



CRM-M-26474-2023 and connected cases 1

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

132 + 133 (I) CRM-M-26474-2023 (O&M)
Date of Decision : August 28, 2024

CENTRAL BUREAU OF INVESTIGATION -PETITIONER

V/S

SURINDER PAL SINGH -RESPONDENT

(II) CRM-M-35369-2023

CENTRAL BUREAU OF INVESTIGATION -PETITIONER

V/S

ATMA SINGH BHULLAR -RESPONDENT

(III) CRM-M-63039-2023

PARAMJEET SINGH -PETITIONER

V/S

CENTRAL BUREAU OF INVESTIGATION -RESPONDENT

(IV) CRM-M-58351-2022 (O&M)

RAJ KUMAR -PETITIONER

V/S

CENTRAL BUREAU OF INVESTIGATION -RESPONDENT

(V) CRM-M-33468-2024

HANS RAJ SINGH AND ANOTHER -PETITIONERS

V/S

CENTRAL BUREAU OF INVESTIGATION -RESPONDENT

CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI

Present: Mr. Deepak Sabherwal, Advocate with
Mr. Akashdeep Singh, Advocate and

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Mr. Prateek Gupta, Advocate
for the C.B.I.

Mr. Ramandeep Singh, Advocate and
Mr. Harpreet S. Multani, Advocate
for the respondent (in CRM-M-26474-2023).

Mr. K.S. Sidhu, Sr. Advocate with
Mr. Praagbir S. Dhindsa, Advocate and
Mr. Kartik Bansal, Advocate
for the petitioner (in CRM-M-63039-2023&CRM-M-33468-2024) and
for the respondent (in CRM-M-35369-2023).

Mr. P.S. Ahluwalia, Advocate with
Ms. Bhavi Kapur, Advocate
for the petitioner (in CRM-M-58351-2022).

KULDEEP TIWARI, J. (ORAL)

1. Since all these petitions encompass common question(s) of law, besides encompassing disputed question(s) of facts, therefore, they are amenable for being decided through a common verdict. For the sake of convenience, the facts are being extracted from CRM-M-26474-2023.

2. Through the instant petition, as instituted under Section 482 of the Cr.P.C., the petitioner assails the order dated 01.03.2023 (Annexure P1), wherethrough, the learned Special Judge, C.B.I. Punjab, S.A.S. Nagar, has partially allowed the application (Annexure P-4) moved by the respondent/accused. The said application encapsulated a prayer for supplying the respondent/accused the copy of statements, as recorded during preliminary enquiry(ies) conducted by the petitioner, in RC No.08(S)/1999/SIU-XVI/Jammu, for effective cross-examination of the investigation officer.

3. Before proceeding to delve into the controversy and make an adjudication upon the validity of the above raised claim(s), it is deemed apt

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to initially capture a concise and compendious backdrop of the case at hand.

FACTUAL MATRIX

4. In pursuance of the order dated 11.12.1996, as became drawn by the Hon'ble Supreme Court, upon Criminal Writ Petition No.497 of 1995, titled as "*Mrs. Paramjit Kaur Vs. State of Punjab*", a PE-2(s)/1995/SIU-XV/CHG was registered in Special Crime Branch, Chandigarh. The said case pertained to "*Mass cremation of unidentified dead bodies by the Punjab Police During Militancy Period*".

5. During the course of inquiry in the PE (supra), another PE-1(s)/1999 was registered on a complaint made by one Rajwant Kaur wife of late Sukhdev Singh. The allegations voiced in the said complaint were that, on 01.11.1992, her husband was abducted by a police party headed by Surinder Pal Singh, S.H.O., P.S. Sarhali, from the fields in her presence and later, he was killed in a police encounter on 02.11.1992 and was cremated as a "*Lawaris*". After conducting a preliminary enquiry, a case bearing RC No.08(S)/1999/SIU-XVI/JMU was registered on 07.07.1999, under Sections 364/302 read with Section 34 of the IPC, against: (i) Surinder Pal, the then S.H.O.; (ii) Chanchal Singh, the then A.S.I.; (iii) Amrik Singh, the then S.I.; and (iv) Gulbarg Singh, the then A.S.I.

6. After completion of investigation, the petitioner/C.B.I. filed a chargesheet on 27.11.2001, under Section 120-B read with Sections 302, 201 and 218 of the IPC and substantive offences thereof, against (i) SI Surinder Pal Singh; (ii) SI Chanchal Singh; (iii) SI Amrik Singh; and (iv)

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SI Avtar Singh; in the court of learned Special Judicial Magistrate, C.B.I. at Patiala.

7. During the course of trial launched in the case (supra), which was then at the stage of prosecution evidence and 14 prosecution witnesses were examined, the respondent/accused moved the application (Annexure P-4), whereon became passed the impugned order dated 01.03.2023 (Annexure P1) by the learned Special Judge concerned, thereby allowing the inquiry registered as PE-1(S)/99 to be brought on file.

8. The drawing of the impugned order caused grievance to the petitioner/C.B.I. and propelled it to institute thereagainst the instant petition.

