

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRMP No. 425 of 2021**

- Jairam Mandavi Aged About 55 (52) Years, S/o Late Shri Dhansay Mandavi, Cast - Gond, R/o Korar, P.S. Korar, District Kanker Chhattisgarh.

---- Petitioner

Versus

- State Of Chhattisgarh Through District Magistrate Surajpur.

---- Respondent

For Petitioner	: Mr. Shashi Bhusan Tiwari, Adv.
For the State	: Mr. Gurudev I. Sharan, G.A. along with Mr. Rakesh Sahu, Dy. G. A.

Hon'ble Shri Justice Narendra Kumar Vyas**Order On Board****23.09.2021**

1. Petitioner has filed present petition challenging the order dated 07.03.2020 passed by learned Additional Sessions Judge First Track Court, Surajpur in Sessions Trial No.82/18 (State of CG Vs. Jairam Mandavi) by which the application of the petitioner for production of statements of witnesses namely Lalit Ekka, Muneshwari Paikara, Kunti Singh, Poonam Bhagat which have been recorded by the investigating authority at the time of investigation but when the prosecution has submitted final report before learned Judge the same was not part of the final report.
2. Learned counsel for the petitioner would submit that during course of cross-examination of Mr. B. L. Kehri who was investigating officer in the cross-examination, it has been brought on record that the statements of Head Constable Lalit Ekka, Women Constable Muneshwari Paikara, their statements have been recorded but it is not the part of the final report. He would further submit that both the witnesses have not supported the prosecution case, therefore, their statements have not become part of the final report.
3. The learned Sessions Judge has rejected the application by recording a finding that a document which is not part of the final report cannot be directed for production of the same, though it may be part of the diary. He has further observed that prosecution shall place the documents which are in their favour and this Court cannot direct that the prosecution to file documents which are the part of the case diary.

4. The petitioner has assailed the order by filing present CRMP before this Court and would submit that the documents are necessary for defence of the petitioner, therefore, the learned trial Court has committed illegality by not allowing them to become part of the record of the trial.
5. Learned counsel for the State would submit that since the documents are not part of final report, the trial Court cannot direct for production of the same, therefore, the order passed by the learned trial Court is legal and justified which does not liable to be interfered. State counsel would further submit that the stage of production of documents as provided in Section 91 has been lapsed, therefore, application was deleted one except this trial Court has visited the same and does not warrant interference. He would further submit that as per Section 91 of CrPC the documents which are necessary for prosecution to prove the guilt of the accused are only to be required to produce and no other document is required to be produced and the document which is not part of the final report has no evidenciary value.

Section 91 of CrPC is extracted below:-

“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.

6. From bare perusal of the Section 91, it is clear that the Court has empowered to issue summons of production of the documents,

therefore, there can not be any bar for the Court to permit the prosecution to produce documents which are necessary for proper disposal of the case irrespective that it has not been filed along with charge sheet.

7. Heard learned counsel for the petitioner and learned counsel for respondent No.2.
8. Learned counsel for the petitioner would submit that investigating authority has to submit all the material collected during the investigation and they cannot withhold any document or material which has been collected during course of investigation and he would refer to Section 2(h) of CrPC which defines investigation. Section 2H of CrPC is extracted below:-

“2(h) " investigation" includes all the proceedings under this Code for the collection of evidence conducted by a police officer or by any person (other than a Magistrate) who is authorised by a Magistrate in this behalf;”

9. Learned counsel for the State would submit that Section 173(5) of CrPC says that the documents which are part of the final report are only to be placed on record before the trial Court not any other document. The submission of the learned counsel for the State cannot be accepted in view of the Section 173(5) of CrPC because the said Section provides that the material already sent to the investigation by Magistrate, it means the material collected during investigation has to be placed on record before concerning Magistrate.

Section 173(5) of CrPC is extracted below:-

“(5) When such report is in respect of a case to which section [170](#) applies, the police officer shall forward to the Magistrate along with the report-

(a) All documents or relevant extracts thereof on which the prosecution proposes to rely other than those already sent to the Magistrate during investigation;

(b) The statements recorded under section [161](#) of all the persons whom the prosecution proposes to examine as its witnesses.

10. Definition of investigation as prevailing in the old CrPC has come up for consideration before the Hon'ble Supreme Court in the case of State of MP Vs. Mubarak Ali reported in 1959 AIR 707 wherein Hon'ble Supreme Court in Para 7 has held as under:-

“7. In this view no other question arises for consideration. But as the learned Counsel appearing for the State contended that the observations of the learned Judge of

the High Court that permission of the Magistrate was obtained ten days after the investigation was started was wrong, it would be as well that we considered the argument briefly. Section 4(1) of the Code of Criminal Procedure defines " investigation as to include all the proceedings under that Code for the collection of evidence conducted by the police officer or other persons other than a Magistrate who is authorised by the Magistrate in this behalf. Chapter XIV of the Code prescribes the procedure for investigation. Investigation starts after the police officer receives information in regard to an offence. Under the Code " investigation consists generally of the following steps: (i) proceeding to the spot; (ii) ascertainment of the facts and circumstances of the case; (iii) discovery and arrest of the suspected offender; (iv) collection of evidence relating to the commission of the offence which may consist of (a) the examination of various persons (including the accused) and the reduction of their statements into writing, if the officer thinks fit, (b) the search of places of seizure of things considered necessary for the investigation and to be produced at the trial; and (v) formation of the opinion as to whether on the material collected there is a case to place the accused before a Magistrate for trial and if so taking the necessary steps for the same by the filing of a charge-sheet under S.173".

