



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 04th September, 2024
Pronounced on: 03rd October, 2024

+ **CRL.M.C. NO.4372/2024& CRL.M.A. 16584/2024**

NAVEEN PANCHAL

S/o Sh. Rampal,
R/o House No.104, Puran Shiv Mandir,
Mohamdpur Village, Sctor-36,
Gurugram, Haryana.

..... Petitioner

Through: Mr. Krishan Kumar, Adv
versus

1. **STATE OF NCT OF DELHI**

Through SHO
P.S. Keshav Puram,
Delhi.

2. **X**

D/o Y
Through SHO/IO
P.S. Keshav Puram,
North-West, Delhi.

.....Respondents

Through: Mr. Hemant Mehla, APP for
the State with SI Shivali PS
Keshav Puram.

CORAM:
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J.

1. A Petition under Section 482 Cr.P.C. has been filed on behalf



of the petitioner/accused for setting aside/modification of the Order dated 29.05.2023 vide which the learned ASJ has dismissed his Application under Section 294 Cr.P.C. for admission and denial of the document/pen drive containing the conversations between the prosecutrix and the brother of the accused.

2. The petitioner has submitted that on the statement of the prosecutrix, FIR No.604/2022, under Section 376 of IPC, at P.S. Keshavpuram, has been registered against him. It is claimed that before the registration of the FIR, there have been conversations between the prosecutrix and his brother as well as cousin, wherein she has made demands for money from his brother as well as the cousin for not getting this aforesaid false case registered against the petitioner. These conversations were recorded by his brother and cousin in their respective mobile phones and now stored in a pen drive, are sought to be produced before the learned Court to confront the prosecutrix during the trial. It is asserted that it is a material piece of admissible evidence belying the entire case of the prosecution.

3. The petitioner, therefore, moved an Application under Section 294 Cr.P.C. for admission/denial of the contents stored in the pen drive to expose the truth of the matter. However, his Application has been dismissed vide impugned Order dated 25.09.2023. Aggrieved by the said Order, the present petition has been filed.

4. The grounds on which the Order has been assailed are that the information contained in the pen drive is a document as defined under Section 3 of Indian Evidence Act. Reliance is placed on the case of P. Gopal Krishanan @ Dileep vs. State of Kerala AIR 2020 SC 1



wherein it has been held that the video footage/clipping is a document in terms of Section 2(1)(t) of Information Technology Act. The petitioner has claimed that bringing on record of this pen drive is absolutely essential to bring out the truth. It is, therefore, submitted that the impugned Order be set aside and the pen drive containing conversations recorded on the mobile phone of the brother and cousin of the accused, be taken on record and the prosecution may be asked to admit or deny the contents of the pen drive.

5. The *learned Prosecutor has opposed the Application* on the ground that this is not the stage of taking on record the documents of the accused and therefore, the petitioner cannot seek the admission/denial of the pen drive and the same has been rightly denied by the learned ASJ.

6. **Submissions Heard and the record perused.**

7. To appreciate the contentions of the accused one may reiterate the fundamental principles which underline any criminal trial. *The accused is presumed to be innocent until proven guilty and the absolute burden of proving the case beyond reasonable doubt rests on the prosecution.*

8. In this context, it is pertinent to appreciate that the prosecution is required to produce the entire evidence including statements, documents and objects in the Chargesheet, to establish the allegations of commission of crime against the accused.

9. When the prosecution opens the case against the accused under Section 226 of Cr.P.C. the duty of the court at that stage is culled out from the conjoint reading of sections 227 & 228 of the Cr.P.C. and has



also been observed by the Supreme Court in State Of Bihar vs Ramesh Singh, AIR 1977 SC 2018, that the Court has to pass an Order either under section 227 or section 228Cr.P.C., in the manner that if there is not sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing, as per section 227; on the other hand, if the Judge is of the opinion that there is a ground for presuming that the accused has committed an offence then “*he shall frame in writing a charge against the accused*”, as provided in Section 228Cr.P.C. To ascertain the same, the court is required to evaluate only the material on record.

