



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO. 2014 OF 2024

Umesh Harishandra Darade And Another .. Petitioners

Versus

The State Of Maharashtra And Another .. Respondents

Mr. M. G. Kedar, Advocate for the Petitioners.

Mr. R. B. Dhaware, APP for Respondent No. 1.

Mr. N. B. Garje, Advocate for Respondent No. 2.

CORAM : KISHORE C. SANT, J.

DATE : 12th AUGUST, 2025.

PER COURT :-

. Heard learned advocate for the petitioners, learned A.P.P. and learned advocate for respondent No. 2.

2. A challenge in this petition is to an order passed by the learned Sessions Judge, Ambajogai in Sessions Case No. 80/2018. By way of impugned order the learned Judge allowed the application below Exh. 97-D filed by the witness in the sessions trial seeking permission to produce on record memory card having photograph of the victims/prosecutrix.

3. The learned advocate for the petitioners/original accused vehemently argued that, the Court has no power to accept the document produced on record directly from a witness. It was necessary for the prosecution to produce the document on record. The said document is not a part of charge-sheet and the accused has no knowledge about the said document. The learned Court ought to have followed the procedure under Section 173 (8) of the Code of Criminal Procedure (for short "Cr.P.C."). He relies upon the judgment in the case of **Bhagyashree Prashant Wasankar Vs. State of Maharashtra, Through Police Station Officer** reported in **2021 SCC Online Bom 1064**.

4. The learned A.P.P. opposes the petition. He submits that, the Court has every power to take material evidence if produced on record. The Court is not bound to follow the procedure under Section 173 (8) of the Cr.P.C.

5. The learned advocate for respondent No. 2 also submits that, there is no limitation on the power of the Court in accepting the document on record. He relies upon the judgment of the Hon'ble Apex Court in the case of **Central Bureau of Investigation**

(CBI) Vs. R. S. Pai and Ors. reported in **AIR 2002 SC 1644.**

6. In the present case, the accused is facing trial for the offence punishable under Sections 376-A, 354 and 506 of the Indian Penal Code. The trial is going on. The applicant who filed an application is a witness whose statement is recorded; he is the person who came to the Court for recording his evidence. Since this witness is having the photographs with him in a memory card, he filed an application seeking permission to produce the same on record. He clearly stated that the memory card contains photographs of the victim of vital importance. The learned Judge observed that, the material evidence can be accepted at any stage of the trial or during the course of investigation. Such evidence is not collected by the investigating officer, merely on that ground the evidence cannot be refused and allowed the application.

7. In the case of **Bhagyashree Prashant Wasankar** (*supra*), the question was as to whether a witness appearing for the prosecution in a sessions trial can produce documents which were not part of the charge-sheet and whether such procedure for production of documents directly by the prosecution witness is

contemplated under the provisions of Cr.P.C. In the said case also, a prosecution witness moved an application seeking permission to produce additional documents on record. The said application was allowed. The argument that such a document could be produced only upon further investigation being undertaken under Section 173 (8) of the Cr.P.C. by the investigating officer. By considering Section 294 of the Cr.P.C. it is held that the document can be produced either by the prosecution or the accused and not by any third party like a witness. The Court has considered the judgment in the case of Shamsher Singh Verma Vs. State of Haryana reported in (2016) 15 SCC 485. It is mainly considered that there is no provision available for a witness to directly seek production of additional documents during the course of sessions trial at the time of recording of his evidence.

8. In the judgment in the case of Central Bureau of Investigation (CBI) (*supra*), the Hon'ble Apex Court held that normally it is investigating officer who is required to produce all the relevant documents at the time of submitting the charge-sheet. It is further held that, at the same time, as there is no specific prohibition, it cannot be held that the additional documents

cannot be produced subsequently. Paragraph No. 7 of the said judgment reads as below :

“7. From the aforesaid sub-sections, it is apparent that normally, the Investigating Officer is required to produce all the relevant documents at the time of submitting the charge-sheet. At the same time, as there is no specific prohibition, it cannot be held that the additional documents cannot be produced subsequently. If some mistake is committed in not producing the relevant documents at the time of submitting the report or charge-sheet, it is always open to the Investigating Officer to produce the same with the permission of the Court. In our view, considering the preliminary stage of prosecution and the context in which Police Officer is required to forward to the Magistrate all the documents or the relevant extracts thereof on which prosecution proposes to rely, the word ‘shall’ used in sub-section (5) cannot be interpreted as mandatory, but as directory. Normally, the documents gathered during the investigation upon which the prosecution wants to rely are required to be forwarded to the Magistrate, but if there is some omission, it would not mean that the remaining documents cannot be produced subsequently. Analogous provision under Section 173(4) of the Code of Criminal Procedure, 1898 was considered by this Court in ***Narayan Rao v. The State of Andhra Pradesh*** [(1958) SCR 283 at 293] and it was held that the word ‘shall’ occurring in sub-section 4 of Section 173 and sub-section 3 of Section 207A is not mandatory but only directory. Further, the scheme of sub-section (8) of Section 173 also makes it abundantly clear that even after the charge-sheet is submitted, further investigation, if called for, is not precluded. If further investigation is not precluded then there is no question of not permitting the prosecution to produce additional documents which were gathered prior to or subsequent to investigation. In such cases, there can not be any prejudice to the accused.

Hence, the impugned order passed by the Special Court cannot be sustained.”

9. In the said case the application filed by the witness for production of documents was rejected by the Special Court. The application in that case was filed by CBI for production of document after filing of the charge-sheet.

10. This Court finds that, when evidence that helps the learned Trial Court in conducting a trial to come to a proper conclusion, it sought to be produced on record, need not be refused merely on taking a grounds. The Court is not expected to be a silent spectator as held in the case of Jahira Habibulla H. Sheikh & another Vs. State of Gujrat reported in (2004) 4 SCC 158. It is the duty of every Court to try to take on record as much evidence as possible relevant to the decision of the case. Taking technical approach is certainly not in the interest of fair trial.

11. In the present case, the learned Trial Court has rightly observed that the said document can be made available to the accused persons. The accused persons have an opportunity to cross-examine the witness. Merely because the document is

produced, it cannot be said that the same will be taken as evidence without sufficient proof. This Court thus finds that, the present writ petition deserves to be dismissed. At the same time it needs to be clarified that, it is for the prosecution to prove the said document by following procedure of law. The Court also cannot straightway read such document as evidence unless it is proved by the prosecution witness. Hence, the following order :

ORDER

- (i) Criminal writ petition stands dismissed.

(KISHORE C. SANT, J.)

PS.B.