

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 929 OF 2018

1. Ramdas Bapurao Jadhav,
Age: 65 years, Occu: Business,
R/o. Akolner, Tal. Nagar
Dist. Ahmednagar.

... **Petitioner**
(Org. Accused)

VERSUS

1. The State of Maharashtra
Through Police Station Officer,
Nagar Taluka Police Station
Dist. Ahmednagar.

... **Respondent**

Mr. Niteen V. Gaware, Advocate for the Petitioner.
Mr. S.D. Ghayal, A.P.P. for Respondent/State.

CORAM : MANGESH S. PATIL, J.

DATE OF RESERVING THE JUDGMENT : 07.02.2019
DATE OF PRONOUNCING THE JUDGMENT : 14.02.2019

JUDGMENT :

Heard. Rule. The rule is made returnable forthwith.
Learned A.P.P. waives service. At the request of both the sides the matter
is heard finally at the stage of admission.

2. The petitioner is an accused facing charge of murder and
the Session Case No.247 of 2015 is underway in the Court of Additional
Sessions Judge, at Ahmednagar. During the course of the trial the
learned prosecutor submitted an application (Exhibit-114) and

requested the Court to examine the CCTV footage captured by the CCTV camera fixed at Pancham Wines shop. Simultaneously, application (Exhibit-115) was filed seeking to produce the DVD of the CCTV footage and the certificate under Section 65-B of the Indian Evidence Act. It appears that the petitioner strongly opposed both these applications by his say (Exhibit-117) and by the impugned order the learned Additional Sessions Judge after hearing both the sides allowed the application (Exhibit-114) as well as granted permission to produce the DVD containing the CCTV footage. It is apparent that though simultaneously both the applications (Exhibit-114 and 115) were filed and were contested too by the petitioner by his say (Exhibit-117) and though it was in fact a common order passed on both the applications, the title of the impugned order only reads that it was being passed only on the application (Exhibit-114).

3. Both the sides fairly concede at the bar that in fact such was the state of affairs. A DVD containing the CCTV footage along with the certificate under Section 65-B of the Indian Evidence Act was sought to be produced by filing application (Exhibit-115) and simultaneously by filing application (Exhibit-114) a request was made by the prosecution to the Court to personally see the recording during the course of the trial and in fact the impugned order allows both the applications (Exhibit-114 and 115). Being aggrieved, the petitioner is before this Court.

4. The learned advocate for the petitioner submitted that since inception the petitioner was insisting for necessary compliance of Section 207 of the Cr.P.C. He would point out that the DVD containing the CCTV footage fixed at Pancham Wine Shop, Kedgaon was stated to have been seized under a panchanama and a copy was annexed to the Index submitted with the charge-sheet but its copy was never served to the petitioner. The petitioner therefore submitted an application (Exhibit-10) before the learned Additional Sessions Judge on 01.03.2016 and specifically demanded the copy of the CCTV footage. One more application (Exhibit-15) was filed on 05.04.2017 specifically insisting for a copy of the CCTV footage so as to enable the petitioner to frame his defence. This application was moved even before the commencement of trial. However, the learned Additional Sessions Judge by the order dated 05.04.2017 illegally rejected the application (Exhibit-15). It is thereafter the trial proceeded and in all 16 witnesses have been examined and at such a belated stage the prosecution submitted the applications (Exhibit-114 and 115) by catching the accused on the wrong foot. The copy of the CCTV footage ought to have been supplied to him in compliance with Section 207 of the Cr.P.C., but the prosecution failed to do it. Even at the inception of the trial the petitioner had insisted for it still the learned Judge rejected the prayer and it is at the fag end after 16 witnesses were examined that a request was made to produce the copy of the CCTV footage in the form of DVD

and the Court was requested to see it. A serious prejudice will be caused to the petitioner if the impugned order is allowed to stand and the order may be quashed and set aside. The learned advocate for the petitioner also placed reliance on the decision of the Supreme Court in the case of **Tarun Tyagi V/s. Central Bureau of Investigation; AIR 2017 Supreme Court 1136.**

5. The learned prosecutor submitted that the petitioner is not being taken by surprise. By way of annexure to the charge-sheet, the panchanama regarding seizure of the CCTV footage DVD was filed. The hard-disk was forwarded to the Forensic Science Laboratory. It transpired that the data in the hard-disk was corrupt and could not be retrieved. Since the Investigating Officer had taken a precaution to have a copy of the CCTV footage on a pen drive, he was able to produce its recording in the form of DVD and even a necessary certificate under Section 65-B of the Indian Evidence Act was appended to. Therefore, it is not that the petitioner is not aware that even the prosecution has been seeking to rely upon the CCTV footage recorded by the camera fitted at Pancham Wines. Therefore, merely because he was not provided with a copy, no prejudice can be said to be likely to cause to him since he must have articulated his defence with a full knowledge of existence of the CCTV footage. Therefore, there is no merit in the writ petition and it may be dismissed.

