Central Bureau of Investigation, Anti Corruption Branch Vs State of U.P. and Others

Court: Allahabad High Court

Date of Decision: Aug. 26, 2013

Acts Referred: Criminal Procedure Code, 1973 (CrPC) â€" Section 15, 154, 154(iii), 160, 161
Evidence Act, 1872 â€" Section 133
Penal Code, 1860 (IPC) â€" Section 120, 120B, 161, 409, 420
Prevention of Corruption Act, 1988 â€" Section 13(1)(d), 13(2), 14, 5(1)(d), 5(2)

Citation: (2013) 9 ADJ 59 : (2014) 2 ALJ 662

Hon'ble Judges: Sudhir Agarwal, J

Bench: Single Bench

Advocate: Anurag Khanna, for the Appellant; Abhishek Kumar, Dinesh Kumar Singh, Manish Kr. Singh, Manoj Prasad, Sunil Singh and Vinay Saran, for the Respondent

Final Decision: Dismissed

Judgement

Sudhir Agarwal, J.
""Ghaziabad General Provident Fund Scam"", a term used commonly in the last five years, in a matter where several

crores of rupees were fraudulently withdrawn from Government Treasury under the Head of ""General Provident Fund"" (hereinafter referred to as

the ""GPF"") in respect of persons, some of whom were working as Class-III and Class-IV employees in Ghaziabad Judgeship, and, some were

rank outsiders. It sounds strange that in a temple of justice, a fraud of such an extent could intrude and successfully continued for amply long period

of 6 to 7 years. More important is that the District Judges continued to change but none, either could check it, or did intend to check it. The fact

remains that more than six crores of rupees, as a matter of fact, were fraudulently withdrawn and had not been restored to public exchequer, so

far. The beneficiaries are enjoying the loot, sitting happily over it. The partial investigation is over and prosecution is still at nascent stage. It is

almost five years since the date of registration of the case with police.

2. The genesis of action relates back to sometime in 2008 when, High Court, on administrative side, received information that crores of rupees

have been withdrawn fraudulently from GPF of a large number of Class-III and Class-IV employees. The internal vigilance team of the Court

made a fact finding inquiry and submitted a report, confirming such fraudulent withdrawal. Under authorisation given by the High Court, Crime No.

152 of 2008, under Sections 409, 420, 467, 468, 471, 477A, 120 IPC and Sections 8, 9, 13(2) read with 13(1)(d) and 14 of Prevention of

Corruption Act, 1988 (hereinafter referred to as the ""PCA, 1988"") was registered at Police Station Kavinagar, District Ghaziabad, on

15.02.2008, on a written complaint of Smt. Rama Jain, Special Judge and Vigilance Officer, Ghaziabad Judgeship.

3. The first information report (hereinafter referred to as the ""FIR"") named, Ashutosh Asthana, the then Central Nazir, District Court Ghaziabad

and 82 other persons (13 Class-III employees, 30 Class-IV employees and 39 outsiders). It was alleged that Ashutosh Asthana, in collusion with

other accused, named in the FIR, fraudulently withdrew huge sum of money in the name of G.P.F. of Class IV employees of District Judgeship,

Ghaziabad. About Rupees seven Crores between 2001 and 2008 was allegedly withdrawn from GPF of Class IV employees out of which, only in

the year 2007, about Rs. 4 Crores were withdrawn fraudulently, and in conspiracy by the accused persons.

4. The local police made preliminary investigation, arrested 62 named accused and also collected copies of certain relevant documents. The

principal accused, Ashutosh Asthana got a statement recorded u/s 164 Cr.P.C. before Magistrate, in which, he admitted fraudulent withdrawal in

the name of GPF of Class-IV employees but alleged that it was done at the instance of the then District Judges, Ghaziabad and proceeds of crime

was utilised for providing benefits to various Judges (Administrative and other Judges of Court of record) and Judicial Officers.

5. The local police filed police reports dated 14.04.2008, 22.04.2008 and 04.05.2008 before District Judge, Ghaziabad, which were transmitted

to Special Judge, Anti-Corruption/E.C. Act, for further action. The local police also filed five charge-sheets against 75 persons.

6. Since the scope of investigation brought in certain sitting and retired Judges of Courts of record as also several District Judges, the

Superintendent of Police, Ghaziabad sent letter to State Government requesting for transfer of investigation to Central Bureau of Investigation

(hereinafter referred to as the ""CBI"").

7. At this stage, a SLP No. 1298 of 2008, Nahar Singh Yadav and another Vs. Union of India and others was filed in Supreme Court requesting

for transfer of investigation to CBI. The State Government then issued a notification dated 10.09.2008 in purported exercise of powers u/s 6 of

Delhi Police Establishment Act, 1946. This notification was placed before Supreme Court and on 23.09.2008, the Court transferred investigation

of the above case to CBI.

8. Consequently, Case No. RC-I(A) of 2008/CBI/ACB/Ghaziabad was registered on 01.10.2008 against Ashutosh Asthana and 82 others. The

CBI investigation continued to be monitored by the Supreme Court. The CBI filed a charge sheet u/s 120B read with Sections 420, 467, 468,

471 IPC and Section 13(2) read with Sections 13(1)(d) of PAC, 1988 in the Court of Special Judge, CBI on 03.07.2010 against six former

District Judges (three of whom were later elevated to this Court and now retired), 48 Class-IV employees, 23 Class-III employees and the then

Central Nazir, Ashutosh Asthana of Ghaziabad Judgeship.

9. Thereafter in the pending SLP applications were filed by petitioners, Nahar Singh Yadav and another as also the CBI, requesting for transfer of

case from Special Judge, CBI, Ghaziabad to another court, preferably at Delhi, but this application, by a detailed order, was rejected by Supreme

Court on 19.11.2010.

10. It is said that Mr. Ashutosh Asthana, the alleged kingpin in the entire episode died unnatural death in jail. To what extent that will reflect upon

the prosecution case, cannot be adjudged at this stage but has to be seen by the Trial Court.

