



Judgment

367 revn102.24

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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

CRIMINAL REVISION APPLICATION NO.102 OF 2024

1. Nikhil Vinayak Narule,
aged 25 years, occupation – student,
r/o Ranbodi Punvarsan, Kuhi,
Nagpur.

2. Saurabh Uttam Rithe,
aged 22 years, occupation – labour,
r/o Ranbodi Punvarsan, Kuhi,
Nagpur (Both are in jail). **Applicants.**

:: V E R S U S ::

State of Maharashtra,
through Police Station Umred,
Nagpur. **Non-applicant.**

Shri Atul Rawlani, Counsel for Applicants.

**Shri M.J.Khan, Additional Public Prosecutor for the Non-
applicant/State.**

CORAM : URMILA JOSHI-PHALKE, J.

CLOSED ON : 14/02/2025

PRONOUNCED ON : 03/03/2025

JUDGMENT

1. Heard learned counsel Shri Atul Rawlani for
applicants and learned Additional Public Prosecutor Shri
M.J.Khan for the State.

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2. By this revision, the challenge has been raised to order dated 27.6.2024 passed below Exh.113 by learned Extra Joint District Judge and Additional Sessions Judge (Special Judge, POCSO Court), Nagpur in Special Criminal (Child) Case No.482/2022 whereby the application moved by the applicants (the accused) for supplying a clone copy of the data available in Pen-Drive submitted by the Investigating Officer having statement of the victim.

3. Learned counsel for the accused submitted the clone copy (transcript of the statement recorded by the Investigating Officer in the nature of Audio/Video Recording) of statement be provided to the accused to allow them by giving a fair opportunity to confront the said statement to the witness in view of Section 145 of the Indian Evidence Act. It is contended that though the prosecution supplied him copy of the statement in a Pen-

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Drive, the Audio/Video Recording itself shows that the police officer who recorded the said statement has also reduced it into the writing and the accused has right to have a copy of the same in the interests of a fair trial. The fair trial is the fundamental right of the accused. It is further submitted that the reasoning given by the trial court is not reasonable and is affecting the right of a fair trial of the present accused. A full transcript of the Audio has to be provided to the accused and if it is not provided, it would seriously affect impartiality and fairness of the trial proceedings.

4. Learned Additional Public Prosecutor for the State strongly opposed the said application on the ground that the accused Nos.1, 4, and 5 moved an application before learned Judge below vide Exh.113 to supply the transcript copy/typed copy of videography statement filed by the prosecution in Pen-Drive. The copy of the statement

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which is recorded in the nature Audio/Video is already copied in the Pen-Driver and supplied to the accused and, therefore, the accused are having a document in the nature of Pen-Drive to contradict the witness and, therefore, the application is rightly rejected and no interference is called for.

5. The question raised is, whether the accused persons are entitled to have a transcript of Audio/Video Recorded Statement of the victim and Audio/Video Recorded Statement is a statement made by a person wherein both their voice (audio) and visual appearance (video) are captured simultaneously essentially treating that including both the spoken words and the body language of the speaker often used in legal proceeding to document, witness testimonies or confession with greater accuracy and transparency.

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6. Having regard to the submissions made by both the parties and having perused the record, it would be relevant to refer Sections 173(5) and (6) and Section 207 of the Indian Penal Code, which are reproduced as under:

“173(5). When such report is in respect of a case to which section 170 applies, the police officer shall forward to the Magistrate along with the report -

(a) all documents or relevant extracts thereof on which the prosecution proposes to rely other than those already sent to the Magistrate during investigation;

(b) the statements recorded under section 161 of all the persons whom the prosecution proposes to examine as its witnesses.

173(6). If the police officer is of opinion that any part of any such statement is not relevant to the subject-matter of the proceeding or that its disclosure to the accused is not essential in the interests of justice and is inexpedient in the public interest, he shall indicate that part of the statement and append a note requesting the Magistrate to exclude that part from the copies to be granted to

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the accused and stating his reasons for making such request.

