

* IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision: 8th July, 2016

+ CRL.M.C. 1752/2016 & CrI.M.A.No.7407 /2016 (stay)

SHASHI BALA

..... Petitioner

Through

Mr. Aditya Aggarwal and Mr. Rahul
Kumar, Advocates

versus

STATE GOVT OF NCT OF DELHI & ORS.

..... Respondent

Through

Mr. Mukesh Kumar, APP along with
ASI Mahavir Singh, PS Moti Nagar

Mr. Veer Sandhu, Advocate for R-2
to 5

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CORAM:

HON'BLE MS. JUSTICE SUNITA GUPTA

J U D G M E N T

: SUNITA GUPTA, J.

1. The challenge in this petition under S. 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'Cr.P.C') is to the order dated 02.04.2016 passed by learned Metropolitan Magistrate, Tis Hazari Courts, Delhi in case FIR No. 259/2013 under S. 509 IPC registered at Police Station Moti Nagar, Delhi whereby pursuant to the application moved by the respondent nos. 2 to 5, the SHO concerned was directed to supply certain documents to them.

2. It is submitted by counsel for the petitioner/complainant that pursuant to the complaint filed by the petitioner the FIR under S. 509 IPC was registered against the respondent nos. 2 to 5. A detailed report under S. 173 Cr.P.C was filed against the respondent nos. 2 to 5 on 13.01.2014. When the matter was pending for the purpose of framing of charges an application dated 25.11.2014 and a supplementary application dated 28.02.2015 were moved by the respondent nos. 2 to 5 seeking direction to prosecution to make disclosure to the effect that all relied / unrelayed documents and

statements recorded under S. 161 Cr.PC collected by the Investigating Officer during the investigation have been supplied to the accused persons and the prosecution be further directed to supply the documents which were not filed alongwith the charge-sheet but collected during investigation. Vide the impugned order, the application was allowed and the respondent no.1 was directed to supply the documents. Counsel further submits that while passing the impugned order, learned Metropolitan Magistrate overlooked the mandate S.91 of Cr.PC. It is settled law that S. 91 of Cr.PC cannot be invoked by the accused persons at the preliminary stage of framing of charge. Further if the statement has been reduced into writing under S. 161 (3) of the Code then statement of such persons as the prosecution proposes to examine as witnesses shall be given to the accused persons meaning thereby that in case persons are orally examined during police investigation and whose statements are not reduced into writing, no question of supplying copies of any such statement arise. Moreover, the accused is not entitled to all the statements recorded under S.161(3) of the Code. He is entitled to only such statement of witnesses whom the prosecution has cited as witnesses. Reliance in this regard is placed on *Sidhartha Vashisht @ Manu Sharma v State (NCT of Delhi)*, (2010) 6 SCC 1 and *State of Orissa v Debendra Nath Padhi*, AIR 2005 SC 359.

3. The petition is contested by the respondent nos. 2 to 5 by relying upon *Sidhartha Vashisht @ Manu Sharma* (supra); *Ashutosh Verma v CBI*, CrI. MC 79/2014 and it is submitted that the impugned order does not call for any interference. It is further submitted that the documents as directed to be supplied to the accused persons by the Court were not as per the mandate of S. 91 of the Code but under S.207 of the Code whereby the accused persons are entitled to receive the documents / statements whether the same are relied or not relied by the prosecution, collected and recorded during the course of investigation.

4. In order to appreciate the respective submissions of learned counsel for the parties, it will be in fitness of things to narrate the averments made in the charge-sheet filed against the respondent nos. 2 to 5.