11. Seven persons, namely, Anokhey Lal, Rameshwar Tiwari, Sachin Goel, Anurag Garg, Ami Chand, Sanjeev Tyagi and Arun Kumar Verma on

29.06.2010 and 30.06.2010 got their statements recorded u/s 164 Cr.P.C. CBI Court then issued summoning order on 21.12.2010, where

against some of the accused came in Criminal Revisions No. 132 of 2011, Justice R.N. Mishra (Retd.) Vs. State of U.P. through S.P. C.B.I.,

Ghaziabad; 141 of 2011, Radhey Shyam Chaubey Vs. State of U.P. and another; and 90 of 2011, Ram Prasad Mishra and others Vs. State of

U.P. and another. Some others filed criminal miscellaneous applications u/s 482 Cr.P.C. being numbered 2246 of 2011, R.P. Yadav Vs. State of

U.P.; 2241 of 2011, Shankar Lal and others Vs. State of U.P.; and, 2243 of 2011, Ram Kumar Vs. State of U.P. though S.P. C.B.I. The

chargesheet as also the summoning orders were assailed therein. This Court vide judgment dated 28.01.2011 rejected all the revisions and

applications.

12. When the Trial Court proceeded, a second round litigation has now cropped up in this criminal miscellaneous application filed u/s 482 Cr.P.C.,

but this time it is at the instance of CBI. It has invoked jurisdiction of this Court aggrieved by order dated 25.11.2011 passed by Sri A.K. Singh,

Special Judge, CBI, Court No. 1, Ghaziabad, (hereinafter referred to as the ""CBI Court"") allowing the request of accused respondents to provide

copies of statements recorded u/s 161 Cr.P.C., by CBI and U.P. Police. CBI Court has also directed the applicant to allow accused respondents,

inspection of original documents, already supplied to them (respondents), to verify about inaccuracy, mistake, if any, and whether documents are

complete or not. The order further says that the documents shall be within the precincts of documents already brought on record, and, if any new

document is to be relied on, first of all, it has to be supplied to accused respondents, otherwise, it will not be entertained. Another order impugned

in this application is dated 09.01.2012, directing CBI to comply with un-complied part of requirement of Section 207 Cr.P.C.

13. Sri Anurag Khanna, learned counsel appearing for CBI stated, at the outset, that basically dispute at this stage, revolves around the question,

whether statement of certain persons, who were earlier accused and are now in the list of prosecution witnesses, referable to Section 161

Cr.P.C., are liable to be furnished/supplied to the respondents or not"".

14. For convenience purpose, I clarify that such statements are of prosecution witnesses no. 68, 77, 82, 124, 141, 169 and 210 i.e. Rameshwar

Tiwari, Sachin Goel, Gaurav Garg, Amichand, Sanjeev Kumar Tyagi, Anokhey Lal and Arun Kumar Verma.

15. The submission, in brief, is that these seven persons were accused. They were granted pardon by Trial Court u/s 5(2) PCA 1988 /306

Cr.P.C. whereafter, prosecution has made them approvers and, that is how, their names are in the list of prosecution witnesses.

16. Sri Khanna submitted that at initial stage, all these seven persons were also accused. Therefore, in compliance of Section 207 Cr.P.C.,

statements of witnesses referable to Section 161 Cr.P.C. were supplied to accused persons but not of co-accused. The trial thus, commenced

validly with compliance of requirement of section 207 Cr.P.C. Subsequently, some of the accused were granted pardon and became approvers.

The prosecution will not be obliged to provide statements of such persons, recorded u/s 161 Cr.P.C., to the accused respondents, merely for the

reason, that such accused approvers are included in the list of prosecution witnesses. He contended that requirement of Section 207 having been

complied, it would not be necessary to ask for its further compliance in the light of subsequent events. The orders impugned in this application, in

so far as they oblige and compel CBI to supply aforesaid documents to accused respondents, are unjust, illegal and unauthorised. It is further

contended that precisely, these are not statements of witnesses recorded at the time of investigation, so cannot be treated as statements within

Section 161(3) Cr.P.C. In effect, the same constitute substance of interrogation of accused persons, which neither, need be supplied, nor such is

the requirement of law, nor even otherwise. The respondents accused are neither entitled nor justified in demanding copies of the same. The CBI

Court in passing impugned orders, in favour of accused respondents, has erred in law and acted wholly illegally. He also argued that, earlier, CBI

Court passed an order on 06.07.2011, declining prayer of accused persons/respondents for furnishing copies of documents and statements, as

above, but now, by impugned order, the earlier order, in substance has been reviewed, which is impermissible in law. It is said that whatever was

collected and recorded by CBI, during course of investigation, is not supposed to be supplied to accused respondents. The insistence otherwise,

on the part of accused respondents, as also the view taken by CBI Court, in favour of accused, is wholly illegal and unsustainable. The entire

exercise, in fact, is nothing but a delaying tactics, so as to prolong the trial. It lacks bona fide on the part of respondents accused. All the

respondents no. 2 to 8 who appeared before CBI Court were provided documents, sought to be relied on by CBI but insistence for supply of

statements of seven accused approvers is erroneous and illegal. These persons cannot be termed as ""witnesses"" so as to attract Section 207

Cr.P.C. He argued that statements u/s 164 Cr.P.C. of these seven approvers have already been supplied to accused respondents as per

requirement of law. The alleged statements, strictly speaking, cannot be termed as statements of witnesses u/s 161 Cr.P.C., liable to be supplied to

them, so as to comply with Section 207 Cr.P.C. The CBI did not record statements of these seven approvers as such, but investigating officer

placed on record only substance of their interrogation who were then accused and, therefore, such statements are not liable to be supplied.

Reliance on behalf of CBI is placed on various judicial authorities which I shall deal at the relevant stage.