207. In any case where the proceeding has been instituted on a police report, the Magistrate shall without delay furnish to the accused, free of cost, a copy of each of the following;

(i) the police report;

(ii) the first information report recorded under section 154;

(iii) the statements recorded under Sub-Section (3) of section 161 of all persons whom the prosecution proposes to examine as its witnesses, excluding therefrom any part in regard to which a request for such exclusion has been made by the police officer under Sub-Section (6) of section 173;

(iv) the confessions and statements, if any, recorded under section 164;

(v) any other document or relevant extract thereof forwarded to the Magistrate with the police report under Sub-Section (5) of section 173;

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Provided that the Magistrate may, after perusing any such part of a statement as is referred to in clause (iii) and considering the reasons given by the police officer for the request, direct that a copy of that part of the statement or of such portion thereof as the Magistrate thinks proper, shall be furnished to the accused;

Provided further that if the Magistrate is satisfied that any document referred to in clause (v) is voluminous, he shall, instead of furnishing the accused with a copy thereof, direct that he will only be allowed to inspect it either personally or through pleader in Court.

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7. Thus, by way of producing the Pen-Drive, the statement is produced by the prosecution in the electronic form. Whether the document Pen-drive is document, is already dealt with by the Hon'ble Apex Court.

8. In **P.Gopalkrishnan alias Dileep vs. State of Kerala and anr, reported in (2020)9 SCC 161**, the Hon'ble Apex Court observed that, "in conclusion, we hold that the contents of the memory card/pen drive being electronic

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record must be regarded as a document. If the prosecution is relying on the same, ordinarily, the accused must be given a cloned copy thereof to enable him/her to present an effective defence during the trial. However, in cases involving issues such as of privacy of the complainant/witness or his/her identity, the Court may be justified in providing only inspection thereof to the accused and his/her lawyer or expert for presenting effective defence during the trial. The court may issue suitable directions to balance the interests of both sides.:

9. Thus, by way of the principle above, it has been recognized that material evidence available in pen-drive in the nature of electronic form is a document.

10. In **Shamsher Singh Verma vs. State of Haryana, reported in (2016)15 SCC 485** it was recognized compact disc is also a document. Then, being material referable to

Section 173(5) Cr.P.C. and not Section 173(6) Cr.P.C., it may be supplied to the accused person as a clone copy of the original. Also, under Section 207 Cr.P.C., the right of the accused to be supplied "any other document or relevant extract thereof forwarded to the Magistrate with the police report under Sub-Section (5) of Section 173 Cr.P.C." may ordinarily be curtailed only if it is voluminous.

11. The Hon'ble Apex Court in **V.K.Sasikala vs. State, represented by Superintendent, reported in (2012)9 SCC 771** it is held that without dilating on the said aspect of the matter what has to be taken note of now are the provisions of the Code that deal with a situation/stage after completion of the investigation of a case. In this regard the provisions of Section 173 (5) may be specifically noted. The said provision makes it incumbent on the Investigating agency to

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forward/transmit to the concerned court all documents/statements etc. on which the prosecution proposes to rely in the course of the trial. Section 173(5), however, is subject to the provisions of Section 173(6) which confers a power on the investigating officer to request the concerned court to exclude any part of the statement or documents forwarded under Section 173(5) from the copies to be granted to the accused.

12. The court having jurisdiction to deal with the matter, on receipt of the report and the accompanying documents under Section 173, is next required to decide as to whether cognizance of the offence alleged is to be taken in which event summons for the appearance of the accused before the court is to be issued. On such appearance, under Section 207 Cr.P.C., the concerned court is required to furnish to the accused copies of the following documents: i) The police report; ii) The first

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information report recorded under section 154; iii) The statements recorded under sub-section (3) of section 161 of all persons whom the prosecution proposes to examine as its witnesses, excluding therefrom any part in regard to which a request for such exclusion has been made by the police officer under sub-section (6) of section 173; iv) The confessions and statements, if any, recorded under section 164; v) Any other document or relevant extract thereof forwarded to the Magistrate with the police report under sub-section (5) of Section 173.

