

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPLICATION NO. 6838 OF 2015

GANESH S/O MOKINDA PATOLE AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA

...
Advocate for Applicants : Mr. Ajinkya Kale h/f S B
Talekar.

APP for Respondents : Mr A R Kale

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CORAM : V.K. JADHAV, J.
Dated : August 31, 2016
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PER COURT :-

1. Heard finally with the consent of the parties at admission stage.
2. Being aggrieved by the order passed by the Sessions Judge, Beed below Exh.32 on 7.3.2015 and 24.11.2015, the original accused preferred this application.
3. Brief facts, giving rise to the present application are as under :-

The applicants are the original accused in Sessions Case No.95/2013. On the basis of the complaint lodged by one Shardabai Crime bearing

No.4/2013 came to be registered at Police Station, Amalner District Beed for the offences punishable under sections 147, 148, 149, 325, 326, 307 and 506 of the Indian Penal Code. After due investigation, concerned police station has submitted charge sheet before the Judicial Magistrate First Class, Patoda, District Beed and since the offences alleged to have been committed by the applicants-accused are exclusively triable by the Court of Sessions, the case is committed to the Sessions Court, Beed which is registered as Sessions Case No.95/2013. During the pendency of the said case, applicants-original accused preferred an application Exh.32 claiming discharge for the offences punishable under section 326 and 307 of the Indian Penal Code.

4. The learned Sessions Judge, Beed by order dated 7.3.2015 while hearing the submissions of learned counsel appearing for accused persons and the learned APP for the State observed that, discharge is basically claimed on the facts that no *prima facie* case made out on the basis of the medical papers to establish the offences under section 326 and 307 of the Indian Penal

Code. Learned Sessions judge has further observed that having perusal of the charge-sheet and papers it appears that injured witnesses were immediately referred to Civil Hospital, Beed for treatment and management of the injuries by Medical Officer attached to Primary Health Center, Dongarkinhi. However alongwith charge sheet medical papers about treatment of the injured witnesses sent to the Civil Hospital, Beed have not been produced. Similarly, C.A. report is also not produced. Thus, in view of the grounds raised in the application Exh.32 by the original accused for claiming discharge the learned Sessions Judge thought it necessary to peruse the medical treatment papers of the injured witnesses and C.A. report before deciding the application. Accordingly, the learned Sessions Judge has directed the prosecution to collect from the Investigating officer the medical papers of the injured witnesses, alongwith X-rays, if any, from Civil Hospital, Beed and CA report and produce it before the court for the just disposal of the application Exh.32. In compliance with the said order, the prosecution has produced the documents including C.A. report, x-ray

plates etc. The learned Sessions Judge, thereafter, heard the applicants-original accused through their counsel and also the learned APP for the State and rejected the application Exh.32 seeking discharge for the offences punishable under section 326, 307 of the Indian Penal Code on merits. Hence, this Criminal Application.

5. The learned counsel for the applicants submits that, the learned Sessions Judge has not taken recourse to the provisions of Section 173 (8) of the Criminal Procedure Code and suo-motto directed the prosecution to procure the medical treatment papers and other relevant papers and produce it before the Court. The learned counsel submits that, the Sessions Judge cannot direct the prosecution to produce such documents as it was done while passing the order below Exh.32 dated 7.3.2015. Learned counsel further submits that, copies of those documents are not supplied to the applicants-accused and both the orders passed below Exh.32 by the learned Sessions Judge are thus liable to be quashed and set aside. Learned counsel for the petitioners submits that, in view of the

provisions of section 173 (5) of the Code of Criminal Procedure, the Sessions Judge cannot direct suo-motto to the prosecution to procure the documents from the Investigating Officer and produce it before the Court.

6. The learned APP submits that, if there is any omission to forward all documents alongwith charge sheet, production of the additional documents thereafter is not impermissible. The learned APP submits that word *shall* used in section 173 (5) cannot be read as mandatory. The learned APP submits that, in the application Exh.32 the applicants-accused have given the minute details about the injuries sustained by the injured witnesses by referring the medical certificates and discharge is also sought by referring the injuries sustained by the injured witnesses with reference to their medical certificates on the ground that the offences punishable u/s 326, 307 are not attracted. The learned APP submits that the applicants-original accused have nowhere stated in this application about the prejudice caused to them when certain medical papers came to be produced before the Court and even,

at the time of hearing of those applications applicants-accused have not raised any objection to the effect that copies of those documents are not provided to them. Learned APP submits that criminal application is devoid of any merit and thus liable to be dismissed.

7. The learned APP in support of his submissions places reliance on a judgment in case of :-

- I] **Central Bureau of Investigation Vs. R.S.Pai and another** reported in **2002 AIR (S.C.) page 1644.**
- ii] **Prashant @ Rohit s/o Ghasiram Tandon Vs. State of Maharashtra** reported in **2004 ALL MR (Cri) 1063.**

8. In view of the above submissions, I would like to refer the relevant part of Section 173 of Code of Criminal Procedure, which reads as under :-

Section 173.