17. The respondents are represented through a battery of Advocates. Sri Satish Trivedi, Senior Advocate assisted by Sri Sheshadri has put in

appearance on behalf of respondent no. 6, Sri Sunil Singh, Advocate represents respondent no. 2, Sri Vivek Saxena, Advocate represents

respondents no. 3, 4 and 5, Sri Dinesh Kumar Singh Advocate represents respondent no. 7 and Sri Abhishek Kumar has appeared for

respondents no. 3, 4, 5 and 8.

18. It is canvassed from the side of respondents accused that for the purpose of compliance of Section 207, statements u/s 161 Cr.P.C., of all

persons, who were examined by prosecution and are on the list of witnesses, have to be supplied to accused. The term ''witness'' does not

contemplate any distinction amongst the kind of witnesses whether it was a witness of fact, or, a witness who was earlier accused and now has

turned into an approver etc. Once somebody''s is shown in the list of witnesses, submitted by prosecution, it is under an obligation to supply

statement of such witness recorded u/s 161 Cr.P.C. to the accused. The Trial Court has not committed any error in the present case in directing to

supply such statements to the respondents. The application of CBI assailing the orders impugned, therefore, deserve to be rejected. On behalf of

respondents also, a large number of authorities were cited, which also, I shall discuss, later on.

19. The dispute revolves around compliance of Section 207 Cr.P.C. It would be appropriate to have a close look thereof. Section 207 reads as

under:

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 there from 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.

20. Looking to the scheme of investigation in respect of a criminal offence, the procedure prescribed in the statute confers wide powers of

investigation to the authority making investigation. The Court at that stage has minimum role.

21. Cr.P.C. deals with all these aspects exhaustively. The process of investigation of a criminal charge, duties of investigating agency and role of

courts after investigation is over, and report thereof submitted to the court, are dealt with in different chapters, in extensio. There is inbuilt

procedure to ensure that investigation of a criminal offence is conducted, while preserving constitutional rights of an accused, through a fair

process. To ensure supervisory role thereon, a mandatory duty has been cast on investigating agency to maintain a case diary of every

investigation, on day to day basis, and power has also been conferred upon Court u/s 172(2) Cr.P.C. to look into such Police Diary for use, not

as an evidence in the case, but to aide it in such inquiry or trial.

22. Recognizing importance of statements recorded during the course of investigation, u/s 161 Cr.P.C., the Legislature has recently intervened by

inserting sub-section (1-A) in Section 172 vide Section 15 of Code of Criminal Procedure (Amendment) Act 2008, which has come into force on

31.12.2009 and reads as under:

(1A) The statements of witnesses recorded during the course of investigation u/s 161 shall be inserted in the case diary.

23. It is not disputed by learned counsel for the parties that statements recorded during investigation u/s 161 Cr.P.C. do not constitute itself an

evidence and the only utility of such statements, open to parties, is that the same by virtue of Section 162 Cr.P.C., can be utilized to contradict a

witness, if his statement u/s 161 Cr.P.C. is available.

24. When investigation is complete and the investigating agency finds sufficient evidence or reasonable ground, it shall submit report to the

Magistrate to take cognizance of the offence. Section 173(5) Cr.P.C. contemplates that the Investigating Agency shall forward to the Court

concerned, all documents/statements on which the prosecution proposes to rely in the court of trial. A little exception in sub section (6) of Section

173 may also be noticed which confers a power on the investigating officer to request the court concerned to exclude any part of statement or

documents forwarded u/s 173(5) from the copies to be granted to accused.

25. Then comes the role of Court having jurisdiction to deal with the matter. On receipt of report and accompanying documents u/s 173, it has to

decide whether cognizance of offence is to be taken, in which event, summons of appearance of the accused before the Court is to be issued.

26. On such appearance, vide section 207 Cr.P.C., the Court concerned is required to furnish, to the accused, copies of: (i) police report (ii) FIR

recorded u/s 154(iii) statement recorded u/s 161(3) of all persons whom the prosecution proposes to examine as its witnesses, subject to

exclusion u/s 173(6) Cr.P.C., if any, (iv) confessions and statement if any, recorded u/s 164 Cr.P.C. and (v) any other document or relevant

extract thereof forwarded to the Magistrate with police report u/s 161(5) Cr.P.C.

27. There are two provisos to Section 207 Cr.P.C. The first one empowers the Court to exclude contents from the copies to be furnished to the

accused such portion of document(s), as may be covered by Section 173(6). Second proviso empowers the court to provide to accused an

inspection of document(s) instead of copy thereof, if in the opinion of the Court, it is not practicable to furnish to the accused, copies, because of

voluminous contents thereof.

28. Prior to coming into force of the present Cr.P.C., the procedure earlier was provided vide Section 207 of Code of Criminal Procedure, 1898

which dealt with committal of proceedings. It came to be considered in AIR 1947 67 (Privy Council) . The Privy Council held that it confers an

invaluable right upon accused and non compliance thereof would vitiate the trial. In that case, there was a refusal to grant requisite documents to

the accused. It was held to be a serious irregularity by the Privy Council. This decision was followed in Purshottam Jethanand Vs. The State of

Kutch, . It was held that the right of accused to get copy of statements made by a witness after investigation is very valuable right and its non

observation would be a serious illegality which may vitiate the entire trial.

29. Distinguishing feature however, in the strict view taken by the Court is that in Purshottam Jethanand (supra) the prosecution refused to supply

copies of all such statements. The Court held that supply of such documents would not depend on discretion of the prosecution as to whether it is

relying on a particular statement recorded u/s 161 Cr.P.C. or not. It held that the purpose of such statement is to attract or confront such witness

during his cross-examination and failing to supply such statement would eliminate the chances of witness from such confrontation with his previous

statement. If there are embellishments or contradictions in the statement given by very same witness on different occasions, veracity and

trustworthiness of evidence of such witness would have to be considered. Thus any non-observance thereof would cause a denial of just and fair

trial to the accused.

30. There came to be an amendment by Criminal Law Amendment Act, 1955 whereby Section 207 was substituted by Sections 207 and 207A.

