

Mrs. Justice Nirmal Yadav (Retired) Vs Central Bureau of Investigation

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: May 13, 2013

Acts Referred: Constitution of India, 1950 " Article 21

Criminal Procedure Code, 1973 (CrPC) " Section 154, 158, 161, 161(3), 164

Penal Code, 1860 (IPC) " Section 120, 192, 196, 199, 200

Prevention of Corruption Act, 1988 " Section 11, 12

Citation: (2013) 3 RCR(Criminal) 538

Hon'ble Judges: Paramjeet Singh, J

Bench: Single Bench

Advocate: S.K. Garg Narwana and Mr. Naveen Gupta, for the Appellant; Anupam Gupta and Mr. Jasmandeep, for the Respondent

Judgement

Paramjeet Singh, J.

In the instant criminal revision, the petitioner has impugned order dated 02.02.2013 passed by learned Special Judge,

CBI Court, Chandigarh in a case FIR No. RCAC22008A004 dated 28.08.2008, under Sections 11 and 12 of the Prevention of Corruption Act,

1988 (hereinafter referred to as the "PC Act"), Section 120 read with Sections 192, 196, 199 and 200 of the Indian Penal Code, registered at

Police Station CBI ACU-II, New Delhi, whereby an application filed u/s 207 of the Code of Criminal Procedure (hereinafter referred to as the

Code") has been dismissed. However, liberty has been granted to the petitioner to inspect the record and prepare notes either in hand or through

Stenographer. Brief facts of the case are that the petitioner herein is a retired Judge of the High Court. Initially an FIR No. 250 of 2008 was

registered at Police Station Sector 11, Chandigarh on the complaint of one Amrik Singh, Peon of the then Hon'ble Ms. Justice Nirmaljit Kaur of

this Court against Shri Sanjeev Bansal, Advocate, practising at Chandigarh, Sh. Ravinder Singh, resident of Delhi, Sh. Rajiv Gupta and Sh. Nirmal

Singh, residents of Panchkula. Initially, the investigation was carried out by the Chandigarh Police. Thereafter, the Governor of Punjab and

Administrator of UT, Chandigarh ordered transfer of the case to CBI which registered a separate FIR. CBI conducted the investigation in the

matter. After completion of investigation, final report (Charge-sheet/Challan) has been submitted.

2. I need not mention the other details of the case. However, at this stage, the only controversy is with regard to the supply of copies of the

documents claimed by the petitioner in her application dated 16.01.2013 (Annexure P/5) whereby request has been made to supply the

photocopies of the documents summoned by the Special Judge from the Ministry of Law and Justice, Government of India to the petitioner-

applicant.

3. The case set up by the petitioner is that in the FIR in question, final report has been submitted by the CBI and the sanction has been accorded

vide order dated 01.03.2011 for prosecution of the petitioner u/s 11 of the PC Act and the other offences. The petitioner challenged the said order

of sanction vide CRM M-14289 of 2011 and the same has been dismissed by this Court vide order dated 14.11.2011 reported as Mrs. Justice

Mrs. Nirmal Yadav Vs. Central Bureau of Investigation and another, The said order was challenged before the Hon"ble Supreme Court of India

through SLP (Criminal) No. 2317 of 2012 and the same was withdrawn with liberty to raise all such grounds before the Trial Court. The record,

sought by the petitioner is relating to the sanction, was summoned u/s 91 of the Code by the Trial Court, which has not been relied upon by the

respondent in the final report. The said record consists of more than 500 pages. The record has already been inspected by the petitioner with the

permission of the Trial Court. It is submitted that the record was voluminous and could not be inspected thoroughly. Now, at this stage of framing

of charge, the said record is required to be referred during the course of arguments, therefore, photocopies of the same are sought to be supplied.

