

Court No. - 16

Case :- APPLICATION U/S 482 No. - 9973 of 2023

Applicant :- Sanjay Kumar Pandey

Opposite Party :- State Thru. Cbi/Acb Lko.

Counsel for Applicant :- Pranjal Krishna

Counsel for Opposite Party :- Anurag Kumar Singh

Hon'ble Subhash Vidyarthi,J.

1. Heard Sri Pranjal Krishna Advocate, the learned counsel for the applicant, Sri Anurag Kumar Singh Advocate, the learned counsel for the respondent/Central Bureau of Investigation and perused the record.

2. By means of the instant application filed under Section 482 Cr.P.C., the applicant has assailed the validity of the order dated 23.08.2023, passed by learned Special Judge (Anti Corruption), C.B.I. Court No.1, Lucknow in Session Trial No.511 of 2022; Central Bureau of Investigation Vs. Sanjay Kumar Pandey and others, arising out of RC No.0062018A0018, under Section 109 I.P.C. read with Section 13 (2) r/w 13 (1) (e) and 13 (1) (b) of Prevention of Corruption Act, 1988 (as amended in 2018), Police Station CBI/ACB/Lucknow, whereby the application filed by the applicant under Section 207 read with Section 173 (6) Cr.P.C. was rejected.

3. By means of the aforesaid application, the applicant had prayed that the Investigating Officer be directed to ensure due compliance of the provisions of Section 173 (6) Cr.P.C. before proceeding any further in the case.

4. Section 173 (6) Cr.P.C. reads as follows: -

“173. Report of police officer on completion of investigation.

(6) If the police officer is of opinion that any part of any such statement is not relevant to the subject- matter of the proceedings or that its disclosure to the accused is not essential in the interests of justice and is inexpedient in the public interest, he shall indicate that part of the statement and append a note requesting the Magistrate to exclude that part from the copies to be granted to the accused and stating his reasons for making such request.”

5. A list of witnesses and a list of documents relied upon by the respondent-C.B.I. have been annexed as Annexure No. 6 to the affidavit filed in support of the application, and at serial no. 274

of the list of documents, the applicant's explanation is mentioned and it is stated that it runs into 19 pages. The learned counsel for the applicant has submitted that this explanation runs into more than 100 pages. It indicates that the entire explanation of the applicant has not been placed by the respondent-C.B.I. before the learned trial court and it gives rise to an apprehension in the mind of the applicant that similar course would have been adopted in the cases of other witnesses examined by the Investigating Officer also, regarding whom the applicant had no knowledge as to in how many pages their statement run.

6. The learned trial court has rejected the application by recording that the applicant has already been provided with copies of all the relevant documents relied upon by prosecution, under Section 207 Cr.P.C.

7. The learned Counsel for the applicant has relied upon the judgment in the case of ***Criminal Trials Guidelines Regarding Inadequacies and Deficiencies, In Re. Vs. State of Andhra Pradesh and others***, (2021) 10 SCC 598, passed by the Hon'ble Supreme Court in a suo moto Writ Petition under Article 32 of the Constitution of India expressed its opinion that while furnishing the list of statements, documents and material objects under Sections 207/208 CrPC, the Magistrate should also ensure that a list of other materials, (such as statements, or objects/documents seized, but not relied on) should be furnished to the accused. This is to ensure that in case the accused is of the view that such materials are necessary to be produced for a proper and just trial, she or he may seek appropriate orders, under Cr.P.C. for their production during the trial, in the interests of justice, and the Hon'ble Supreme Court directed accordingly. The Hon'ble Supreme Court framed draft Rules of Criminal Practice, 2021, (which were annexed to the order, and have been made as part of it and Rule 4 of the draft Rules provides that: -.

“4. Supply of documents under Sections 173, 207 and 208 CrPC.—(i) Every accused shall be supplied with statements of witness recorded under Sections 161 and 164 CrPC and a list of documents, material objects and exhibits seized during investigation and relied upon by the investigating officer (IO) in accordance with Sections 207 and 208 CrPC.

Explanation : The list of statements, documents, material objects and exhibits shall specify statements, documents, material objects and exhibits that are not relied upon by the investigating officer.”

