

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

CRM-M No.22639 of 2018

Date of decision : 28.05.2018

Gurmeet Ram Rahim

.....Petitioner

Versus

Central Bureau of Investigation

...Respondent

CORAM : HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present : Mr. Tanveer Ahmed Mir, Advocate for the petitioner.

* * *

DAYA CHAUDHARY, J.

The present petition has been filed under Section 482 of the Code of Criminal Procedure, 1973 (for short – 'the Cr.P.C.') for quashing of impugned order dated 05.05.2018 (Annexure P-1) passed by the Special Judicial Magistrate, CBI Haryana at Panchkula in FIR No.RC1(S)/2015 SCU.V/SCII/CBI/New Delhi dated 07.01.2015 under Sections 120-B/326/417/506 of the Indian Penal Code, 1860, Police Station SCII/CBI New Delhi. A further prayer has also been made that the proceedings before the trial Court be stayed during pendency of this petition.

Briefly, the facts of the case as made out in the present petition are that the petitioner filed an application under Section 91 read with Section 207 Cr.P.C. before the trial Court, which has been dismissed vide impugned order dated 05.05.2018 (Annexure P-1) which is subject matter of

challenge in the present petition.

Learned counsel for the petitioner submits that all the documents collected by the investigating agency during the course of investigation have not been supplied to the accused/petitioner only on the ground that those documents have not been relied upon by the prosecution, whereas the same is violative of right of fair trial. Learned counsel also submits that in view of ratio of law laid down by Hon'ble the Apex Court in number of judgments, an accused is entitled to be given fair opportunity, which is necessary for fair trial and same cannot be ignored. Learned counsel further submits that the right of accused with regard to disclosure of documents may be limited but it is codified and is the very foundation of a fair investigation and trial. Learned counsel also submits that certain rights of the accused flow both from the codified law as well as from equitable concepts of the constitutional jurisdiction and in failure thereof a substantial variation to such procedure would frustrate the very basis of a fair trial.

Learned counsel for the petitioner also contends that the Investigating Officer of the case is having in possession the statements of 128 persons recorded under Section 161 Cr.P.C., whereas, the statements of only six persons have been placed on record. Around 20 persons were examined during course of investigation, who stated that they were castrated but they did not support the case of the prosecution as they refused to undergo medical examination. The statement of 122 witnesses examined during course of investigation have been concealed from the cognizance of the Court and copies of those statements were not supplied either to the

Court or to the accused persons, whereas those statements are relevant and are fundamental basis of evidence which are necessary for the accused persons to know.

Learned counsel for the petitioner further submits that as per the provisions of Section 207 read with Section 91 Cr.P.C., the principle of liberal interpretation is required for fair disclosure of evidence collected during investigation which is fundamental right of the accused for fair trial and also the guarantee of fair trial granted by the Constitution of India.

At the end, learned counsel for the petitioner submits that the entire evidence collected by the investigating agency during course of investigation is necessary and essential for fair trial. It is required for the accused to prepare his defence. The statements of witnesses are important for the fair trial and also crucial by considering the entire controversy and by exercising the powers under Section 207 read with Section 91 Cr.P.C. as well as free and fair disclosure being the essence of fair trial is a fundamental guarantee which has been denied by passing the impugned order. Learned counsel also submits that as per ratio of judgment passed by Hon'ble the Apex Court in case ***Union of India Vs. Prafulla Kumar Samal and another 1979 (3) Supreme Court Cases 4***, in case two views are possible, the benefit should go to the accused. It has also been held by Hon'ble the Apex Court in a number of cases that in rare and exceptional cases, the defence material can be looked into by the Court by taking cognizance of the evidence collected during investigation which appear to be absurd or irrelevant. In support of his arguments, learned counsel for the

petitioner has relied upon judgments of Hon'ble Supreme Court in cases *Dayal Singh and others Vs. State of Uttaranchal 2012 (8) SCC 263*, *Purshottam Jethanand Vs. The State of Kutch AIR 1954 SC 700*, *Nitya Dharmananda and others Vs. Gopal Sheelum Reddy and others 2018(2) SCC 93*, *Arulvelu and another Vs. State represented by the Public Prosecutor and another 2009(10) SCC 206*, *Dilawar Balu Kurane Vs. State of Maharashtra 2002 (2) SCC 135*, judgment of Bombay High Court in case *Kamal Ahmed Mohammed Vakil Ansari Vs. State of Maharashtra 2013 CriLJ 858*, judgment of Rajasthan High Court (Jaipur Bench) in case *Neelesh Jain Vs. State of Rajasthan 2006 CriLJ 2151* and judgment of Privy Council in case *Pulukuri Kottaya and others Vs. Emperor AIR 1947 PC 67*.

The application filed by the petitioner has been dismissed on the ground that originally the Court has to proceed on the basis of material collected during investigation and in case the Court comes to the conclusion that any material relevant evidence has been withheld by the investigating agency while filing the final report, the defence has a right to invoke the provisions of Section 91 Cr.P.C. However, at the time of framing of charge, it is to be seen by the trial Court as to whether the charge is framed on the basis of the collected material or not.

