

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.799 OF 2023

Vidyadhar s/o Dhondiram Dhage

Petitioner

Versus

The Central Bureau of Investigation

Respondent

Mr. Joydeep Chatterji, Advocate holding for Mr. P. A. Bhosle, Advocate
for the petitioner.

CORAM : R. M. JOSHI, J.

DATE : 30th JUNE, 2023.

PER COURT :

1. This petition takes exception to the order dated 18th April, 2023 passed below Exhibit 80 in Special Case ACB No. 10/2017 whereby the application filed by the petitioner/accused for issuing certificate of hash value of the pen drive and other details thereof came to be rejected.

2. The petitioner is facing trial for offence punishable under Sections 7, 13(1)(d) read with Section 13(2) of Prevention of Corruption Act, 1998. It is contended by petitioner that charge-sheet filed against him in Court includes one pen drive containing purported conversation between petitioner and complainant

regarding demand and acceptance of bribe. It is alleged that learned Trial Court did not follow the procedure laid down in Chapter VI paragraph No. 24(5) of the Criminal Manual while accepting S.D. Card in so far as transcript proved was not verified and endorsed by Court. It is further alleged that pen drive was not provided till recording of evidence of PW 4. Later on pen drive is provided without certifying hash value thereof and other details such as serial number of device, make, storage capacity etc. It is claimed that in absence of these details the petitioner could not send pen drive for forensic analysis for verifying its correctness to rule out probability of tampering therewith. An application filed vide Exhibit 80 to that effect came to be rejected.

3. Learned counsel for the petitioner states that there was non-compliance of the provision of criminal manual while accepting the charge-sheet to the effect that pen drive and transcript of conversation therein is not verified. It is contended that petitioner is within his right to send the pen drive to forensic expert to ascertain that it is not tampered with. According to him, for want of compliance of rules regarding issuance of hash value certificate while making and providing copy to the petitioner from original pen drive,

now it wont be open for him to send it for examination to expert. To support his submission, he placed reliance on judgments in the case of Gopalkrishnan Alias Dileep vs. State of Kerala, AIR 2020 Supreme Court 1 and Nandu Govind Khile vs. The State of Maharashtra in Criminal Application No. 3681/2019 decided on 5th March, 2020.

4. For the purpose of understanding grievance of the petitioner, few facts of the case are required to be taken note of. The petitioner is facing trial for offences punishable under Prevention of Corruption Act. Pen drive filed in charge-sheet is relied upon by prosecution to support the charges against petitioner. The petitioner sought copy of the contents of pen drive and in view of no objection of prosecutor, copy thereof was provided to the petitioner before the court. No dispute is made by petitioner about the fact that the copy of contents of very same pen drive which formed part of charge-sheet is provided to the petitioner. It is on the next date of hearing application, Exhibit 80 came to be filed seeking hash value, details of device etc. The application was opposed by prosecution stating that this is an attempt to delay trial.

5. It is not subject matter of petition to decide the effect of non-furnishing copy of pen drive before commencement of evidence before Trial Court. The scope of the petition is restricted to the issue of refusal of learned Trial Court to issue hash value certificate and other particulars of pen drive containing of S.D. Card provided to the petitioner/accused.

6. During the course of arguments of learned counsel for petitioner, a specific query was made as to whether at the time of seizure of the original S. D. Card its hash value was determined and certified by the Investigating Officer. To this query, on instructions, a candid reply is given by him stating that no such hash value was determined at the relevant time. The effect of non furnishing of hash value is not issue before this Court as the same would be determined during trial.

7. Order dated 6th March, 2023, passed by the Trial Court, clearly shows that prosecution was directed to provide copy of micro S. D. Card to the accused after making copy thereof in presence of Court. Learned advocate appearing for accused has acknowledged receipt of the copy of conversation in pen drive. It being so and since

copy has been done by Court in performance of Judicial acts, there will be presumption that the copy issued to the petitioner is exact true copy of the contents of S. D. card which is part of charge-sheet. As the application filed before the Trial Court is for hash value and details of device i.e. pen drive, the same is sought not in respect of original electronic document but copy thereof. Needless to say that for all practical purpose the S. D. Card filed in charge-sheet would be the document of evidence and not the copy made thereof. Apart from this, since there was no hash value determined of S. D.Card at the time of making it part of charge-sheet, it is immaterial as to whether the hash value of coy is determined or not.

8. No doubt, Hon'ble Apex Court in the case of P. Gopalkrishnan (supra) emphasized the importance of the hash value and details about the electronic evidence, so also, observations are made by this Court in Criminal Application No. 3681/2019 in that regard, but question would arise as to whether the same could be made applicable while making copy of the original record before the Court or at the time of filing of charge-sheet hash value of the same would have to be certified. At the stage when Investigating Officer seizes the concerned electronic record and to ensure that there is no

further tampering of the same, hash value is determined and certified. In the instant case, no hash value of the S. D.Card was taken by the Investigating Officer at the time of its seizure. Hence, the observations in the case referred no way helps case of petitioner to determine hash value and other details of copy i.e. Pen drive.

9. In the result, this Court finds no perversity in the impugned order. The petition sans merit and the same stands dismissed.

(R. M. JOSHI)
Judge

dyb