

Court No. - 15

Case :- APPLICATION U/S 482 No. - 1791 of 2024

Applicant :- Puneet Singh

Opposite Party :- State Of U.P. Thru. S.P. C.B.I./Acb Lko.

Counsel for Applicant :- Pranjal Krishna

Counsel for Opposite Party :- Anurag Kumar Singh

Hon'ble Mohd. Faiz Alam Khan,J.

1. Heard Shri Nandit Srivastava, learned Senior advocate assisted by Shri Pranjal Krishna, learned counsel for the applicant as well as Shri Anurag Kumar Singh, learned counsel appearing for the C.B.I. and perused the record.

2. The instant application under Section 482 Cr.P.C. has been moved by the applicant against the impugned order dated 15.02.2024 passed by the Trial court/ Special Court with the prayer to direct the respondent- C.B.I. to furnish/ supply the copy of the post trap memo (*Fard Baramadgi* and arrest) of date 31.01.2024 to enable the applicant to know as to why he was arrested pertaining to Case Crime No.Rc00624 under Section 120-B and Section 7 Prevention of P.S.- CBI/ ACB/ LKO.

3. Learned Senior counsel while drawing the attention of this Court towards impugned order passed by the Trial Court of dated 15.02.2024 submits that the Trial Court has committed a patent illegality in rejecting the request of the applicant to provide him post trap memo/ recovery/ arresting memo. Elaborating further, it is submitted that the applicant has been arrested on 31.01.2024 and was produced in the court on 1.02.20224. However, no copy of the post trap memo/ recovery memo has been provided to the applicant.

4. It is further submitted that the grounds of arrest may only be inferred from the post trap memo/ recovery memo of date 31.1.2024 and it is only after perusal of the said trap memo/ recovery memo, it may be ensured that the arrest of the applicant was justified or not, in the given set of circumstances.

5. It is also submitted that in absence of trap memo/ recovery memo, the applicant is being prejudiced in defending himself properly and thus, the respondent- C.B.I. be directed to provide a copy of the arresting/ recovery memo of date 31.01.2024 to the applicant.

6. Shri Anurag Kumar Singh, learned counsel appearing for the C.B.I. submits that the applicant has been provided a copy of the arrest memo, which was prepared pertaining to his arrest. However, the applicant appears to be interested in getting a copy of the post trap memo in order to benefit the other co-accused persons pertaining to which the investigation is going on and their arrest is yet to be made. It is vehemently submitted that supply of the pre trap or post trap memo of date 31.01.2024 to the applicant may hamper the smooth progress of investigation and the case of the prosecution may be adversely affected.

7. Having heard learned counsel for the parties and having perused the record, what could be gathered from the documents brought on record, is that a complaint was made by the complainant Rajiv Shukla addressed to the Superintendent of Police, C.B.I., Lucknow of date 24.01.2024 alleging that his company i.e. M/s Veena Pvt. Ltd. Is registered with EPFO, Lucknow and is engaged in supply of manpower to various departments. It is also alleged that proceedings under Section 7A has been initiated by EPFO against his firm and Shri Gyanendra Kumar, Assistant Commissioner, EPFO, Lucknow and Shri Puneet, Inspector, EPFO , Lucknow has demanded Rs.12 lacs for not imposing/ leaving tax and the said amount has been demanded by the Shri Gyanendra Kumar Singh & Punit Singh (applicants) through consultant Manish Singh. The complaint is shown to have been discreetly verified and the F.I.R. of the case was registered and subsequent to registration of the F.I.R. after completing the formalities of pre trap proceedings, the trap was laid on 30.01.2024 and the consultant Manish Kumar was trapped/ arrested and the Assistant Commissioner, EPFO, Shri Gyanendra Kumar was also arrested and was produced before the Court on 31.01.2024 and the instant applicant is also shown to have been arrested on 31.01.2024.

8. Thus, what is reflected from the record is that all the three persons against whom allegations were levelled by the complainant have been arrested. This

Court is not in a position to appreciate the stand taken by the C.B.I. before the court below, which is evident from the reply filed by the C.B.I., before the Special Court, a copy of which has been placed at Page No.43 of the paper book, wherein it is stated that accused Punit Singh has not signed on post trap memorandum, hence, same is not falling in the category of recovery memo and also that the investigation of the case is at initial stage and vital witnesses are yet to be examined and documents are to be collected and thus, the copy of the post trap memo cannot be provided to the accused.

