

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.

CRM M-32449 of 2016

Date of Decision: November 21, 2016

S.K. Bahl

.....Petitioner

Vs.

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE M.M.S. BEDI.

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Present:- Mr.Vikram Chaudhri, Sr. Advocate with
Mr. S.S. Gill, Advocate , for the petitioner.

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M.M.S. BEDI, J.

The petitioner has sought the quashing of order dated July 29, 2016 passed by Special Court, Rupnagar in case FIR No.47 dated September 23, 2004 under Sections 420, 465, 468, 471, 511, 120-B IPC and Section 13 (1) (d) read with Section 13 (2) of the Prevention of Corruption Act registered at Police Station Vigilance Bureau, Ludhiana, dismissing the application under Section 294 Cr.P.C. praying for discharge of the petitioner and for calling upon the prosecution agency to admit or deny the genuineness of the documents mentioned in the application filed by the petitioner alleging that the subject matter of the criminal prosecution is

merely a case of civil nature and the FIR has been registered without considering various important circumstances and documents. Documents, copies of which have been appended as annexures A-1 to A-31 with the application, and a prayer was made that prosecution agency may be called upon to admit the said documents and on consideration of said documents, the accused may be discharged.

The following documents are sought to be admitted or denied:-

- “1. Allotment Letter dated 11.11.1988 wherein the Trust allotted land to the Company measuring 10,000 Sq. yards situated in Development Scheme No. 1 (Giani Zail Singh Nagar) Ropar @ Rs .150/- per sq. yard **annexed as ANNEXURE A-1.***
- 2. Allotment Letter dated 3.5.1989 annexed as **ANNEXURE A-2.***
- 3. Letter dated 14.12.1993 annexed as **ANNEXURE A-3.***
- 4. Letter dated 20.12.1993 wherein the Company M/s Ranbaxy protested to the demand of Rs.5,10,000/- **annexed as ANNEXURE A-4.***
- 5. Letter dated 23.8.1999 annexed as **ANNEXURE A-5.***
- 6. Letter dated 23.12.1999 annexed as **ANNEXURE A-6.***
- 7. Letter dated 17.1.2000 annexed as **ANNEXURE A-7.***
- 8. Letter dated 24.1.2000 annexed as **ANNEXURE A-8.***
- 9. Representation dated 8.6.2000 annexed as **ANNEXURE A-9.***

10. Notice dated April 10, 2001 annexed as **ANNEXURE A- 10.**
11. Reply dated June 19, 2001 annexed as **ANNEXURE A-11.**
12. Letter dated 15.10.2001 annexed as **ANNEXURE A-12.**
13. Letter dated 26.11.2001 is annexed as **ANNEXURE A-13.**
14. Letter dated December 26, 2001 is annexed as **ANNEXURE A-14.**
15. Letter dated 3.1.2002 annexed as **ANNEXURE A-15.**
16. Letter dated 25.3.2002 annexed as **ANNEXURE A-16.**
17. Letter dated 13.8.2002 annexed as **ANNEXURE A-17.**
18. Letter 30.9.2002 annexed as **ANNEXURE A-18.**
19. Show Cause Notice dated 17 .1.2003 annexed as **Annexure A-19.**
20. Reply dated 10.2.2003 to the show cause notice annexed as **Annexure A-20.**
21. Letter dated 10.2.2003 annexed as **Annexure A-21.**
22. Communication dated 3.4.2003 received from the Trust annexed as **Annexure A-22.**
23. Letter dated 25.11.2003 annexed as **Annexure A-23.**
24. Show cause notice dated 11.5.2005 annexed as **Annexure A-24.**
25. Reply annexed as **Annexure A-25.**

26. *Order dated 29.12. 2005 annexed as **Annexure A-26.***
27. *Appeal (without annexures) annexed as **Annexure A-27.***
28. *order dated 18.6.2007 annexed as **Annexure A-28.***
29. *Copy of the judgment dated 2.9.2014 is annexed as **Annexure A-29.***
30. *Copy of the order dated 5.12.2014 passed by Hon'ble Supreme Court is annexed as **Annexure A-30.***
31. *Copy of latest case status downloaded from the official website of the Hon'ble Supreme Court of India is annexed as **Annexure A-31.**"*

The relevancy or admissibility of the aforesaid documents or their connection with the allegations in FIR is not important as the case is at pre-charge stage when the challan has already been filed by the prosecution.

Learned senior counsel for the petitioner has placed reliance on the judgment of this Court in **Vinod Kumar Vs. State of Haryana**, 1987 (1) RCR (Crl.) 222 in which at pre-charge stage an accused in a criminal case of forgery had placed on record certain documents for being considered at pre-charge stage. Taking into consideration the provisions as cited in Section 239 Cr.P.C. in context to Section 294 Cr.P.C., it was held that an accused has got a right to produce documents and call upon the prosecution to admit or deny the genuineness of the documents. Taking into consideration the scope of Section 239 and Section 294 Cr.P.C., it was held as follows:-

“The joint effect of the aforesaid two provisions is to put at par the prosecution and the accused so far as the documentary evidence is concerned. One cannot be allowed to score over another by taking shelter in procedural wrangles and tactical gimmicks. Thus, I am of the considered view that the learned Magistrate in suggesting to postpone admission of these documents at this stage on the ground that the complainant was not before him, tended to thwart the rights of the accused to have his documents admitted at that stage so as to be considered while considering the question of charge. Thus, in the interest of justice, it becomes essential to quash his impugned order and regulate the trial by suitable directions.

