

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

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Reserved on: 27.03.2015

Date of decision: 16.04.2015

Crl.M.A. 3886/2015 in CRL.A. 216/2015

CHANDRAKANT JHA Appellant
Through Mr. Arvinder Singh, Adv.

versus

STATE Respondent
Through Mr. Varun Goswami, APP for the
state.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE ASHUTOSH KUMAR

ASHUTOSH KUMAR, J.

1. The applicant/appellant has preferred this application under Section 391 of the Code of Criminal Procedure read with Section 482 of the Code of Criminal Procedure for taking the replies under Right to Information Act, 2005 (hereinafter referred to 'RTI' for short) obtained after the pronouncement of the final judgment passed by the Trial Court in Sessions Case No. 89/2011 (FIR No.243/2007); SC No.90/2011 (FIR No. 609/2006) and SC No. 91/2011 (FIR No.279/2007) all of Hari Nagar police station, on record as additional evidence. The applicant has filed three criminal appeals bearing Criminal Appeal Nos. 655/2013 (S.C No. 89/2011 in FIR No.243/2007); 656/2013 (S.C No. 91/2011 in FIR No. 279/2007) and

216/2015 (SC No. 90/2011 in FIR No. 90/2011) which is pending adjudication.

2. The cases against the appellant relate to serial killings in the year 2006 and 2007 in Delhi where the victims were beheaded, dismembered and their limbs were thrown outside Central Jail, Tihar and at other places around Delhi.

3. The applicant has averred that after filing of the criminal appeals, he has collected certain information through the mechanism of RTI and such information are required to be taken on record as additional evidence, for a just decision in appeal.

4. The application refers to as many as 47 replies. No details of such documents or its relevance for deciding the appeal have been stated in the application.

5. We, therefore, directed the counsel for the appellants to furnish a chart giving details of the nature of information sought and its relevance to the just decision of the case. The chart which has been furnished refers to the following documents:-

S.No.	Replies	Reference
1.	P-1, P-7 and P-27	These are the information provided by the Superintendent of Jail and the 3rd Battalion of DAP which reveal that the appellant was produced before the Court of learned M.M, Rohini Courts on 30.6.2007 and not on 26.6.2007 as claimed by the prosecution.

		One Ram Babu Chaurasia is stated by the prosecution to have identified the applicant on 26th of June, 2007 while he was on judicial remand in connection with FIR No.243/2007.
2.	P-2, P-3, P-4, P-28 and P-47	These are the replies to information sought with respect to the criminal case against SI Dilip Kaushik under the Prevention of Corruption Act, 1998 who is a witness to the receipt of secret information about the crime and the appellant. The information further reveals that aforesaid Dilip Kaushik was arrested on 7.4.2010 and this fact, it has been suggested impinges upon the reliability of such witness.
3.	P-5	This is the FIR bearing No.620/2003, P.S.Hari Nagar was with respect to an offence where the dead body which was recovered was not headless. It has been the effort of the prosecution to link the applicant with such crimes as the modus operandi in all such matters was to behead the body and leave it before a police station.
4.	P-6, P-16	These are the information which reveals that during trial the applicant was not

		permitted to meet his family members and friends despite his application.
5.	P-8	This is the reply which indicates that DD No.12A dated 20th May, 2007 P.S.Hari Nagar which was recorded at 8 A.M disclosed the name of the appellant, his parentage and address, which information was provided by a spy. The prosecution claimed that only the approximate whereabouts and no other details of the appellant was known to the police. The reply further reveals the names of 6 out of 13 members of the raiding party on 20th May, 2007 and out of them only 4 have been brought as witnesses. There is no record of any weapons having been issued to the raiding party on that day.
6.	P-9	This is the information relating to the sample handwriting of the applicant was kept in the case file which was maintained by the IO till it was sent to the FSL on 10th august and 8th August, 2007 respectively. The samples were taken in presence of the learned Magistrate.
7.	P-10	This is the information regarding

