as under :

> **"*37.*** *If, after a thing or a document is produced, its admissibility is going to be examined and the document or thing in question is not going to be admitted in evidence if it incriminates the accused person, the order to produce the thing or document*

> *would seem to serve no purpose; it cannot be overlooked that it is because the document or thing is likely to be relevant and material in supporting the prosecution case that on most occasions the power under Section 94(1) would be resorted to, so that on the alternative view which seeks to exclude incriminating documents or things, the working of Section 94(1) would yield no useful result.*"

45. It was thus, held that Section 94 of Cr.P.C. 1898 (*S.91 Cr.P.C., 1973*) in its true construction, does apply to an accused person.The operational word is *production*. ***This presupposes the existence of a specific, tangible document or thing in the possession of the person***.

46. The facts of this case, in the light of aforesaid discussion, may now be considered. A perusal of the Notice dated 11.02.2020 reveals that the CBI sought the following documents from the Respondent:

> *(i)* ***Details*** *of mobile numbers being used during the year 2017.*
> *(ii)* ***Details*** *of all bank accounts (including closed accounts) with statements for the period May 2017 to October 2017.*
> *(iii)* ***Details*** *of drivers/servants employed during May 2017 to October 2017.*

47. These requests do not call for the production of a specific, pre-existing document like a specific mobile number, bank accounts or the Servants/Drivers. Instead, the Petitioner, by way of Application under S.91 Cr.P.C, has demanded that the accused to **provide the information about the number of mobile phones, names of servants/drivers and Bank account details,** by applying their mind to their memory and creating a new record in the form of a statement which contains the details sought by the Petitioner.

48. Cr.P.C. provides distinct mechanisms for gathering evidence. Section 91 Cr.P.C is the machinery for securing *real evidence* which exists in the forms of a document or a thing. *S.161 Cr.P.C.* is the machinery for securing *oral evidence* and *information* through interrogation of the accused. If the Investigating Officer requires ***details*** of the accused's drivers or bank accounts, the legally appropriate route is to examine the accused orally and during such interrogation, the Officer is free to ask these questions. The accused may answer them, or if the answers are self-incriminatory, may choose to remain silent as per Article 20(3).

49. The Notice under S.91, infact is a request for *information* and not the *production* of documents. Section 91 is a provision for compelling the production of evidence that already exists; it is not a provision to compel an accused to create evidence or draft a memorandum of facts, for the convenience of the investigating agency.

50. By issuing a Notice under Section 91 for what is essentially a questionnaire, the Petitioner is attempting to bypass the interrogation process. This is an attempt to convert an oral examination, subject to the accused's volition and rights, into a mandatory order for production. To treat a demand for ***details*** as a demand for a ***document,*** would be to stretch the statutory language of Section 91 beyond its permissible limits.

51. As held in *Shyamlal Mohanlal Choksi*, (supra) the legislature did not intend Section 91 to apply to an accused, and the terms *attend and produce*, are *inept* for such a purpose. This ineffectiveness is magnified when the Order effectively demands to attend and write the information sought.

52. The scheme of the **Indian Evidence Act** further demonstrates why Section 91 is the wrong route for this information.

53. Section 27 of the Evidence Act becomes relevant. The same is as under:

> *"**27. How much of information received from accused may be proved**.*
> *Provided that, when any fact is deposed to as discovered in consequence of information received from a person accused of any offence, in the custody of a police-officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved."*

54. If the IO interrogates the accused under S. 161 Cr.P.C. and the accused provides information (e.g., I employed Driver X) which leads to the discovery of a fact (e.g., Driver X confirms the employment), that information becomes provable. This is the correct legal method for the IO to utilize information within the accused's knowledge.

55. The Petitioner is free to collect this information. They are free to ask the accused for these details during custodial or non-custodial interrogation. They are free to source these details from independent authorities (*Banks, Telecom Service Providers)* using Section 91 notices addressed to *those* third parties. However, the Petitioner cannot compel the accused to prepare a sheet of facts against themselves by seeking information through a Section 91 Notice. If the accused is compelled to write down this information under a Section 91 Notice, it becomes a compelled statement. If this statement is incriminatory, it is hit by Article 20(3). If it is not incriminatory, it is still not executory because Section 91 does not mandate the *creation* of a document.

56. The Petitioner/CBI has contended that the information sought, viz. details of bank accounts, mobile numbers, and employees - is merely documentary and does not constitute "*testimonial compulsion"* as defined in

Kathi Kalu Oghad (supra). However, as discussed above, it is an endeavour to get the information conveniently, without having to interrogate, which is not permissible under law.