5. It is averred in the charge-sheet that on 05.07.2013, the petitioner / complainant – Smt. Shashi Bala, Vice Principal of SBM Sen. Secondary School, Moti Nagar, Delhi

made a PCR call vide DD NO.16A. During inquiry, she informed the Investigating Officer about the incident and handed over a written statement and told that she will submit a complaint on 06.07.2013 regarding details of circumstances and incident. On 06.07.2013, she filed a complaint at Police Station Moti Nagar, Delhi. On 08.07.2013, the same was received to the Investigating Officer for inquiry. In addition to this, he also received some reference on behalf of the management and staff regarding the incident dated 05.07.2013 stating that the allegations leveled by the complainant were not true; the details of which are given in the charge-sheet. During inquiry on 21.07.2013 the complainant came to the Police Station and produced her detailed written statement wherein she alleged that on 05.07.2013, when she reached the school at around 7.50 am to mark her attendance, she found that her attendance record has been mutilated for the period from 01.07.2013 to 04.07.2013. She went to the office of principal to seek his clarification as to why her attendance has been mutilated by red pen. The respondent nos. 2 to 4 were sitting in the principal's office. The respondent no.2 passed obscene remarks using abusive language with an attempt to slap. He got up from his seat and tried to assault her. The respondent no.3 also stood and started using shameful gestures with obscene remarks. Earlier also, he had passed incident and shameful comments. The respondent no.4 also got up from his seat and abused her. During this time, the respondent no.5 also joined them and tried to overpower her. She was in distress and had no other option but to call the police. Then she called at telephone number 100.

6. On the basis of her statement, the instant FIR under S. 509 IPC was registered. Statement of complainant was also recorded under S. 164 Cr.PC by the learned Metropolitan Magistrate. In order to verify the allegations of complainant as well as authenticity of the complaint filed against the complainant, the Investigating Officer made inquiries from several teachers of the school and some of the teachers stated that they were not present at the time of incident, but after knowing about the allegations leveled by the complainant, they decided to write a letter in favour of principal. The senior teacher Dr Preeti Shukla prepared the draft and they signed it in routine. The matter was investigated further. One Arun Sharma, UDC, SBM Sr. Sec. School also filed a complaint at Police Station Moti Nagar, Delhi on 21.08.2013. According to him, he

noticed the complainant just after the incident and pacified her as well. During inquiry conducted at school level, he also gave statement regarding misconduct of the respondent no.2. The complainant further produced the photocopies of the earlier complaints made by her to the management as well as education department which were kept in the file. Her supplementary statement was also recorded. On 30.08.2013, the details of staff posted were received. The management also sent the copies of inquiry proceedings on investigation conducted by the Internal Complaint Committee. A detailed chart was given in the charge-sheet regarding the complaints received at Police Station Moti Nagar, Delhi regarding this case by different persons by or against the complainant.

7. When the matter was pending for the purposes of hearing arguments on charge, an application dated 25.11.2014 was moved by the respondent nos. 2 to 5 for calling of relied / un-relied documents collected by prosecution. A supplementary application dated 28.02.2015 was also filed wherein it was specified that accused persons have received certain information by way of RTI from the school as such it was prayed that the preliminary inquiry report, internal complaints, committee report, complaint dated 05.07.2013 filed by the complainant to the management of the school and statement of school staff as recorded by the Investigating Officer be supplied to them whether same is favouring the prosecution or the accused. After hearing learned counsel for the parties, learned Trial Court observed that it was bounden duty of the investigating agency to collect all the relevant piece of evidence, whether the same are incriminating the accused or favouring them. The complainant and the accused persons are colleagues and two groups have been constituted – one of the group is supporting the allegations of the complainant and another group is supporting the defence of the accused persons. The Investigating Officer had placed with the charge-sheet only the statements of the witnesses who are supporting the allegations of the complainant as they are the only witnesses proposed to be examined by the prosecution. By replying upon *CBI v Ashutosh* (supra), direction was given to the concerned SHO to supply all the statements of witnesses recorded in writing during investigation to the accused persons whether the same favours prosecution or the defence. SHO was further directed to supply copies of preliminary inquiry report, internal complaint, committee report, complaint dated

05.07.2013 filed by the complainant to the management of the school, if all these documents are available in the police file.