31. It is evident from a plain reading of the provision which came in 1955 that an exhaustive procedure was enumerated prior to commitment of the

case to the Court of Sessions. Ostensibly, if a case was initiated on Police report; Magistrate was obliged to hold enquiry, record satisfaction

about various aspects, take evidence in regard to the actual commission of offence alleged and further possessed with the discretion to record

evidence of one or more witness(s). The accused was at liberty to cross examine the witness and it was incumbent on the Magistrate to consider

the document, and, if necessary, to examine the accused for the purpose of enabling him to explain any circumstance appearing in the evidence

against him, and afford opportunity to the accused of being heard. If there was no ground to commit the accused person for trial, the Court was to

record reasons and discharge him. The accused, thus, under the earlier provision, enjoyed a substantial right prior to commitment of the case and

that was indeed a vital stage. It is this part of the procedure which has gone under a substantial change under new Cr.P.C. Now in the committal

proceeding, the Magistrate is only required to see whether the offence is exclusively triable by Court of Sessions. The limited jurisdiction conferred

upon the magistrate is only to verify the nature of offence. Thereafter, the statute mandates that he shall commit. The cases tried under special

statute, before Special Court are governed by such special procedure, if any.

32. There is a sea change in the proceedings for commitment as existed under the old Code and the present one. Even other provisions of new

Code, namely, Section 208 or 209 do not remotely suggest that any of the protection provided under old Code has been retained in the present

Code.

33. However, so far as the supply of documents is concerned, the Court however, has to ensure its substantial compliance. The purpose of

supplying documents u/s 207 Cr.P.C. is to give adequate notice to an accused, of the material to be used against him, so that he is not prejudiced

during trial. It is to ensure just and fair trial and not to delay it or create a situation of holding of trial impracticable. It is true that a very strict

compliance of the aforesaid provision, so much so, that unless observed to every dots and I''s, the trial would stand vitiated, has not been held

necessary in the context of 207, yet its compliance substantially and to the extent that no prejudice is caused to accused, has been held necessary.

34. The insistence upon compliance of requirement of Section 207 Cr.P.C. has been stressed in State of Uttar Pradesh Vs. Lakshmi Brahman and

Another, in the context of duty of Magistrate at the stage of committal. The Court considered the nature of duty lying upon the magistrate with

regard to observance of Section 207 Cr.P.C. and it said that the duty cast on the Magistrate by section 207 has to be performed in a judicial

manner. The Magistrate has to enquire from the accused by recording his statement whether copies of the various documents set out in Section

207 have been supplied to him or not. The Court has gone to the extent of observing that no order committing accused to the Court of Sessions

can be made u/s 209 unless the Magistrate fully complies with the provisions of Section 207. If it is shown that the copies of relevant documents or

some of them are not supplied, the matter will have to be adjourned to get the copies prepared and supplied to the accused. This is implicit in

Section 207 and Section 209 provides that on being satisfied that the requisite copies have been supplied to the accused, the Magistrate may

proceed to commit the accused to the Court of Sessions to stand his trial. The statutory obligation imposed by Section 207 is a judicial obligation.

It is not an administrative function. It is a judicial function which is to be discharged in a judicial manner. It is not an administrative function. The

Court said that it is the obligation of prosecution to supply copies of documents u/s 207.

35. The rigour of compliance of requirement of Section 207 has been stressed by the Court in State of U.P. vs. Lakshmi Brahman (supra) also by

referring to Sections 226 and 227 Cr.P.C. The Court says that procedure for opening the case for the prosecution is provided in Section 226

Cr.P.C. Section 227 confers power on the Court of Sessions to discharge accused if upon consideration of record of the case and the documents

submitted therewith, Sessions Judge considers that there is no sufficient ground for proceeding against the accused. No duty is cast on the Court of

Sessions to enquire or ascertain before proceeding to hear the case of the prosecution u/s 226, whether copies of the documents have been

furnished to the accused because such an obligation has been placed on Magistrate u/s 207, requiring him to perform the judicial function.

36. In Sidharth Vashisht @ Manu Sharma Vs. The State (N.C.T. of Delhi), the Court said that Section 207 not only requires or mandates that the

Court without delay and free of cost should furnish to accused, copies of police report, FIR, statement, confessional statement of persons

recorded etc. but the Legislature has deliberately not used words that documents which are relied on by the prosecution, only shall be supplied.

Section 207 will, therefore, have to be given a liberal and relevant meaning so as to achieve its object. The right of accused with regard to

disclosure of documents is limited right, but codified and constitutes the very foundation of fair trial.

37. Here the Court also said that the right of the accused to receive documents/statements submitted before the Court is absolute and must be

adhered to by the prosecution. The Court must also ensure supply of documents/statements to the accused in accordance with law before

proceeding further.

38. In V.K. Sasikala Vs. State rep. by Superintendent of Police, , the Court observed:

At the time of framing of the charge, Court is required to satisfy itself that all papers, documents and statements required to be furnished to the

accused u/s 207 Cr.P.C. have been so furnished.

39. In V.K. Sasikala (supra), the Court said that statement u/s 161 can be used for confronting the witness whose statement u/s 161 has been

recorded. It is a statutory right u/s 162(1), allowed to the accused, enabling him to confront the witness with the statement recorded u/s 161

Cr.P.C. Right of the accused, therefore, to receive the documents/statements u/s 207 is absolute and must be adhered to by the prosecution. The

Court must ensure supply of documents/statements to the accused in accordance with law.

40. I need not burden this judgment with various earlier authorities also but suffice it to mention that it is incumbent upon the prosecution to comply

with the requirement of Section 207 Cr.P.C. substantially in words and spirit, so as to give an opportunity of fair trial to the accused which is basic

foundation of criminal administration of justice.

41. Sri Khanna, learned counsel for CBI, however, submitted that the CBI actually as such has not recorded statement of the above seven

witnesses, but, it is in fact, in the form of an observation sheet or supervision note recorded by Investigating Officers in general diary. It cannot be

doubted that a mere supervision note which does not qualify to be a statement u/s 161 Cr.P.C., may not fall within the ambit of Section 207. The

accused may not insist on supply of such supervision note or gist of observations recorded by I.O. for his own purpose.

