



CRM-M-28885-2022 (O&M)

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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

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CRM-M-28885-2022 (O&M)

Date of Decision : October 21, 2024

MANOJ JAIN

-PETITIONER

V/S

CENTRAL BUREAU OF INVESTIGATION

-RESPONDENT

CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI

Present: Mr. Nikhil Kaushik, Advocate and
Mr. Vineet Kumar, Advocate
for the petitioner.

Mr. Ravi Kamal Gupta, Advocate
for the respondent-C.B.I.

KULDEEP TIWARI, J. (ORAL)

1. The relief(s) yearned to be reaped through institution of the instant petition moulded under Section 482 of the Cr.P.C., appertains to the rendering of an order by this Court, thus setting aside the order dated 02.06.2022 (Annexure P-6), wherethrough, the learned Special Judicial Magistrate, CBI Punjab, SAS Nagar, has dismissed the petitioner's application (Annexure P-4) filed under Section 207/208 of the Cr.P.C., wherein became enclosed a prayer for supply of the hereinafter mentioned documents:-

"I. Statements/disclosure statement recorded u/s 161 CrPC during the course of investigation of the accused i.e. Kamini Sehgal, Sumit Sehgal & Manoj Jain.

II. Statement of Nisha Rani, Munish Singla, Ashwani Kumar, Gurpreet Singh, Ramesh Chander, Balvinder Kaur, Ram Kishan, Monoku Pal, Siv Dhall & Ram Dhall, directors of the firm who are put in column No.12 of the Final Report u/s 173.

III. Statement of the Income Tax Officials recorded u/s 161CrPC by the



Investigation Agency as without enquiring the ITO, the present case can not be investigated as the offence pertains to bogus tax deduction account number.

IV. All the non relied upon documents & statements.”

SUBMISSIONS OF THE LEARNED COUNSEL FOR THE PETITIONER

2. The principal argument of the learned counsel for the petitioner is embedded in the notion that, the documents, which although became seized by the C.B.I. during the course of investigation, however, did not become relied upon or placed on record, carry dire significance for the petitioner to prove his innocence, besides them being essential for a proper and just trial. He argues 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. To lend vigour to this argument, he makes 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.”***

3. Another argument framed by the learned counsel for the petitioner ensues from the indefeasible right of the petitioner to a fair trial becoming infringed, on account of non compliance of the mandate enclosed in Section 207/208 of the Cr.P.C, inasmuch as, Section 207/208 endows a right to the accused to have access to all the documents, which constitute a part of the final report. Consequently, he argues that, at the time of making compliance of Section 207/208, the learned Special Judge erred in declining to supply deficient copies of documents to the petitioner, which he was/is oth-



erwise entitled to.

SUBMISSIONS OF THE LEARNED COUNSEL FOR THE RESPON-
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4. *Per contra*, the learned counsel representing the respondent defends the reasons banked upon by the learned Special Judicial Magistrate concerned while drawing the impugned order. He argues that, the complete set of documents, which includes all the relevant statements/disclosure statements, has already been supplied to the petitioner along with the Final Report, and, insofar as those documents are concerned, which did not become relied upon against the petitioner, the same do not hold any significance in the present case and production thereof is totally irrelevant.

ANALYSIS OF JUDICIAL PRECEDENT(S) GERMANE TO DISPOSAL OF THE INSTANT PETITION

5. This Court has heard the submissions made by the learned counsels for the contesting litigants and also perused the record. Before evincing any opinion upon the merits/de-merits of the instant petition, it is deemed imperative to, at this juncture, advert to some significant judicial precedent(s).

6. 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, 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....”

7. 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.”

8. 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.”

9. 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."*

10. 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;

FINAL ORDER

11. To the considered mind of this Court, the impugned order dated 02.06.2022 (Annexure P-6) does not suffer from any illegality or perversity. The cause for forming this inference ensues from the reasoning, as became penned down by the learned Special Judicial Magistrate concerned in the impugned order, and that too, after considering the rival submissions of the parties and analyzing the record.

12. The impugned order embodies factual observations that the statements of accused/income tax officials enumerated in paragraph 2(i) & (iii) of the petitioner's application (Annexure P-4) have already been supplied to the petitioner, whereas, the statements craved to be supplied in paragraph 2(ii) appertain to fictitious and non-existent entities, therefore, when there arose no question of recording such statements and the same are not at all in existence, hence the C.B.I. cannot be ordered to make supply thereof. The ultimate observation drawn in the impugned order, relevant portion whereof is reproduced hereunder, is that, since further investigation is claimed to be still pending against other persons including unknown public servants of the Income Tax Department, therefore, the documents being collected by the investigating officer during further investigation cannot be termed as unrelayed upon at this stage. Moreover, seeking the details/list of



such documents, copies of statements, material, objects and exhibits might not be conducive to the confidentiality always kept in investigation, rather it would tantamount to interference in further investigation.

“9.....The documents relied upon by the prosecution have already been supplied to the applicants/accused and at the stage of framing of charge, the defence of the accused cannot be put forth. In case the contentions of the learned defence counsel are accepted, it would amount to permitting the applicants/accused to adduce their defence at the stage of framing of charge and for examination thereof at this stage, which is against the Criminal Jurisprudence. Moreover, by virtue of Section 173(8) of the Cr.P.C. the police is empowered to conduct further investigation even after the Court took cognizance of any offence on the strength of the police report first submitted, it is open to the police to conduct further investigation. It has been mentioned in the challan, reiterated in reply to the instant application and vociferously submitted during the course of arguments that further investigation is still pending against other persons including unknown public servants of the Income Tax Department, so the documents being collected by the Investigating Officer during further investigation cannot be termed as un-relied at this stage and seeking the details/list of such documents, copies of statements, material objects, and exhibits might not be conducive to the confidentiality always kept in investigation and it would tantamount to interference in further investigation....”

13. Consequently, the impugned order dated 02.06.2022 (Annexure P-6) is upheld.

14. At this stage, the learned counsel for the petitioner seeks liberty to approach the learned trial Court concerned, in view of the proposition of law expounded by this Court in ***CRM-M-26474-2023, titled as “Central Bureau of Investigation V/S Surinder Pal Singh”, Decided on : August 28, 2024.***

15. Since the above made prayer of the learned counsel for the petitioner is not opposed by the learned counsel representing the respondent-



C.B.I., therefore, the instant petition is disposed of in terms of the order dated 28.08.2024 rendered by this Court in CRM-M-26474-2023.

16. In case, the petitioner files any application seeking supply of unrelayed upon documents, the learned Judge concerned shall decide the same, while keeping in view the verdict rendered by this Court in CRM-M-26474-2023.

17. The instant petition is disposed of accordingly.

18. Pending application(s), if any, also stand disposed of accordingly.

October 21, 2024
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(KULDEEP TIWARI)
JUDGE

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