		deployment of Inspector Sunder Singh (Special Staff, Delhi). There is no record of his deployment on or before 21.6.2007 and 25.6.2007.
8.	P-11	This is the information regarding the timing of departure of mobile crime on 20.10.2006 in the evening and not during the day as claimed by the prosecution.
9.	P-12	This contains information that there is no record of any media interaction of the applicant on 21.5.2007 in FIR No.609/2006 P.S.Hari Nagar. The appellant, according to a prosecution witness was shown to the media with muffled face but he forcibly uncovered his face, which fact was recorded in a DD.
10.	P-13, P-29 and P-25	These are the replies suggesting the phone numbers installed at P.S.Hari Nagar had caller ID facilities and the same were being used. However, the prosecution evidence through the mouth of SI Balkishan is that the police did not know the number from which calls came on 20.5.2007.
11.	P-14	This is the RTI reply which says that there is no malkhana receipt of taking back the

		letter which was recovered from the deceased on 20.10.2006 and the handwriting sample of the applicant for the purpose of matching, after briefly depositing it in the malkhana.
12.	P-15	This shows that the dead body which was found in connection with FIR No.210/2003 was not headless.
13.	P-17 and P-18	These are the information about fit mental state of the appellant which has been testified by many doctors.
14.	P-19	This is the DD No.21A of 7.5.2007 (P.S.Hari Nagar) which disclosed the identity and whereabouts of the appellant.
15.	P-20	This is the DD No.15A which does not mention the name of the accused despite the same being known to the police
16.	P-21, 22 and P-23	These are replies contradicting the stand of the prosecution regarding same modus operandi of murder.
17.	P-24	This is the record of all cases registered in which the appellant was named subsequent to his disclosures and the final outcome of such cases.
18.	P-26 and	These are the CD in FIR No.243 of 2007

	P-35	(Hari Nagar, P.S) and DD No.28 dated 20.5.2007 which reveal that a skull was recovered. The prosecution relies on the recovery allegedly on the pointing out of the appellant on 23.5.2007 of a skull from the banks of river Yamuna.
19.	P-30, P-41 and P-47	These are the replies which disclose that on 10.11.2006 the person on duty at the dossier cell of P.S.Hari Nagar was a women constable namely Sujan Lata and there was no record as to on whose instruction the sketch of the appellant was prepared by Ram Babu Chaurasia.
20.	P-31	This refers to the movement of constables and which information is sought to contradict the recoveries from near the dead body on 20.10.2006 and subsequent arrest and recoveries on 20.5.2007.
21.	P-32 and P-36	These are the documents which demonstrate that HC Rajbir took the original letters from the case file on 8.8.2007 and those letters were not in a sealed condition.
22.	P-33 and P-36	These are with respect to the reply regarding no arms having been taken from

		malkhana on 20.5.2007 and the letter which was recovered from near the dead body on 20.10.2006 having been sent to malkhana on 10.8.2007.
23.	P-34	This is the DD No.8A dated 8.5.2007 in which details of the appellant were entered.
24.	P-37, P-38	Shows that the details of the appellant were available to the police.
25.	P-39	This is DD NO.24A dated 23.5.2007 which inter-alia states that SI Satinder Mohan of Seelampuri was called after the skull was recovered from the banks of Yamuna.
26.	P-40	This is the information suggesting that no DDs were registered in Hari Nagar police station with respect to pointing out of the site of recoveries at Tis Hazari on 19.5.2007.
27.	P-41	No entry of any secret information received on 18th and 19th of May, 2007.
28.	P-42	These are the record of FIR No.639/2006 of Police Station Shalimar Bagh, registered under Sections 25, 54 and 59 of the Arms Act demonstrating that the appellant was arrested on 30.8.2006.
29.	P-43	No DD information recorded regarding the

		receipt of information showing recovery of hand in Loni by local police.
30.	P-44	This is DD No.3 (dated 20.5.2007) Special Staff, West District, Delhi which contradicts the testimony of raiding party.
31.	P-45	These are DD Nos.4 and 10 dated 19.5.2007 which records the recovery and link to the dead body which has been found on 18.5.2007 in FIR No.279/2007.

6. After going through such replies which have been made part of the petition, we notice that there are repetitions and similar issues have been agitated by the applicant through various documents in form of replies to the RTI. Most of the documents, which are requested to be taken on record, do not have any bearing with the facts of the cases which have been tried.