42. Distinction between a statement u/s 161 Cr.P.C. and a supervision note/gist recorded by the Inquiry Officer for his own purpose, came to be

considered in Sunita Devi Vs. State of Bihar and Another, wherein para 27 it was said:

The supervision notes can in no count be called. They are not a part of the papers which are supplied to the accused. Moreover, the informant is

not entitled to the copy of the supervision notes. The supervision notes are recorded by the supervising officer. The documents in terms of Sections

207 and 208 are supplied to make the accused aware of the materials which are sought to be utilized against him. The object is to enable the

accused to defend himself properly. The idea behind the supply of copies is to put him on notice of what he has to meet at the trial. The effect of

non-supply of copies has been considered by this Court in Noor Khan Vs. State of Rajasthan, and Smt. Shakila Abdul Gafar Khan Vs. Vasant

Raghunath Dhoble and Another, . It was held that non-supply is not necessarily prejudicial to the accused. The Court has to give a definite finding

about the prejudice or otherwise. The supervision notes cannot be utilized by the prosecution as a piece of material or evidence against the

accused. At the same time the accused cannot make any reference to them for any purpose. If any reference is made before any court to the

supervision notes, as has noted above they are not to be taken note of by the concerned court. As many instances have come to light when the

parties, as in the present case, make reference to the supervision notes, the inevitable conclusion is that they have unauthorized access to the official

records. We, therefore, direct the Chief Secretary of each State and Union Territory and the concerned Director General of Police to ensure that

the supervision notes are not made available to any person and to ensure that confidentiality of the supervision notes is protected. If it comes to

light that any official is involved in enabling any person to get the same appropriate action should be taken against such official. Due care and

caution should be taken to see that while supplying police papers supervision notes are not given.

(emphasis added)

43. The Court, then held that before directing for supplying the statements referable to Section 161, it shall be ensured whether there is a statement

recorded u/s 161(3) or what is sought to be supplied is a supervision note or a gist of the statements and whether this document can be said to be

a statement recorded u/s 161(3) Cr.P.C.

44. This decision has been followed in State of NCT of Delhi Vs. Ravi Kant Sharma and Others, . The Court considered the distinction between a

supervision note/gist recorded by the investigating officer for his own purpose, i.e., recording his own observations (and not the statement of a

witness) and statement of witness u/s 161 Cr.P.C. Referring to Section 161 Cr.P.C., it was observed that u/s 161 Cr.P.C., Police officer may

reduce in writing any statement made to him in the course of examination under that provision and, if he does so, he shall make separate and true

record of the statement of each such person whose statement he records. The provision then authorizes him to reduce in writing any statement

made by a witness. In a given case, the investigating officer may record circumstances ascertained during investigation in the case diary in terms of

Section 172 Cr.P.C. It is only when the investigating office decides to record the statement of witness u/s 161 Cr.P.C., that he becomes obliged to

make a true record of the statement which obviously will not include the interpretation of investigating officer of the statements or gist of the

statements.

45. In the present case, however, I find that no such stand was taken by CBI before the Court below. In his Court though in the grounds taken in

the application, it has been said that the alleged statements are nothing but a gist recorded by IOs but neither the alleged gist has been brought on

record to enable this Court to ascertain whether what has been said by CBI, is correct, nor during the course of argument, the said documents

were placed for Court''s perusal. On the contrary, when I specifically asked whether alleged statements, whatsoever, recorded by the IO is

something which is not referable to Section 161(3) Cr.P.C., no specific reply came forth from learned counsel appearing for CBI. To my mind,

therefore, the ground is only a flimsy attempt to prevent supply of aforesaid statements to accused, reason whereof, I fail to understand.

46. The CBI, a prosecuting agency is not expected to proceed with a determination that an accused must be convicted whether there is credible

evidence or not, and irrespective of the fact, whether he gets a fair opportunity of defence or not. On the contrary, the approach of CBI, a pioneer

investigating agency, must be to place whatever material it has collected, before the Court, and allow ample opportunity to accused also for

his/their defence. Assessment of evidence thereafter should be left to the wisdom of Court, whose duty is to cull out truth and adjudicate

accordingly. The prosecuting agency like CBI should not proceed with a predetermined attitude of holding somebody guilty in its own assessment

and thereupon to proceed for his conviction by any means, irrespective of observance of fairness of the procedure. The fact, whether an accused is

an ordinary common man or privileged citizen holding high office, should not influence CBI, either way, in observing impartiality and fairness. The

approach of CBI should be free from any bias, malice or pre-determination. It should ensure that a guilty person does not go unpunished and

simultaneously an innocent should not suffer. I really could not understand as to why CBI has hampered proceedings before CBI Court, by

assailing the orders impugned in this writ petition, only to the extent of furnishing copies of statements of seven accused turned approvers, who are

admittedly witnesses to support the prosecution case.

47. Sri Khanna then tried to assail the impugned order, contending that the alleged statements actually were those of accused and the statements of

co-accused are not supposed to be given u/s 207 Cr.P.C. The mere fact that these co-accused after being given pardon also placed in the list of

witnesses of prosecution, will not bring them in the category of witnesses simplicitor, who were not witnesses but accused from the very inception

of proceedings. It is further said that Section 207 contemplates supply of statements of witnesses and not of co-accused who became approver or

are granted pardon and included in the list of witnesses by prosecution. It is in this context that Sri Anurag Khanna sought to illustrate the meaning

of the term ''accused'' and attempted to demonstrate that the statement recorded by investigating agencies of certain persons, treating them to be

accused at the time of investigation will not qualify to be statements which are required to be supplied to accused u/s 207 Cr.P.C. He cited several

authorities in this regard. The arguments were advanced on the meaning of "accused". Sri Anurag Khanna, stressed upon the fact that the seven

persons, who are in the list of witnesses, were earlier accused and now approvers. Since they were accused, their statements shall not come within

the ambit of Section 207, liable to be supplied to the accused respondents. He urged that statements of approver accused, recorded during

investigation are not statements of witnesses. They are merely substance of interrogation of accused with cannot be termed as statement recorded

under Sections 161(3). In support of the submission he placed reliance on Maha Singh Vs. State (Delhi Administration), ; Narayan Chetanram

Chaudhary and Another Vs. State of Maharashtra, and State Rep. by Inspector of Police and Others Vs. N.M.T. Joy Immaculate, .