Heard arguments of learned counsel for the petitioner and have also gone through the impugned order and other documents available on the record.

In the present case, an application moved by the petitioner

before the trial Court under Section 91 read with Section 207 Cr.P.C has been dismissed vide impugned order dated 05.05.2018 (Annexure P-1).

Sections 91 and 207 Cr.P.C. are reproduced as under :-

“91. Summons to produce document or other thing

(1) Whenever any Court or any officer in charge of a police station considers that the production of any document or other thing is necessary or desirable for the purposes of any investigation, inquiry, trial or other proceeding under this Code by or before such Court or officer, such Court may issue a summons, or such officer a written order, to the person in whose possession or power such document or thing is believed to be, requiring him to attend and produce it, or to produce it, at the time and place stated in the summons or order

(2) Any person required under this section merely to produce a document or other thing shall be deemed to have complied with the requisition if he causes such document or thing to be produced instead of attending personally to produce the same

(3) Nothing in this section shall be deemed—

(a) to affect, sections 123 and 124 of the Indian Evidence Act, 1872 (1 of 1872), or the Bankers, Books Evidence Act, 1891(13 of 1891), or

(b) to apply to a letter, postcard, telegram or other document or any parcel or thing in the custody of the postal or telegraph authority.”

“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 sub-section (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.”

The issue, which is to be examined is whether the Court can look into the defence material on record can be summoned at the instance of defence at the stage of framing of charge.

The petitioner is aggrieved by the impugned order only on the ground that all material/evidence collected by the investigating agency while investigating the case have not been supplied to him. Statements of witnesses recorded under Section 161 Cr.P.C. and other material collected by way of evidence are necessary for fair trial and it is a fundamental right of the accused to know as to what evidence has been collected. The application has been dismissed by the trial Court on the ground that the petitioner has already been supplied all the documents/ evidence collected

by the investigating agency and the same is relevant at this stage and at the time of filing final report he has a right to have those documents which are part and partial of the final report.

A perusal of contents of Section 207 and 91 Cr.P.C. the desirability and necessity is to be seen by the trial Court. Under Section 207 Cr.P.C. the relevant record produced in terms of Section 173 Cr.P.C. is placed on record and filed with the final report. The accused/petitioner is asking for supplying the documents collected by the investigating agency during investigation, whereas Section 91 Cr.P.C. does not confer any right on the accused to produce any document even in case the same is necessary for his defence. Simply it has been mentioned that production of documents sought in the application are necessary for fair disclosure of evidence collected during course of investigation and fair trial is a fundamental right of an accused and for that all material is necessary to be seen by the petitioner.

Undisputedly, in the charge-sheet filed by the prosecution all the documents filed along with the charge-sheet have been supplied to the accused persons which is a part of mandate of fair trial. All documents which have been relied upon by the investigating agency have been supplied to the accused persons under Section 207 Cr.P.C. and the provisions of Section 91 read with Section 207 Cr.P.C. is to be read with Section 161 and 162 Cr.P.C. and Section 173 Cr.P.C. as well as Section 173 read with Section 207 Cr.P.C. It is also not disputed that the charges are to be framed on the basis of evidence/material annexed with the charge-sheet

which includes statements of the witnesses as well as the documents filed along with the charge-sheet as has been held by Hon'ble the Apex Court in case State of **Orissa Vs. Debendra Nath Padhi 2005(1) SCC 568**. In judgment of **Nitya Dharmananda's** case (supra), it has been observed that originally the Court has to proceed on the basis of material produced along with the charge-sheet and if the Court is satisfied that such material which has been necessary and same has been withheld by the investigating agency from the Court then there is no bar for summoning or relying upon the same, in case such document is not part of charge-sheet and necessary for fair trial. At this stage it cannot be said that any prejudice is going to be caused to the accused/petitioner in case documents/evidence collected during investigation but are not part of charge-sheet, are not supplied to him.

The Apex Court in **State of Orissa Vs. Debendra Nath Padhi 2005(1) RCR (Criminal) 297** had overruled the earlier judgment rendered in **Satish Mehra Vs. Delhi Administration 1996(3) RCR Criminal 410 (SC)**. Having regards to the views expressed in Satish Mehra's case, it was directed that the matter should be referred to a Larger Bench. The order referring the matter to the Larger Bench was reported in **State of Orissa Vs. Debendra Nath Padhi 2003(2) RCR (Criminal) 116**. The three Judges Bench while examining the provisions of Criminal Procedure Code also referred to the judgment rendered in **Superintendent and Remembrancer of Legal Affairs, West Bengal Vs. Anil Kumar Bhunja and others (1979)4 SCC 274**, wherein it was held that the Magistrate at the stage of

framing the charge had to see whether the facts alleged and sought to be proved disclosed an offence prima facie on general consideration of the material placed before him by the Investigating Officer. The specific question raised there was whether an accused at the stage of framing of charge had a right to produce any material. It was ultimately held as under:-

“23. As a result of aforesaid discussion, in our view, clearly the law is that at the time of framing charge or taking cognizance the accused has no right to produce any material. Satish Mehra's case holding that the trial court has powers to consider even materials which accused may produce at the stage of Section 227 of the Code has not been correctly decided.”

