

IN THE HIGH COURT AT CALCUTTA

CRIMINAL REVISIONAL JURISDICTION

Appellate Side

Present:

The Hon'ble Justice Jay Sengupta

CRR 943 of 2022

Chandan Kumar Chowdhury

Versus

The State of West Bengal & Anr.

For the petitioner : Mr. Milon Mukherjee
Mr. Soumyajit Das Mahapatra
Mr. Soumya Basu Roy Chowdhuri
..... Advocates

For the opposite party no. 2 : Mr. Kallol Mondal
Mr. Krishan Roy
Mr. Souvik Das
Mr. Anamitra Banerjee
..... Advocates

For the State : Mr. Madhusudan Sur
Mr. Dipankar Paramanick
..... Advocates

Lastly heard on : 05.05.2022

Judgment on : 17.06.2022

Jay Sengupta, J.:

1. This is an application challenging an order dated 17.03.2022, passed by the learned Additional Sessions Judge, Fast Track Court - II, Howrah and all subsequent orders relating thereto in S.T. Case No. 38 of 2021 under Sections 302, 326 120B and 34 of the Indian Penal Code and Sections 26 and 27 of the Arms Act whereby an application under Section 207 of the Code was effectively disposed of.

2. It appears from the certified copy of the order dated 23.03.2022, filed subsequently, that the prayer for supply of CCTV footage was finally turned down on that day.

3. Learned senior counsel appearing on behalf of the petitioner submitted as follows. The petitioner was an accused in this case. The charge sheet was submitted by the investigating agency indicating that the prosecution would rely on a CCTV footage marked as Item No. 4 of Annexure 'A' appended in the charge sheet. However, at the stage of supply of copies, no copy of the said CCTV footage was supplied to the accused. When the matter was taken up before the learned Magistrate, it was submitted on behalf of the prosecution that since the prosecution was not relying on the said CCTV footage anymore, there was no requirement to supply the same. This was an absolutely misconceived notion. Whether one relied on a copy of such document finally during trial or not, since the same was relied upon in the charge sheet, copies of the same had to be given to the accused.

Reliance was placed on a decision in the case of Sidhartha Vashisht @ Manu Sharma Vs. State (NCT of Delhi) reported in (2010) 6 SCC1 and In Re : Criminal Trial Guidelines relying inadequacy and divorce reported in (2021) 10 SCC 598. In Sidhartha Vshisht @ Manu Sharma(supra) case, the Hon'ble Apex Court gave a wider interpretation to the words contained in Section 207 of the Code. In Re: Criminal Trials Guidelines (supra), it was categorically held that documents seized during investigation and relied upon by the Investigating Officer in accordance with Sections 207 and 208 had to be supplied to the accused along with the statements of witnesses. Therefore, it was inconsequential whether the learned Public Prosecutor at this stage would rely on such document mentioned in the charge sheet or not.

4. Learned counsel appearing on behalf of the State submitted as follows. The prosecution was supposed to supply only those documents to the accused which they were going to rely upon during trial. On this reliance was placed on the case of P. Gopalkrishnan vs. State of Kerala reported in (2020) 9 SCC 161. In any event, the prosecution had made it abundantly clear that it would not rely on the CCTV footage in question. Therefore, there was no need to serve a copy of the same upon the State.

5. Learned counsel appearing on behalf of the private opposite party submitted as follows. The right to a fair trial of the accused would not be prejudiced if a copy of the CCTV footage was not supplied to him because the prosecution had specifically stated that it would not rely on the same. However, even if a copy of the footage was supplied to the accused, the

private opposite party would not have any objection. What was of utmost importance to the private opposite party was that the proceeding commenced at the earliest and was not protracted on some ground or the other.

6. I heard the submissions of the learned counsel appearing on behalf of the parties and perused the revision petition and the written notes.

7. For a better exposition of the question of law raised in this revision, it is necessary to refer to the relevant portions of Sections 173 and 207 of the Code of Criminal Procedure.

Sub-sections (5), (6), (7) of Section 173:

“.....

(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.