4. *It would not be out of place at this stage to take note of a decision rendered in **Surja Ram v. Vakil Chand (1985) 1 Chand LR (Cri) 516** in which while interpreting Section 294 of the Code I had spelled out the efficacy of the provision in a complaint case where the complainant was almost always available in the Court for the purpose. Another decision cited by the learned Counsel for the petitioner is a Single Bench judgment of the Karnataka High Court reported as **Tirathraj Upendra***

Joshi v. State of Karnataka, 1983 Cri LJ 318, in which while spelling out the intendment of Section 239 of the Code, view was taken that the opportunity of being heard by the accused included his right to introduce documents at the pre-charge stage. But here the doubt expressed by the learned Counsel for the complainant is that Section 294 of the Code would be unworkable, for the admission or denial of the genuineness of such documents is to be put to the pleader for the prosecution and not to the complainant and if the pleader for the prosecution denies the genuineness of each document put in by the accused on the plea that he is not in communication with the complainant, then the Court cannot compel the pleader for the prosecution to establish such a communication. Such an interpretation as it appears to me would eat away the very purpose for which Section 294 is there in the Code. It has to be viewed in this context that the pleader prosecutes on the instructions received from the State agency of investigation and the complainant's version is part of the investigation. The prosecution as such is no artificial person, but a bunch of individuals who in the form of complainants, witnesses, investigators and projectors put, forward the offences for trial before a

Court of law and the Court takes cognizance of the offence and not of the offenders. Thus, it seems to me that proper reading of Section 294 of the Code inheres in it the compulsive nature of communication between the prosecuting pleader and the investigating agency and necessarily of the complainant and witnesses. This duty enjoined upon the prosecuting pleader can only be discharged by establishing a communication so as to further the intendment of law and the protection of the right of the accused conferred under Section 239 of the Code of the opportunity of being heard.”

After making above said observations, the accused was permitted to produce at pre-charge stage the documents, further directing that the list of these documents would be handed over to the prosecuting pleader and that he would be given an opportunity to establish contact with the investigating agency and the complainant or witnesses in order to admit or deny the genuineness of each such document and would not have the effect of determining the question of relevancy of each document at the pre-charge stage or at any subsequent stage.

Mr. Vikram Chaudhri, learned senior counsel for the petitioner also relied upon the judgment of Delhi High Court in **M.L. Meena Vs. State (CBI)**, 2015 (5) RCR (CrI.) 11, wherein certain documents obtained by the accused under RTI Act were not permitted to be placed on record at the time

of hearing on the point of charge relying upon **Rukmini Narvekar Vs. Vijaya Satardekar**, AIR 2009 SC 1013, holding that it cannot be said as an absolute proposition that under no circumstances can the Court look into the material produced by the defence at the time of framing of charges, though this should be done in very rare cases, where such material convincingly establish that the whole prosecution version is totally absurd, preposterous or concocted. He also placed reliance on the judgment of Madhya Pradesh High Court in **Jagdish Prasad Shrivastava Vs. State of M.P.**, 2015 (3) MPWN 71, wherein the order framing charges against the accused had been set aside requiring the Court to look into the documents placed on record by the accused.

I have heard learned senior counsel for the petitioner and considered the contention that the documents, copies of which have been placed on record as annexures A-1 to A-31 should be permitted to be admitted/ denied by the prosecution agency and the accused should be discharged. The details of the allegations against the petitioner, as per the FIR and the material forming part of the report under Section 173 (2) Cr.P.C. are not of much relevance but it is sufficient to observe that the allegation against the petitioner is that he connived with other co-accused and had deliberately sent a false report with malafide intention regarding construction on the site which resulted in the waiving of the non-construction fee of the Ranbaxy in the year 2001.

The petitioner had earlier filed a petition for quashing of the proceedings but said petition bearing CRM M-12266 of 2016 was dismissed as withdrawn on April 8, 2016 with liberty to the petitioner to raise all the pleas at an appropriate stage including the stage of consideration of charges.

So far as the contention of learned senior counsel for the petitioner that provisions of Section 294 Cr.P.C. enabling an accused to produce documents for admission or denial is concerned, is acceptable as Section 294 Cr.P.C. falls under Chapter XXIII dealing with the evidence in inquiries and trials. It reads as follows:-

“Section 294 Cr.P.C.: No formal proof of certain documents—

- 1. Where any document is filed before any Court by the prosecution or the accused, the particulars of every such document shall be included in a list and the prosecution or the accused, as the case may be, or the pleader for the prosecution or the accused, if any, shall be called upon to admit or deny the genuineness of each such document.*
- 2. The list of documents shall be in such form as may be prescribed by the State Government.*
- 3. Where the genuineness of any document is not disputed, such document may be read in evidence in any inquiry trial or other proceeding under this*

Code without proof of the signature of the person to whom it purports to be signed:

Provided that the Court may, in its discretion, require such signature to be proved.”

