

HIGH COURT OF CHHATTISGARH AT BILASPUR**Cr.M.P. No. 367 of 2020**

Deepak Kumar Chakraborti, Aged about 58 years,
S/o Late Prabhat Kumar Chakraborti, R/o
Vivekanand Nagar Ward No. 40 Torwa, Police
Station Torwa, Tahsil and District Bilaspur,
Chhattisgarh.

--Petitioner (Accused)

Versus

State of Chhattisgarh, Police Station Mahila
Thana, Bilaspur, District Bilaspur, Chhattisgarh.

--- Respondent

For Petitioner	:-	Mr. Rajeev Ku. Dubey, Advocate
For State	:-	Mr. Ravi Bhagat, Dy. G.A.

Hon'ble Shri Justice Sanjay K. Agrawal

Order on Board

24/02/2020

1. Petitioner herein is facing trial for offence punishable under Sections 376, 506, 509-B of the IPC and Sections 66(E) and 67(F) of the Information Technology Act, 2000 which is pending consideration before the Court of Additional Sessions Judge (FTC), Bilaspur wherein he filed an application on 27/07/2019 for providing copy of the seized CD (compact disk) and pen drive as well as copy of victim's statement under Section 164 of the Cr.P.C. On the same day, learned trial Court

passed the impugned order (Annexure A/1) and directed the Assistant Sub-Inspector of Police, Mahila Thana, Bilaspur to provide the copy of the said seized CD and pen drive to the petitioner/accused, but declined to grant victim's statement to him recorded under Section 164 of the Cr.P.C. Thereafter, on 26/08/2019, inability was expressed on behalf of the prosecution to provide the copy of the said CD and pen drive to the petitioner/accused on the ground that the said documents are confidential in nature against which the present petition under Section 482 of the Cr.P.C. has been preferred by the petitioner/accused.

2. Mr. Rajeev Kumar Dubey, learned counsel for the petitioner would submit that since the CD and pen drive have been seized, therefore, he is entitled to get the copy of the said CD as well as the pen drive and it cannot be refused on the ground of confidentiality of the said documents as these articles would be a document for the purpose of Section 207 of the Cr.P.C.

3. Mr. Ravi Bhagat, learned State counsel would support the impugned order.

4. I have heard learned counsel for the parties at length and perused the records annexed with the petition.

5. The question that arises for consideration herein is as to whether the petitioner/accused is entitled to get the copy of the seized CD and pen drive ?

6. The aforesaid question came up for consideration before the Supreme Court in the matter of P. Gopalkrishnan alias Dileep v. Stte of Kerala and Anr.¹ wherein their Lordships framed the following question for determination :-

“The conundrum in this appeal is: whether the contents of a memory card/pen-drive being electronic record as predicated in [Section 2\(1\)\(t\)](#) of the Information and Technology Act, 2000 (for short, ‘the 2000 Act’) would, thereby qualify as a “document” within the meaning of [Section 3](#) of the Indian Evidence Act, 1872 (for short, ‘the 1872 Act’) and Section 29 of the Indian Penal Code, 1860 (for short, ‘the 1860 Code’)? If so, whether it is obligatory to furnish a cloned copy of

the contents of such memory card/pen-drive to the accused facing prosecution for an alleged offence of rape and related offences since the same is appended to the police report submitted to the Magistrate and the prosecution proposes to rely upon it against the accused, in terms of [Section 207](#) of the Code of Criminal Procedure, 1973 (for short, 'the 1973 Code')? The next question is: whether it is open to the Court to decline the request of the accused to furnish a cloned copy of the contents of the subject memory card/pen drive in the form of video footage/clipping concerning the alleged incident/occurrence of rape on the ground that it would impinge upon the privacy, dignity and identity of the victim involved in the stated offence(s) and moreso because of the possibility of misuse of such cloned copy by the accused (which may attract other independent offences under the 2000 Act and the 1860 Code)?"

7. The aforesaid issue was considered by their Lordships of the Supreme Court threadbare and thereafter, in paragraphs 54 and 55 of the judgment, it was held as under :-

"54. If the accused or his lawyer himself, additionally, intends to inspect the contents of the memory card/pen-drive

in question, he can request the Magistrate to provide him inspection in Court, if necessary, even for more than once alongwith his lawyer and I.T. expert to enable him to effectively defend himself during the trial. If such an application is filed, the Magistrate must consider the same appropriately and exercise judicious discretion with objectivity while ensuring that it is not an attempt by the accused to protract the trial. While allowing the accused and his lawyer or authorized I.T. expert, all care must be taken that they do not carry any devices much less electronic devices, including mobile phone which may have the capability of copying or transferring the electronic record thereof or mutating the contents of the memory card/pen-drive in any manner. Such multipronged approach may subserve the ends of justice and also effectuate the right of accused to a fair trial guaranteed under Article 21 of the Constitution.

55. In conclusion, we hold that the contents of the memory card/pen drive being electronic record must be regarded as a document. If the prosecution is relying on the same, ordinarily, the accused must be given a cloned copy thereof to enable him/her to present an effective defence during the trial. However, in cases involving issues such as of privacy of the complainant/witness

or his/her identity, the Court may be justified in providing only inspection thereof to the accused and his/her lawyer or expert for presenting effective defence during the trial. The court may issue suitable directions to balance the interests of both sides."

8. In the aforesaid decision, their Lordships have clearly held that contents of the memory card/pen drive being electronic record must be regarded as a document and if the prosecution is relying on the same, the accused must be given a cloned copy thereof to enable him to present an effective case during the trial, except in cases involving issues such as of privacy of the complainant/witness or his/her identity. In such a case, the Court may be justified in providing only inspection thereof to the accused and his/lawyer.

9. In that view of the matter, the present petition stands disposed of by modifying the impugned order. Learned Additional Sessions Judge (FTC), Bilaspur is directed to pass a fresh order on the application of the petitioner/accused in terms of paragraph 55 of the principle of law laid down by the Supreme Court in **P. Gopalkrishnan** (supra) quoted

herein-above within ten days from the date of receipt of a copy of this order.

10. A copy of this order be sent to the Additional Sessions Judge (FTC), Bilaspur by e-mail/fax for needful and compliance.

Sd/-
(Sanjay K. Agrawal)
Judge

Harneet