48. In my view, this argument travel wide off the clear and unambiguous language of Section 207. It simply provides that those, whose names have

been included in the list of witnesses by the prosecution, their statements u/s 161(3), recorded during investigation, must be supplied to the

accused. The word ''accused'' herein is in the context of those who are going to face trial. Statements recorded u/s 161(3) which are to be

supplied are of those, whose names are included in the list of witnesses. Therefore, what is important to see is that whether a particular person''s

name finds mention in the list of witnesses, and, if so, his statement, if recorded u/s 161(3) Cr.P.C. during investigation, must be supplied to the

accused persons, without looking into any antecedents or status of such witness at one or the other time. A witness is a witness. Once he is in the

list of witnesses of prosecution, it will attract Section 207(3). It has not been doubted by the prosecution that the seven persons who are accused

approvers, their names find mention in the list of witnesses. That being so, the accused respondents would be entitled to cross-examine them and in

that process, are also entitled to use their statements u/s 161(3), for the purpose of contradiction etc. They are legally entitled to confront those

witnesses with their earlier statements, if so required. Whether it will actually be required or not is a matter not to be seen at this stage. It is right of

the accused and has to be observed and protected. This is obligatory.

49. I have also gone through the decisions cited at Bar by Sri Khanna very carefully and find nothing therein to support the case of applicant CBI.

None of the authorities has specifically dealt with the issue in question.

50. In Maha Singh (supra) which is a two judges'' judgment of Apex Court, the accused Maha Singh, a Head Constable, was deputed for

prosecuting unauthorised squatters and persons indulging in petty offences, within the area of Lahori gate Police Station, where he was posted. The

complainant Shiv Darshan Nath, an unlicensed hawker, approached Anti-Corruption Inspector, Delhi who recorded his statement and thereafter

arranged a raid and summoned two witnesses from the office of Deputy Commissioner. The trap was laid by Inspector. The accused caught

therein accepting bribe, was prosecuted for charges u/s 161 IPC and section 5(2) read with section 5(1)(d) of the Prevention of Corruption Act.

As usual, defence was about concocted case against him and that the money was planted in his pocket. Trial resulted in conviction and sentence

and the judgment was affirmed in appeal by the High Court. The question arose before Supreme Court whether the statement recorded before

formal registration of the case at Lahori Gate police station by Ante Corruption Inspector, can be said to be a statement recorded during

investigation. The Court held that the moment Inspector recorded complaint, with a view to take action to track the offence, the entire process

turned into an investigation under the Code. Then comes the question whether any statement made by accused in answer to the questions put by

Inspector is admissible or not. The Court said that it is inadmissible u/s 162 Cr.P.C. and neither the prosecution nor the accused can take

advantage of these answers. I do not find that the aforesaid observations or the above decision helps the applicant in any manner in the present

case.

51. In State Vs. N.M.T. Joy Immaculate (Supra), the learned counsel for the applicant-CBI has heavily relied on observations made in para 22 of

judgment, which is a part of concurring judgment, delivered by Hon. Dr. A.R. Lakshman, J. Having gone through the same very carefully, I,

however, failed to find out anything lending support to the applicant. The said paragraph reads as under:

In the instant case, the High Court, by an impugned order has given a direction to the State Government to issue circulars to all the police stations

instructing the police officials that the woman accused/witness should not be summoned or required to attend at any police station u/s 160 Cr.P.C.

but they must be enquired only by women police or in the presence of a women police, at the places where they reside. The High Court has issued

a further direction to the Government to ensure that this instruction is strictly followed by the police in future.

52. From the above quote, it is evident that the Court was dealing with the power of police officer to require attendance of witnesses u/s 160

Cr.P.C. This Section aims at securing attendance of persons who would supply necessary information in respect of commission of an offence and

would be examined as witnesses in the inquiry or trial therefor. The Section applies only to the cases of persons who appear to be acquainted with

the circumstances of the case, i.e. the witnesses or possible witnesses only. An order under this Section cannot be made requiring attendance of an

accused person with a view to his answering the charge made against him. The intention of legislature is only to provide a facility for obtaining

evidence and not for procuring attendance of the accused, who may be arrested at any time, if necessary. The Section has no reference to the

persons, to be examined as witnesses, in the trial or inquiry to be held, after completion of investigation. An accused cannot be examined as a

witness either for or against himself. He cannot be included in the class of persons referred to in the Section. However, police officers are fully

authorised to require personal attendance of suspects during investigation. The Court held that strictly speaking, Section 207 is applicable only to

''witnesses'' and not ''accused''. This judgment nowhere says that a person who is a witness in the list of witnesses of prosecution, if his statement

u/s 161(3) has been recorded, the same shall not be supplied to accused, subjected to trial for the reason that the investigating agency treated that

person at the time of investigation de facto as an accused.