13. The first proviso to Section 207 empowers the court to exclude from the copies to be furnished to the accused such portions as may be covered by Section 173(6), the second proviso to Section 207 empowers the court to provide to the accused an inspection of the documents instead of copies thereof, if, in the opinion of the court it is not practicable to furnish to the

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accused the copies of the documents because of the voluminous content thereof.

14. Thus, only by way of exception to the general rule, it may be recognized that the Court may be justified to allow for a simple inspection of the documents being relied upon by the prosecution. Statutorily, those exception may arise under Section 207(iii) read with Section 173(6) Cr.P.C. and Section 207(v) read with Section 173(5) Cr.P.C. At the same time, by virtue of the first proviso to Section 207, the Magistrate retains discretion to allow any part or portion of the statement to be furnished to the accused, in such event. Also, by virtue of the second proviso to Section 207, the Magistrate may only allow inspection of any document (covered by Section 176(5) of the Cr.P.C.), if it is voluminous.

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15. In view of the decision of the Hon'ble Apex Court in the case of **P.Gopalkrishnan alias Dileep** *supra*, issues such as of privacy of the complainant/witness or his/her identity, the Court may be justified in providing only inspection thereof to the accused and his/her lawyer or expert for presenting effective defence during the trial. The court may issue suitable directions to balance the interests of both sides. The Magistrate may only allow for an inspection of a document in place of its whole copy being supplied. Thus, denial of complete copy of a document is an exception to the general rule namely, the accused has a right to be made available the material. To carve an exception to the rule, there must exist just and proper grounds. When the police officer has formed an opinion that disclosure of any statement is either not relevant or its disclosure in the interests of justice or is expedient in the public interest, by virtue of Section 207

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of the Code, the opinion and the reasons (giving rise to it) would remain subservient to the better wisdom of the learned Magistrate. If the document not covered under Section 173(5) Cr.P.C. is voluminous, for that reason the learned Magistrate may allow for its extract to be made over to the accused.

16. In the light of the above provisions and the exception carved out by the Hon'ble Apex Court in the case of in the case of **P.Gopalkrishnan alias Dileep** *supra*, is referable to the proviso to Section 207 of the Code being not in the interests of justice or expedient in public interest. However, that decision to be made by the Magistrate being discretionary, would have to be exercised on a judicious application of mind to the particular/peculiar facts giving rise to serious concerns about violation of privacy etc.. When the Court seeks to deny an accused person material gathered during

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investigation and proposes to only allow him an opportunity to peruse the same from the Court record, the Court is taking a decision that may, potentially have a material bearing on the fairness and completeness of the trial as also its final outcome. Therefore, before the Court may do that, it must itself examine the material to be sure that the interest to protect the privacy of a complainant or witness etc. outweighs the requirement to make available to the accused person, the material being relied against him. In that, it may also speak to the concerned witness/complainant and ascertain his views. If necessary, it may entertain formal objections and reply thereto and pass such order as may balance the rights and interests of both sides, without risk of impairing the fairness of trial of proceedings.

17. In the present case, learned Additional Public Prosecutor for the State has strongly opposed the

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application and submitted that positive steps have to be adopted to create a barrier free environment. The barriers are not only those which exist within the physical space of conventional court but those which operate on the minds and personality of the voluntariness and submitted that providing a transcript will affect the privacy of the victim. He further invited my attention towards the guidelines and submitted that to ensure the privacy and physical and mental state of a child witness and to prevent undue distress the application is rightly rejected by the trial court.

