

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CR.R. No. 1503 of 2019

1. Pradeep Kumar Arya, S/o. N.R. Arya, Aged About 38 Years, R/o. Indrasen Nagar, 27 Kholi, Thana Civil Lines, District- Bilaspur, Chhattisgarh.
2. Ekta Sahu, D/o. Late Girja Shanker Sahu, Aged About 37 Years, W/o. Pradeep Kumar Arya, R/o. Gole Bazar, Near Mansarover, P.S. Kotwali, District- Bilaspur, Chhattisgarh.

---- Applicants

Versus

State of Chhattisgarh, Through : Police Station - Mahila Thana, District- Bilaspur, Chhattisgarh.

-----Respondent

For Applicants	: Mr. Parag Kotecha, Advocate
For Respondent	: Mr. Adil Minhaj, Govt. Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order On Board

06/02/2020

1. Challenge in this petition is to the order dated 25.11.2019, passed by the learned Additional Sessions Judge (F.T.C.), Bilaspur in Sessions Case No.101/2019, by which the prayer made by the applicants for supply of copy of the CD and Pen-drive present with the charge-sheet has been dismissed.
2. It is submitted that list of documents mentioned in the charge-sheet itself shows in Sr. No.19 and 20, that a Pen-drive and C.D. are the electronic documents, on which the prosecution wishes to rely in the case against the applicants. Section 207 of Cr.P.C. gives the applicants entitlement to receive the copy of the documents. Relying on the judgment of Supreme Court in case of

V.K. Sasikala Vs. State Rep. By Superintendent of Police, reported in **2012 AIR SCW 5502**, it is submitted that Hon'ble Supreme Court has held that all the documents submitted in the Court along with the report under Section 173 of Cr.P.C. ought to be supplied to the accused if demanded. Therefore, the prayer of the applicant for supply of copies of electronic documents is based on his right to make such demand. Hence, the impugned order is erroneous, which is liable to be set-aside.

3. State counsel opposes the petition and the submission made in this respect. It is submitted that the learned trial Court has not committed any error by making a observation in the impugned order that since in such cases the identity of the prosecutrix has to be kept confidential, therefore, the copy can not be given. Relying on the judgment of Supreme Court in case of **P. Gopalkrishnan alias Dileep Vs. State of Kerla and Anr.**, reported in **2019 SCC OnLine SC 1532**, in which it was held by the Supreme Court that although the accused person has the right to receive all the documents including copy of the electronic documents, however, there is specific direction that in case, where the issue of privacy of the complainant/witness are there, her identity has to be protected. The Court is at liberty to issue suitable direction to balance the interest of both the sides. Therefore, in this particular case, where the applicants are being prosecuted for offence of rape, the Court is duty bound to protect the privacy of the prosecutrix, hence, no error has been

committed by the trial Court in passing the impugned order. Therefore, it is prayed that the petition be rejected.

4. I have heard learned counsel for the parties and perused the documents placed on record.
5. As a general rule Section 207 of Cr.P.C. provides for supply of all the copies of documents on which the prosecution wishes to rely in the case concerned. However, the first proviso in the same provision empowers the Magistrate by mentioning specific reason for the request of the police officer if the Magistrate thinks proper he can direct for supply of part of the document or statement to the accused, which the Magistrate thinks proper. The second proviso provides that where the documents are voluminous, instead of furnishing all the documents, permission can be given to inspect such documents to such accused personally or through pleader in Court.
6. The judgment of Supreme Court in case of **V.K. Sasikala (Supra)** was not passed in context with the cases of sexual offences. In paragraph 52 to 55, the Supreme Court has held in case of **P. Gopalkrishnan alias Dileep (Supra)**, which reads as under :-

“52. We are conscious of the fact that Section 207 of the 1973 Code permits withholding of document(s) by the Magistrate only if it is voluminous and for no other reason. If it is an “electronic record”, certainly the ground predicated in the second proviso in Section 207, of being voluminous, ordinarily, cannot be invoked and will be unavailable. We are also

conscious of the dictum in the case of *Superintendent and Remembrancer of Legal Affairs, West Bengal v. Satyen Bhowmick*, wherein this Court has restated the cardinal principle that accused is entitled to have copies of the statements and documents and accompanying the police report, which the prosecution may use against him during the trial.

53. Nevertheless, the Court cannot be oblivious to the nature of offence and the principle underlying the amendment to Section 327 of the 1973 Code, in particular sub-Section (2) thereof and insertion of Section 228A of the 1860 Code, for securing the privacy of the victim and her identity. Thus understood, the Court is obliged to evolve a mechanism to enable the accused to reassure himself about the genuineness and credibility of the contents of the memory card/pen-drive from an independent agency referred to above, so as to effectively defend himself during the trial. Thus, balancing the rights of both parties is imperative, as has been held in *Asha Ranjan (supra)* and *Mazdoor Kisan Shakti Sangathan (supra)*. The Court is duty bound to issue suitable directions. Even the High Court, in exercise of inherent power under Section 482 of the 1973 Code, is competent to issue suitable directions to meet the ends of justice.

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 221 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.

7. The observation made in ***P. Gopalkrishnan alias Dileep (Supra)*** and direction given in the same have relevance with the instant case. Therefore, it is duty of the trial Court to strike a balance between the interest of the accused and the privacy of the prosecutrix. Hence for this reason, the trial Court should have

permitted the applicants side for inspection of the electronic documents in presence of the Court officials or the counsel in the premises of the Court itself and subsequent to that, if any, requirement and prayer is made then the learned trial Court shall have liberty to decide upon such prayer made.

8. The petition is disposed off at this stage. There is no need to set-aside the impugned order. However, the liberty is granted to the petitioner to make a prayer for inspection of the electronic documents, which are kept in custody of the Court. The learned trial Court may consider on the same and pass order in view of the directions given by the Supreme Court in in case of ***P. Gopalkrishnan alias Dileep (Supra)***. The applicants shall also have further liberty to file application for copies of the documents and then the learned trial Court shall again have the authority to decide on the same without being influenced by the observations made in this order.
9. Accordingly, the petition is disposed off.

Sd/-
(Rajendra Chandra Singh Samant)
Judge