

Sachin Jindal vs.state & Ors

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Court : Delhi

Decided On : Sep-18-2019

Appellant : Sachin Jindal

Respondent : State & Ors

Judgement :

IN THE HIGH COURT OF DELHI AT NEW DELHI CRL.REV.P. 960/2019, CRL.M.A. 35619/2019 (stay) and CRL.M.A. 35620/2019 (exemption) * Judgment Reserved :

12. 09.2019 Date of Decision :

18. 09.2019 IN THE MATTER OF SACHIN JINDAL STATE

... Petitioner

Through: Mr. Harshit Jain, Adv. versus Respondent Through: Ms. Radhika Kolluru, APP for CORAM: HON'BLE MR. JUSTICE MANOJ KUMAR OHRI State. By this revision petition, petitioner assails the order dated 1. 03.09.2019 passed by Additional Session Judge in SC No.58093/2016 arising out of FIR No.278/2014 registered under Sections 302/370/3 IPC at P.S. Model Town, whereby his prayer seeking a copy of video cassette has been rejected.

2. In the present case, the prosecution had examined Mr. Naresh Kumar Rana as PW3. Learned counsel for the petitioner has handed over a copy of the testimony

of the said witness, which is taken on record. PW3 is a Videographer by profession. He had done the videography in respect of the post-mortem examination conducted on the body of the deceased. The video cassette containing the above videography was seized vide seizure memo Ex. PW3/1. During his deposition, the aforementioned video cassette was taken out from the judicial file and shown to the CrI. Rev. P. 960/2019 Page 1 of 6 witness, who identified the same as the cassette which was prepared by him and seized vide seizure memo Ex. PW3/1. The said cassette was exhibited as Ex. P1.

3. It is the case of the petitioner that he moved an application under Section 311 Cr.P.C. to recall Dr. M.K. Wahi (PW13) and Dr. Mohit Gupta (PW27), who conducted the Post-Mortem, which was allowed vide order dated 01.07.2019. The petitioner also moved an application under Section 91 Cr.P.C. read with Sections 173 and 207 Cr.P.C., whereby it was prayed that a copy of the aforementioned video cassette be supplied to him as the same would be just and necessary for the cross-examination of the witnesses who have been recalled. The said application, however, came to be dismissed vide impugned order dated 03.09.2019 on the ground that when the said video cassette was exhibited the witness was not cross-examined. It was also observed that no objection was raised either at the stage of compliance of Section 207 Cr.P.C. or when the said cassette was proved by the concerned witness.

4. Fair and just investigation is the hallmark of any investigation. In *Manu Sharma vs. State (NCT of Delhi)* reported as (2010) 6 SCC1 it was held as under :-

"203. It is pertinent to note here that one of the established canons of just, fair and transparent investigation is the right of defence of an accused. An accused may be entitled to ask for certain documents during the course of enquiry/trial by the court. Let us examine the extent of this right of an accused in light of the statutory provisions and the manner in which the law has developed under the criminal jurisprudence. xxx 206. Section 173 commands the investigating agency to investigation expeditiously without complete the CrI. Rev. P. 960/2019 Page 2 of 6 unnecessary delay and when such an investigation is completed, the officer in charge of the police station shall forward to a Magistrate empowered to take

cognizance of offence on a police report the details in the form as may be prescribed by the State Government and provide the information required under this section.

207. The provisions of Section 173(5) contemplate and make it obligatory upon the investigating officer where the provisions of Section 170 apply to forward to the Magistrate along with his report, all documents or relevant extracts thereof on which the prosecution proposes to rely other than those already sent to the Magistrate during investigation in terms of Section 170(2) of the Code. During investigation the statement recorded under Section 161 of all the persons whom the prosecution proposes to examine as witnesses shall also be sent to the Magistrate. Some element of discretion is vested with the police officer under Section 173(6): where he is of the opinion that any such statement is not relevant to the subject-matter of the proceedings or 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 requesting a Magistrate (sic to exclude) that part from the copies to be granted to the accused and stating his reason for making such a request. Sub-section (7) of the same section is indicative of another discretion given to the police officer under law that where he finds it convenient, he may furnish the copy of documents referred to in sub-section (5) of the section.