4. To the said application, reply was filed by the CBI through Inspector of Police, Special CBI, AC-I, New Delhi. In the reply, it is averred that

the application is not maintainable. Photostat copies of the record cannot be supplied. Liberty was already granted to the petitioner by the Trial

Court to inspect the record and prepare notes either in hand or through Stenographer. It is further averred in the reply that as per Section 173 of

the Code, only the documents relied upon by the prosecution in the final report can be supplied to the petitioner and the petitioner is not entitled to

other documents. It is also submitted that order dated 10.09.2012 passed in SLP whereby liberty has been granted to the petitioner to raise all the

objections before the Trial Court does not purport to alter the scheme of trial under the Code, much-less it cannot be construed like that. The

prayer for supply of photocopies is, however, wholly without precedent, it has no authority and rather is unwarranted by the provisions of law.

5. I have heard learned counsel for the parties.

6. Learned senior counsel for the petitioner vehemently argued that the record is voluminous, photostat copies of the same should be provided as

the petitioner is a retired Judge of the High Court and is otherwise also suffering from ailments; petitioner wants to see the records herself in

addition to the assistance being rendered by her counsel. It was further submitted that sanction can be challenged even at the stage of framing the

charge. It was further contended that Hon"ble Supreme Court has granted liberty to the petitioner to raise all the objections before the Trial Court,

certainly it means that the petitioner can demand the copies of the record which has been considered at the time of grant of sanction. Learned

counsel for the petitioner further submitted that the said documents are necessary for just and fair trial and this is the essence of Article 21 of the

Constitution of India when the life and liberty of a person is involved. Learned counsel has relied upon judgments of Hon"ble Supreme Court in

Thana Singh Vs. Central Bureau of Narcotics, Lallan Rai and Others Vs. State of Bihar, and judgment of this Court in 2012 (4) R.C.R. (Cri.) 743

: CRM M-37077 of 2009 - Major Gurinder Singh Benipal vs. State of Punjab and others, decided on 15.10.2012.

7. Learned senior counsel for the CBI vehemently argued that already relief beyond the provisions of Section 207 read with Section 173(5) of the

Code has been granted to the petitioner. Now, the petitioner wants photocopies of the documents which is not permissible under law. It is

specifically provided in Section 207 of the Code that when the record is voluminous, in that circumstance, the accused has a right to inspect the

same in accordance with law and in the present case, the Trial Court has already granted liberty to the petitioner to inspect the record and prepare

notes either in hand or even with the assistance of the Stenographer. Learned counsel for the CBI further submitted that further concession can be

given to the petitioner to the extent that document could be dictated to the stenographer and recorded on any electronic device to avoid possibility

of mistakes/omissions during dictation.

8. I have considered the rival contentions of the learned counsel for the parties.

9. I am conscious of the fact that Article 21 of the Constitution of India is very relevant when life and liberty of a person is involved. For a just and

fair trial as well as to maintain the transparency, compliance of Article 21 of the Constitution of India is essential. In the light of the said Article, I

would like to go into the provisions of Section 173 as well as Section 207 of the Code, so it would be appropriate to reproduce the aforesaid

Sections which read as under:-

173. Report of police officer on completion of investigation. - (1) Every investigation under this Chapter shall be completed without unnecessary

delay.

[(1-A) The investigation in relation to rape of a child may be completed within three months from the date on which the information was recorded

by the officer-in-charge of the police station.]

(2) (i) As soon as it is completed, the officer in charge of the police station shall forward to a Magistrate empowered to take cognizance of the

offence on a police report, a report in the form prescribed by the State Government, stating-

(a) the names of the parties;

(b) the nature of the information;

(c) the names of the persons who appear to be acquainted with the circumstances of the case;

(d) whether any offence appears to have been committed and, if so, by whom;

(e) whether the accused has been arrested;

(f) whether he has been released on his bond and, if so, whether with or without sureties;

(g) whether he has been forwarded in custody u/s 170;

[(h) whether the report of medical examination of the woman has been attached where investigation relates to an offence under sections 376, 376-

A, 376-B, 376-C or 376D of the Indian Penal Code (45 of 1860).]

(ii) The officer shall also communicate, in such manner as may be prescribed by the State Government, the action taken by him, to the person, if

any, by whom the information relating to the commission of the offence was first given.

(3) Where a superior officer of police has been appointed u/s 158, the report shall, in any case in which the State Government by general or

special order so directs, be submitted through that officer, and he may, pending the orders of the Magistrate, direct the officer in charge of the

police station to make further investigation.

