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28.08.2023
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C.R.R.3132 of 2023

In Re: An application under Section 401 read with Section 482 of the
Code of Criminal Procedure, 1973;

Aryaman Poddar
Versus
The State of West Bengal

Mr. Ankit Agarwal,
Ms. A. Mukherjee.
...for the petitioner.

Mr. Saswata Gopal Mukherjee, Ld.P.P.
Mr. Pavas Bhattacharya
Mr. M.F.A. Begg.
...for the State.

Petitioner is directed to serve a copy of the revisional application upon Mr. Pravas Bhattacharyya, learned advocate, who ordinarily appears on behalf of the State. His appointment may be regularised by the concerned authorities.

The revisional application has been preferred challenging the order dated 9th August, 2023 passed by the learned Special Judge, City Sessions Court, NDPS Act, Kolkata, Bench-I relating to NDPS Case No.26 of 2022 arising out of STF Police Station Case No.17 of 2022 dated 23rd June, 2022 under the relevant provisions of the NDPS Act.

Petitioner initially preferred an application under Section 207 of the Code of Criminal Procedure for supply of certified clone copies of the entire videography referred to in the seizure list dated

27.06.2022 and also in case the investigating officer failed to supply such videography, electronic data etc. which are not referred to in the charge-sheet submitted by the prosecution. Consequently, on 09.08.2023 a date was fixed for production of the accused persons and supply of copies of videography of the alleged search and seizure.

Learned special court elaborately has dealt with the issue regarding the pen-drive wherein the video footage as claimed by the prosecution was opened in court. It has been observed by the learned trial court that in course of copying from the pen-drive kept inside the sealed envelope, there were two video footages relating to two phases of search and seizure and out of those two video footages one was found to be corrupted and could not be copied. It was informed by the investigating officer, according to the court, that the source of the said video was official phone of the department. The learned trial court fixed at 3.00 p.m. on the said date to produce the source of the said video footages and get copies from it with the help of the technical team. Later part of the order dated 09.08.2023 reflects that the copies of the video footages from the phone were extracted and the copies of the same were supplied in two separate pen-drives to the learned lawyers of both the accused persons and the same were accepted with objection after separate applications were filed by the accused persons regarding their objection to the authenticity of the video footages. Learned court after considering such prayer on behalf of the accused persons was pleased to reject the same.

Mr. Agarwal, learned advocate appearing for the petitioner submits that the phone which was claimed to be the source was never seized in course of investigation and refers in respect of the same phone/mobile set which was not referred to in the order dated 09.08.2023. The learned trial court having accepted the extract of video footages from such sources are beyond the scope of law and the accused are seriously prejudiced by such materials being brought on record in spite of the same not being referred to in the original charge-sheet.

I have considered the submissions advanced by Mr. Agarwal, learned advocate appearing for the petitioner and on an appreciation of the same as also the reasons so assigned by the learned special court, I am of the opinion that such video footages at this stage are not adduced in evidence but have been produced in support of the prosecution case. If at all pursuant to an application which has been taken out, the source is a subject matter of challenge, then the same is kept open. The petitioner would be at liberty to challenge the same when the prosecuting agency bring such video footages by way of evidence at the appropriate stage of the trial.

With the aforesaid observations, CRR 3132 of 2023 is disposed of.

Pending application, if any, is consequently disposed of.

All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

Urgent photostat certified copy of this order, if applied

for, be supplied to the parties upon compliance of all requisite formalities.

(Tirthankar Ghosh, J.)