xxx 219. The role and obligation of the Prosecutor particularly in relation to disclosure cannot be equated under our law to that prevalent under the English system as aforesaid. But at the same time, the demand for a fair trial cannot be ignored. It may be of different consequences where a document which has been obtained suspiciously, fraudulently or by causing undue advantage to the accused during investigation such as *Crl. Rev. P. 960/2019* Page 3 of 6 the expression documents on which document could be denied in the discretion of the Prosecutor to the accused whether the prosecution relies or not upon such documents, however in other cases the obligation to disclose would be more certain. As already noticed the provisions of Section 207 have a material bearing on this subject and make an interesting reading. This provision not only require or mandate that the court without delay and free of cost should furnish to the accused copies of the police report, first information report, statements, confessional statements of the persons recorded under Section 161 whom the prosecution

wishes to examine as witnesses, of course, excluding any part of a statement or document as contemplated under Section 173(6) of the Code, any other document or relevant extract thereof which has been submitted to the Magistrate by the police under subsection (5) of Section 173. In contradistinction to the provisions of Section 173, where the legislature has used the prosecution relies are not used under Section 207 of the Code. Therefore, the provisions of Section 207 of the Code will have to be given liberal and relevant meaning so as to achieve its object. Not only this, the documents submitted to the Magistrate along with the report under Section 173(5) would deem to include the documents which have to be sent to the Magistrate during the course of investigation as per the requirement of Section 170(2) of the Code.

220. The right of the accused with regard to disclosure of documents is a limited right but is codified and is the very foundation of a fair investigation and trial. On such matters, the accused cannot claim an indefeasible legal right to claim every document of the police file or even the portions which are permitted to be excluded from the documents annexed to the report under Section 173(2) as per orders of the court. But certain rights of the accused flow both from the codified law as well as from equitable concepts of the constitutional jurisdiction, as substantial variation to such procedure would frustrate the very basis of a fair trial. To claim documents within CrI. Rev. P. 960/2019 Page 4 of 6 the purview of scope of Sections 207, 243 read with the provisions of Section 173 in its entirety and power of the court under Section 91 of the Code to summon documents signifies and provides precepts which will govern the right of the accused to claim copies of the statement and documents which the prosecution has collected during investigation and upon which they rely. 5. In *Dinesh Puri vs. State (Govt. of NCT of Delhi)* reported as 2016 SCC OnLine Del 555 (1), a coordinate Bench of this Court has held as under :-

"15. Thus the law on Section 91 Cr.P.C. is clear that the Court or officer in charge of a police station shall exercise the power to ensure production of any document or other things "necessary or desirable" for the purpose of any investigation, inquiry, trial or other proceedings under the Code. Further the necessity and desirability of production of the document has to be seen also keeping in mind the

stage at which the power is required to be exercised. However, it would be contrary to the frame work of Cr.P.C. and Indian Evidence Act that a document which favours the accused is only required to be produced at the stage when he leads defence evidence. It is trite law that the accused can probabalize his defence even by cross-examining the witnesses by confronting them with documents which impeach their creditworthiness. Thus, in all cases it cannot be held that a document which is in favour of the accused will be supplied only at the stage of defence evidence. If the nature of the document is such that the accused can confront the prosecution witnesses/complainant witnesses with the said document, he would be within his right to claim those documents under Section 91 Cr.P.C. even when prosecution evidence is being led for a fair and just trial as mandated by Article 21 of the Constitution of India. 6. In the present case, the video cassette though, recorded during the time when the Post-Mortem examination was being conducted, however, as submitted by learned counsel for the petitioner, the said video cassette was not part of the documents filed along with the charge-sheet. On being enquired, learned APP for the State, on instructions, submitted that the said video cassette was not filed alongwith the charge-sheet but was produced from the judicial record.

7. Once the prosecution relies upon a document which has been exhibited, a copy whereof ought to have been supplied to the accused so that no prejudice is caused to him. The petitioner has sought recall of the witnesses who conducted the Post-Mortem examination ostensibly on the ground to confront them. The witnesses have already been allowed to be recalled vide order dated 01.07.2019. This Court is, therefore, of the opinion that the supply of the said video cassette will be just and necessary for the fair decision of the case.

8. In view of the above discussions, petition is allowed and impugned order dated 03.09.2019 is set aside. The Trial Court is directed to supply a copy of the video cassette to the petitioner forthwith.

9. The petition is disposed of. The miscellaneous applications are also disposed of, as infructuous.

10. Dasti. MANOJ KUMAR OHRI, J SEPTEMBER18h, 2019 ga Crl. Rev. P.
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