

**IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH**

**CRM-M-25969-2021
Date of decision: 09.08.2021**

Jaswinder Kaur

...Petitioner

Versus

Central Bureau of Investigation

...Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present:- Mr. P. S. Ahluwalia, Advocate
for the petitioner.

Mr. Sumeet Goel, Sr. Advocate with
Mr. A. K. Ranolia, Advocate
for the respondent-CBI.

(Through Video Conferencing)

ARVIND SINGH SANGWAN, J. (Oral)

On 12.07.2021, the following order was passed:

“Prayer in this petition is for quashing of order dated 25.03.2021, passed by the Special Judge, CBI Court, Chandigarh in case FIR No. RC0052020A0006 dated 29.06.2020, under Sections 120-B IPC and Sections 7 and 7-A of the Prevention of Corruption Act, 1988, vide which the application dated 17.02.2021 for providing the following documents was partly declined, however, the documents mentioned at Sr. No. 4 were given to petitioner/accused and with regard to other documents, it was observed that since the CFSL report is awaited, the same cannot be given at this stage and simultaneously, the trial Court framed the charges against the petitioner. The prayer of the petitioner was to

supply the following documents:

1. Copy of Voice sample alongwith questioned recordings of Bhagwan Singh, Smt. Jaswinder Kaur and Gurdeep Singh and CFSL report in this regard.
2. Copy of specimen signatures and handwriting samples of all the five accused alongwith CFSL report in this regard.
3. Copy of CCTV Footage of Police Station, Manimajra, U.T., Chandigarh and CFSL report in this regard.
4. Copy of document No. 40, 43, 45.

Learned counsel for the petitioner relies upon **2020(1) RCR (Criminal) 391, P. Gopalkrishnan @ Dileep vs. State of Kerala and another** to argue that while deciding an identical application, Hon'ble Supreme Court has held that on receipt of the police report under Section 173 Cr.P.C. along with the accompanying statements and documents, by virtue of Section 207 of the 1973 Code, the Magistrate is obliged to furnish copies of each of the statements and documents to the accused unless it is voluminous. It is also held that the furnishing of documents to the accused under Section 207 of the 1973 Code is a facet of right of the accused to a fair trial enshrined in Article 21 of the Constitution of India. It is also held by Hon'ble Supreme Court that when an objection is raised by an accused, the same be answered at the earliest and certainly before conclusion of the trial. In para 32 of this judgment, Hon'ble Supreme Court has further held as under:

“32. It is crystal clear that all documents including “electronic record” produced for the inspection of the Court alongwith the police report and which

prosecution proposes to use against the accused must be furnished to the accused as per the mandate of Section 207 of the 1973 Code. The concomitant is that the contents of the memory card/pendrive must be furnished to the accused, which can be done in the form of cloned copy of the memory card/pendrive. It is cardinal that a person tried for such a serious offence should be furnished with all the material and evidence in advance, on which the prosecution proposes to rely against him during the trial. Any other view would not only impinge upon the statutory mandate contained in the 1973 Code, but also the right of an accused to a fair trial enshrined in Article 21 of the Constitution of India.”

Learned counsel for the petitioner further submits that the approach of Special Judge, CBI Court, Chandigarh in observing that at the stage of framing of charge, only prima facie case is to be seen, even if the copies of recorded conversations, CCTV footage, CFSL report are not provided to accused as CFSL report is pending, is contrary to settled procedure under Cr.P.C. Learned counsel further submits that awaiting the CFSL report, the trial Court should not frame charge or start recording prosecution evidence as it is seen in many cases that after some document/electronic evidence is supplied to accused person at a later stage, the accused has to file application for further cross-examination of witness already examined and it delays the trial unnecessarily.

Notice of motion.

Mr. Sumeet Goel, Senior Advocate, assisted by Mr. Samir Rathour, Advocate, accepts notice on behalf of the respondent-CBI and submits that he may be

granted two weeks' time to file the reply.

List again on 09.08.2021.

To be shown in the Urgent List.”

Reply, on behalf of the respondent-CBI, is filed in Court today.

Learned senior counsel for the respondent-CBI has referred to 'reply on merit', whereby, in reply to para 5 to 9 of the petition, it is stated as under:

“5-9 That the contents mentioned in Para No. 5, 6, 7, 8 & 9 does not require any reply on behalf of prosecution being matter of record however it is pertinent to mention here that copy of all the relied upon documents have been supplied to accused applicant alongwith the charge sheet except the documents/articles sent to CFSL for examination. However, it is pertinent to mention that copies of transcriptions of the recorded conversation relied upon by the prosecution were already supplied to the accused/applicant prior to framing of charge. Further, now copies of voice specimen and specimen sent for handwriting examination as mentioned in the application dated 17.02.2021 by the applicant Jaswinder Kaur had been received which had already been placed on Judicial record along with copies to be supplied to accused persons vide application dated 05.08.2021 by the prosecution. However, report of CCTV footage sent to CFSL for examination vide letter dated 29.12.2020 is still awaited and would be supplied to accused persons as and when received. It is further pertinent to mention that Ld. Special Judge, CBI, Chandigarh had rightly framed charges u/s 120-B IPC, 7, 7A of PC Act, 467, 468 and 471 of IPC after considering that there were sufficient material available on record to frame charges against them.”

Learned senior counsel has further argued that documents at Sr. No. 40, 43 and 45 have already been supplied, thus, the prayer qua these documents becomes infructuous.

Learned senior counsel further submitted that voice specimen, handwriting specimen and CFSL report have already been handed over to petitioner before the trial Court on 05.08.2021. It is, thus, submitted that cloned copy of voice sample and CCTV footage along with CFSL report will be supplied to petitioner as and when, the same are received by the CBI.

In reply, learned counsel for the petitioner submits that since the charges have already been framed, in the event of any such report coming in favour of the petitioner, if the trial is allowed to continue, it will adversely affect the rights of the petitioner.

Learned counsel for the petitioner further submits that as per judgment in ***P. Gopalkrishnan @ Dileep's*** case (supra), the documents are to be supplied at the very outset, however, the trial Court has framed charges without awaiting the same.

After hearing learned counsel for the parties, I deem it appropriate to dispose of this petition with a direction to trial Court that the proceedings before it will remain stayed till the time, the cloned copy of voice sample and CCTV footage along with CFSL report are supplied to petitioner to enable her to put up her defence to the prosecution witnesses.

The petitioner is also granted liberty that in case any report comes in her favour, she may move an appropriate application for alteration of charge.

Considering the fact that the matter is pending since long, the Director, Central Forensic Science Lab, CGO Complex, Lodhi Road, New Delhi is directed to ensure that the requisite CFSL report is supplied to respondent-CBI within a period of 30 days from today.

09.08.2021

Waseem Ansari

(ARVIND SINGH SANGWAN)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No