57. Pertinent observation in this regard was made in *Kathi Kalu Oghad* (supra), warning against such an approach being permitted, das J. observed as under:

> *"Much has been written and discussed in England and America as regards the historical origin and development of the rules against* ***"testimonial compulsion"****. These matters of history, however, interesting they be, need not detain us and we must also resist the temptation of referring to the numerous cases especially in America where the concept of "'testimonial compulsion" has been analysed. It is sufficient to remember that long before our Constitution came to be framed the wisdom of the policy underlying these rules had been well recognised. Not that there was no view to the contrary; but for long it has been generally agreed among those who have devoted serious thought to these problems that few things could be more harmful to the detection of crime or conviction of the real culprit, few things more likely to hamper the disclosure of truth than to' allow* ***investigators or prosecutors to slide down the easy path of producing by compulsion, evidence, whether oral or documentary, from an accused person.*** *It has been felt that* ***the existence of such an easy way would tend to dissuade persons in charge*** *of investigation or prosecution from* ***conducting diligent search for reliable independent evidence and from sifting of available materials with the care necessary ascertainment of truth.*** *If it is permissible in law to obtain evidence from the accused person by compulsion, why tread the bard path of laborious investigation and prolonged examination of other men, materials and documents? It has been well said that an* ***abolition of this privilege would be an incentive for those in charge of enforcement of law "to sit comfortably in the***

> ***shade rubbing red pepper into a poor devil's eyes rather than to go about in the sun hunt' up evidence".*** *(Stephen., History of Criminal Law, p. 442). Of all these dangers the Constitution-makers were clearly well aware and it was to avoid them that Art. 20 (3) was put in the Constitution. It is obvious however that these dangers remain the same whether* ***the evidence which the accused is compelled to furnish is in the form*** *of statements, oral or written about his own knowledge or in the shape of documents or things, which though not transmitting knowledge of the accused person directly helps the Court to come to a conclusion against him."*

58. It was thus concluded that *"to be a witness"* in Article 20(3) means to impart personal knowledge, which tantamounts to be a witness and to furnish evidence, which is against the protection provided in Article 20(3) Constitution of India.

59. This Court finds merit in the reasoning adopted by the Learned Special Judge and the arguments advanced by the Respondent. While *Kathi Kalu Oghad* (supra) laid down the broad contours of Article 20(3) of the Constitution regarding "being a witness against oneself," the judgment in *Shyamlal Choksi* (supra) specifically interpreted the statutory machinery of the Code of Criminal Procedure and the specific language of theS.91, being *"attend and produce"*, and concluded that the legislature did not intend to include an accused person within the ambit of the section. The Court in *Shyamlal Choksi* (supra) explicitly held: *"****that Section 94 [now Section 91] on its true construction does not apply to an accused person."***

60. Crucially, the judgment in *Shyamlal* (decided in 1964) was delivered *after Kathi Kalu Oghad* (decided in 1961). It cannot be assumed that the Constitution Bench in *Shyamlal* was unaware of the principles laid down by

the larger bench three years prior. Rather, *Shyamlal* carved out a specific statutory exception regarding Section 91 based on the structure of the Cr.P.C. and the potential exposure of the accused to prosecution under Section 175 IPC for non-compliance. Therefore, regarding the specific invocation of Section 91 Cr.P.C. against an accused, *Shyamlal Choksi* (supra) remains the binding authority.

61. Even applying the test laid down in *Kathi Kalu Oghad* (supra), the notice issued by the CBI falls foul of Article 20(3). The distinction drawn in *Kathi Kalu Oghad* (supra) is between *"mechanical production*" (like fingerprints, measurements) and "*imparting knowledge*".

62. The Notice under S.91 dated 11.02.2020 requires the Respondent to identify and list the mobile numbers *used* by him, bank accounts *held* by him, and drivers/servants *employed* by him. This is not a demand for the mere production of a physical object already identified by the police (like a weapon or stolen property). It is a demand for the accused to apply his mind, search his memory, and compile information based on his **personal knowledge**. By providing a list of "drivers employed," the accused is making a testimonial statement acknowledging an employer-employee relationship, which could be a vital link in the chain of conspiracy alleged by the CBI. Compelling the accused to provide this information is forcing him to create evidence against himself, which is strictly prohibited. As noted in *Shyamlal Choksi* (supra), if the document or thing is likely to be relevant and material in supporting the Prosecution case, compelling the accused to produce it would be contrary to the protection against self-incrimination.

63. The protection under Section 91 does not handicap the investigation. As observed by the Supreme Court, the police officer has ample powers

under Section 165 Cr.P.C. to search for documents or things necessary for the investigation. The details of bank accounts can be obtained from bankers under the Bankers' Books Evidence Act; call records can be obtained from service providers. The Petitioner cannot use Section 91 as a shortcut to compel the accused to assist in building the case against himself when the agency has the statutory power to collect this evidence from independent sources.

Conclusion:

64. In the light of above discussion, it is held that the Notice under Section 91 is legally unsustainable not only because of the constitutional bar affirmed in *Shyamlal Mohanlal Choksi*, (supra) but also because it sought to extract information rather than secure existing documents, which is beyond the scope of S. 91 CrPC.

65. The Ld. Trial Court was therefore, correct in dismissing the Application. The Order of the Ld. Special Judge is upheld, and the Petition is **dismissed**.

66. Pending Application(s), if any, are accordingly disposed of.

(NEENA BANSAL KRISHNA)
JUDGE

JANUARY 12, 2026/*N*