10. It has consistently been held that at the stage of framing of charge, no document of the accused can be taken on record. More recently, in State of Gujarat v Dilipsinh Kishorsinh Rao, 2023 INSC 894, the Supreme Court held that “*no provision in the Code grants any right to the accused to file any material or document at the stage of framing of charge.*”

11. The Supreme Court in M.E. Shivalingamurthy vs. CBI, (2020) 2 SCC 768, has held that “*the court has to consider the broad probabilities, the total effect of the evidence and the documents produced before the court, any basic infirmities appearing in the case and so on.*” Further, the Court also held that “*the defence of the accused is not to be looked into at the stage when the accused seeks to be discharged under Section 227 of Code. The expression, “the record of the case”, used in Section 227 of Cr.P.C., is to be understood as the documents and the articles, if any, produced by the prosecution.*”



12. In the celebrated judgment of State of Orissa vs. Debendra Nath Padhi, (2005) 1 SCC 568, it has been observed:

“the law is that at the time of framing of charge or taking cognizance the accused has no right to produce any material.”

13. Therefore, it is settled proposition of law that till the stage of framing of charge; the documents produced by the accused cannot be looked into. However, a caveat is added to this proposition of admitting such documents of accused at this stage, which are of sterling quality and the genuineness of which is beyond any doubt, as observed in the case of Nitya Dharmananda @ K. Lenin vs. Sri Gopal Sheelum Reddy also known as Nithya Bhaktananda and Anr., 2018 (2) SCC 93.

14. After the framing of charge, to facilitate expeditious trial and to curtail unnecessary evidence, Section 294 of Cr.P.C. provides for admission and denial of the documents. It reads as under:

“294. No formal proof of certain documents.

- 1. Where any document is filed before any Court by the prosecution or the accused, the particulars of every such document shall be included in a list and the prosecution or the accused, as the case may be, or the pleader for the prosecution or the accused, if any, shall be called upon to admit or deny the genuineness of each such document.*
- 2. The list of documents shall be in such form as may be prescribed by the State Government.*
- 3. Where the genuineness of any document is not disputed, such document may be read in evidence in any inquiry, trial or other proceeding under this Code without proof of the signature of the person to whom it purports to be signed:*



Provided that the Court may, in its discretion, require such signature to be proved.”

15. Section 294 Cr.P.C. has been enacted with the laudatory objective of placing prosecution and accused at par with regard to the documentary evidence and save time and money informally proving each of such admitted documents at an early stage and thereby affording the Court opportunity to consider the same.

16. The purpose of Section 294 Cr.P.C. is to accelerate the pace of trial by avoiding the time being wasted in examining the signatory of the document filed by *either of the parties* to prove his signature and correctness of its contents, *if its genuineness is not disputed*.

17. It is no doubt true that Section 294 Cr.P.C. is applicable to both the prosecution as well as the accused, *but it does not define the stage at which the Section 294 can be invoked*. From the entire scheme of Cr.P.C. it is quite evident that immediately after framing of charge or anytime thereafter during the Trial, Section 294 Cr.P.C. can be invoked by the prosecution or the accused. Either party to the criminal proceedings, is at liberty to file such documents and call upon the other party to admit and deny the genuineness of each document which may or may not be accepted, thereby leaving it to the concerned party to prove the documents in accordance with law.

18. In Montari Industries Ltd. and Anr. Vs. State 114 (2004) DLT 416, Coordinate Bench of this Court observed that Section 294 Cr.P.C. is aimed at dispensing with formal proof of documents and as such, the admission/denial of documents has to take place at the initial stage so that after the admission/denial, both the parties have



opportunity to prove denied documents or rebut admitted documents or lead evidence to give explanation, if any, in regard to the documents. If the documents of the accused at the stage of admission/denial under Section 294 Cr.P.C. after framing of charge, is denied, it may result in serious prejudice to him.