Report of police officer on completion of investigation :-

- (1). Every investigation under this Chapter shall be completed without unnecessary delay.

1-A. The investigation in relation to rape of a child may be completed within three months from the date on which the information was recorded by the officer in charge of the police station.

2(i). As soon as it is completed, the officer in charge of the police station shall forward to a Magistrate empowered to take cognizance of the offence on a police report, a report in the form prescribed by the State Government, stating-

- (a) the names of the parties;
- (b) the nature of the information;
- (c) the names of the persons who appear to be acquainted with the circumstances of the case;
- (d) whether any offence appears to have been committed and, if so, by whom;
- (e) whether the accused has been arrested;
- (f) whether he has been released on his bond and, if so, whether with or without sureties;
- (g) whether he has been forwarded in custody under section 170.

(h). whether the report of medical examination of the woman has been attached where investigation relates to an offence under sections 376, 376A, 376B, 376C 376D, or 376E of the Indian Penal Code.

(ii). The officer shall also communicate, in such manner as may be prescribed by the State Government, the action taken by him, to the person, if any, by whom the information relating to the commission of the offence was first given.

(iii). Where a superior officer of police has been appointed under section 158, the report, shall, in any case in which the State Government by general or special order so directs, be submitted through that officer, and he may, pending the orders of the Magistrate, direct the officer in charge of the police station to make further investigation.

(iv). Whenever it appears from a report forwarded under this section that the accused has been released on his bond, the Magistrate shall make such order for the discharge of such bond or otherwise as he thinks fit.

- (v). When such report is in respect of a case to which section 170 applies, the police officer shall forward to the Magistrate along with the report-
- (a) all documents or relevant extracts thereof on which the prosecution proposes to rely other than those already sent to the Magistrate during investigation;
 - (b) the statements recorded under section 161 of all the persons whom the prosecution proposes to examine as its witnesses.
- (vi) If the police officer is of opinion that any part of any such statement is not relevant to the subject-matter of the proceeding 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.
- (vii) Where the police officer investigating the case finds it convenient so to do, he may furnish to the accused copies of all or any of the documents referred to in Sub-Section (5).
- (viii) Nothing in this section shall be deemed to preclude further investigation in respect of an offence after a report under Sub-Section (2) has been forwarded to the Magistrate and, where upon such investigation, the officer in charge of the police station obtains further evidence, oral or documentary, he shall forward to the Magistrate a further report or reports regarding, such evidence in the form prescribed; and the provisions of Sub-Sections (2) to (6) shall, as far as may be, apply in relation to such report or reports as they apply in relation to a report forwarded under Sub-Section (2).

9. In the instant case, provisions of section 173 (8) of the Code are not attracted for the reason that no further

investigation in respect of present offence has been carried out. In view of the provisions of Section 173 sub-section (5), if any such report as per the provisions of Section 173 of the Code of Criminal Procedure, where the provisions of section 170 applies the police officer shall forward to the Magistrate alongwith the report all documents or relevant extracts thereof on which the prosecution proposes to rely other than those already sent to the prosecution during investigation. In the case in hand, it is not disputed that certain witnesses sustained injuries and they were also referred to the Hospital for their medical examination and same is also evident from the contents of the application Exh.32 filed by the applicant-accused seeking discharge before the Sessions Court. Since the learned Sessions Judge on perusal of the charge sheet and papers found that, no any medical papers about the treatment of the injured witnesses in the Government Hospital, Beed has been produced and also CA report is also not produced, directed the prosecution to collect from the Investigating Officer said papers pertaining to the injured witnesses and produce the same before the Court. Order passed

below Exh.32 dated 7.3.2015 was not challenged by the applicants/accused at the relevant time. Only after the application Exh.32 came to be rejected by the Sessions Judge, this Criminal Application has been preferred challenging the said order dated 7.3.2015 also.

10. In a case **Central Bureau of Investigation Vs. R.S.Pai** reported in **2002 AIR SC page 1644** (supra) relied upon by the learned APP, in paragraph no.7 of the Judgment, the Apex Court has made following observations :-

