



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-21114-2022
Date of Decision : 23.09.2024

VINOD KUMAR GUPTA

.....Petitioner

VERSUS

CENTRAL BUREAU OF INVESTIGATION

.....Respondent

CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI

Present : Mr. R.P.S.Jammu, Advocate for
Mr. Vineet Kumar, Advocate
for the petitioner.

Mr. Gagandeep Singh Wasu, Advocate,
for the respondent-CBI.

KULDEEP TIWARI, J.(Oral)

1. Through the instant petition, challenge is thrown to the order dated 07.05.2022, passed by learned Special Judge, CBI Court, Chandigarh, whereby, the application of the present petitioner to supply the non-relied documents and statements, have been dismissed.

2. Learned counsel for the petitioner while placing reliance upon a judgment passed by the Hon'ble Supreme Court in **Re:To issue Certain Guidelines Regarding Inadequacies and Deficiencies in Criminal Trial vs. The State of Andhra Pradesh and others, (2021) 2 Crimes 218**, submits that he restricts his prayer to the extent of supplying the list of documents and statements, at this stage and reserve his liberty

to make an application for production of documents from the list supplied by the respondent-CBI.

3. Before disposing of instant petition, it is relevant to highlight the judicial precedents which are essential for adjudication of the instant petition.

4. The Hon'ble Supreme Court, in the ***Suo Moto Writ (supra)***, observed that, while furnishing the list of statements, documents and material objects under Sections 207/208 of the Cr.P.C., the Magistrate should also ensure that a list of other materials (such as statements, or, objects/documents seized, but not relied on) should be furnished to the accused. The relevant paragraph of this verdict is reproduced hereinafter:-

“11. The amici pointed out that at the commencement of trial, accused are only furnished with list of documents and statements which the prosecution relies on and are kept in the dark about other material, which the police or the prosecution may have in their possession, which may be exculpatory in nature, or absolve or help the accused. This court is of the opinion that while furnishing the list of statements, documents and material objects under Sections 207/208, Cr.PC, the magistrate should also ensure that a list of other materials, (such as statements, or objects/documents seized, but not relied on) should be furnished to the accused. This is to ensure that in case the accused is of the view that such materials are necessary to be produced for a proper and just trial, she or he may seek appropriate orders, under the Cr.PC for their production during the trial, in the interests of justice. It is directed accordingly; the draft rules have been accordingly modified....”

5. Moreover, in the ***Suo Moto Writ (supra)***, High Courts were also directed to incorporate the Draft Rules of Criminal Practice, 2021, as became finalized in terms of the discussion made therein, as part of the

rules governing criminal trials. Accordingly, the relevant incorporation was made in the “Procedure in Enquiries and Trials by Magistrates”, relevant portion whereof is reproduced hereunder:-

“(c) Procedure in the trial of warrant cases instituted on Police Report.

6. Warrant case on Police report - Police to furnish copies to accused before the trial commences:- In a warrant-case (Chapter XIX of the Code of Criminal Procedure, 1973) the procedure would now depend on whether the case has been instituted on a police report or otherwise. Section 238 to 243 of Code of Criminal Procedure, 1973 govern the procedure in warrant cases instituted on police reports. When the accused appears or is brought before the magistrate, the magistrate should, at the commencement of the trial, satisfy himself that he has complied with the provisions of Section 207 Cr.P.C. Further, every accused should be supplied with statements of witness recorded under Sections 161 and 164 Cr.P.C and a list of documents, material objects and exhibits seized during investigation and relied upon by the Investigating Officer in accordance with Sections 207 and 208 Cr.P.C.

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.”

6. Furthermore, by placing reliance upon the observations recorded in ***Suo Moto Writ (supra)***, the Hon’ble Supreme Court has, in its verdict rendered in ***“Manoj and ors. V/s State of Madhya Pradesh”, Criminal Appeal Nos.248-250 of 2015***, Decided on: 20.05.2022, directed that, in all criminal trials, the prosecution should furnish the list of statements, documents, material objects and exhibits, which are not relied upon by the investigating officer and the presiding officers shall ensure

compliance with such rules. The relevant paragraph of this verdict is reproduced hereinafter:-

“179. In view of the above discussion, this court holds that the prosecution, in the interest of fairness, should as a matter of rule, in all criminal trials, comply with the above rule, and furnish the list of statements, documents, material objects and exhibits which are not relied upon by the investigating officer. The presiding officers of courts in criminal trials shall ensure compliance with such rules.”

7. The import of the judicial pronouncements (supra) gets further expounded in the verdict rendered by the Hon’ble Supreme Court in case titled as **“P. Ponnusamy V/s. The State of Tamil Nadu”, 2023(1) R.C.R. (Criminal) 307**, relevant paragraphs whereof are reproduced hereunder:-

“14. The framework that emerges (by reading Section 173, 207, 208 and Draft Rule 4) is that based on the list of statements, documents, etc. received at the commencement of the trial, the accused can seek appropriate orders under Section 91 of the CrPC, 1973 wherein the magistrate on application of judicial mind, may decide on whether it ought to be called for. Additionally, by virtue of Section 391 of the CrPC, the appellate court, if it deems necessary, may take further evidence (or direct it be taken by a magistrate or court of sessions) upon recording reasoning. This safeguards the right of the accused in a situation where concern has been raised regarding evidence or material in possession of the prosecution, that had not been furnished, but was material to the trial and disposal of the case.....

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17. As stated earlier, the requirement of disclosure elaborated on in Manoj, not only was premised on the formulation of draft rules, but normatively premised on the ratio of the three-judge bench decision in Manu Sharma (supra). In these circumstances, the

proper and suitable interpretation of the disclosure requirement in Manoj (supra) would be that:

(a) It applies at the trial stage, after the charges are framed.

(b) The court is required to give one opportunity of disclosure, and the accused may choose to avail of the facility at that stage.

(c) In case documents are sought, the trial court should exercise its discretion, having regard to the rule of relevance in the context of the accused's right of defence. If the document or material is relevant and does not merely have remote bearing to the defence, its production may be directed. This opportunity cannot be sought repeatedly – the trial court can decline to issue orders, if it feels that the attempt is to delay.

(d) At the appellate stage, the rights of the accused are to be worked out within the parameters of Section 391 CrPC, 1973.”

8. This Court has examined the case at hand, on the touchstone of the hereinabove discussed expositions of law, and proceeds to dispose of the instant petition with a *mandamus* upon the prosecution agency, i.e. the respondent-CBI, to forthwith supply the list of unrelayed documents and statements to the petitioner. Thereupon, the petitioner is at liberty to make an appropriate application under an apt provisions of law at relevant stage of trial for production of such documents and statements which according to the petitioner, are relevant.

9. In case such application is filed, the learned trial court concerned, shall after considering the relevancy of such documents/statements, and not merely because it has remote bearing to the defence, may direct the production of such documents/statements.

10. In case the learned trial court concerned, finds that the documents/statements as sought by the petitioner, have no relevancy it may decline such application.
11. The learned trial court concerned, shall afford only one opportunity to the petitioner for making such application.
12. **Disposed of** accordingly.
13. All pending application(s), if any, also stand **disposed** of accordingly.

September 23, 2024
dharamvir

(KULDEEP TIWARI)
JUDGE

Whether speaking/reasoned. : Yes/No
Whether Reportable. : Yes/No