8. The aforesaid judgment in ***Criminal Trials Guidelines Regarding Inadequacies and Deficiencies, In Re.*** (Supra) was followed in ***Manoj and others Vs. State of Madhya Pradesh***,

(2023) 2 SCC 353, wherein the Hon'ble Supreme court has held as under: -

“207. In this manner, the public prosecutor, and then the trial court's scrutiny, both play an essential role in safeguarding the accused's right to fair investigation, when faced with the might of the state's police machinery.

208. This view was endorsed in a recent three judge decision of this court in Criminal trials guidelines regarding Inadequacies and Deficiencies, in re v. State of Andhra Pradesh and others (2021) 10 SCC 598. This court has highlighted the inadequacy mentioned above, which would impede a fair trial, and inter alia, required the framing of rules by all states and High Courts, in this regard, compelling disclosure of a list containing mention of all materials seized and taken in, during investigation- to the accused. The relevant draft guideline, approved by this court, for adoption by all states is as follows:(SCC p. 608, para 21)

“21....4. Supply of documents under Sections 173, 207 and 208 Cr.P.C. (1) Every Accused shall be supplied with statements of witness recorded under Sections 161 and 164 Cr.PC and a list of documents, material objects and exhibits seized during investigation and relied upon by the Investigating Officer (I.O) in accordance with Sections 207 and 208, Cr.PC.

Explanation: The list of statements, documents, material objects and exhibits shall specify statements, documents, material objects and exhibits that are not relied upon by the Investigating Officer.”

209. In view of the above discussion, this court holds that the prosecution, in the interests of fairness, should as a matter of rule, in all criminal trials, comply with the above rule, and furnish the list of statements, documents, material objects and exhibits which are not relied upon by the investigating officer. The presiding officers of courts in criminal trials shall ensure compliance with such rules.”

9. The learned Trial Court has rejected the application holding that copies of the relevant documents have already been provided to the applicant and there is no reasonable basis for providing copies off those documents, which are not being relied upon by the prosecution. The learned trial court has distinguished the aforesaid judgment of the Hon'ble Supreme Court in Manoj Kumar (supra) on the ground that the aforesaid case related to offence under Section 302 I.P.C. whereas the present case relates to an offence under Prevention of Corruption Act.

10. The aforesaid guidelines issued by Hon'ble Supreme Court in ***Criminal Trials Guidelines Regarding Inadequacies and Deficiencies, In Re.*** (Supra), which was followed in ***Manoj*** (supra) are binding on all the courts and the same cannot be disobeyed by any Court. The reasoning given by learned trial court for distinguishing the judgment passed by Hon'ble Supreme Court issuing guidelines for being complied by all the

courts cannot be sustained and the same is against even the basic norms of judicial disciplines.

11. Sri. Anurag Kumar Singh, the learned counsel for the respondent has submitted that as per the guidelines issued by the Hon'ble Supreme Court, the prosecution is merely obliged to provide a list of the documents which are not being relied upon by it and copies of such documents are not required to be supplied to the accused person, which submission appears to be correct.

12. In view of the aforesaid discussions, the order dated 23.08.2023, passed by learned Special Judge (Anti Corruption), C.B.I. Court No.1, Lucknow in Session Trial No.511 of 2022; Central Bureau of Investigation Vs. Sanjay Kumar Pandey and others, arising out of RC No.0062018A0018, under Section 109 I.P.C. read with Section 13 (2) r/w 13 (1) (e) and 13 (1) (b) of Prevention of Corruption Act, 1988 (as amended in 2018), Police Station CBI/ACB/Lucknow is not sustainable in law and the same is hereby set aside.

13. The applicant is granted liberty to move a fresh application for being provided a copy of the list of the documents as provided in the directions issued by the Hon'ble Supreme Court in ***Criminal Trials Guidelines Regarding Inadequacies and Deficiencies, In Re.*** (Supra), within a period of three days from today. The respondent-C.B.I. may file its objection against that application within a further period of one week. The learned trial court is directed to dispose off the application, keeping in view the directions issued by the Hon'ble Supreme Court in ***Criminal Trials Guidelines Regarding Inadequacies and Deficiencies, In Re.*** (Supra), within a period of one week thereafter.

14. The application under Section 482 Cr.P.C. stands ***allowed*** in terms of the aforesaid order.

Order Date :- 12.10.2023

Pradeep/-