SUBMISSIONS OF THE LEARNED COUNSEL FOR THE PETITIONER

9. The principal argument of the learned counsel for the petitioner stems from the fact that, since the preliminary enquiry concerned is an internal document of the C.B.I., which was never made a relied or non-relied document in any case, much less the present case, therefore, it does not hold any significance in the present case and its production is totally irrelevant, however, the learned Special Judge erred in directing the production thereof. Nonetheless, a copy of the registration report of the preliminary enquiry concerned, as became cited in the list of relied upon documents, has already been provided with the charge sheet.

10. The learned counsel for the petitioner submits that, in fact, the preliminary enquiry concerned was conducted by the C.B.I. in order to sat-

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isfy itself as to whether any *prima facie* case is made out to investigate and on the basis thereof multiple cases including the present case, related to militancy period in Punjab, were registered by the C.B.I. Moreover, the said preliminary enquiry encompasses the statements of various victims.

11. Another argument constructed by the learned counsel for the petitioner is that, the hereinafter extracted inference adopted by the learned Special Judge concerned, thus for drawing the impugned order, is anchored upon ill-conceived and illogical factor(s), inasmuch as, the preliminary enquiry concerned was conducted by an officer, who is not the investigating officer of the present case, hence there arises no occasion for the defence to confront the present investigating officer with the statement(s) recorded by a different officer.

“...Learned counsel for the accused has brought to the notice of the court that statements of number of witnesses recorded under section 161 Cr.P.C., who had turned hostile and had resiled from those statements had been proved by the investigating officer, which could not otherwise have been done. Hence, it is necessary to confront the investigating officer with the statement recorded in the inquiry, which have been proved by him since those witnesses had resiled from their statements recorded under section 161 Cr.P.C. He further contended that in view of this situation, it becomes imperative to look into the statements recorded during preliminary enquiry and this would also help the court in arriving at a just decision...”

12. Lastly, the learned counsel for the petitioner claims the application (Annexure P-4) to be vague, rather promoted by an ill endeavour to linger the matter and delay the conclusion of trial, which commenced circa 02 decades back.



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SUBMISSIONS OF THE LEARNED COUNSEL FOR THE RESPON-
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13. *Per contra*, the learned counsel for the respondent, in his defending the validity of the impugned order, makes huge dependence upon the verdict drawn by the Hon'ble Supreme Court in *Suo Moto Writ (Crl.) No.1 of 2017*, Decided on: 20.04.2021, titled as "*In Re: To Issue Certain Guidelines Regarding Inadequacies and Deficiencies in Criminal Trials V/s The State of Andhra Pradesh & Ors.*", to submit that the prosecution agency is duty bound to furnish all the relied/non-relied upon documents, so that the accused can effectively defend himself/herself.

ANALYSIS OF JUDICIAL PRECEDENT(S) GERMANE TO DIS-
POSAL OF THE INSTANT PETITION

14. The Hon'ble Supreme Court has, 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,



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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....”

15. 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 Trails 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.”

Furthermore, by placing reliance upon the observations


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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."

17. 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



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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.”*

18. The gist of the hereinabove alluded to judicial precedents can be extracted in the following manner:-

- (i) the prosecution is required to furnish only the list of statements, documents, material objects and exhibits, which are not relied upon by the investigating officer;*
- (ii) the court is required to, after the charges become framed, give only one opportunity of disclosure and the accused may choose to avail this facility, but, only once;*



(iii) in case documents are sought to be produced, the trial court should, after considering the relevancy of the said documents and not merely because it has remote bearing to the defence, direct production thereof. The trial court is at liberty to decline such production, in case it feels that it is a dilatory tactic;

REASONS FOR SETTING ASIDE THE IMPUGNED ORDER

19. This Court has examined the case at hand, on the touchstone of the hereinabove discussed expositions of law. For the reasons assigned hereinafter, this Court is of the opinion that the impugned order requires interference.

20. To the considered mind of this Court, the learned Special Judge concerned has rightly declined to bring on record the inquiry reports submitted in preliminary enquiry registered as PE-2(S)/95-CHG, inasmuch as, it has been specifically directed by the Hon'ble Supreme Court that the contents thereof be kept secret. However, insofar as the another direction pertaining to place on record the preliminary enquiry registered as PE-1(S)/99 is concerned, the said direction is the outcome of a vague plea, as became canvassed in the application (Annexure P-4), becoming straight-away accepted by the learned Special Judge.

21. At most, the learned Special Judge concerned could have passed directions for placing on record the list of statements, documents, material objects and exhibits, which are not relied upon by the investigating officer, although collected. In such eventuality, the respondent/accused



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was endowed with a liberty to make an appropriate application under the provisions of Cr.P.C./B.N.S.S., thus seeking production of said documents, and, if any such application became preferred, the learned Special Judge concerned should have made a decision thereon in the light of the law laid down by the Hon’ble Supreme Court in *P. Ponnusamy’s case (supra)*, but, after evaluating the relevancy of such documents.

22. Consequently, the impugned order (Annexure P-1) warrants interference and the same is hereby set aside. The matter is remanded to the learned Special Judge concerned for making decision afresh on the application (Annexure P-4).

23. The instant petitions are disposed of accordingly.

24. Pending application(s) also stand disposed of accordingly.

25. A photocopy of this order be placed on file of each connected case.

August 28, 2024
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(KULDEEP TIWARI)
JUDGE

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