8. Feeling aggrieved the present petition has been filed by the petitioner / complainant.

9. Before advertng to the facts of the present case, it is necessary to consider the relevant provisions of Sections 173 and 207 of Cr.P.C., which read as under: -

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

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

[(1A). 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 Section 376, 376A, 376B, 376C [Section 376D or Section 376E of the Indian Penal Code (45 of 1860)].]

(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 whom the information relating to the commission of the offence was first given.

(3) 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 incharge of the police station to make further investigation

(4) 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.

(5) 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.

(6) 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.

(7) 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).

(8) 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)

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207. Supply to the accused of copy of police report and other documents

In any case where the proceeding has been instituted on a police report, the Magistrate shall without delay furnish to the accused, free of cost, a copy of each of the following:—

(i) the police report;

(ii) the first information report recorded under section 154;

(iii) the statements recorded under subsection (3) of section 161 of all persons whom the prosecution proposes to examine as its witnesses, excluding therefrom any part in regard to which a request for such exclusion has been made by the police officer under subsection (6) of section 173;

(iv) the confessions and statements, if any, recorded under section 164;

(v) any other document or relevant extract thereof forwarded to the Magistrate with the police report under sub-section (5) of section 173: Provided that the Magistrate may, after perusing any such part of a statement as is referred to in clause (iii) and considering the reasons given by the police officer for the request, direct that a copy of that part of the statement or of such portion thereof as the Magistrate thinks proper, shall be furnished to the accused:

Provided further that if the Magistrate is satisfied that any document referred to in clause.

(v) is voluminous, he shall, instead of furnishing the accused with a copy thereof, direct that he will only be allowed to inspect it either personally or through pleader in Court.

10. On perusal of Section 173 of Cr.P.C. it is manifestly clear that after completion of investigation, the investigating officer shall make a detailed report and the concerned Officer In-Charge of the police station shall forward this report to the Magistrate having jurisdiction to take cognizance. Thereafter, the Magistrate would consider the charge-sheet and the accompanying documents as well as the statements of the witnesses and would decide whether to take cognizance of the offence or not. In terms of Section 207 Cr.P.C. after appearance

of the accused, the Magistrate is required to furnish to the accused persons following reports: -

- (i) Copies of police report;
- (ii) First Information Report;
- (iii) Statements recorded under sub-section (3) of Section 161 Cr.P.C. of all the persons whom the prosecution proposes to examine as its witnesses excluding therefrom any part in regard to which a request for such exclusion has been made by the police officer under sub-section (6) of Section 173 of Cr.P.C.;
- (iv) The confessions and statements, if any, recorded under Section 161 of Cr.P.C.; and
- (v) Any other document or relevant extract thereof forwarded to the Magistrate with police report under sub-section (5) of Section 173 of Cr.P.C.

11. A bare reading of provisions contained in Section 207 of Cr.P.C. shows that it is the obligation of the Magistrate to see that all the documents which are necessary for the accused for proper conduct of his defence, are furnished to him well before the trial.

12. A conjoint reading of section 173(5), 173(6) and first proviso attached to Section 207 of Cr.P.C. leaves no scope of doubt that it is the bounden duty of the police officer to forward to the Magistrate all the statements mentioned in sub-section (5)(b) of Section 173 of Cr.P.C. without any exception so as to enable the Magistrate to discharge his duty under Section 207 of Cr.P.C. by furnishing copies of such statements to the accused. In case the police officer considers that the disclosure of any part of such statements would not be expedient in the public interest nor essential in the interest of justice, he is supposed to append a note in his forwarding memorandum to the Magistrate to that effect along with his reasons for withholding such statements or parts thereof from the accused. Wherever any such reservation is made by the police officer, it still lies within the discretion of the Magistrate whether to allow such request or not and it is only in the event where Magistrate agrees with the reasons given by the police officer for

not supplying any statement or part thereof to an accused, he may order accordingly while agreeing with the objection raised by the police official.