53. Then comes heavily relied on decision by the applicant i.e. Narayan Chetanram Chaudhary (Supra). Therein two accused appellants and one

more charged under various Sections of IPC and, in particular, Section 302 for committing murder of five women. They were convicted and

sentenced to death besides other sentences, by Trial Court. The judgment was affirmed by High Court. One of the accused, namely, Raju Raj

Purhohit turned an approver and appeared as a prosecution witness PW 2 to support the prosecution. Initially, investigating agency submitted a

report for prosecution of all the three persons. The Magistrate committed them for trial to the Court of Sessions. After committal but before

commencement of trial, one of accused, namely, Raju Rajpurohit, sent a letter to Commissioner of Police, repenting, and conveying his wish to

make confessional statement. Court''s permission was sought for getting confessional statement recorded which was acceded to by Trial Court and

such confessional statement was recorded and received by the Court. Thereupon an application u/s 307 Cr.P.C. was filed on behalf of the

prosecution with a prayer to tender pardon to accused Raju Rajpurohit, which was allowed with the condition of his making true and full disclosure

of all within his knowledge, relating to the offence. Before the Apex Court the appellants accused attacked the statement of approver on various

grounds and in that context, the Court considered Sections 306 and 307 Cr.P.C. at length. It held that Section 306 is applicable where the order

of commitment has not been passed. Section 307 is applicable after commitment of the case but before judgment is pronounced. The delayed offer

for pardon was also challenged but the Court said that no time limit is provided for recording such statement and delay is no ground to reject

testimony of the accomplice. Delay may be one of the circumstances to be kept in mind as a measure of caution for appreciating evidence of the

accomplice. Human mind cannot be expected to be reacting in a similar manner under different situations. Any person accused of an offence, may,

at any time before the judgment is pronounced, repent for his action, and volunteer to disclose the truth in the court. Repentance is a condition of

mind, differing from person to person, and, from situation to situation. Then an argument was also advanced that conviction passed on

uncorroborated testimony of approver is neither safe nor proper. It was rejected by reference to Section 133 of Evidence Act. The Court

observed that no distinction has been made between an accomplice who is or is not an Approver. Therefore, the rule of corroboration applies to

both. The Court held that the practice of getting it corroborated is a rule of practice and not laid down in letters by rule of law. Insistence upon

corroboration is based on the rule of caution and not merely a rule of law. The corroboration need not be in the form of ocular testimony of witness

but may be in the form of circumstantial evidence. Once the evidence of approver is held to be trustworthy, it must be shown that the story given

by approver, so far as the accused is concerned, must implicate him in such a manner, so as to give rise to a conclusion of guilt, beyond reasonable

doubt. So far, I find nothing therein to throw any light on the question up for consideration in this case and to help the applicant-CBI before this

Court.

54. Now I come to what has been referred to in para 41 of the judgment, in Narayan Chetanram Chaudhary (supra), wherefrom, I find that an

attempt was made on behalf of appellants before the Apex Court to show contradiction between the previous statement recorded and that

recorded in the Court. Threadbare attempt was made to point out that even minor discrepancy or contradiction would affect adversely, which did

not impress upon the Court to accept submission advanced on behalf of the appellant. The Court held that minor contradictions are bound to

appear in the statements of truthful witnesses as memory sometimes plays foul and the sense of observation differ from person to person. The

omissions in the earlier statement, if found to be of trivial details, the same would not cause any dent in the testimony of witness. Even if there is

contradiction in statement of a witness, or on any contradiction of statement of a witness on any material point, that is no ground to reject the whole

of the testimony of such witness. It was in this context, the Court observed that what was referred to in statement u/s 161 of PW 2, the approver,

was only his statement before the police and substance of interrogation recorded by the investigating officer. The aforesaid statement cannot, in any

way, be termed to be a statement recorded u/s 161 Cr.P.C. which could be used for the purpose of contradiction of witness u/s 162 Cr.P.C.

However, having said so, the Court further said that the portion of earlier statements put to the witnesses, do not, in fact show any contradiction in

material particulars. The Court in para 42 proceeded to hold that only such omissions which amount to contradiction in material particulars can be

used to discredit the testimony of the witness and not others. The omission in the earlier statement, if found to be of trivial details, as in the present

case, the same would not cause any dent in the testimony of PW 2, approver. Having said so, then, in para 43, the Court said:

On an analysis of the statement of PW 2 (which is part of Vol. IV of the paper book), his statement u/s 161 of the Cr.P.C. and the deposition

made by him on 15.10.1984 during investigation (which is part of Vol. III of the paper book) we have come to a conclusion that there is no

material improvement, much less contradiction in the deposition made by him before the Trial court after being granted pardon. The so-called

improvements are in fact the details of the narrations extracted by the Public Prosecutor and the defence counsel in the course of his examination-

in-chief and cross-examination.

55. In the present case, CBI is contesting tooth and nail for not supplying statement of accused turned approver witnesses, recorded during

investigation, pleading that as a matter of fact, no such statement was recorded, but neither the trial Court nor this Court was taken in confidence

by placing those documents so as to be examined whether the same would qualify to be statement u/s 161(3) Cr.P.C. or not. The failure or

reluctance on the part of CBI shall go against it.

56. Though on behalf of respondents also, a large number of authorities have been cited to highlight the term ""accused"" but I do not find any

relevance thereof to answer the real question up for consideration in this case, and, therefore, it is not necessary to discuss all those authorities in

detail, being wide off the issue.

57. The answer to the question raised by the applicant-CBI in this case is simple. If a person is a witness in the list of prosecution, his statement, if

any, recorded u/s 161(3) Cr.P.C., the same has to be supplied to the accused, irrespective of status or antecedents etc. of such

person(s)/witness(es) in the mind of IO at the time of investigation. For the purpose of Section 207, this Court is not required to go into

unnecessary niceties and suffice it to say that the inquiry to be made by Court is, whether the statement u/s 161 of a person, which is being

demanded, is such a person whose name finds mention in the list of witnesses of prosecution. If this condition is satisfied, plain and simple

application of Section 207 Cr.P.C. would come into operation and the prosecution must observe its compliance without creating unnecessary

hurdle, so as to avoid obstruction of expeditious and speedy trial.

