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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **CRL.M.C. 1219/2018**

ASHOK KUMAR AGARWAL

..... Petitioner

Through: Mr. Shakeel Ahmed, Advocate with Mr.
Kushdeep Gaur, Advocate.

Versus

CENTRAL BUREAU OF INVESTIGATION

..... Respondent

Through: Mr. Ripu Daman Bhardwaj, SPP for CBI
with SI Ravish Jha, Advocate.

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

ORDER

% **17.02.2020**

1. The present petition is directed against the order dated 07.02.2018 passed by Special Judge (PC Act), CBI in CC No. 75/2016 whereby the petitioner's application seeking supply of complaint dated 30.07.2014 and the forwarding letter dated 25.09.2014 was dismissed.
2. Learned counsel appearing on behalf of the petitioner restricts his prayer only to the complaint dated 30.07.2014.
3. Learned counsel for the petitioner submits that the respondent initially carried out a preliminary examination on the basis of complaint, given by one *Umesh Chandra*, the then Director (Operations), *Rashtriya Ispat Nigam Ltd.* On the basis of the aforesaid complaint, PE was conducted which resulted to the filing of the present RC against the present petitioner.

4. Learned counsel for the petitioner submits that the aforesaid complaint has not been handed over and the same is necessary for the just decision of the case.
5. On the other hand, learned counsel for the respondent submits that the aforesaid document was neither relied upon nor seized during the investigation. The fact remains that the PE was conducted only on the basis of the aforesaid complaint.
6. Learned counsel for the petitioner submits that the aforementioned complainant, *Umesh Chandra* at the relevant time was having additional charge of MD, *Orissa Mineral Development Corporation* and that M/s. East India Minerals Ltd. (EIML) was a joint venture co-promoted by Orissa Mineral Development Corporation (OMDC) and M/s. URCIL (UIL).
7. In Sidhartha Vashisht vs. State (NCT of Delhi), reported as **(2010) 6 SCC 1**, the Supreme Court held as follows:-

“218. The liberty of an Accused cannot be interfered with except under due process of law. The expression "due process of law" shall deem to include fairness in trial. The court (sic Code) gives a right to the Accused to receive all documents and statements as well as to move an application for production of any record or witness in support of his case. This constitutional mandate and statutory rights given to the Accused place an implied obligation upon the prosecution (prosecution and the Prosecutor) to make fair disclosure. The concept of fair disclosure would take in its ambit furnishing of a document which the prosecution relies upon whether filed in court or not. That document should essentially be furnished to the Accused and even in the cases where during investigation a document is bona fide obtained by the investigating agency and in the opinion of the Prosecutor is relevant and would help in arriving at the truth, that document should also be disclosed to the Accused.

219. *The role and obligation of the Prosecutor particularly in relation to disclosure cannot be equated under our law to that prevalent under the English system as aforesaid. But at the same time, the demand for a fair trial cannot be ignored. It may be of different consequences where a document which has been obtained suspiciously, fraudulently or by causing undue advantage to the Accused during investigation such document could be denied in the discretion of the Prosecutor to the Accused whether the prosecution relies or not upon such documents, however in other cases the obligation to disclose would be more certain. As already noticed the provisions of Section 207 have a material bearing on this subject and make an interesting reading. This provision not only require or mandate that the court without delay and free of cost should furnish to the Accused copies of the police report, first information report, statements, confessional statements of the persons recorded Under Section 161 whom the prosecution wishes to examine as witnesses, of course, excluding any part of a statement or document as contemplated Under Section 173(6) of the Code, any other document or relevant extract thereof which has been submitted to the Magistrate by the police under Sub-section (5) of Section 173. In contradistinction to the provisions of Section 173, where the legislature has used the expression "documents on which the prosecution relies" are not used Under Section 207 of the Code. Therefore, the provisions of Section 207 of the Code will have to be given liberal and relevant meaning so as to achieve its object. Not only this, the documents submitted to the Magistrate along with the report Under Section 173(5) would deem to include the documents which have to be sent to the Magistrate during the course of investigation as per the requirement of Section 170(2) of the Code.*

220. *The right of the Accused with regard to disclosure of documents is a limited right but is codified and is the very foundation of a fair investigation and trial. On such matters, the Accused cannot claim an indefeasible legal right to claim every document of the police file or even the portions which are*

permitted to be excluded from the documents annexed to the report Under Section 173(2) as per orders of the court. But certain rights of the Accused flow both from the codified law as well as from equitable concepts of the constitutional jurisdiction, as substantial variation to such procedure would frustrate the very basis of a fair trial. To claim documents within the purview of scope of Sections 207, 243 read with the provisions of Section 173 in its entirety and power of the court Under Section 91 of the Code to summon documents signifies and provides precepts which will govern the right of the Accused to claim copies of the statement and documents which the prosecution has collected during investigation and upon which they rely.

221. It will be difficult for the Court to say that the Accused has no right to claim copies of the documents or request the Court for production of a document which is part of the general diary subject to satisfying the basic ingredients of law stated therein. A document which has been obtained bona fide and has bearing on the case of the prosecution and in the opinion of the Public Prosecutor, the same should be disclosed to the Accused in the interest of justice and fair investigation and trial should be furnished to the Accused. Then that document should be disclosed to the Accused giving him chance of fair defence, particularly when non-production or disclosure of such a document would affect administration of criminal justice and the defence of the Accused prejudicially.”

8. As the preliminary enquiry itself was based on the aforesaid complaint and although it has been contended by the respondent that the document in question was neither relied upon document nor seized during the investigation, the fact remains that the aforesaid complaint was received by the CBI and is in their possession. I find considerable force in the submission of the learned counsel for the petitioner that the aforesaid complaint is necessary and desirable in order to set up his defence. Further,

it has not been stated that the supply of the complaint would cause prejudice to the respondent in any way.

9. Accordingly, the impugned order dated 07.02.2018 is set aside and it is directed that the copy of the aforesaid complaint be supplied to the petitioner.

10. The petition is accordingly disposed of.

MANOJ KUMAR OHRI, J

FEBRUARY 17, 2020

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