

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.2874 of 2017

Arising Out of PS.Case No. -56 Year- 2013 Thana -C.B.I CASE District- MUZAFFARPUR

-
1. Vijay Laxmi Singh, Wife of Vijay Pratap Singh, resident of Village- Ram Gulam Tola, P.S.- Deoria, District- Deoria.
 2. Vijay Pratap Singh, Son of Late Ram Rekha Singh, resident of Village- Ram Gulam Tola, P.S.- Deoria, District- Seoria.

.... Petitioner/s

Versus

The State of Bihar Through Vigilance.

.... Opposite Party/s

Appearance :

For the Petitioner/s : Mr.

For the Opposite Party/s : Mr.

CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR

ORAL JUDGMENT

Date: 13-02-2017

The petitioners are accused in Vigilance Case No. 56 of 2013 corresponding to Spl. Case No. 35 of 2013. The petitioners had prayed before the learned trial court by filing a petition to supply copy of Exhibit -1 to Exhibit-24, the documents submitted with the police report under Section 173 Cr. P.C. in pursuance of the provisions contained in Section 207 Cr.P.C.

By the impugned order dated 16.11.2016, the prayer has been refused on the ground that the case diary etc. has already been supplied and the required document would be supplied only when the prosecution realises and produces before the court as exhibits during trial.

Submission of the petitioners is that those documents support the defence case and the matter has to be seen at the stage of hearing of charge itself. Therefore, the view taken by the learned trial court is erroneous one.

On the other hand, the learned counsel for the Vigilance



submits that the main police papers, case diary etc. have already been supply and there are sufficient materials disclosing the offences alleged against the petitioners and material for framing of the charges. The petitioners only want to delay the process of trial and frivolous petition was filed, which has rightly been rejected.

In V.K. Sasikala vs. State represented by Superintendent of Police [(2012) 9 SCC 771], the Hon'ble Apex Court considered the identical question and scope of application of Section 207 Cr. P.C. and held as follows in paragraph 15, 16 and 17 which are relevant for this purpose:-

“ **15.** While the first proviso to [Section 207](#) empowers the court to exclude from the copies to be furnished to the accused such portions as may be covered by [Section 173\(6\)](#), the second proviso to [Section 207](#) empowers the court to provide to the accused an inspection of the documents instead of copies thereof, if, in the opinion of the court it is not practicable to furnish to the accused the copies of the documents because of the voluminous content thereof. We would like to emphasise, at this stage, that while referring to the aforesaid provisions of the Code, we have deliberately used the expressions “court” instead of the expression “Magistrate” as under various special enactments the requirement of commitment of a case to a higher court (court of Sessions) by the Magistrate as mandated by the Code has been dispensed with and the special courts constituted under a special statute have been empowered to receive the report of the investigation along with the relevant documents directly from the investigating agency and thereafter to take cognizance of the offence, if so required.

16. It is in the context of the above principles of law and the provisions of the Code that the rights of the appellant will have to be adjudicated upon by us in the present case. It is not in dispute that after the appearance of the accused in the Court of the Special Judge a large number of documents forwarded to the Court by the Investigating Officer along with his report, had been furnished to the accused. Thereafter, charges against the accused had been framed way back in the year 2007 and presently the trial has reached the stage of examination of the second accused, i.e. appellant under the provisions of [Section 313](#) Cr.P.C.



At no earlier point of time (before the examination of the second accused under [Section 313](#) Cr.P.C.) the accused had pointed out that there are documents in the Court which have been forwarded to it under [Section 173](#) (5) and which have not been relied upon by the prosecution. It is only at such an advanced stage of the trial that the accused, after pointing out the said facts, had claimed an entitlement to copies of the said documents or at least an inspection of the same on the ground that the said documents favour the accused.

17. Seizure of a large number of documents in the course of investigation of a criminal case is a common feature. After completion of the process of investigation and before submission of the report to the Court under [Section 173](#) Cr.P.C., a fair amount of application of mind on the part of the investigating agency is inbuilt in [the Code](#). Such application of mind is both with regard to the specific offence(s) that the Investigating Officer may consider to have been committed by the accused and also the identity and particulars of the specific documents and records, seized in the course of investigation, which supports the conclusion of the Investigating Officer with regard to the offence(s) allegedly committed. Though it is only such reports which support the prosecution case that are required to be forwarded to the Court under [Section 173](#) (5) in every situation where some of the seized papers and documents do not support the prosecution case and, on the contrary, supports the accused, a duty is cast on the Investigating Officer to evaluate the two sets of documents and materials collected and, if required, to exonerate the accused at that stage itself. However, it is not impossible to visualize a situation whether the Investigating Officer ignores the part of the seized documents which favour the accused and forwards to the Court only those documents which support the prosecution. If such a situation is pointed by the accused and such documents have, in fact, been forwarded to the Court would it not be the duty of the Court to make available such documents to the accused regardless of the fact whether the same may not have been marked and exhibited by the prosecution? What would happen in a situation where such documents are not forwarded by the Investigating Officer to the Court is a question that does not arise in the present case. What has arisen before us is a situation where evidently the unmarked and unexhibited documents of the case that are being demanded by the accused had been forwarded to the Court under [Section 173](#) (5) but are not being relied upon by the prosecution. Though the prosecution has



tried to cast some cloud on the issue as to whether the unmarked and unexhibited documents are a part of the report under [Section 173](#) Cr.P.C., it is not denied by the prosecution that the said unmarked and unexhibited documents are presently in the custody of the Court. Besides, the accused in her application before the learned Trial court(IA 711/2012) had furnished specific details of the said documents and had correlated the same with reference to specific seizure lists prepared by the investigating agency. In such circumstances, it can be safely assumed that what has been happened in the present case is that along with the report of investigation a large number of documents have been forwarded to the Court out of which the prosecution has relied only on a part thereof leaving the remainder unmarked and un-exhibited.”

In the case in hand, the petitioners had demanded the papers before hearing on charge. The petitioners have fundamental right to fair investigation and fair trial, hence, the court below failed to exercise the power vested in it by not providing the required papers to the petitioners.

In the result, the impugned order is not sustainable in law. Hence, the same stands quashed and the matter is remitted back with direction to pass appropriate order according to law.

This application is accordingly, allowed.

(Birendra Kumar, J)

BTiwary/-

AFR/NAFR	AFR
CAV DATE	
Uploading Date	18-02-2017
Transmission Date	18-02-2017

