

AGK

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

WRIT PETITION NO.641 OF 2023

Arati Sanyog Sawant & Anr.

... Petitioners

V/s.

The State of Maharashtra

... Respondent

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Mr. Akhilesh Singh for the petitioners.

Mr. Arfan Sait, APP for the respondent/State.

Mr. Popat Baban Dhaytonde, PI, Investigating Officer,
Sadar Bazar Police Station, Solapur City,

CORAM : AMIT BORKAR, J.

DATED : APRIL 17, 2023

PC.:

1. The writ petition is directed against order dated 22nd December 2022 passed by the learned Additional Chief Metropolitan Magistrate, 4th Court at Girgaon, Mumbai permitting prosecution to produce documents.

2. Relying on the judgment of this Court in **Bhagyashree Prashant Wasankar v. State of Maharashtra** reported in 2021 SCC OnLine Bom. 1064, it is submitted that without following procedure under the Criminal Procedure Code, 1973, such production could not have been allowed when the documents does not form part of charge-sheet.

3. Learned APP relying on the judgment of the Karnataka High

Court in **B.L. Udaykumar v. State of Karnataka** reported in 2018 Cri.L.J. 2935 submitted that in the facts of the case, the trial is pending before the Magistrate. Section 242 of the Criminal Procedure Code, 1973 is the relevant provision. Learned Single Judge of this Court in **Bhagyashree Wasankar** (supra) was dealing with sessions trial and, therefore, the procedure followed by the learned Magistrate cannot be faulted.

4. Having heard advocates for the parties, in my opinion, learned APP is right in submitting that the judgment of learned Single Judge of this Court is of no help to the petitioners as this Court was dealing with the prosecution in sessions trial. Learned Single Judge in paragraph 20 has distinguished sessions trial *vis-a-vis* trial before the Magistrate. In paragraph 21, this Court held that unlike Section 242, there is no provision available for a witness to directly seek production of additional document during the course of sessions trial. Therefore, the said judgment is of no help to the petitioners.

5. However, learned Single Judge of the Karnataka High Court in **B.L. Udaykuar** (supra) has interpreted Section 242 of the Criminal Procedure Code, 1973. In paragraphs 12 to 14, learned Single Judge has observed as under:

“12. As could be seen from the above, sub-section (3) mandates the Magistrate to take all such evidence as may be produced in support of the prosecution. The use of the language "all such evidence" in the sub-section means that the court is required to take or receive all such evidence which the prosecution may produce in support of its case. Having regard to the wide language used in the section, the

expression "all such evidence" cannot be given a restrictive meaning so as to hold that only such evidence as relates to those of persons who have been examined by the police or only the documents collected during investigation could be produced before the Court. To read the section in such a restricted manner would amount to reading into the sub-section something which is not there. Even otherwise "evidence" in strict sense means oral and documentary evidence. As defined in Section 3 of the Evidence Act "Evidence means and includes-(1) all statements which the Court permits or requires to be made before it by witnesses, in relation to matters of fact under inquiry, such statements are called oral evidence; (2) (all documents including electronic records produced for the inspection of the Court) such documents are called documentary evidence."

13. Thus it is clear that sub-section (3) of section 242 casts a mandatory duty on the Magistrate to take all such evidence as may be produced in support of the prosecution. The word "produced" in sub-section (3) also cannot be given a restrictive meaning to hold that only the materials collected during investigation could be permitted to be produced in evidence. Such a construction would defeat the very purpose of trial. If the main object of criminal trial is to discover truth, necessarily all and every piece of evidence while could help the court to arrive at a just decision should be allowed to come on record. Therefore, it is immaterial whether the "evidence" sought to be produced during trial was either collected in the course of investigation or subsequent thereto. Section 91 Cr.P.C. no doubt empowers the court or the officer in charge of the Police Station to ensure the production of any 'document or other thing' 'necessary or desirable' for the purpose of any investigation, enquiry or other proceedings by issuing summons or written order to the person in whose possession or power such document or thing is; but section 242(3) Cr.P.C. requires the court to take

all such evidence which the prosecution desires to produce including the documents which are not mentioned in sub-section (5) of section 173 Cr.P.C. subject of course furnishing to the accused a copy thereof and providing him a reasonable opportunity to meet the same. The only safeguard or restriction that could be thought of in view of the provisions of the Evidence Act is that such evidence must relate to the matters of fact in enquiry. In other words, as long as the proposed evidence, either oral or documentary, is relevant and in support of the prosecution case, the Magistrate cannot refuse to receive it.

14. In this context, it is also relevant to note that a duty is cast on the Public Prosecutor conducting the trial to produce all evidence relevant to the determination of the guilt or innocence of the accused. Therefore, it goes without saying that even the Public Prosecutor conducting the trial owes a duty to produce before the court all evidence in support of the prosecution. The Public Prosecutor therefore cannot withhold any relevant piece of evidence which he finds it necessary for fair trial of the case. That being the position of law and the mandate contained in section 242(3) of Cr.P.C., I do not have any hesitation to hold that the criminal court conducting the trial is bound to receive all the evidence produced by the prosecution irrespective of the fact whether the said evidence or documents were part of the charge-sheet placed before the court or not.

6. Considering the reasons assigned by the learned Single Judge of the Karnataka High Court, I respectfully agree with the reasoning adopted by the learned Single Judge of the Karnataka High Court. Therefore, in my opinion, there is no error in the impugned order.

7. Learned Magistrate has permitted production of documents subject to right of applicant to dispute legality and genuineness of the documents produced. In my opinion, such caveat lodged by the Magistrate takes care of right of the applicant of any material prejudice caused to the applicant.

8. The impugned order does not result in miscarriage of justice. The writ petition is, therefore, dismissed. No costs.

(AMIT BORKAR, J.)