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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO.3088 OF 2023

Tarsem Chanu Singh & Ors.] .. Petitioners
vs.
State of Maharashtra] .. Respondent

Ms.Mallika Ingale, for the Petitioners.

Mr.S.R. Agarkar, APP for the State.

PSI Sunil Sonawane (Pairavi), Charkop Police Station present.

CORAM : BHARATI DANGRE, J

RESERVED ON : 7th November, 2023.

PRONOUNCED ON: 4th December, 2023.

JUDGMENT :

1] The Petitioners who are arraigned as Accused in CR No.150/2013 registered with Charkop Police Station for the alleged offence under Section 498(a), 406, 306, 304-B read with 34 of the IPC, have approached this Court for quashing and setting aside the impugned order dated 11.07.2023, passed below Exhibit 20 in Sessions Case No.206/2013 a/w Sessions Case No.100/2014 by the Sessions Court for Greater Mumbai at Dindoshi, Goregaon, declining to furnish the copy of the CDR and SDR of the phones of the deceased and accused Narinder Singh.

The impugned order has refused the said documents to the Petitioners as they are not forwarded to the Magistrate alongwith the final report filed under Section 173 of the Cr.P.C. nor the prosecution has placed the same on record post committal and therefore, it has been held that, the accused are not entitled to the copies of the same.

2] Heard Ms. Mallika Ingale for the Petitioners and Mr.S.R. Agarkar, the learned APP for the State.

The Petitioners are the in-laws of Harsh, the daughter of the complainant who was married to Petitioner No.5, Narinder Singh in a marriage ceremony performed on 10.06.2012.

After the marriage, she continued to reside in her matrimonial house, but after about 3 months, she made grievance to the complainant about the harassment meted out to her by her husband and his family members. She gave various instances of the physical and mental harassment and it was informed by her that her husband was demanding money and she was often threatened to bring various valuable articles from her parents. After few months the couple started residing separately in Mumbai and as per the complainant, the harassment continued

despite the couple resided separately from the matrimonial house in Punjab.

On 07.06.2013 the complainant received a phone call from his daughter that she had found evidence of her husband's affair with various girls and her husband had harassed her and had told her to put an end to her life or else he will kill her.

This resulted in the subject CR in which the Petitioners were arraigned as accused and subjected to trial.

3] In the Sessions Case, an application was moved on behalf of the accused persons to the following effect :-

"1. The prosecution has furnished form E i.e. brief facts of the case (Add separate chargesheet if necessary).

2. The same confirms that accused Narendra Singh and deceased Harsh Jassal mobile numbers have been taken and the reports of CDR and SDR have been received by them. The same has not been furnished to the accused.

3. In that respect a separate application came to be preferred on 05.11.2022 vide receipt with serial no.373710 in Book no.841 dated 05.11.2022. The same is required for the defence.

4. In the interest of justice the prosecution be directed to furnish the CDR and SDR record as mention in Form E of the charge sheet."

4] It is this application which came to be rejected by the learned Judge and by Section 207 of the Code came to be reproduced in the order and the rejection was worded in the following words :-

“6. From the plain reading of the aforesaid provision, it is very clear that in so far as documents or relevant extract thereof are concerned, copies thereof are required to be supplied to the accused, if the documents or relevant extract thereof are forwarded to the Magistrate along with police report under sub section (5) section 173 of Cr.P.C.

7. In the instant case, on going through the entire chargesheet it appears that the report of the CDR and SDR are not forwarded to the Magistrate with the Final Report under Sec.173 of Cr.P.C. nor the prosecution post committal of the case to this Court has placed on record the same. Therefore, the defence is not entitled to seek the directions to the prosecution to supply the copies of reports of CDR and SDR.”

5] The above order is assailed in the present Writ Petition and Ms.Mallika Ingale, the learned counsel would submit that Section 207 of the Code ensure right of the Accused to a fair investigation and fair trial and the accused is entitled to inspect all documents in custody of the Court at advance stage of trial. She would rely upon the decision of the Apex Court in the case of *Sidhartha Vashisht alias Manu Sharma vs. State (NCT of Delhi)* (2008) 5

SCC 230 and V.K. Sasikala lvs. State Represented by Superintendent of Police, (2012) 9 SCC 771, as well as the decision of the Apex Court in *Criminal trials Guidelines Regarding Inadequacies and Deficiencies, In Re vs. State of Andhra Pradesh and Others, (2021) 10 SCC 598*.

