

HIGH COURT OF CHHATTISGARH, BILASPUR

CRMP No. 1800 of 2017

Khikhram Tandel S/o Darabharam Tandel, Aged About 61 Years R/o
Village Manpasar, Police Station Sarsiva, District Baloda Bazaar
Bhatapara Chhattisgarh --- **Petitioner**

Versus

State of Chhattisgarh through District Magistrate, Baloda Bazaar,
District Baloda Bazaar Bhatapara Chhattisgarh --- **Respondent**

CRMP No. 1801 of 2017

Khikhram Tandel S/o Darabharam Tandel Aged About 61 Years R/o
Village Manpasar, Police Station Sarsiva, District Baloda Bazar
Bhatapara Chhattisgarh --- **Petitioner**

Versus

State of Chhattisgarh through District Magistrate Baloda Bazar,
District Baloda Bazar Bhatapara Chhattisgarh --- **Respondent**

For the applicant	:	Mr. Mr. Amiyakant Tiwari, Advocate.
For the Respondent	:	Mr. Suryakant Mishra, P.L.

Hon'ble Shri Justice Goutam Bhaduri

Order on Board

14.12.2017

1. These are two petitions filed under section 482 of the Code of Criminal Procedure against the order dated 29.11.2017 passed by the learned Sessions Judge, Boloda Bazar, District Baloda Bazar arising out of the order dated 08.11.2017 passed by the CJM, Baloda Bazar in Criminal Case Nos. 590/2012 and 591 of 2012.
2. Learned counsel for the applicant submits that by order dated 08.11.2017, the learned JMFC without looking into the earlier observation made before the cross examination of one Keshari Lal Verma has again reviewed the order and has

committed a gross illegality while doing so. It is submitted that the order dated 08.11.2017 would amount to review of earlier directions and if the documents which are exhibited in evidence is not supplied by the prosecution to the defence accused, the same cannot be referred during the evidence and adjudication. He further submits that when the order was subject of revision before the Sessions Judge, the same was dismissed at the threshold by order dated 29.11.2017. Consequently, both the orders are grossly illegal as it affects the right of accused for fair trial, therefore, they cannot be sustained and are liable to be set aside.

3. Perused the document filed along-with the petition. One copy of deposition sheet of Keshri Lal Verma who was examined as P.W.1 on 11.7.2008 is on record. The deposition records that after the examination of the said witness, the court at para 19 of the deposition recorded that since certain documents appears to have not been given to the accused which were exhibited in evidence of Keshri Lal Verma, so cross examination cannot proceed and it was ordered that the document should be supplied to the accused and thereafter, Keshrilal Verma be cross-examined.
4. The records would show that thereafter the prosecution did not supply the document to the accused and the case was adjourned from time to time for hearing. The order sheet dated 12.10.2017 of the CJM also records the fact that the documents were not given, as such, the prosecution was directed to supply the document to the accused and it was observed that in absence thereof the right to lead evidence of prosecution would be closed. Thereafter, the order dated 08.11.2017 records that one of the witnesses who was earlier

not found namely R.K. Mishra appeared and the Court thought it expedient to examine him and on the request of the accused, the next date i.e., 09.11.2017 was given for evidence. The issue in this case is with respect to second part of the order dated 08.11.2017 wherein it is observed that the accused has again requested for copy of the document which was earlier directed to be given on 11.07.2008. However, with the observation that since the copy of the charge sheet has already been given, therefore, no order can be passed to supply the document afresh. This order apparently contradicts the earlier order of the Court and the observation which was made on 11.07.2008 and thereafter reaffirmed by an order dated 12.10.2017. Primarily the facts remain status quo with respect to the supply of document which was earlier ordered for. The records would suggest that even after 2008 the documents which were relied upon by the prosecution were not given by the prosecution to the accused during the examination of Keshri Lal Verma.

5. It is trite law that when prosecution relies on certain documents, the accused has to be given copies of such documents to put-forth his defence effectively and in absence of supply of any document unilaterally the prosecution cannot proceed on it. The accused if are not supplied with the copy of document relied on by the prosecution, it would defeat the rights of the accused as also the principles of natural justice and analogy of criminal jurisprudence. The observation made by the CJM that since the copy of the challan has already been given, fresh order for supply of document cannot be ordered would amount to

review of its earlier order and the contradiction of the fact which was observed earlier by the same Court. Consequently the same cannot be sustained.

6. In the result, it is observed that since the case appears to be more than 10 years old, if the prosecution is not able to supply the document to the accused which were relied on during the statement of Keshri Lal Verma, in such eventuality, the said document cannot be referred by the prosecution during trial. The said documents were exhibited during statement of Keshrilal Verma. In absence of documents, the cross examination of Keshari Lal Verma also could not be conducted as such in such eventuality the statement of Kesharil Lal Verma also cannot be availed by the prosecution. On the other hand, if the statement of Mr. Verma and documents are accepted, it would seriously prejudice the rights of the accused.
7. In the result, if the prosecution fails to supply the document to accused then the prosecution shall not be entitled to rely on the statement of Mr. Verma and the document so exhibited during the examination in chief. Further in the event of of Mr. Verma's non-exposure to cross examination for no fault of accused, the rights of accused cannot be curtailed for fair trial. In a result the statement of Mr. Verma and documents so exhibited cannot form part of record.
8. With such observation, this petition stands disposed of.

Sd/-
GOUTAM BHADURI
JUDGE