A perusal of Section 294 Cr.P.C. indicates that a document of formal nature, the genuineness of which is not disputed, may be proved without the existing of proof of signatures and it requires for this purpose, which party to produce the list of documents calling upon which to admit or deny the genuineness of that. A discretion has, however, been given to the Court to require the signatures of any document to be proved. The objective of Section 294 Cr.P.C. is absolutely to accelerate the pace of trial by avoiding the time being wasted in examining the signatory to the document filed by either of the parties to prove his signature and correctness of its documents; if its genuineness is not disputed.

No doubt, this Court in **Vinod Kumar’s** case (supra) had held that an accused can be permitted to produce documents at pre-charge stage. The Apex Court in **Rukmini Narvekar’s** case (supra) has held that in rare cases Court can look into the material by the defence if the material convincingly demonstrate that the whole prosecution version is totally absurd, preposterous or concocted, but the Apex Court in **State of Orissa Vs. Debendra Nath Pandhi**, (2005) 1 SCC 568 has held that at the time of framing of charges or at the time of taking cognizance, the accused cannot be permitted to produce any material as the trial Court has no jurisdiction to

allow the accused to produce any document at the stage of framing of charges but only exception carved out was that it is High Court in the exercise of powers under Section 482 Cr.P.C. and Article 226 of the Constitution of India, which can in the interest of justice, permit the production of documents if it is necessary to prevent the abuse of any Court or otherwise to secure ends of justice. In view of the judgment in **Debendra Nath Pandhi's** case (supra), which was delivered in the year 2005, the judgment of **Vinod Kumar's** case (supra) stands overruled as such the reliance of the counsel for the petitioner on **Vinod Kumar's** case (supra) for production and consideration of documents at pre-charge stage, is misplaced. In the judgment of Delhi High Court in **M.L. Meena's** case (supra), the ratio of the ruling of **Debendra Nath Pandhi's** case (supra) has been apparently ignored, while permitting the consideration of certain documents obtained under RTI by the accused at the time of hearing of charge.

Facing the difficulty in the light of the judgment in **Debendra Nath Pandhi's** case (supra), Mr. Vikram Chaudhari, Senior Advocate appearing on behalf of the petitioner has modified his prayer and requested that the prayer of the petitioner in the application filed before the trial Court may be accepted only to the extent of permitting the admission and denial of documents Annexures A-1 to A-31 but the said documents may not be considered at the pre-charge stage for discharging the accused.

I have carefully considered the said contention and I am of the opinion that the documents which are sought to be put-forth under Section

294 Cr.P.C. are number of letters addressed to Ranbaxy Laboratory either by Chairman of the Improvement Trust, Ropar or the Executive Officer of Improvement Trust and also include certain communications addressed by Manager Liaison to the Chairman, Improvement Trust besides certain orders of the Courts. A combined application filed by the petitioner for production of the documents and putting these documents for admission or denial for the prosecution, and for discharge of the accused would indicate that two prayers have been made in the application i.e. requiring admission and denial of the genuineness of the documents which are relating to various correspondences between Ranbaxy and the officials of the Improvement trust and on consideration of the same to discharge the petitioner. The precedent in **Vinod Kumar's** case (supra) cannot be followed as the documents had been permitted in the said case, to be produced, for admission and denial by enabling the investigating agency to establish contact with the complainant or the witnesses in order to admit or deny the genuineness of the documents. Even in that case request for consideration of those documents for discharge of the accused was not specifically ordered. It will not be out of place to observe that counsel for the petitioner has also placed reliance on **Shamsher Singh Verma Vs. State of Haryana**, 2016 (1) RCR (Crl.) 167. In the said case in context to the provisions of Section 294 Cr.P.C., a C.D. was permitted to be produced for admission or denial at a stage when the prosecution witnesses had been examined and the accused

had been denied an opportunity to produce the documents under Section 294 Cr.P.C. for admission/ denial.

The facts of the said case are absolutely distinguishable and the ratio of the judgment is not applicable as the application under Section 294 Cr.P.C. was permitted to be utilized at the stage of defence evidence after recording of statements under Section 313 Cr.P.C.

In view of the above discussion and the judgments cited by counsel for the petitioner and taking into consideration the ratio of the judgment in **Debendra Nath Pandhi's** case (supra), I do not find any ground to interfere in the order passed by the trial Court.

Petition is dismissed. However, it is observed that the right of the petitioner to confront the said documents to the prosecution witnesses or to move an application under Section 294 Cr.P.C. and seeking the benefit of production of formal proof of execution of the documents on the basis of the admissions made regarding the documents/ letters would be considered. It will also be open to the trial Court to rely upon the documents subject to their admissibility on the basis of the same having been admitted in cross-examination by prosecution witnesses.

November 21, 2016
sanjay

(M.M.S.BEDI)
JUDGE

Whether speaking/ reasoned:	Yes/ No.
Whether Reportable:	Yes/No.