7. A criminal case against an official witness with respect to another transaction does not in any way discredit such witness. The reference of FIRs where no headless dead bodies were recovered are not relevant as the investigations in such cases were closed for paucity of any lead or evidence. The fact that the request of the appellant to meet his family members was not acceded to, would not in any manner affect the nature of evidence collected against the appellant. The sample handwriting which are taken in presence of the judicial officer cannot at all be tampered with even if it is kept in the file

which is maintained by the investigating officer. Absence of any record of deployment of any police officer does not also lead to the conclusion that the case is false. Similarly, the timing of departure of the mobile crime team also is of no great relevance as there could always be wrong estimation of time. The telephone in a police station may be having caller I.D facilities but the same could be used only if the apparatus/telephone is fitted with such screen where the numbers could be displayed. The ingress and egress of the documents from the malkhana is normally recorded in the original store room register. Such register becomes part of the case property and no definite reply could be given about such movement of papers. Some of the replies, even if accepted by way of additional evidence would not change or affect the findings of the Trial Court.

8. However, the replies contained in P-1, P-7, P-8, P-12 and P-27 can be said to have some possible relevance so far as the defence of the appellant is concerned.

9. We have undertaken such exercise, despite the case being an old one, only for the reason that it is a death reference matter and such an application has been filed from jail.

10. Section 391 of the Code of Criminal Procedure provides for the powers and the circumstances under which the appellate Court could order for taking of additional evidence.

"Section 391. Appellate Court may take further evidence or direct it to be taken -

(1) In dealing with any appeal under this Chapter, the Appellate Court, if it thinks additional evidence to be necessary, shall record its reasons and may either take such evidence itself, or direct it to be taken by a Magistrate, or when the Appellate Court is a High Court, by a Court of Session or a Magistrate.

(2) When the additional evidence is taken by the Court of Session or the Magistrate, it or he shall certify such evidence to the Appellate Court, and such Court shall thereupon proceed to dispose of the appeal.

(3) The accused or his pleader shall have the right to be present when the additional evidence is taken.

(4) The taking of evidence under this section shall be subject to the provisions of Chapter XXIII, as if it were an inquiry."

11. There is no cavil on the powers of the appellate court to receive additional evidence if such evidence is considered to be necessary for coming to a just decision in any case. The primary object is to prevent the escape of the wrong doer as also to vindicate the innocence of a person who has wrongly been made accused and convicted. No restriction can be perceived in the wordings of Section 391 Cr.P.C either as to the nature of evidence or at whose instance can such additional evidence be received or that whether it could only be invoked in case of requirement of formal proof of certain documents. The overt as well as underlying principle behind such powers of the appellate court is to do justice and prevent injustice.

12. The general rule regarding hearing of appeal is that the appellate court is called upon to decide the case on the basis of the

evidence which was available before the Trial court. Section 391 is an exception to such a rule and like all exceptional powers under the Code, this power also requires to be exercised with caution and circumspection with the sole purpose of reaching the truth. it is important to emphasize that permitting additional evidence to be adduced does not ipso facto lead to the conclusion that the judgment of the trial Court is wrong especially when the documents have been obtained after the pronouncement of judgment.

13. In the case in hand, the applicant seeks to have such replies taken on record which have been obtained by him after the conclusion of the case. It is because of this that a preliminary exercise was done to see whether such documents would be necessary and relevant for deciding the appeal. It needs to be noted that in undertaking such an exercise we are expressing no definite opinion about the admissibility of such documents. The aspect of admissibility and reliance upon such documents or its probative value would be dealt with later.

14. The issues of these replies being neither primary or secondary evidence simplicitor would also be required to be dealt with. For the present, we have to analyze the relevance of such documents with the facts of the case and that also for the purpose of deciding the guilt or innocence of the appellant.

15. Documents namely P-1, P- 7, P-8, P-12 and P-27 appear to bear some possible link with the facts of the case and such facts if established/proved, that would have to be taken into consideration while deciding the appeal. The prosecution has filed a chart, indicating

their response, but in respect of documents P-1, P-7, P-8, P-12 and P-27, it would be more appropriate if reply with supporting affidavit is filed.

16. With respect to above mentioned replies/documents, we direct the State to give its response and file a reply on the relevancy etc. so that the application could be decided at the earliest before commencing with the hearing of the criminal appeal.

17. Reply with supporting affidavit will be filed within 3 weeks. Rejoinder, if any, will be filed within 2 weeks thereafter.

18. List on 25th of May, 2015.

(ASHUTOSH KUMAR)
Judge

(SANJIV KHANNA)
Judge

APRIL 16th, 2015

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