

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CRM-M-8267-2018

Date of Decision : November 20, 2024

RAJ KUMAR

-PETITIONER

V/S

CENTRAL BUREAU OF INVESTIGATION

-RESPONDENT

CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI

Present: Mr. R.K. Handa, Advocate with
Ms. Gauri Handa, Advocate
Mr. Dharambir Bhargav, Advocate and
Mr. Kulwinder Bhargav, Advocate
for the petitioner.

Mr. Gagandeep Singh Wasu, Special Public Prosecutor
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 common order dated 23.01.2018 (Annexure P-6), wherethrough, the learned Special Judge, C.B.I. Court, Chandigarh, has dismissed the petitioner's application (Annexure P-1), wherein became enclosed a prayer for issuance of directions upon the C.B.I. to preserve and place on record the hereinafter mentioned documents, however, allowed the C.B.I.'s application (Annexure P-3) and directed the petitioner to give specimen of his voice sample in the CFSL, C.B.I., New Delhi, before 07.03.2018.

“(i) Recording and transcript relating to the first visit dated 01.01.2017 of the trap party to the Police Station, Sector 31, Chandigarh.

(ii) *DVR and memory card used during the second visit dated 01.01.2017 of the trap party to the Police Station, Sector 31, Chandigarh.*”

2. It would be apt to record here that, the learned counsels for the contesting litigants are at consensus *ad idem* that, insofar as the direction embodied in the impugned order (Annexure P-6) relating to giving of petitioner’s specimen voice sample is concerned, the said direction has already been meted compliance by the petitioner through his giving the requisite voice sample, therefore, the said grievance becomes infructuous and now the solitary grievance survives only *qua* dismissal of the petitioner’s application (Annexure P-1).

SUBMISSIONS OF THE LEARNED COUNSEL FOR THE PETITIONER

3. The principal argument of the learned counsel for the petitioner is embedded in the notion that, although the documents sought to be placed on record did not become relied upon, yet they 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.”***.

4. Another argument framed by the learned counsel for the petitioner ensues from the indefeasible right of the petitioner to a fair trial being

infringed, on account of him becoming deprived to have access to all the documents. Consequently, he argues that, the learned Special Judge erred in declining to direct the C.B.I. to supply documents (supra) to the petitioner, which he was/is otherwise entitled to.

5. Finally, assailing the order dated 23.01.2018, the learned counsel for the petitioner argues that, while opposing the petitioner's application (Annexure P-1) before the learned Special Judge, false averment was made by the C.B.I. that the documents sought to be placed on record are not at all in existence, hence the C.B.I. cannot make supply thereof. To buttress this argument, he places reliance upon some statements recorded under Section 161 Cr.P.C. and also upon the post trap memo, which according to him, contains a reference that clear cut recording was done, which is available with the C.B.I.

SUBMISSIONS OF THE LEARNED COUNSEL FOR THE RESPONDENT-C.B.I.

6. *Per contra*, the learned counsel representing the respondent defends the reasons banked upon by the learned Special Judge while drawing the impugned order. He argues that, the complete set of relied upon documents has already been supplied to the petitioner, 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.

7. Insofar as the document enumerated at Sr. No. (i) in the petitioner's application (Annexure P-1) is concerned, the learned counsel for the respondent denies existence thereof and submits that, since the petitioner

was not found present in the Police Station during the first visit, therefore, there arose no occasion for making any recording. Furthermore, with regard to the document enumerated at Sr. No. (ii), he submits that, although a recording device was placed in the pocket of the complainant, however, nothing was recorded and the said recording device and memory card were found blank.

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

8. 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).

9. 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....”

10. 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.”

11. 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.”

12. 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.”*

13. 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

14. This Court has considered the rival submissions constructed by

the learned counsels for the contesting litigants and is of the opinion that the impugned order (Annexure P-6) is not tainted with the vice of illegality or perversity. The cause for drawing this inference stems from the hereinafter discussed reasons.

15. The petitioner's request enumerated at Sr. No. (i) of his application (Annexure P-1) appertains to supply of the recording and transcript relating to the trap party's first visit dated 01.01.2017. Notably, it has throughout been the positive stand of the C.B.I. that, since the petitioner was not found present during the trap party's first visit, therefore, there arose neither any occasion for making recording of the said visit, nor for preserving the said recording. In such circumstances, neither the learned Special Judge could have, nor this Court can impose any direction upon the C.B.I. to supply the non existent document. Therefore, this Court believes that the impugned declining order (Annexure P-6) in respect of the petitioner's request (supra) by the learned Special Judge is a rightly gauged decision.

16. Now, insofar as petitioner's request enumerated at Sr. No. (ii) of his application (Annexure P-1) is concerned, which relates to supply of the DVR and memory card used by the trap party during second visit dated 01.01.2017, it would be apt to, at this juncture and at the cost of repetition, advert to the submissions of the contesting litigants made hereinabove.

17. By referring to statements of some of the witnesses recorded under Section 161 Cr.P.C., as also to the proceedings recorded in the post trap memo dated 02.01.2017, the learned counsel for the petitioner developed an argument that, the conversation recorded by the trap party during its second visit on 01.01.2017 was preserved/saved by the C.B.I. in its offi-

cial laptop, therefore, the same is very much available with the C.B.I. He also argued that, even in the statement of the then S.H.O., P.S. Sector 31, Chandigarh, as became recorded under Section 161 Cr.P.C., it has been specifically recorded that recording in the laptop was played before the S.H.O. by the investigating officer of the C.B.I.

18. The above built argument has been opposed by the learned counsel for the respondent-C.B.I., on the anvil that, the conversation (supra), which the petitioner's counsel claims to have been saved in the official laptop of the C.B.I., is in fact the conversation recorded during verification on 31.12.2016 and not the conversation of the actual trap proceedings. He argues that, a thorough perusal of the post trap memo (supra) and the statements of witnesses (recovery, shadow, TLO and complainant) would make it abundantly clear that, during post trap proceedings, when the 8GB Sandisk was played, the same was found blank. Therefore, there did not arise any occasion for the C.B.I. to save the trap recording on its official laptop, and consequently, the non existent document/information cannot be supplied to the petitioner.

19. The inference stemming from the hereinabove reiterated submissions of the parties is that, the petitioner's request enumerated at Sr. No. (ii) of his application (Annexure P-1) is a premature request. The witnesses, whose statements under Section 161 Cr.P.C. have been relied upon by the parties in support of their respective claims, are yet to step in the witness box. Therefore, when the said witnesses would step in the witness box, the petitioner would get ample opportunity to cross-examine them and to establish whether the reference made in the post trap memo (supra) appertains to the conversation relating to verification proceedings dated 31.12.2016 or to

the trap party’s second visit dated 01.01.2017.

20. At this stage, the learned counsel for the petitioner seeks liberty to, in respect of his request enumerated at Sr. No. (ii) of his application (Annexure P-1), approach the learned trial Court concerned at the relevant stage, 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**, principle whereof already becomes discussed in paragraph 13 of this verdict.

21. 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.

22. In case, the petitioner, at the relevant stage, files any application seeking supply of the documents enumerated at Sr. No. (ii) of his application (Annexure P-1), the learned Judge concerned shall decide the same, while keeping in view the verdict rendered by this Court in CRM-M-26474-2023, besides evaluating, on the basis of evidence placed on record by the prosecution, as to whether such information/document exist or not.

23. The instant petition is disposed of accordingly.

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

November 20, 2024
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(KULDEEP TIWARI)
JUDGE

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