9. Hon'ble Supreme Court ***In RE: To Issue Certain Guidelines Regarding Inadequacies and Deficiencies in Criminal Trials Vs. The State of Andhra Pradesh and Ors.*** has approved Draft Criminal Rules of practice, 2021 wherein with regard to supply of documents under Sections 173, 207 and 208 Cr.P.C., it is highlighted as under:-

“(I) Every Accused shall be supplied with statements of witness recorded under Sections 161 and 164 Cr.P.C. and a list of documents, material objects and exhibits seized during investigation and relied upon by the Investigating Officer (I.O.) in accordance with Sections 207 and 208, Cr.P.C.

Explanation: The list of statements, documents, material objects and exhibits shall specify statements, documents, material objects and exhibits that are not relied upon by the Investigating Officer.”

10.The matter was finally disposed of with the following directions:-

“19. The court is of the opinion that the Draft Rules of Criminal Practice, 2021, (which are annexed to the present order, and shall be read as part of it) should be hereby finalized in terms of the above discussion. The following directions are hereby issued:

(a) All High Courts shall take expeditious steps to incorporate the said Draft Rules, 2021 as part of the rules governing criminal trials, and ensure that the existing rules, notifications, orders and practice directions are suitably modified, and promulgated (wherever necessary through the Official Gazette) within 6 months from today. If the state government's co-operation is necessary in this regard, the approval of the concerned department or departments, and the formal notification of the said Draft Rules, shall be made within the said period of six months.

(b) The state governments, as well as the Union of India (in relation to investigating agencies in its control) shall carry out consequential amendments to their police and other manuals, within six months from today. This direction applies, specifically in respect of Draft Rules 1-3. The appropriate forms and guidelines shall be brought into force, and all agencies instructed accordingly, within six months from today.”

11. Hon'ble Supreme Court in three Judges Bench judgment of **P. Ponnusamy Vs. the State of Tamil Nadu** reported in **2022 LiveLaw (SC) 923**, while acknowledging the guidelines issued in above mentioned **In RE: To Issue Certain Guidelines Regarding Inadequacies and Deficiencies in Criminal Trials (supra)**, observed as under:-

"7. The amici curiae had pointed out that before the commencement of the trial, the accused only receives a list of documents and statements relied upon by the prosecution but is kept in the dark on other material in the possession of the prosecution, even if it has exculpatory value. On this, the court unequivocally held:

"11.This Court is of the opinion that while furnishing the list of statements, documents and material objects under Sections 207/208 CrPC, the Magistrate should also ensure that a list of other materials, (such as statements, or objects/documents seized, but not relied on) should be furnished to the accused. This is to ensure that in case the accused is of the view that such materials are necessary to be produced for a proper and just trial, she or he may seek appropriate orders under CrPC for their production during the trial, in the interests of justice. It is directed accordingly, the Draft Rules have been accordingly modified. [Rule 4(1)]"

(emphasis supplied)

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10. The Draft Rules framed, therefore, were a product of a thorough consultative exercise undertaken to remedy asymmetries caused by the lack of uniformity in Rules across States, which could hamper appreciation of evidence, and in turn delay proceedings, especially at the appellate stage. Recognition of the need to streamline trials or mitigate delays, however, cannot come at the cost of the accused's right to fair trial.

11. Taking note of the case law in Siddharth Vasisht @ Manu Sharma v. State of NCT Delhi, this court in Manoj & Ors. v. State of Madhya Pradesh, highlighted the dual role played by the public prosecutor and the court in safeguarding the accused's right to fair investigation and trial, by scrutinizing the material and ensuring fair disclosure. In light of this, and the aforementioned draft Rule 4, this court went on to hold in Manoj that:

"...In view of the above discussion, this court holds that the prosecution, in the interests of fairness, should as a matter of rule, in all criminal trials, comply with the above rule, and furnish the list of statements, documents, material objects and exhibits which are not relied upon by the investigating officer. The presiding officers of courts in criminal trials shall ensure compliance with such rules"

12. In addition to the decision in Manu Sharma (as noticed in Manoj), there is another decision-Manjeet Singh Khera v. State of Maharashtra which had highlighted how the requirement of disclosure, is an intrinsic part of the right to fair trial under Article 21 of the Constitution" Relying upon its previous decision in V.K Sasikala v State, this court noted in Manjeet Singh Khera:

"In that case, the documents were forwarded to the court under Section 173(5) CrPC but were not relied upon by the prosecution and the accused wanted copies/inspection of those documents. This Court held that it is to supply the copies of was incumbent upon the trial court to supply these documents to the accused as

that entitlement was a facet of just and transparent fair investigation trial and constituted an inalienable attribute but of the process of a fair trial which Article 21 of the Constitution guarantees to every accused. We would like to reproduce the following portion of the said judgment discussing this aspect (VK. Sasikala case (VK Sasikala v State, (2012) 9 SCC 771 (2013) 1 SCC (Cri) 1010), SCC P 788, para 21)

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 en 20 would no longer be one of compliance or non-compliance with the provisions of Section 207 CrPC and would travel beyond the confines of the strict language of the provisions of CrPC 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 VK. Sasikala v State, 2012 SCC OnLine Kar 9209] 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."