13. In other words, it is only when specific request has been made by a police officer in his forwarding memorandum of the charge-sheet while being forwarded to the Magistrate stating that any particular statement recorded under Section 161(3) of Cr.P.C. or any document or any part thereof should not be supplied to the accused that the, Magistrate shall on the basis of the discretion conferred upon him, by virtue of first proviso attached to Section 207 of Cr.P.C. after considering the reasons given by the police officer making such request, would either issue directions for furnishing copy of that part of statement or would issue directions for furnishing any relevant portion of that statement thereof to the accused or otherwise. It thus, necessarily follows therefrom that in case where no such specific request has been made by a police officer while forwarding the chargesheet to the Magistrate then the copies of all the statements recorded under Section 161(3) of Cr.P.C., documents or relevant extract thereof, etc. as provided in clause (i) to (v) of Section 207 of Cr.P.C are required be provided to the accused.

14. It is settled law that an impartial and fair opportunity in a trial is the legal right of an accused. Justice can only be ensured if the rules of procedure are diligently adhered to. No court shall allow breach of these principles. In this regard, it will be apt to reproduce the observations made in ***Shakuntala vs. State of Delhi***, ILR (2007) I Delhi 1005:

“4. It is settled law that fair and just investigation is a hallmark of any investigation. It is not the duty of the Investigating Officer to strengthen the case of prosecution by withholding the evidence collected by him. If an Investigating Officer withholds the evidence collected by him, the accused has a right to rely upon that evidence and tell the Court to take that evidence into account while framing the charges. The Court while framing charges may not take into account the defence of the accused or the documents in custody of the accused which were not produced by the accused before the Investigating Officer

or which did not form part of the investigation but the Court is duty bound to consider the evidence collected by the Investigating Officer during the investigation of the case. If it is brought to the notice of the Court by the accused that some of the evidence or documents have been withheld by the Investigating Officer or the prosecution deliberately, so that truth does not come out before the Court, the Court, before framing of charge can order the Investigating Officer to place the entire investigation before it and ask him to produce case diaries. Fair investigation is the right of the accused and this right can be exercised by the accused at the time of charge and the accused can insist upon the Court to consider the evidence collected by the Investigating Officer but not made part of the charge-sheet.”

15. Adverting to the case in hand, reliance placed by learned counsel for the petitioner on **Debendra Nath Padhi** (supra) does not help the petitioner / complainant as in that case it was observed that at the time of framing of charge or taking cognizance, S. 91 Cr.PC does not confer any right on the accused to produce document in his possession to prove his defence. In the instant case, accused persons / respondent nos. 2 to 5 are not seeking to produce any document nor are they seeking to produce any material to prove their innocence but they have called upon the Investigating Officer of the case to supply the statement of witnesses recorded during the course of investigation report of the committee which was received by the Investigating Officer during the course of investigation. **Sidhartha Vashisht @ Manu Sharma** (supra) relied upon by the petitioner instead of helping her rather helps the respondent nos. 2 to 5 as in this case Hon’ble Apex Court observed as under:

“—207. The provisions of Section 173 (5) contemplate and make it obligatory upon the investigating officer where the provisions of Section 170 apply to forward to the Magistrate along with his report, all documents or relevant extracts thereof on which the prosecution proposes to rely other than those already sent to the Magistrate during investigation in terms of Section 170 (2) of the Code. During investigation the statement recorded under Section 161 of all the persons whom the prosecution proposes to

examine, as witnesses shall also be sent to the Magistrate. Some element of discretion is vested with the police officer under Section 173 (6) where he is of the opinion that any such statement is not relevant to the subject matter of the proceedings or its disclosure to accused is not essential in the interest of justice and is expedient in the public interest he shall indicate that part of the statement refusing a Magistrate that part from the copies to be granted to the accused and stating his reason for making such a request. Sub-Section 7 of the same Section is indicative of another discretion given to the police officer under law that where he finds it convenient, he may furnish the copy of documents refer to Sub-section 5 of the Section.