(4) Whenever it appears from a report forwarded under this section that the accused has been released on his bond, the Magistrate shall make

such order for the discharge of such bond or otherwise as he thinks fit.

(5) When such report is in respect of a case to which section 170 applies, the police officer shall forward to the Magistrate alongwith 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 u/s 161 of all the persons whom the prosecution proposes to examine as its witnesses.

(6) If the police officer is of opinion that any part of any such statement is not relevant to the subject-matter of the proceedings 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 the accused and stating his reasons for making such

request.

(7) Where the police officer investigating the case finds it convenient so to do, he may furnish to the accused copies of all or any of the documents

referred to in sub-section (5).

(8) Nothing in this section shall be deemed to preclude further investigation in respect of an offence after a report under sub-section (2) has been

forwarded to the Magistrate and, where upon such investigation, the officer in charge of the police station obtains further evidence, oral or

documentary, he shall forward to the Magistrate a further report or reports regarding such evidence in the form prescribed; and the provisions of

sub-sections (2) to (6) shall, as far as may be, apply in relation to such report or reports as they apply in relation to a report forwarded under sub-

section (2).

207. Supply to the accused of copy of police report and other documents. - 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 u/s 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 u/s 164;

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

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.

10. Perusal of Section 207 of the Code clearly indicates that the supply of documents mentioned in report u/s 173 of the Code is necessary. The

reason is to ensure that the accused is apprised of the exact nature of material that has been found during the investigation so as to defend

himself/herself and to shatter the prosecution case and may pray for discharge. The issue for supplying the copies of documents arises only when

the final report u/s 173 of the Code is submitted.

11. Report by the Investigation Agency u/s 173 of the Code which is commonly known as final report/charge-sheet/challan, is submitted on

completion of investigation. Along with it, when the report is submitted, the documents are annexed which are specifically mentioned in Section

173(5) of the Code: (a) all documents or relevant extracts thereof on which the prosecution proposes to rely, (b) the statements recorded u/s 161

of all the persons whom the prosecution proposes to examine as its witnesses. Plain reading of Section 207 of the Code makes it clear that the

accused is entitled to copies of (i) the police report, (ii) first information report, (iii) the statements recorded u/s 161(3) of all the persons whom the

prosecution proposes to examine as its witnesses as mentioned in Section 173(5)(b), (iv) the confessions and statements recorded u/s 164 Cr.P.C.

and (v) any other document or relevant extract thereof forwarded to the Magistrate with the police report under sub section (5)(a) of Section 173

Cr.P.C.

12. From the conjoint reading of the provisions of Sections 173 and 207 of the Code, it is amply clear that apart from the FIR, police report and

other documents mentioned in Section 207 read with Section 173(5) of the Code are to be supplied to the accused. Any other document, in

custody of the Investigating Agency, if not forwarded u/s 173(5) of the Code, can neither be relied upon by the prosecution subsequently during

trial, as it would prejudice the accused nor can the accused demand its copies since it will not come within the purview of Section 173(5) of the

Code. In the totality of the circumstances and reading of the provisions, the statute mandates supply of all the documents mentioned in the

chargesheet which the prosecution is going to rely during the trial, the Court is not duty bound to supply each and every document collected during

investigation. The learned senior counsel for the CBI stated that the documents sought by the petitioner are not in the custody of the CBI, rather

these are the documents summoned by the Special Judge from Ministry of Law and Justice, Government of India, u/s 91 of the Code.

13. In these circumstances, the accused cannot claim an absolute right over every document collected during investigation. Sections 173(5) and

207 of the Code are in consonance with the equality clause in the Constitution of India and give both the parties an equal opportunity to perform

their respective duties to prosecute and defend. Both the parties have been kept at the same level, no party can take undue and unfair advantage.