11. From perusal of records it reflects that in the cross-examination of I.O. it has been revealed that the statements of certain witnesses namely Lalit Ekka, Muneshwari Paikara, Kunti Singh, Poonam Bhagat have been recorded by the investigating authority during investigation of the case but it has been produced but this document is not a part of final report. He would further refer to judgment reported in **2001(2) CGLJ 216 in case of Santosh Vs. State of C.G.** and would submit that though the statements have been recorded but during investigation they have not supported the prosecution, therefore, it should have been brought on record. Coordinate Bench of this Court in the said judgment has held in Paras 16 and 19 as under:-

"16. It would be contrary to law to hold that the prosecution agency is entitled to file only those statements or document on which they are placing reliance. If such an authority is given to the police/prosecution agency it would lead to a judicial anarchism. The prosecution agency under such an authority would be entitled to suppress material documents and would not permit such evidence to see the light of the day which tends to support or help the case and cause of the accused. The police, the investigating agency and the prosecution agency are not the judges, they simply have to make investigation and submit the

challan honestly before the Court. It is for the Court to decide in accordance with law after taking into consideration the evidence which is brought on the record. A Court is not entitled to say that it would not permit use of the statements recorded under Section 174, Cr.P.C. A previous statement of a witness recorded during course of the enquiry, investigation and/or trial continues to be a previous statement and in accordance with Section 145 of the Indian Evidence Act the accused is entitled to contradict the maker of such statement with his previous statement.

19. This Court time and again has required the prosecution agency to file each and every document which came into existence during the course of the enquiry or investigation and has also cautioned the Courts that while trying a case they must see that the accused does not suffer any prejudice to his defence because of the suppression of material documents.”

12. Learned counsel for the petitioner would further rely on the Judgment reported in **SCC online 2008 SCC 693 in case of Jaikam Khan Vs. State of Rajasthan** and would refer to Para 6 as under:-

“6. So far as the question of supplying of the copies of statement of persons other than those who were cited as prosecution witnesses in the report submitted under Section 173 Cr.P.C. is concerned, strictly speaking sub-section (5) of Section 173 Cr.P.C. does not require the prosecution to supply the copies of the statements of such persons recorded under Section 161 Cr.P.C. But it does not mean that there can be no case in which the necessity of production of statements of such persons who have not been cited as prosecution witnesses, cannot arise. It is conceivable that one or more of these persons who were examined under Section 161 Cr.P.C. but who are not proposed to be cited as prosecution witness might be the persons acquainted with the facts and circumstances of the case and their statements might be relevant for the purpose of deciding the question whether the petitioner is guilty or is innocent. In such cases, if a material witness is withheld by the prosecution a question may arise whether adverse inference should be drawn against the prosecution for withholding a material witness. The trial Court may, therefore, direct the prosecution to produce the copies of the statements of those persons who appear to be acquainted with the facts and circumstances of the case or, in other words, who appear to be the material witnesses but have not been cited as prosecution witnesses. The Court may examine such witnesses if for a just decision in the case the Court considers the examination of such witnesses to be necessary under Section 311 Cr.P.C. read with Section 165 of the Evidence Act. In appropriate cases, the accused may also be supplied the certificate copies of the statements of such

witnesses so that the accused may consider whether the witness should be called as a defence witness or the Court should be requested to draw adverse inference for withholding a material witness.”

13. The Coordinate Bench of this Court and High Court of Rajasthan have taken a view that if the documents which necessary for fair trial of the case then the prosecution should produce before the trial Court. The prosecution cannot withhold the documents according to their evidence.
14. In light of the judgment passed by the Coordinate of this Court and High Court of Rajasthan and the definition clause of 2H, considering all the facts and circumstances of the case and material available on record, I am of the clear view that the investigation authority cannot withhold documents which are necessary for adjudication of the case. It is well settled proposition of law that investigation requires that all the materials which have been collected during course of investigation should be placed on record. Thus, the order passed by learned Sessions Judge rejecting the application of the petitioner for production of statements is illegal and accordingly the order dated 07.03.2020 passed by the learned 2nd Additional Sessions Judge is quashed.
15. Prosecution is directed to produce all the statements for consideration of trial Court. However, it is made clear that the evidenciary value has to be examined and ascertained by the trial Court, in accordance with law.
16. This Court has not commented anything on merit of case as well as evidenciary value of the documents which have to be placed on record or merit of the case. It is for the trial Court, in accordance with law and on the basis of material or evidence collected during the trial to decide the case.
17. With this observation, the present CRMP is allowed.

Sd/-

(Narendra Kumar Vyas)
Judge