18. In support of his contentions, learned Additional Public Prosecutor for the State placed reliance on 1. **P.Gopalkrishnan alias Dileep vs. State of Kerala and anr**, reported in (2020)9 SCC 161; 2. **Sharadchandra @ Sarat Chandra vs. State of Rajasthan**, reported in 2015(4) CriLR (Raj) 2135 and 3. **Special Leave Petition (Cri)**

NO.6548/2022 (State of Karnataka vs. T.Naseer @ Nasir @ Thandiantavida Naseer @ Umarhazi @ Hazi and ors) decided by the Hon'ble Apex Court on 6.11.2023 where the Hon'ble Apex Court considered that fair trial in a criminal case does not mean that it should be fair to one of the parties. Rather, the object is that no guilty should go scot-free and no innocent should be punished. The Hon'ble Apex Court has referred its earlier judgment in the case of **Arjun Panditrao Khotkar vs. Kailash Kushanrao Gorantyal**, reported in (2020) 7 SCC 1.

19. In the present case, the Audio/Video Recorded Statement is already provided to the accused by copying the same in the Pen-drive and, therefore, the contention of learned Additional Public Prosecutor for the State as to the privacy of the victim is not sustainable. As far as the observations of the Hon'ble Apex Court in the case of **State of Karnataka vs. T.naseer @ Nasir @**

Thandiantavida Naseer @ Umarhazi @ Hazi and ors
supra are concerned, it is specifically in the said decision observed that fair trial in a criminal case does not mean that it should be fair to one of the parties. Rather, the object is that no guilty should go scot-free and no innocent should be punished.

20. Thus, the accused should have been granted full opportunity to rebut the evidence led by the prosecution. The object of the Code is to arrive at truth considering the fact that the transcript of the said statement is required to cross examine the witness as to the previous statement in writing in view of Section 145 of the Indian Evidence Act. Section 145 of the said Act gives right to the the accused to cross examine the witnesses as to previous statements made by him in writing or reduce into writing, and relevant to matters in question, without such writing being shown to him, or being proved; but, if it is intended

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to contradict him by the writing, his attention must, before the writing can be proved, be called to those parts of it which are to be used for the purpose of contradicting him.

21. Perusal of the Audio/Video Recorded Statement which is produced before the court shows that while recording the said statement, the investigating officer has also reduced into writing the said statement which is visible from the video and, therefore, the transcript of the said statement which is previous statement made by the victim in writing and reduced into writing which is relevant to matters in question. The right of the accused to show such writing to the witness would be affected if such writing is not provided to the accused. The contention raised by the prosecution is only considered by the court while passing on order. If the court had itself examined the material, the court ought to have

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considered that the aspect of privacy would not arise as the Audio/Video Recorded Statement is already supplied to the accused and therefore, while passing order, the learned Judge of the trial court ought to have considered that prejudice would be caused to the accused if they were not provided with the transcript of the conversation which is not only recorded by the investigating officer but also it is reduced into writing and supplying the same to the accused would not cause any prejudice to the prosecution.

22. In view of the above observations and in the light of the decision of the Hon'ble Apex Court in the case of **P.Gopalkrishnan alias Dileep vs. State of Kerala and anr**, if the prosecution is relying on the same, the same must be given a clone copy thereof to enable him/her to present and effective defence during the trial. As such, the application of the present accused seeking transcript of

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the Audio/Video Recorded Statement deserves to be **allowed**. Hence, following order is passed:

ORDER

(1) The Criminal Revision Application is **allowed**.

(2) The order dated 27.6.2024 passed below Exh.113 by learned Extra Joint District Judge and Additional Sessions Judge (Special Judge, POCSO Court), Nagpur in Special Criminal (Child) Case No.482/2022 is hereby quashed.

(3) The prosecution shall produce on record the transcript of the Audio/Video Recorded Statement of the victim and also supply the copy of the same to the applicants.

Revision stands **disposed of**.

(URMILA JOSHI-PHALKE, J.)

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