19. Reference may also be made to the decision of the Co-ordinate Bench in the Case of Mohan Lal Singhal vs State (Delhi Administration), 1996 JCC 129 wherein similar question in regard to the admission/denial of the documents of the accused under Section 294 Cr.P.C., was considered. It was observed that it would not be correct to state that Section 294 Cr.P.C. makes it apparent that the documents can be filed at any stage and a party, both accused and the prosecution, could be called upon to admit or deny the genuineness of such documents. Where the genuineness of such documents is not disputed, the same can be read in evidence in any inquiry, trial or other proceedings. Even the documents submitted along with the Report under Section 173 Cr.P.C. can be put to the accused to admit or deny the genuineness thereof. It was concluded that the acceptance of any argument to the contrary would be defeating the object of the Section 294 Cr.P.C.

20. This procedure finds validation from the observations made in the case of Rakkappan Vs. State rep. By Inspector of Police, Cherambadi Police Station, Uthagamandalam District, (2009) 4 MLJ (Crl.) wherein it was observed that:

“6. It is ex facie and prima facie clear that when either of the parties to the criminal proceedings, if



*wants to file some document, they are at liberty to file such documents and call upon the other side either to admit or deny the genuineness of each such document. It is open for the other side to either accept or deny the genuineness of the document. **If it is denied by the opposite party, the party, who wants to rely upon it should resort to the normal procedure of marking the document.***

21. The Apex Court in the case of Shamsher Singh Verma vs. State of Haryana (2016) 15 SCC 485 also observed that endorsement of admission or denial on behalf of the counsel for the accused on a document filed by the prosecution, is sufficient compliance of Section 294 Cr.P.C.

22. Further, the right to seek admission denial is neither restricted to any particular stage nor is it confined to be availed only at one time. The Full Bench Judgment of the Allahabad High Court in Saddiq and Ors. vs. State, 1981 CRI.L.J.379 succinctly explains that the word 'any' appearing before the word 'document' makes sub-section (1) of Section 294 Cr.P.C., applicable to all documents filed by the prosecution or the accused irrespective of their nature and character, which *can be filed indefinite number of times*. Section 294 of Cr.P.C. does not limit the filing of the documents by the accused to one time and can be resorted to at any time after the charge is framed and for any number of times. Of course, it goes without saying that this right is circumscribed by the jurisdiction of the court to disallow the filing of the documents or their admission denial, if found to be irrelevant or an abuse of process of law or tantamount to dilatory tactics.

23. The procedure to be followed under *Sub-section (1) of Section*



294 Cr.P.C. was explained in the case of Saddiq and Ors. (*supra*) which provided that “*particulars of all documents, which are to be filed by the prosecution or the accused, must be mentioned in a list and the opposite party, or their pleaders, shall be called upon to admit or deny the genuineness of such documents*”.

24. Further, it is evident from a plain reading of sub-section (3) of Section 294 Cr.P.C., that those documents filed by the prosecution or the accused under sub-section (1) of Section 294 Cr.P.C., whose genuineness is not disputed by the opposite party, such documents may be read in evidence.

25. In Saddiq and Ors. (*supra*) it was also held that Sub-section (3) of Section 294 Cr.P.C. applies to private document and not public documents, since there does not arise any question of proving signatures in the certified copies of public documents. However, even if the genuineness of such a document filed under sub-section (1), Cr.P.C. is not disputed by the opposite party, it does not prevent the Court or the parties to summon such witness to prove its content.

26. Similar observations were made by Punjab and Haryana High Court in the case of Vinod Kumar v State of Haryana, 1987 CRI. L.J. 1335, that it does not hold to any reason that the accused cannot at *that stage produce his documents*. This seems to be the reason for such a provision under Section 294 the Code subject of course to the accused's documents being genuine. This right is not merely conferred on the accused, but a corresponding right is also vested in the prosecution. The documents submitted along with the report under Section 173 of the Code relied upon by the prosecution, can be put to



the accused and he can be asked to admit or deny the genuineness of each such document. This does away with the formal necessity of proving the genuineness of the document and such document can thereafter, be read in evidence without proving of the signature of the person to whom it purports to be signed. The joint effect of the aforesaid two provisions is to put at par the prosecution and the accused so far as the documentary evidence is concerned. One cannot be allowed to score over another by taking shelter in procedural wrangles and tactical gimmicks.