Apart from this, she would also rely upon the latest decision of the Apex Court in the case of *Manoj and Ors. vs. State of Madhya Pradesh, (2023) 2 SCC 353*.

6] Section 207 of the Cr.P.C. deserve a reproduction and it reads as under :-

“207. Supply to the accused of copy of police report and other documents – In any case where the proceeding has been instituted on a police report, the Magistrate shall without delay furnish to the accused, free of cost, a copy of each of the following:-

(i) the police report;

(ii) the first information report recorded under section 154;

(iii) the statements recorded under sub-section (3) of section 161 of all persons whom the prosecution proposes to examine as its witnesses, excluding therefrom any part in regard to which a request for such exclusion has been made by the police officer under sub-section (6) of section 173;

(iv) the confessions and statements, if any,

recorded under Section 164;

(v) any other document or relevant extract thereof forwarded to the Magistrate with the police report under sub-section (5) of Section 173;

Provided that the Magistrate may, after perusing any such part of a statement as is referred to in clause (iii) and considering the reasons given by the police officer for the request, direct that a copy of that part of the statement or of such portion thereof as the Magistrate thinks proper, shall be furnished to the accused;

Provided further that if the Magistrate is satisfied that any document referred to in clause (v) is voluminous, he shall, instead of furnishing the accused with a copy thereof, direct that he will only be allowed to inspect it either personally or through pleader in Court.”

7] The position as regards the rights of the accused cannot be doubted, as the accused is entitled for a fair investigation and a fair trial.

The right of an accused to ask for documents that he may be entitled to is one of the significant facets of just, fair and transparent investigation. The documents whether relied on or not by the prosecution, but filed in the Court and which would help in absolving him of accusations. Denying access to the documents would definitely cause prejudice to him in properly

defending his case and this would amount to denial of fair trial.

8] At the time of filing of charge-sheet/final report under Section 173 Cr.P.C. the police officer who furnish a report on completion of investigation is duty bound to forward to the Magistrate empowered to take cognizance of the offence on the police report, a report in the form prescribed by the State Government, stating that :-

- “(a) the names of the properties;
- (b) the nature of the information;
- (c) the names of the persons who appear to be acquainted with the circumstances of the case;
- (d) whether any offence appears to have been committed and, if so, by whom;
- (e) whether the accused has been arrested;
- (f) whether he has been released on his bond and, if so, whether with or without sureties;
- (g) whether he has been forwarded in custody under section 170;”

[(h) whether the report of medical examination of the woman has been attached where investigation relates to an offence under sections 376, 376-A, 376-AB, 376-B, 376-C, 376-D, 376-DA, 376-DB) or section 376-E of the Indian Penal Code (45 of 1869)]

Sub-section (5) of Section 173 further provide as under :-

“(5) When such report is in respect of a case to which section

170 applies, the police officer shall forward to the Magistrate along with the report -

(a) all documents or relevant extracts thereof on which the prosecution proposes to rely other than those already sent to the Magistrate during investigation;

(b) the statements recorded under section 161 of all the persons whom the prosecution proposes to examine as its witnesses.”

9] Apart from this provision, Section 207 in the Code , which is included in Chapter XV of the Code also make it imperative for the Magistrate to furnish to the accused the documents specified therein which may include the police report, FIR, statements recorded by the police under Section 161 Cr.P.C., who are to be examined as witnesses, the confessions and statements, if any, recorded under Section 164 Cr.P.C. and also any other document or relevant extract thereof forwarded to the Magistrate with the police report under sub section (5) of Section 173 Cr.P.C.

