

Neutral Citation No. - 2023:AHC-LKO:80064

**Court No. - 16**

**Case :-** APPLICATION U/S 482 No. - 1302 of 2022

**Applicant :-** Sanjay Singh @ Munna Singh

**Opposite Party :-** State Of U.P. Thru.Prin.Secy.Dept. Of Home And Another

**Counsel for Applicant :-** Kapil Misra,Ravindra Mani Misra

**Counsel for Opposite Party :-** G.A.,Paritosh Shukla,S M Singh Royekwar,Sukh Deo Singh

**Hon'ble Subhash Vidyarthi J.**

1. Heard Sri Jyotindra Misra, Senior Advocate assisted by Sri Kapil Misra, the learned counsel for the applicant, Sri Anurag Verma, the learned AGA-I and Sri Surya Mani Singh Royekwar, the learned counsel for opposite party no. 3.
2. By means of the instant application filed under Section 482 Cr.P.C., the applicant has assailed the validity of an order dated 05.01.2022 passed by the Additional Sessions Judge, Court No. 10, Sultanpur in Sessions Trial No. 180 of 2007 rejecting an application dated 30.10.2021 filed by the applicant for summoning the entire case diary. The petitioner has also assailed the validity of an order dated 21.02.2022 passed by the trial court rejecting an application dated 14.02.2022 filed by the applicant praying that the recording of evidence be conducted only after the original case diary of police and CBCID is made available on record of the trial court.
3. The aforesaid case was initiated on the basis of an FIR bearing Case Crime No. 235 of 2006, under Sections 307, 302, 504 & 506 IPC lodged at Police Station Sangrampur, District Sultanpur against four accused persons on 30.03.2006. During continuance of investigation conducted by U.P. Police, the investigation was transferred to C.B.C.I.D. on 19.05.2006 and a charge sheet was submitted against

three persons, including the applicant, on 30.12.2006. An application for discharge moved by a co-accused Pancham Singh was allowed by means of an order dated 29.05.2008 passed by the trial court.

4. The aforesaid order dated 29.05.2008 was challenged unsuccessfully by filing a revision before this Court and thereafter a special leave petition before the Hon'ble Supreme Court. The complainant had filed Criminal Misc. Case No. 2363 of 2021 praying for expediting the proceedings of the trial court of the case and this Court had issued a direction to complete the trial within a period of one year.
5. After three prosecution witnesses had been examined, the applicant filed an application dated 30.10.2021 stating that the complete case diary of investigation carried out by the police and CBCID is not available on record, for which reason the trial cannot proceed and evidence cannot be recorded. The case diary available on the record is not legible, misleading, incomplete and not clear and no order is available for keeping the aforesaid copy of case diary on record. The applicant would be deprived of his right to cross-examine the witness in absence of the complete case diary on record. The application itself states that the examinations of PW-1 - the informant Dinesh Singh, PW-2 - Sub-Inspector Raj Bahadur Rastogi, who had conducted the inquest proceedings and PW-3 - Dr. Ashok Kumar Singh, who had carried out post mortem examination, have already been concluded. It is stated in the application that for a legal and just disposal of the matter, it is necessary that the entire case diary be made available on record and he prayed to direct the prosecution to bring the entire case diary on record.
6. This application was rejected by means of an order dated 05.01.2022 passed by the trial court after taking into consideration the aforesaid pleas taken by the applicant and the objection raised by the opposite party no. 3 that the copies of the documents had been provided to the applicant under Section 207 Cr.P.C. prior to committal of the case and the same had been received by the applicant. The matter had been committed by the Magistrate for session trial in the year 2007. The

trial court held that the original charge-sheet, FIR, its script, site-plan, memo of taking possession of a tricycle related to the case, memo of recovery of blood stained and plain soil, inquest report, post mortem examination report, photograph of dead body are available on record. A photocopy of the case diary bearing seal of the court of Additional District and Sessions Judge, Court No. 2 is also on the record and statements of three prosecution witnesses have already been recorded. This Court has directed the trial court for concluding the trial within a period of one year. Keeping in view the aforesaid facts, the application filed by the applicant was rejected.

7. Immediately after rejection of the aforesaid application, on 14.02.2022, the applicant submitted another application requesting that the evidence be recorded only after the charge sheet of police and CBCID is brought on record. This application too was rejected by means of an order dated 21.02.2022 passed by the trial court stating that the previous application moved for the same object had already been rejected by means of a detailed order dated 05.01.2022 and, therefore, the second application was also rejected.
8. The record of the trial court was summoned by means of an order dated 29.03.2022 and the same has been placed before the Court. The case-diary has been mentioned to be placed in a sealed envelope, which contains a photocopy of the case diary prior to transfer of investigation to the CBCID.
9. Sri Jyotindra Misra Senior Advocate has submitted that the validity of case diary on record of the trial court is essential for enabling the trial Court to arrive at a proper and just decision.
10. Per contra, Sri S. M. Royekwar, the learned counsel for the opposite party no. 3 has submitted that an accused person has no right to insist on the case diary being brought on record. In support of his submission, he has relied upon a decision of the Hon'ble Supreme Court in **Balak Ram v. State of Uttrakhand**, (2017) 7 SCC 668.
11. Replying to the aforesaid objection raised by the learned counsel for the opposite party no. 3, the learned counsel for the applicant has

submitted that the applicant is requesting for the case diary to be brought on record to assist the trial court for arriving at a just decision and the applicant is not insisting for its availability to secure his own interest.

