

Prasiddh Narayan Dubey and Anr .. Petitioners

Versus

The State of Maharashtra .. Respondent

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Mrs. Anamika Malhotra, APP for the State.

DATED : 13th APRIL 2023

P.C:-

1 Heard learned counsel for the petitioner and the
learned counsel for the CBI.

The petitioners are challenging the order dated 28/11/2022 passed by the Special Court for CBI at Greater Mumbai in Special Case No.115/2021 by which an application filed by the petitioners (accused persons) vide Exhibit-159, came to be rejected and the accused were directed to remain present before the Court on the next date.

2 In order to examine the legality and propriety of the impugned order, I must narrate the backdrop facts.

3 The appellant – husband and wife are facing charge in Special Case No.115/2021 for committing an offence punishable u/s.13(2) r/w Section 13(1)(e) of the Prevention of Corruption Act, 1988. The petitioner no.1 is a public servant and it is the case of the prosecution that he acquired movable and immovable assets worth Rs.2,03,24,399/-.

4 These bare minimum facts are sufficient for consideration of the arguments advanced by the rival parties.

 During the course of trial, an Application was moved by the prosecution purportedly u/s.294 of Cr.P.C, on 6/7/2022, which read as under :-

 “It is submitted that while submitting the charge-sheet total 97 documents (D-1 to D-97) was submitted along with the charge-sheet.

 After framing of charge now prosecution is filing application u/s.294 Cr.P.C. Therefore, the accused persons may be call upon to admit or deny each of the documents”.

5 It is the case of the prosecution that while charge-sheet was filed, the entire list of 95 documents in R.C./B.A.1/2018/A0007 was furnished to the accused persons and this provided the description of the documents/pages number in the charge-sheet, the nature of the document whether original/

certified, the person through whom the document is to be produced as well as the name of the concerned persons whether he is cited as a witness.

6 It is not disputed by the petitioners that this list of document was received at the time of filing of charge-sheet.

In order to avoid repetition in action, when the application under Section 294 of Cr.P.C. was filed, it was stipulated that charge-sheet was accompanied with these 97 documents and after framing of charge, the accused persons were called upon to admit or deny each of these documents, which were furnished with the charge-sheet.

7 The result of the entire exercise, being that the counsel for the accused made the following endorsement on the said list.

“Except the document at D-1, D-2(vii) and D 6(2), all the documents were admitted by accused no.1 and accused no.2. This endorsement is dated 22/7/2022”.

8 Thereafter, on 19/11/2022, when five witnesses were already examined and also cross-examined by the accused, and when the Investigating Officer was under examination and he was confronted with some documents, an application was filed on 19/11/2022 (Exhibit-159) seeking retraction of admitted documents and exhibited documents, by contending that they

were exhibited as they came to be admitted by the earlier Advocate without examining the witnesses, and this would prejudice the accused. With the five witnesses of the prosecution being examined, the documents were admitted in the wake of the endorsement dated 22/7/2022, through the witnesses who were already examined, and the documents were exhibited, since admitted.

9 The submission of the learned counsel is about the procedural aspect which is adopted by the CBI, and the learned counsel would place reliance upon the decision of Division Bench at Nagpur in *State of Maharashtra Vs. Ajay Dayaram Gopnarayan & Anr, 2014 SCC Online 68*, wherein the Division Bench has emphasized upon the importance of Section 294 of the Code and took note of the fact that this procedural requirement, must be strictly adhered to. The Court, also took note of the fact, that in large number of Sessions trials, the provision of Section 294 of the Code is not followed in strict sense and this definitely result into prejudice to the accused persons, as in the said case, two documents were passed being Exhibit 87 and 88, without verifying that they never formed part of the list, which was produced under Section 294(1). The provision of the Criminal Manual contained in Chapter VI para 32 was reproduced in the judgment and directions were issued that the format as prescribed in the manual must be strictly adhered to.

10 There cannot be any serious doubt about the proposition of law that flows from the aforesaid judgment and there cannot be quibble over the fact that if the law requires a particular thing to be done in a particular fashion, then it must be done in that fashion only and in no other way.

11 Section 294 of the Code of Criminal Procedure reads thus :

“294 No formal proof of certain documents. -

(1) Where any document is filed before any Court by the prosecution or the accused, the particulars of every such document shall be included in a list and the prosecution or the accused, as the case may be, or the pleader for the prosecution or the accused, if any, shall be called upon to admit or deny the genuineness of each such document.

(2) The list of documents shall be in such form as may be prescribed by the State Government.

(3) Where the genuineness of any document is not disputed, such document may be read in evidence in any inquiry, trial or other proceeding under this Code without proof of the signature of the person to whom it purports to be signed :

Provided that the Court may, in its discretion, require such signature to be proved”.

12 The avowed purpose of the introduction of the said provision in the Code is to shorten the time consumed by the prosecution in producing the documents and by affording an opportunity to the other side, including the accused either to admit or to deny the document. If there is an admission of any

particular documents, then the learned Judge during the course of the trial, can exhibit the same, but if there is any objection, the prosecution would be cast with the responsibility to prove the particular document which is not admitted.

Section 294 of Cr.P.C. therefore, contain specific provision where the document deserve to be admitted, as it cannot be called in question, being a document in the nature of public document like report from an expert, the medical report, ballistic reports, etc. However, the emphasis of Section 294 is admission of such documents, which do not require formal proof.

As the Division Bench has rightly observed that there is no compulsion on the accused to admit a document and there can still be a denial even if the document is a public document like an expert opinion contained in a post mortem report. In that case, the prosecution will have to prove the said document by examining an author of the document or any other witness who is capable of proving the said document.

13 In this background, when we look at the list of the documents placed at page 53 of the petition which give the necessary details in the following sequence

Doc. No.	Description of documents.	Page Nos.	Original/ Certified copy	MR No./ Item No.	To whom prepared/ produced.	Name of Attesting Person whether he has cited as witness	PW No.

When one look at the format in form of paragraph no.32 of Chapter VI of the Criminal Manual, the same particulars are to be found.

14 The application of the prosecution filed vide Exhibit-40 provided an opportunity to the accused person to admit or deny the document, the details of which were already made available to him along with the charge-sheet.

I do not think that there is any procedural infraction of Section 294 by submitting the list along with the charge-sheet and in fact, since it was already provided with the charge-sheet, the accused persons had more time available with them to delve upon whether they want to admit or deny the document.

When the counsel for the accused chose to admit all the documents, except three of them, with the change in the counsel, and that too at the stage when the trial has now advanced and is, at the stage of cross-examination of the Investigating Officer, probably the last witness, the objection has been rightly turned down by the learned Judge on 28/11/2021 on the impugned order.

In para 7 of the said order, the learned Judge has also observed about the conduct of the accused and their counsel, and specifically recorded that there is no provision of the Code of Criminal Procedure for retraction of admitted and exhibited documents.

I am therefore, unable to persuade myself to find any perversity or illegality in the impugned order and hence, by upholding the same, the present Writ Petition is dismissed.

No order as to cost.

(SMT. BHARATI DANGRE, J.)