The aforesaid documents are to be supplied to the accused as the prosecution is likely to rely upon the same in order to establish his guilt. However, it is possible that the Investigating Officer during the course of investigation has collected several documents/other material which are exculpatory in nature and

therefore the Investigating Officer may have the desire to withhold the same from the Magistrate as well as the Court taking cognizance of the offence. This may include statements of witnesses recorded during the course of investigation which are not inculpatory in nature, but may tilt towards the accused in proving his innocence. The temptation not to bring these documents before the competent Court and not to furnish the same to the accused may be galore and this may cause grave prejudice to the accused.

It is quite possible that when the accused participate in the investigation, he has rendered certain documents to the Investigating Officer which may help him in proving his innocence and absolving him of the accusation levelled against him. But the Investigating Officer may intentionally not accept the said documents or even if he take it on record as a part of investigation, by referring to the same in the police diary, he may choose not to present it before the Court as it may weaken the case of the prosecution.

Though Section 173, 207 and 208 Cr.P.C. contemplate as to what documents should be supplied to the accused, such statements, documents, material objects and exhibits which were

seized during investigation, but not forwarded to the Magistrate/ Court taking cognizance was therefore kept away from the accused and he could not have an access to the same.

10] Sensing the difficulty in such a situation, where such documents/ exhibits, were not supplied to the accused though having been collected by the prosecution or the police, but which may be exculpatory in nature or assist the accused in disproving his guilt, the Apex Court in a *Suo Moto Writ Petition*, adverted to this aspect of the matter and expressed an opinion that while producing the list of statements, documents and material objects under Section 207, 208 of the Cr.P.C. the Magistrate shall also 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. It was expressed that it will ensure that in case the accused is of the view that such materials are necessary to be produced for proper and just trial, appropriate orders can be obtained under the Code for production of the same during the course of trial in the interest of justice.

11] The Apex Court directed the draft Rules of Criminal Practice

2021 to be formulated and all the High Courts were issued directions to take expeditious steps to incorporate the said draft Rules as a part of rules governing criminal trials and even the State Government was directed to render its co-operation in this regard, so that the notification of the draft rules was to be published.

Rule 4 of the said Draft Rules reads thus :-

“4. Supply of Documents Under Sections 173, 207 and 208 Cr.P.C.

Every Accused shall be supplied with statements of witness recorded under Sections 161 and 164 Cr.PC and a list of documents, material objects and exhibits seized during investigation and relied upon by the Investigating Officer (I.O) in accordance with Sections 207 and 208, Cr. PC.

Explanation: The list of statements, documents, material objects and exhibits shall specify statements, documents, material objects and exhibits that are not relied upon by the Investigating Officer.”

In the wake of the aforesaid directions issued by the Apex Court, which have been held to be mandatory, any material/ documents collected by the prosecution shall be furnished to the accused by segregating it as the material though collected during investigation, but not produced before the Magistrate/the Court taking cognizance.

12] In the present case, the charge sheet reveal that CDR and SDR of the mobile phones of accused Narinder and deceased Harsh were collected by the investigating agency and have been received from appropriate source, but the same are not furnished to the accused.

The directions issued by the Apex Court in form of draft criminal rules has made it imperative for the prosecution to furnish a list of statements/documents, material objects and exhibits which are not relied upon by the Investigating Officer though seized during investigation and upon such list having been furnished, the accused is entitled to seek production of such documents from the Investigating Officer. Since in the present case, it is clearly admitted that the CDR and SDR which are already collected by the Investigating Officer, the impugned order refusing to furnish the same to the accused as per his request, cannot be sustained and the documents deserve to be produced by the Investigating Officer under Section 91 of the Cr.P.C. and copies of the same shall be furnished to the accused.

13] In the wake of above, by setting aside the impugned order dated 11.07.2023, the Investigating Officer is directed to furnish

copies of CDR and SDR of the phones of deceased and accused, which have been already collected by the prosecution as indicated in the charge sheet, but the copies of which are not annexed to the charge sheet.

The necessary compliance shall be ensured within period of four weeks from today, as the Petitioners deserve a fair trial and according to the learned counsel Ms. Ingale, it will assist the Petitioners who face the trial to prove their innocence.

For reasons recorded above, Writ Petition is made absolute in the aforesaid terms.

Needless to state that till the aforesaid compliance is ensured the proceedings before the trial Court shall not proceed ahead.

[BHARATI DANGRE, J]