(6) If the police officer is of opinion that any part of any such statement is not relevant to the subject-matter of the proceedings or that its disclosure to the accused is not essential in the interests of justice and is inexpedient in the public interest, he shall indicate that part of the statement and append a note requesting the Magistrate to exclude that part from the copies to be granted to the accused and stating his reasons for making such request.

(7) Where the police officer investigating the case finds it convenient so to do, he may furnish to the accused copies of all or any of the documents referred to in sub-section (5).”

Section 207:

“207. Supply to the accused of copy of police report and other documents.

- In any case where the proceeding has been instituted on a police report, the Magistrate shall without delay furnish to the accused, free of cost, a copy of each of the following:-

- (i) the police report;
- (ii) the first information report recorded under section 154;
- (iii) the statements recorded under sub-section (3) of section 161 of all persons whom the prosecution proposes to examine as its witnesses, excluding therefrom any part in regard to which a request for such exclusion has been made by the police officer under sub-section (6) of section 173;
- (iv) the confessions and statements, if any, recorded under section 164;
- (v) any other document or relevant extract thereof forwarded to the Magistrate with the police report under sub-section (5) of section 173:

Provided that the Magistrate may, after perusing any such part of a statement as is referred to in clause (iii) and considering the reasons given by the police officer for the request, direct that a copy of that part of the statement or of such portion thereof as the Magistrate thinks proper, shall be furnished to the accused:

Provided further that if the Magistrate is satisfied that any document referred to in clause (v) is voluminous, he shall, instead of furnishing the accused with a copy thereof, direct that he will only be allowed to inspect it either personally or through pleader in Court.”

8. While Section 173 (5) deals with the documents that a police officer is to forward to a Magistrate along with the report, Section 207 of the Code delves in supply of copies of police report and other documents to the accused.

9. Although sub-section (iii) of Section 207 contains the expression “the statements recorded under sub-section (3) of Section 161 of all persons whom the prosecution proposes as its witnesses”, there is no similar qualification in case of “any document” referred to in sub-section (v) of the said Section.

10. The CCTV footage in question would fall within the category of other document referred to in sub-section (v) of Section 207 of the Code.

11. Therefore, once such other document is referred to in the charge-sheet it will be deemed that the same would be relied on by the prosecution during trial although this does not preclude the prosecution from not relying on such document during trial. Therefore, it is quite logical to infer that once a document is referred to and/or relied on by the prosecution in the charge-sheet, a copy of the same ought to be supplied to the accused unless the same is otherwise barred. Regardless of whether at the stage of supply of copies the prosecution claims that it would not rely on a document referred

to in the charge sheet, ordinarily copies of the same have to be supplied to the defence as per Section 207 of the Code.

12. In *Sidharth Vashist @ Manu Sharma Versus State (NCT of Delhi)*, (2010) 6 SCC the Hon'ble Apex Court held as follows-

"....the right of the accused to receive the documents/statements submitted before the Court is absolute and it must be adhered to by the prosecution and the Court must ensure supply of documents/statements to the accused in accordance with law...."

".....In contradistinction to 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 requirement of Section 170 (2) of the Code."

13. Even in *Re: Criminal Trial Guidelines regarding inadequacies and deficiencies Versus State of Andhra Pradesh and others*, (2021) 10 SCC 598, a special Bench of the Hon'ble Apex Court held that the accused was entitled to get all statements, list of documents, material objects, exhibits seized during investigation as per 207 and 208 of the Code of Criminal Procedure.

14. Therefore, it is abundantly clear that the documents and the other materials which are referred to in a charge-sheet and thereby, are deemed to

have been relied on by the prosecution at that stage, ought to be supplied to the accused.

15. In view of the above, the orders passed by the learned Trial Court are partially modified inasmuch as a copy of the CCTV footage in question shall be supplied to the accused as per Section 207 of the Code and in accordance with law. Thereafter, the matter will be proceeded with as expeditiously as possible.

16. With these observations, the revisional application is disposed.

17. Urgent photostat certified copies of this judgment may be delivered to the learned Advocates for the parties, if applied for, upon compliance of all formalities.

18. The parties shall act in terms of copy of the order downloaded from the official website of this Court.

(Jay Sengupta, J.)