(emphasis supplied)

13. It is true that this court in VK. Sasikala (supra) was dealing with material/documents that were forwarded to the Magistrate under Section 173 CrPC, but were not being relied upon by the prosecution. However, it is undeniable that there could also arise a situation wherein the investigating officer, ignores or does not rely on seized documents, material or evidence which favours the accused, and fails to forward it to the Magistrate [as required under Section 173 CrPC, specifically sub-section (6)]. Merely because it is not already on the record of the court, cannot disentitle the accused from accessing material that may have exculpatory value. It is this gap, that was recognised and addressed (paragraph 11 of final order) in the suo- moto proceedings, and suitably codified in the text of the Draft Rule 4, by introducing a requirement of providing a list (at the commencement of the trial) of all documents, material, evidence, etc. seized during the course of investigation or in the possession of the prosecution, regardless of whether the prosecution plans to rely on it. The facts in Manoj, having reflected such a situation (of suppression of evidence that favoured the accused) similarly, necessitated elaboration of this right.

14. The framework that emerges (by reading Section 173, 207, 208 and Draft Rule 4) is that based on the list of statements, documents, etc. received at the commencement of the trial, the accused can seek appropriate orders under Section 91 of the CrPC, wherein the magistrate on application of judicial mind, may decide on whether it ought to be called for. Additionally, by virtue of Section 391 of the CrPC, the appellate court, if it deems necessary, may take further evidence (or direct it be taken by a magistrate or court of sessions) upon recording reasoning. This safeguards the right of the accused in a situation where concern has been raised regarding evidence or material in possession of the prosecution, that had not been furnished. but was material to the trial and disposal of the case.

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17. As stated earlier, the requirement of disclosure elaborated on in Manoj, not only was premised on the formulation of draft rules, but normatively premised on the ratio of the three-judge bench decision in Manu Sharma (supra). In these circumstances, the proper and suitable interpretation of the disclosure requirement in Manoj (supra) would be that:

(a) It applies at the trial stage, after the charges are framed.

(b) The court is required to give one opportunity of disclosure, and the accused may choose to avail of the facility at that stage.

(c) In case documents are sought, the trial court should exercise its discretion, having regard to the rule of relevance in the context of the accused's right of defence. If the document or material is relevant and does not merely have remote bearing to the defence, its production may be directed. This opportunity cannot be sought repeatedly; the trial court can decline to issue orders, if it feels that the attempt is to delay.

(d) At the appellate stage, the rights of the accused are to be worked out within the parameters of Section 391 CrPC.”

12. Hon'ble Justice Bela M. Trivedi while writing separate judgment has opined as under:-

“11) May it be noted that in any case, the Draft Rule no. 4 with regard to the supply of documents under Sections 173, 207 and 208 Cr.P.C. is part of the Chapter I of the said Draft Rules, to be followed during the course of investigation and before the commencement of the trial. The said Draft Rule no.4 as and when brought into force after following the due process of law could be pressed into service by the accused only during the course of investigation and during the course of trial, and not at the appellate stage before the High Court or the Supreme Court.”

13. Thus, the above mentioned law reports would fortify that the concept of fair trial may not be confined only to the prosecution and the same with equal force is applicable to the accused and if there is nothing extraordinary, in usual course, the copies of necessary documents must be provided to the accused persons of a crime, even at the stage of investigation and so much material should be provided by the investigating agency to the accused which may at least reflect the necessary evidence and material appearing against accused resulting in his arrest and confinement. Thus, for the reasons mentioned above and the law enumerated hereinbefore, this Court is of the considered view that the Central Bureau of Investigation should have provided a copy of post trap memo of date 31.1.2024 to the applicant.

14. In result, the application moved by applicant/ accused Puneet Singh under Section 482 Cr.P.C. is allowed. CBI is directed to provide a copy of Post Trap Memo/ arrest memo of date 31.01.2024 to the applicant or to his counsel engaged before this Court within 7 days from today.

Order Date :- 6.3.2024

Gurpreet Singh