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216. Under Section 170, the documents during investigation are required to be forwarded to the Magistrate, while in terms of Section 173(5) all documents or relevant extracts and the statement recorded under Section 161 have to be forwarded to the Magistrate. The investigating officer is entitled to collect all the material, what in his wisdom is required for proving the guilt of the offender. He can record statement in terms of Section 161 and his power to investigate the matter is a very wide one, which is regulated by the provisions of the Code. The statement recorded under Section 161 is not evidence per se under Section 162 of the Code. The right of the accused to receive the documents/statements submitted before the Court is absolute and it must be adhered to by the prosecution and the Court must ensure supply of documents/statements to the accused in accordance with law. Under proviso to Section 162(1) the accused has a statutory right of confronting the witnesses with the statements recorded under Section 161 of the Code thus indivisible.

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218. The liberty of an accused cannot be interfered with except under due process of law. The expression ‘due process of law’ shall deem to include fairness in trial. The Court gives a right to the accused to receive all documents and statements as well as to move an application for production of any record or witness in support of his case. This constitutional mandate and statutory rights given to

the accused places an implied obligation upon the prosecution (prosecution and the prosecutor) to make fair disclosure. The concept of fair disclosure would take in its ambit furnishing of a document which the prosecution relies upon whether filed in Court or not. That document should essentially be furnished to the accused and even in the cases where during investigation a document is bona fide obtained by the investigating agency and in the opinion of the prosecutor is relevant and would help in arriving at the truth, that document should also be disclosed to the accused.

219.It may be of different consequences where a document which has been obtained suspiciously, fraudulently or by causing undue advantage to the accused during investigation such document could be denied in the discretion of the prosecutor to the accused whether the prosecution relies or not upon such documents, however in other cases the obligation to disclose would be more certain.

.....This provision {Section 207} not only require or mandate that the Court without delay and free of cost should furnish to the accused copies of the police report, first information report, statement, confessional statement of the persons recorded under Section 161 whom the prosecution wishes to examine as witnesses, of course, excluding any part of a statement or document as contemplated under Section 173(6) of the Code, any other document or relevant extract thereof which has been submitted to the Magistrate by the police under Sub-section 5 of Section 161. ...Therefore, the provisions of Section 207

of the Code will have to be given liberal and relevant meaning so as to achieve its object. Not only this, the documents submitted to the Magistrate along with the report under Section 173(5) would deem to include the documents which have to be sent to the Magistrate during the course of investigation as per the requirement of Section 170(2) of the Code.

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221. It will be difficult for the Court to say that the accused has no right to claim copies of the documents or request the Court for production of a document which is part of the general diary subject to satisfying the basic ingredients of

law stated therein. A document which has been obtained bonafidely and has bearing on the case of the prosecution and in the opinion of the Public Prosecutor, the same should be disclosed to the accused in the interest of justice and fair investigation and trial should be furnished to the accused. Then that document should be disclosed to the accused giving him chance of fair defense, particularly when non-production or disclosure of such a document would affect administration of criminal justice and the defence of the accused prejudicially."

16. Relying upon this judgment, in **Ashutosh Verma** (supra), this Court observed that the petitioner cannot be denied an access to the documents in respect of which prayers have been made in the petition merely because CBI does not consider it relevant. If there is a situation that arises wherein an accused seeks documents which support his case and do not support the case of the prosecution and the investigating officer ignores these documents and forward only those documents which favour the prosecution, in such a scenario, it would be the duty of investigating officer to make such documents available to the accused.

17. Reverting to the case in hand, accused persons called upon the Investigating Officer to supply documents / statements as mentioned in the applications. In fact, in the charge-sheet also there was a reference that during the course of investigation, the Investigating Officer had received the inquiry report etc. Under the circumstances, in order to do substantial justice to both the parties, the application moved by the respondent nos. 2 to 5 was allowed. The State has not challenged the impugned order meaning thereby it is not averse to supply the documents as ordered by the learned Trial Court.

18. In view of the foregoing discussion, the impugned order does not suffer from any infirmity which calls for any interference.

19. The petition is accordingly dismissed. Pending applications, if any, stand disposed of.

(SUNITA GUPTA)
JUDGE

JULY 08, 2016/*rd*