With respect to the contention as to whether the documents could be summoned under Section 91 Cr.P.C., it was held:-

“28. We are of the view that jurisdiction under Section 91 of the Code when invoked by accused the necessity and desirability would have to be seen by the Court in the context of the purpose—investigation, inquiry, trial or other proceedings under the Code. It would also have to be borne in mind that law does not permit a roving or fishing inquiry.”

In Rukmini Narvekar's case (supra), a two Judges Bench had held that ordinarily defence material cannot be looked into by the Court while framing the charge. However, in some very rare cases the Court can justify in looking into the material produced by the defence. It was observed as under:-

“28. We have carefully perused the decision of this Court in the **State of Orissa vs. Debendra Nath Padhi (supra)**. Though the observations in paragraph 16 of the said decision

seems to support the view canvassed by by Shri Rohatgi, it may be also pointed out that in paragraph 29 of the same decision it has been observed that the width of the powers of the High Court under Section 482 of Cr.P.C and Article 226 of the Constitution is unlimited whereunder in the interests of justice the High Court can make such orders as may be necessary to prevent abuse of the process of the court or otherwise to secure the ends of justice within the parameters laid down in **Bhajan Lal's case (supra)**. Thus we have to reconcile paragraphs 16 and 23 of the decision in **State of Orissa vs. Debendra Nath Padhi (supra)**. We should also keep in mind that it is well settled that a judgment of the Court has not to be treated as a Euclid formula vide **Dr. Rajbir Singh Dalal vs. Chaudhari Devi Lal University, Sirsa & Anr. JT 2008(8) SC 621**. As observed by this Court in **Bharat Petroleum Corporation Ltd. & Anr. vs. N.R. Vairamani & Anr AIR 2004 SC 4778**, observations of Courts are neither to be read as Euclid's formula nor as provisions of the statute. Thus in our opinion while it is true that ordinarily defence material cannot be looked into by the Court while framing of the charge in view of D.N. **Padhi's** case (supra), there may be some very rare and exceptional cases where some defence material when shown to the trial court would convincingly demonstrate that the prosecution version is totally absurd or preposterous, and in such very rare cases the defence material can be looked into by the Court at the time of framing of the charges or taking cognizance.

29. In our opinion, therefore, 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 the charges, though this should be done in very rare cases, i.e. where the defence produces some material which

convincingly demonstrates that the whole prosecution case is totally absurd or totally concocted. We agree with Shri Lalit that in some very rare cases the Court is justified in looking into the material produced by the defence at the time of framing of the charges, if such material convincingly establishes that the whole prosecution version is totally absurd, preposterous or concocted.

30. However, in this case it cannot be said that the evidence in the Civil Suit which was produced by the defence before the trial court established convincingly that the prosecution case is totally absurd or preposterous. In our opinion this is a matter which has to be looked into by the trial Court.”

As per the provisions of Section 91 Cr.P.C. in case any Court or office Incharge of the Police Station considers that the production of any document is necessary or desirable for the purpose of investigation, inquiry, trial or other proceedings, the Court may issue a summon or such officer a written order to such person in whose possession such documents are believed to be along with those documents to produce at the proper time and place. In judgment of ***Debendra Nath Padhi's*** case (supra), the documents/ evidence can be ordered to be produced in case the same is necessary or desirable. The requirement is necessity and desirability. Both things are necessary to be seen with reference to the stage of the case when prayer for asking such evidence/material has been made. It is not disputed that defence of the accused is not relevant at this stage. Such necessity and desirability would arise at the stage when the record produce in terms of Section 173 Cr.P.C. is there. At the time of invoking of provisions of Section 91 Cr.P.C., the Court is to be satisfied that the material available

with the investigator which is not part of charge-sheet is having bearing on the issue of framing of charge. In the application moved by the petitioner, not only the provisions of Section 207 Cr.P.C. have been invoked but also of Section 91 Cr.P.C. The provisions of Section 207 Cr.P.C. provides for supply of documents to the accused.

Accordingly, by keeping in view the stage of the trial and in such a situation when the charge has not been framed, the application moved by the petitioner has been dismissed and as such, no interference is required by this Court and the present petition being devoid of any merit, is hereby dismissed.

However, the petitioner is at liberty to avail the appropriate remedy in case such necessity arises and Court comes to the conclusion that those documents/evidence are necessary to be called for.

28.05.2018

sunil yadav

**(DAYA CHAUDHARY)
JUDGE**

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No