At the time of framing the charge also, the documents annexed with the report u/s 173 of the Code are required to be considered in view of the

proposition of law laid down in State of Orissa Vs. Debendra Nath Padhi,

14. The Hon"ble Supreme Court of India has recently considered the entire law regarding disclosure of documents in V.K. Sasikala Vs. State rep.

by Superintendent of Police, and observed that:-

21. The issue that has emerged before us is, therefore, somewhat larger than what has been projected by the State and what has been dealt with

by the High Court. The question arising would no longer be one of compliance or noncompliance with the provisions of Section 207 Cr.P.C. and

would travel beyond the confines of the strict language of the provisions of the Cr.P.C. and touch upon the larger doctrine of a free and fair trial

that has been painstakingly built up by the courts on a purposive interpretation of Article 21 of the Constitution. It is not the stage of making of the

request; the efflux of time that has occurred or the prior conduct of the accused that is material. What is of significance is if in a given situation the

accused comes to the court contending that some papers forwarded to the Court by the investigating agency have not been exhibited by the

prosecution as the same favours the accused the court must concede a right to the accused to have an access to the said documents, if so

claimed. This, according to us, is the core issue in the case which must be answered affirmatively. In this regard, we would like to be specific in

saying that we find it difficult to agree with the view taken by the High Court that the accused must be made to await the conclusion of the trial to

test the plea of prejudice that he may have raised. Such a plea must be answered at the earliest and certainly before the conclusion of the trial, even

though it may be raised by the accused belatedly. This is how the scales of justice in our Criminal Jurisprudence have to be balanced.

15. Ultimately, thereafter, in the last, the Hon"ble Supreme Court has observed as under:

24. In view of what has been stated above and to balance the need to bring the prosecution in the present case to its earliest conclusion and at the

same time to protect and preserve the right of the accused to a fair trial we are of the view that the following directions would take care of the

conflicting interests that have surfaced in the present case:-

24.1. Accused No. 2, i.e. the appellant herein, be allowed an inspection of the unmarked and unexhibited documents referred to by her in the

application dated 29.3.2012, i.e., IA No. 711 of 2012 in CC No. 2008/2004 filed in the Court of XXXVI Additional City Civil and Sessions

Judge, Bangalore;

24.2. Such inspection will be completed within a period of 21 days from the date of receipt of this order by the learned trial court. The venue of

such inspection and also the persons who will be permitted to be present at the time of inspection will be decided by the learned trial court.

24.3. The right of inspection conferred by this order will not affect the validity of any part of the trial till date, including, the examination of the

accused No. 1 u/s 313 Cr.P.C. which has since been completed or any part of such examination of the second accused that may have been

completed in the meantime.

24.4. In the event the third and the fourth accused also desire inspection of the unmarked and unexhibited documents such inspection will be

allowed by the learned trial court. In such an event the process of inspection will also be simultaneously carried out and completed within the

period of 21 days stipulated in the present order.

16. There is no dispute regarding the proposition of law laid down by the Hon"ble Supreme Court in Lallan Rai's case (supra). It is settled law that

it is the statutory provisions which govern the trial and the Court has to act in accordance with the provisions of Section 207 of the Code. The

judgments of the High Court or the Supreme Court are given in the facts and circumstances of each case. Every judgment is not to be read as a

statute. Each case is decided in the peculiar facts of that case. Until and unless, the High Court or the Supreme Court lay down a general principle

of law to be followed by the Courts below, the judgment would have to be considered as adjudication of the particular issue before the Court.

Therefore, I am of the considered view that the judgments relied upon by the learned counsel for the petitioner are of no help to the petitioner. The

Trial Court has rightly dismissed the application of the petitioner.

17. Since the concession has been granted by the CBI Counsel that the notes can be prepared with the help of Stenographer and while dictating

the notes to the Stenographer, the petitioner will be at liberty to simultaneously get the same recorded through any electronic device so as to avoid

any error or omission in the dictation to the Stenographer. In view of the above, present petition is devoid of merit, and hence dismissed. However,

since the matter is lingering on with regard to framing of charge on hyper-technical grounds, in spite of the fact that petitioner has been granted

liberty to inspect the record, but the petitioner preferred to challenge the same, it would be appropriate to issue directions that the petitioner will be

at liberty to inspect the records within 15 days from today. The Trial Court shall decide the issue of framing of charge within 15 days thereafter

after affording opportunity of hearing to both the parties. Since the detailed order with regard to sanction has already been passed, the stage for

challenging the sanction or the issue with regard to the sanction can be raised by the petitioner when the sanction is tendered by the prosecution in

evidence.