12. Section 172 Cr.P.C. provides as follows: -

*“172. Diary of proceedings in investigation.—(1) Every police officer making an investigation under this Chapter shall day by day enter his proceedings in the investigation in a diary, setting forth the time at which the information reached him, the time at which he began and closed his investigation, the place or places visited by him, and a statement of the circumstances ascertained through his investigation.*

*(1-A) The statements of witnesses recorded during the course of investigation under Section 161 shall be inserted in the case diary.*

*(1-B) The diary referred to in sub-section (1) shall be a volume and duly paginated.*

*(2) Any Criminal Court may send for the police diaries of a case under inquiry or trial in such Court, and may use such diaries, not as evidence in the case, but to aid it in such inquiry or trial.*

*(3) Neither the accused nor his agents shall be entitled to call for such diaries, nor shall he or they be entitled to see them merely because they are referred to by the Court; but, if they are used by the police officer who made them to refresh his memory, or if the Court uses them for the purpose of contradicting such police officer, the provisions of Section 161 or Section 145, as the case may be, of the Indian Evidence Act, 1872 (1 of 1872), shall apply.”*

13. In **Balakram v. State of Uttarakhand**, (2017) 7 SCC 668, the Hon’ble Supreme Court held that: -

*“13. ...right of the accused to cross-examine the police officer with reference to the entries in the police diary is very much limited in extent and even that limited scope arises only when the Court uses such entries to contradict the police officer or when the police officer uses it for refreshing his memory and that again is subject to the provisions of Sections 145 and 161 of the Evidence Act. Thus, a witness may be cross-examined as to his previous statements made by him as contemplated under Section 145 of the Evidence Act if such previous statements are brought on record, in accordance with law, before the Court and if the contingencies as contemplated under Section 172(3) CrPC are fulfilled. Section 145 of the Evidence Act does not either extend or control the provisions of Section 172 CrPC. We may hasten to*

*add here itself that there is no scope in Section 172 CrPC to enable the Court, the prosecution or the accused to use the police diary for the purpose of contradicting any witness other than the police officer who made it.*

*14. In Malkiat Singh v. State of Punjab (1991) 4 SCC 341, this Court while considering the scope of Section 172(3) CrPC with reference to Section 145 of the Evidence Act observed thus:*

*“11. It is manifest from its bare reading without subjecting to detailed and critical analysis that the case diary is only a record of day-to-day investigation of the investigating officer to ascertain the statement of circumstances ascertained through the investigation. Under sub-section (2) the court is entitled at the trial or enquiry to use the diary not as evidence in the case, but as aid to it in the inquiry or trial. Neither the accused, nor his agent, by operation of sub-section (3), shall be entitled to call for the diary, nor shall he be entitled to use it as evidence merely because the court referred to it. Only right given thereunder is that if the police officer who made the entries in the diary uses it to refresh his memory or if the court uses it for the purpose of contradicting such witness, by operation of Section 161 of the Code and Section 145 of the Evidence Act, it shall be used for the purpose of contradicting the witness i.e. investigating officer or to explain it in re-examination by the prosecution, with permission of the court. It is, therefore, clear that unless the investigating officer or the court uses it either to refresh the memory or contradicting the investigating officer as previous statement under Section 161 that too after drawing his attention thereto as is enjoined under Section 145 of the Evidence Act, the entries cannot be used by the accused as evidence.”*

*15. The police diary is only a record of day-to-day investigation made by the investigating officer. Neither the accused nor his agent is entitled to call for such case diary and also are not entitled to see them during the course of inquiry or trial. The unfettered power conferred by the statute under Section 172(2) CrPC on the court to examine the entries of the police diary would not allow the accused to claim similar unfettered right to inspect the case diary.”*

14. In view of the law as explained by the Hon’ble Supreme Court in the above mentioned case, there is no room to doubt that the accused has no right to insist for production of the case diary on record of the Court.
15. Moreover, the present case was committed by the Magistrate for session trial in the year 2007. Statements of three prosecution

witnesses have already been recorded. This Court has directed the trial court for concluding the trial within a period of one year. Keeping in view the aforesaid facts, the application for summoning the case-diary appears to have been filed for delaying the decision of the case.

16. The writ petition lacks merits and, accordingly, the same is ***dismissed***.

**Order Date - 06.12.2023**

Pradeep/-