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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

WRIT PETITION NO.4981 OF 2019

Vishnu S. Gupta

... Petitioner

V/s.

Central Bureau of Investigation
& Anr.

... Respondents

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Mr. Sanjeev Kadam with Mr. Ramdas Hake Patil for the
petitioner.

Mr. Sandesh Patil with Mr. Chintan Shah for
respondent no.1/CBI.

Mr. A.D. Kamkhedkar, APP for respondent no.2/State.

CORAM : AMIT BORKAR, J.

DATED : NOVEMBER 17, 2022

P.C.:

- 1.** Heard. **Rule.** Rule is made returnable forthwith by consent of the parties.
- 2.** The challenge in this writ petition is to the order dated 19th July 2019 passed by the learned Special Judge, Greater Mumbai in Criminal Revision Application No. 664 of 2019 confirming order dated 1st April 2019 passed below Exhibit 134 in C.C. No. 984/PW/2014 passed by the learned Additional Chief Metropolitan Magistrate, 3rd Court, Esplanade, Mumbai.
- 3.** In a trial for offence under section 120-B read with sections

409, 420 and section 13(2) read with section 31(1)(c) & (d) of the Prevention of Corruption Act, the prosecution filed charge-sheet. The petitioner/accused no.3 filed application below Exhibit 134 seeking production of documents listed in the application.

4. The learned Magistrate by order dated 1st April 2019 rejected the application holding that the accused is not entitled to the documents as the same are not covered by section 207 of the Criminal Procedure Code. Aggrieved thereby, the petitioner filed revision before the learned Special Judge, CBI, Greater Mumbai. The learned Special Judge by the impugned order dated 19th July 2019 dismissed the revision holding that the requirement of section 207 to supply documents to the accused has been complied with as the necessary documents along with charge-sheet are supplied to the petitioner. The petitioner has, therefore, filed present writ petition.

5. Respondent no.1 filed reply *inter alia* stating that the documents sought by the petitioner which are not part of the charge-sheet will not be relied upon by the prosecution and if it is decided to rely upon such documents, the accused would be furnished copies of such documents after following due process of law.

6. Mr. Kadam, learned advocate for the petitioner submitted that such course as stated in the reply is not permissible in view of the authoritative pronouncement of the Apex Court in **Criminal Trials Guidelines Regarding Inadequacies and Deficiencies, In re. v. State of Andhra Pradesh & Others,**

reported in (2021) 10 SCC 598. He submitted that the Apex Court has held that along with the documents as contemplated under section 207, the Magistrate need to ensure that the list of other materials such as statements or objects/documents seized but not relied on should also be furnished to the accused.

7. In paragraph 11 of **Criminal Trials Guidelines Regarding Inadequacies and Deficiencies, In re.** (supra) has held as under:

“11. The Amici Curiae pointed out that at the commencement of trial, accused are only furnished with list of documents and statements which the prosecution relies on and are kept in the dark about other material, which the police or the prosecution may have in their possession, which may be exculpatory in nature, or absolve or help the accused. This Court is of the opinion that while furnishing the list of statements, documents and material objects under Sections 207/208 CrPC, the Magistrate should also ensure that a list of other materials, (such as statements, or objects/documents seized, but not relied on) should be furnished to the accused. This is to ensure that in case the accused is of the view that such materials are necessary to be produced for a proper and just trial, she or he may seek appropriate orders, under CrPC for their production during the trial, in the interests of justice. It is directed accordingly; the Draft Rules have been accordingly modified.”

8. On perusal of the application, and in particular paragraphs 5 to 16 would, in my opinion, be covered by the observations of the Apex Court in paragraph 11 in **Criminal Trials Guidelines Regarding Inadequacies and Deficiencies, In re.** (supra).

9. In that view of the matter, the impugned order cannot be sustained. Hence, following order:

The application below Exhibit 134 in C.C. No. 984/PW/2014 pending before the Chief Metropolitan Magistrate, Mumbai is allowed.

10. Rule is made above in above terms. No costs.

(AMIT BORKAR, J.)