“7.From the aforesaid sub-sections, it is apparent that normally, the Investigating Officer is required to produce all the relevant documents at the time of submitting the charge-sheet. At the same time, as there is no specific prohibition, it cannot be held that the additional documents cannot be produced subsequently. If some mistake is committed in not producing the relevant documents at the time of submitting the report or charge-sheet, it is always open to the Investigating Officer to produce the same with the permission of the Court. In our view, considering the preliminary stage of prosecution and the context in which Police Officer is required to forward to the Magistrate all the documents or the relevant extracts thereof on which prosecution proposes to rely, the word 'shall' used in sub-section (5) cannot be interpreted as mandatory, but as directory. Normally, the documents gathered during the investigation upon which the prosecution wants to rely are required to be forwarded to the Magistrate, but if there is some omission, it would not mean that the remaining documents cannot be produced subsequently. Analogous provision under [Section 173\(4\)](#) of the Code of Criminal Procedure, 1898 was considered by this Court in [Narayan Rao v. The State of Andhra Pradesh](#) [(1958) SCR 283 at 293] and it was held that the word 'shall' occurring in sub-

section 4 of Section 173 and sub-section 3 of Section 207A is not mandatory but only directory. Further, the scheme of sub-section (8) of [Section 173](#) also makes it abundantly clear that even after the charge-sheet is submitted, further investigation, if called for, is not precluded. If further investigation is not precluded then there is no question of not permitting the prosecution to produce additional documents which were gathered prior to or subsequent to investigation. In such cases, there can not be any prejudice to the accused. Hence, the impugned order passed by the Special Court cannot be sustained.”

11. The Apex Court has observed that, normally the investigating officer is required to produce all relevant documents at the time of submitting charge sheet. However, at the same time, as there is no specific prohibition, it cannot be held that the additional documents cannot be produced subsequently. The Apex Court has also observed that the word *shall* used in sub section (5) cannot be interpreted as mandatory, but as directory. The Apex Court has also given reference to the provisions of section 173 (8) of the Code and observed that even after charge sheet is submitted, further investigation, if called for, is not precluded. It is also observed that if further investigation is not precluded then there is no question of not permitting the prosecution to produce additional documents which were gathered prior to or subsequent to investigation.

In such a cases, there cannot be any prejudice to the accused.

12. Learned counsel for the petitioners submitted that in the instant case, prosecution or investigating officer with the permission of the Court has not produced said documents on record and on the other hand, the learned Sessions Judge himself has directed the prosecution to procure those medical papers from the Investigating Officer and produce it on record. Learned counsel submits that, same is not permissible. I do not find any substance in these submissions. In the instant case, the applicants-original accused in paragraph no.5 onwards of the application, referred the MLC certificate of all injured persons with the specification of the injuries sustained by them alongwith nature of the injuries and probable weapon causing said injuries. The applicants-accused sought discharge for the offence punishable u/s 326, 307 of the Indian Penal Code mainly on the ground that even referring to medical certificates of the injured witnesses, section 326, 307 of Indian Penal Code are not attracted against the

applicants-accused. After perusal of the charge sheet and papers the learned Sessions Judge has observed that injured witnesses were immediately referred to Civil Hospital, Beed for treatment and management of the injuries by Medical Officer attached to Primary Health Center, Dongarkinhi. However alongwith charge sheet no any medical papers about treatment of the injured witnesses sent to the Civil Hospital, Beed has been produced. Similarly, C.A. report is also not produced. In Primary Health Center, after giving preliminary treatment to the injured witnesses concerned Medical Officer has referred the injured witnesses to Civil Hospital, Beed for their further treatment. Even if, the investigating officer has collected the injury certificates from PHC where injured witnesses were treated initially, failed to submit medical papers about the treatment of the injured witnesses in Civil Hospital, Beed. Thus, for the just decision of the application Exh.32, the learned Sessions Judge thought it fit to call the said papers by giving directions to the prosecution suo-motto. I do not find any fault in the said order directing the prosecution to procure from the Investigating Officer medical

treatment papers of Civil Hospital, Beed. If, the Court can do so by granting permission to the prosecution, if the application is submitted seeking production of such documents, at the later stage before the Court, I do not think that it is not permissible for the Court suo-motto to call the said papers if the prosecution has not filed any such application. Furthermore, as held by the Apex Court in the case of Central Bureau of Investigation (supra), the word 'shall' used in sub-section (5) cannot be interpreted as mandatory. I do not find any substance in the contention raised by the learned counsel for the applicants-petitioner that, initial order passed by the learned Sessions Judge below Exh.32 dated 7.3.2015 is improper, incorrect and illegal.

13. On perusal of the documents on record and produced after directions given by the Court as aforesaid, the learned Sessions Judge has observed that some injured witnesses sustained fracture injuries and weapons used in the commission of said offence for causing said injuries are axe. Learned Sessions Judge has declined to accept the submissions of the learned

counsel appearing for the applicant-accused before him that, the complainant party has prepared false MLC of injured by joining hands with the Investigating Officer. The learned Judge held that such contention would always be available to the applicant-accused during the course of the trial on merit and not at this stage of the matter. Needless to say here that so far as offence punishable u/s 307 of the Indian Penal Code is concerned, intention is important and not the nature of the injuries sustained by the witnesses. The learned Sessions Judge thus has rightly rejected the application at Exh.32. No interference is required. There is no substance in this criminal application. Hence, following order.

O R D E R

Criminal Application is hereby rejected.

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(V.K. JADHAV, J.)

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