58. Before parting, however, I would like to place on record that the approach of CBI in this case does not merit any commendation. The Court

can understand the ways and means adopted by an accused to delay trial, but a similar attempt on the part of Prosecution is something beyond

comprehension of any prudent person. The simple request made by accused, in this case, was supply of statements of some persons, who

admittedly are witnesses in the list of prosecution to support prosecution case. It is also not doubted that if there is any statement of such

witness(es), recorded during investigation u/s 161 Cr.P.C., the prosecution is obliged to supply copy thereof to the accused. Neither the

prosecution has any escape from the observance of this procedure nor there is any reason for its non observance. The parties are also well aware

that utility of such statement is extremely limited but of utmost importance. Very recently, it has been reiterated in R. Shaji Vs. State of Kerala, ,

that statements u/s 161 Cr.P.C. can be used only for the purpose of contradiction though the statements u/s 164 can be used for both

corroboration and contradiction. It is, thus, clear that the statements u/s 161 are of very limited value, yet it cannot be doubted that if the person is

a witness supporting the prosecution case, such statement need be supplied to the accused so that whatever of little work or use such statement is,

the accused may avail the same. It is an integral part of a fair trial to which an accused is entitled having legal as well as constitutional right.

59. Still and despite law being well settled on this aspect, CBI chose to assail the order of CBI Court, which was nothing but a command for

simple compliance of requirement of Section 207 Cr.P.C. Not only this, but, due to continuance of proceedings in this Court in the present case,

the trial has also not proceeded further. In effect, it has been delayed at the instance of prosecution. Whether the prosecution is also interested in

unnecessary delay of trial and, if so, why, is a question, which has puzzled this Court, but no answer could come forth. If mere non compliance of

Section 207 Cr.P.C. on the part of the prosecution, results in delay in trial, one has to blame prosecution for this conduct and none else. The Apex

Court has shown its anxiety, so that undue delay in compliance of Section 207 may not result, by observing in Thana Singh Vs. Central Bureau of

Narcotics, that compliance of Section 207 many a times, have been found in resulting delay in trial and, therefore, it would be apt for prosecution if

the charge sheet and other documents are provided in electronic form, as this will save time as also preparation of voluminous documents etc.

However, the Court had also clarified that it is only observance/recommendation and the aforesaid directions are not to be treated as substitute of

hard copy of same, which are indispensable for Court proceedings.

60. The above observations, I have referred only to stress my point that the prosecution itself should be prompt in observing legal requirements

which it is obliged in law at the threshold, so that, trial may not get obstructed for procedural technicalities. Delay defeats justice. In criminal

matters, society is benefited if expeditious trial results in appropriate punishment to guilty persons at the earliest. If the person is innocent, it is more

so important that he should get relieved from mental agony, social stigma and trauma of being viewed with suspicion. Therefore, expeditious trial is

in the interest of both the sides. However, an unscrupulous offender knowing it well that the trial if completes, he will have to be punished, may

have vested interest in delaying trial, but I cannot appreciate similar approach of prosecution for delaying trial. The prosecution, must take all

possible steps so as to get trial concluded at the earliest.

61. Of late, credibility, impartiality and even the expertise of CBI has been questioned at different levels. In the matters involving high officials or

very high stakes, normally the choice for investigation is CBI, particularly due to lack of any other better option, but CBI unfortunately has not

delivered and proved its ability/competence up to mark. I recollect an order dated 19th February 2010 of a Special Bench in C.M. Application

No. 20(O) of 2002 in O.O.S. No. 4 of 1989, Sunni Central Board of Waqfs, UP and others Vs. Gopal Singh Visharad and others, wherein the

Special Bench of three Judges unanimously passed serious strictures against functioning of CBI and its approach. Relevant extract thereof are:

...The C.B.I. has not taken any clue or indication from these very question in order to find out the reason for such callous and serious lapse on the

part of the State Government and its officials and that too in such a sensitive and important matter.

... The image of C.B.I. is of a pioneer investigating agency. The people''s unshaken faith is that in such matters this is a body which will make an

investigation threadbare and will separate water from milk by its expertise, sheer intelligence, devotion and sincerity. We believing it, directed for

investigation by it but unfortunately we are extremely disappointed by its lacklustre performance and attitude shown towards investigation.

From the status report submitted by C.B.I., it appears that they were waiting for some officer to come and take responsibility upon himself

otherwise they will submit a report closing the matter as if there is nothing wrong and that has been done so. Just a few days back, the C.B.I. was

looking for a much longer time but when this Court tried to find out as to what actual investigation in the mean time, they have made, within a week

thereafter, they have submitted report closing the matter.

We are thoroughly unsatisfied with the manner in which the C.B.I. has dealt with this matter and have reason to infer that either the slackness or

reluctance on the part of C.B.I. is deliberate on their own or on account of some otherwise influence on the part of the controlling government.

... It has left so many serious issues untouched and unnoticed, which otherwise would have raised a reasonable suspicion in the mind of a person

having prudence and could have given a clue to an expert investigating agency to make its investigation from that point of view but that is

completely lacking.

.... we are at pains to express our anguish and deprecate the way and the manner in which the C.B.I. has behaved in this matter. It may be under

the influence of some other higher authority.

(emphasis added)

62. I have reproduced the above quotes to remind the CBI of its glory, public confidence reposed in it, undisputed expertise in the field of

investigation, which are now in doldrums. CBI must work all out, to restore its position and it is for this reason, an earnest desire and attitude with

full devotion is needed to carry entire prosecution to its logical end and, that too, very expeditiously.

63. In the present case, besides the employees of District Judgeship, certain judicial officers have also been inducted. It is not their individual

honour and social status which is at stake, but even public confidence in judicial establishment is also at the stake. The society is already shocked

of having learnt of such a huge financial scam in a judicial establishment and is further likely to dwindle its faith, if the trial is prolonged. Truth with

certainty, in such a sensitive important matter, should surface at the earliest, which is of utmost importance. The Court can also not shut its eyes that

still a huge amount from public exchequer is un-trailed and the society is still continuing to suffer this loss. I, thus find it appropriate to direct the

Trial Court to proceed to conclude the proceedings very expeditiously. If necessary, it shall conduct proceedings day to day or with shorter dates,

if adjournment is very necessary. With the aforesaid observations/directions, the application being devoid of merit, deserves rejection. Accordingly,

the application u/s 482 Cr.P.C. is rejected.