27. The next aspect for consideration is what happens after the admission -denial of the documents. In case the documents are admitted, their formal proof is dispensed with. However, in case the documents are denied, the concerned party has to prove the documents in accordance with Law. In the case of Rakkappan (supra) it was observed that “*section 294 Cr.P.C., is not the be- all and end-all of the right to adduce evidence before Court and either of the parties to criminal proceedings, to put forth their documents before the Court*”.

28. There are other modes of relying on their documents during the trial, *dehors* the method contemplated under Section 294 Cr.P.C. Section 145 of the Indian Evidence Act permits the accused to confront the witness with his previous statements during cross-examination, and documents could be marked or exhibited as the case maybe.

29. From the aforesaid discussion, the following points in regard to admission/denial of the documents under S.294 be summarized thus:



- (i) Section 294 Cr.P.C. applies equally to the prosecution and the accused and does not limit the production of the documents at any particular stage. Both prosecution and accused are at par in a trial and therefore, both can produce the documents for admission and denial any time after the framing of Charge;
- (ii) The Application under Section 294 can be moved any number of times;
- (iii) The Section applies to both Public or Private documents;
- (iv) The procedure to be followed is that particulars of all documents, which are to be filed by the prosecution or the accused, must be mentioned in a list and the opposite party shall admit or deny the genuineness of such documents;
- (v) If the documents are admitted to be genuine or are by the very nature being admissible in evidence being the public document, they may be read in evidence as such.
- (vi) However, where the genuineness of the document is denied as in the case of private documents, the burden would have to be discharged by the prosecution or the accused as the case may be, to establish its genuineness.
- (vii) Even if the genuineness is admitted, the Court can still summon the witness to prove the contents of the document;
- (viii) Section 145 of Indian Evidence Act can always be resorted to confront the witness with its previous statements which would also include the previously recorded statements either in a previous proceeding



or in any other document or in any electronic device as in the present case.

30. In the light of aforesaid principles, the facts of present case may be considered. The petitioner intends to rely upon the a pen drive containing conversations recorded by his brother and cousin with prosecutrix before the registration of the FIR. It is a document as held in the judgment in P. Gopal Krishanan @ Dileep (Supra) wherein it is observed that the electronic record is not confined only to the data but it also includes the record or data generated, received or sent in electronic form and the same is a document as envisaged in Section 2(1)(t) of IT Act, 2000. Any information contained in electronic form would be qualified as the document to which the petitioner shall entitled at the stage of Section 207 Cr.P.C.

31. As already discussed above, there is no impediment for the petitioner *herein* (accused) to place the pen drive containing the conversations on record and seek its admission/denial by the prosecution under Section 294 Cr.P.C. The prosecution if unable to admit its genuineness being essentially the private document the genuineness of which may not be established at this stage, is at liberty to deny the same as observed in the case of Rakkappan (Supra) leaving it for the petitioner to prove it in accordance with law at the appropriate stage. However, merely because it is a private document which may not be admitted by the prosecution, does not take away the right of the accused to resort to Section 294 Cr.P.C.

32. Considering the nature of the document which pertains to the prosecutrix who can authenticate the conversations, the accused may



also confront the prosecutrix with the conversation in her cross-examination of other relevant witnesses, in terms of Section 145 of the Indian Evidence Act which permits the accused to confront any witness with a document/statement pertaining to him created prior to the commencement of the trial, which though would be obviously subject to its genuineness being established. He has a further opportunity to prove it at the time of his defence evidence, if he so desires.

33. Learned Metropolitan Magistrate was, therefore, not justified in denying taking on record the document i.e. the pen drive as submitted by the defendant and seeking the prosecution to admit or deny the same. Merely putting a document to admission and denial does not cause prejudice nor does it create any obligation on the prosecution to admit the same. It is merely intended to cut short the trial in case the genuineness of the document is established and is admitted by the prosecution as it would curtail the time taken in adducing formal evidence in prove thereon.

34. It is, therefore, held that the document/pen drive sought to be placed on record by the petitioner/accused, be taken on record and one opportunity be given for its admission/denial under Section 294 CrPC by the prosecution.

35. The Petition is accordingly allowed. The pending applications, if any, also stands disposed of.

(NEENA BANSAL KRISHNA)
JUDGE

OCTOBER 03, 2024



va/rs