6. I have carefully gone through the papers. It is indeed unfortunate that since inception the petitioner was seeking a copy of the CCTV footage which is in fact a recording which is annexed with the charge-sheet and which he should have been provided with in compliance of the provision of Section 207 of the Cr.P.C. However, neither the Magistrate who had committed the case to the Sessions Court nor even the learned Additional Sessions Judge paid attention to the request of the petitioner who was entitled to have a copy of the CCTV footage under Section 207 of the Cr.P.C. and was demanding it at the inception of the trial and still by the impugned orders a very same request is now being favorably considered by the learned Additional Sessions Judge at the instance of the prosecution.

7. However as is pointed out by the learned A.P.P., since inception the petitioner has been aware that the prosecution is seeking to rely upon a CCTV footage to substantiate its case. If that be so, merely saying that the petitioner would be subjected to some prejudice would not be sufficient. The submission of his learned advocate that he has been made to open his defence in as much as 16 witnesses have been examined may at the first blush seem to be attractive. However, he has failed to demonstrate as to in what manner the production of the CCTV footage is now going to catch the petitioner on the wrong foot. He ought to have, by referring to the testimonies, particularly the cross-examination of the prosecution witnesses demonstrated as to how and

in what manner, the scenario would have changed had the copy of the CCTV footage been made available to him at the beginning of the trial. Merely saying that the petitioner would be prejudiced by the production of the CCTV footage is as vague as it could be. It was expected of the petitioner to have precisely demonstrated by referring to the cross-examination of the prosecution witnesses as to how he is now being caught off guard. However, his learned advocate has not been able to demonstrate anything in that respect. Therefore, merely because a CCTV footage is now being sought to be produced belatedly, no prejudice is being caused to the petitioner.

8. As far as the decision in the case of **Tarun Tyagi** (supra) is concerned, it is important to note that the accused therein had allegedly stolen source code of a software and had put it on sale on a web-site with a different name and the charge-sheet was filed on the basis of such hard disk. It is in the light of such circumstances following observations were made in paragraph no.10 :

“10. It is clear from the above that the CBI had seized some hard disks marked Q-2, 9 and 20 from the premises of the appellant which contained the source code of the data recovery software. Defence of the appellant is that this source code was exclusively prepared by him and was his property. On the other hand, case of the prosecution is that the recovered CDs are in fact same or similar to the software stolen in 2005. In a case like this, at the time of trial, the attempt on the part of the prosecution would be to

show that the seized material, which contains the source code, is the property of the complainant. On the other hand, the appellant will try to demonstrate otherwise and his attempt would be to show that the source code contained in those CDs is different from the source code of the complainant and the seized material contained the source code developed by the appellant. It is but obvious that in order to prove his defence, the copies of the seized CDs need to be supplied to the appellant. The right to get these copies is statutorily recognised under Section 207 of the Code, which is the hallmark of a fair trial that every document relied upon by the prosecution has to be supplied to the defence/accused at the time of supply of the chargesheet to enable such an accused to demonstrate that no case is made out against him and also to enable him to prepare his cross-examination and defence strategy. There is no quarrel up to this point even by the prosecution. The only apprehension of the prosecution is that if the documents are supplied at this stage, the appellant may misuse the same.”

The hard-disk therein contained the source code of the data recovery software. The defence of the accused therein was this source code was exclusively prepared by him and was his property. Whereas the prosecution was alleging that the CDs which were recovered were in fact same or similar to the software stolen in the year 2005. It was therefore for the prosecution to demonstrate that the seized material which contained the source code was the property of the complainant. Whereas the accused was to demonstrate that the source code contained

in those CDs was either different from the source code of the complainant and it was developed by him. It is in such a fact situation that it was observed that in order to prove his defence the copies of the seized CDs ought to have been supplied to the accused. It is thus apparent that the offence itself was allegedly committed in respect of a software contained in the CDs. As against this, in the matter in hand, the offence does not pertain to anything contained in the CCTV footage but it only allegedly demonstrates as to how the accused/petitioner could be said to have committed the offence. It is only by way of corroboration to its case that the CCTV footage is being sought to be relied upon by the prosecution. Therefore, in the matter in hand no prejudice can be said to be likely to be caused to the petitioner by belated production of the CCTV footage. Therefore, the petitioner is not entitled to derive any benefit from the decision in the case of **Tarun Tyagi** (supra).

9. In this regard, it is also important to note that the petitioner's request in the form of application (Exhibit-15) seeking copy of the CCTV footage was rejected by the learned Additional Sessions Judge by the order dated 05.04.2017. He had never made any attempt to challenge the order. Rather he suffered the order and went ahead with the trial. Instead of challenging the said order he went ahead and cross-examined the prosecution witnesses. It is only now when the prosecution is seeking to produce the CCTV footage which he was

insisting for at the earlier point of time that he is now raising the objection.

10. The upshot of the above discussion, the petitioner has failed to demonstrate exactly as to in what manner he is likely to suffer some prejudice by the production of the CCTV footage. I find no apparent illegality in the order passed by the learned Additional Sessions Judge and the writ petition is liable to be dismissed.

11. The writ petition is dismissed. The Rule is discharged.

(MANGESH S. PATIL, J.)

KAKADE