

**Gopal Sahai Vs. State**

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**Court :** Allahabad

**Decided On :** Sep-08-1965

**Reported in :** AIR1966All252; 1966CriLJ506

**Judge :** Gyanendra Kumar, J.

**Acts :** [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 173(4), 174(4), 207A(3) and 251A(1)

**Appeal No. :** Criminal Revn. No. 1307 of 1964

**Appellant :** Gopal Sahai

**Respondent :** State

**Advocate for Def. :** A.G.A. and ;G.P. Bhargava, Adv.

**Advocate for Pet/Ap. :** B.C. Saxena and ;Krishna Chandra Saxena, Advs.

**Disposition :** Application allowed

**Judgement :**

ORDER

**Gyanendra Kumar, J.**

1. The applicant was the Cashier of the Zila Parishad Mathura and in that capacity was entrusted to receive income of the Parishad like licence fee, contract money,

security money, Nazul dues etc. It was his duty to deposit the same in the State Bank of India Mathura Branch in the account of the Zila Parishad. He was also entitled to withdraw money from the Bank from the account of the Parishad to be spent on its behalf, on items such as, pay-merit of salaries and Provident Fund of teachers etc. The allegation against the applicant is that he abused his position as a Cashier of the Zila Parishad and committed criminal breach of trust to the tune of Rs. 37,624-78p. between the period 1-4-61 and 31-1-62. He was accordingly charged of an offence under Section 409 of the Indian Penal Code. After preliminary enquiry under Section 207-A Cr. P. C. the Magistrate round a prima facie case against the applicant and committed him to stand his trial before the Court of Session.

2. It is an admitted fact that during the enquiry before the Magistrate the applicant was furnished with copies of the First Information Report, General Diary, charge sheet, statements of the witnesses recorded by the Investigating officer as well as copies of suspension order and relevant entries of Cash Book.

3. Before the commencement of the trial in the Sessions Court the applicant moved an application dated 3-8-64 saying that he was not supplied copies of all those documents on which the prosecution was relying or was going to rely in the course of the trial. The grievance of the applicant was that he was not in a position to conduct the cross-examination properly nor justly defend himself in absence of the copies of such documents.

4. The contention of the prosecution, on the other hand, was that copies of all the necessary documents had already been supplied to the applicant and that it was not bound to supply copies of other documents.

5. The learned Sessions Judge accepted the prosecution version and rejected the application of the applicant by his order dated 3-8-64; hence this revision.

6. Satish Chandra, J. admitted the revision and stayed further proceedings before the Sessions Court by his order dated 13-8-64. However, he made a direction that if copies of documents required by the applicant were furnished to him, the trial will proceed. Thereupon the applicant furnished a long list of 178 documents of which

he desired copies to be supplied to him by the prosecution. The matter was referred to the prosecution counsel, who noted down against about 60 of such documents that they would be relied upon by the prosecution. The prosecution also supplied copies of 19 such documents, but did not supply copies of the rest of them. The grievance of the applicant now is that if the prosecution wants to rely upon the remaining documents of the list or any other documents in support of its case, it should supply him copies of such documents or necessary extracts thereof.

7. In this connection it is necessary to examine the provisions of certain sections of the Criminal Procedure Code. First of all reference may be made to Section 173 Cr. P. C. which deals with the procedure to be adopted by the Investigating Officer on completion of investigation. It says that on completion of investigation the Officer incharge of the police station shall forward a report in the prescribed form setting forth the particulars of the parties, the nature of information, the names of witnesses, etc. Sub-section (4) of Section 173 runs as under:--

4. After forwarding a report under this section, the Officer in charge of the police-station shall, before the commencement of the inquiry or trial, furnish or cause to be furnished to the accused, free of cost, a copy of the report forwarded under Sub-section (1) and of the first information report recorded under Section 154 and of all other documents or relevant extracts thereof, on which the prosecution proposes to rely, ... . . . . .'

8. From the above quotation it is quite clear that it is not only in cases of enquiry but also of trial in which the prosecution has to furnish inter alia copies "of all other documents or relevant extracts thereof, on which the prosecution proposes to rely.'

9. It was argued on behalf of the prosecution that the word 'trial' used in the above quoted section refers to the trial before the Magistrate and has no reference to the sessions trial which commences after commitment of the case by the enquiring Magistrate. In order to judge the validity of this argument reference shall be made to two other sections of the Code, viz., Sections 207-A and 251-A. Section 207-A falls in Chapter XVIII which deals with enquiry into cases triable by the Court of session or High Court. Sub-section (3) thereof runs thus:--

'(3) At the commencement of the inquiry, the Magistrate shall, when the accused appears or is brought before him, satisfy himself that the documents referred to in Section 173 have been furnished to the accused and if he finds that the accused has not been furnished with such documents or any of them, he shall cause the same to be so furnished.'

10. On the other hand Section 251-A relates to procedure to be adopted in cases instituted on police report triable by Magistrates. Sub-section (1) of Section 251-A provides:--

'(1) When, in any case instituted on a police report, the accused appears or is brought before a Magistrate at the commencement of the trial, such Magistrate shall satisfy himself that the documents referred to in Section 173 have been furnished to the accused, and if he finds that the accused has not been furnished with such documents or any of them, he shall cause them to be so furnished.'

11. From the examination of the above provisions of the Code it is abundantly clear that both at the enquiry by the Magistrate in sessions cases and in trial by the Magistrate it is necessary that the prosecution should supply the accused copies of such documents or relevant extracts thereof on which the prosecution wants to place reliance. The principle behind these provisions obviously is that the accused should not be taken by surprise by production of undisclosed documents or extracts thereof to his prejudice. In *Narayan Rao v. State of Andhra Pradesh*, (S) AIR 1957 SC 737 dealing with the scope and ambit of Sections 173 (4) and 207-A (3) Cr. P. C. their Lordships of the Supreme Court observed as under:--

'In cases exclusively triable by a Court of Session, it is the duty of the Magistrate while holding a preliminary inquiry, to satisfy him-self that the documents referred in Section 173 have been furnished to the accused and if he found that the police officer concerned had not carried out his duty in that behalf, the Magistrate should see to it that that is done..... there is no doubt that those provisions have been introduced by the amending Act of 1955, in order to simplify the procedure in respect of inquiries leading upto a Sessions trial, and at the same time, to safeguard the interests of accused persons by enjoining upon police officers concerned and Magistrates before whom such proceedings are brought, to see

that all the documents, necessary to give the accused persons all the information for the proper conduct of their defence are furnished ..... Magistrates, therefore, have to be circumspect, while conducting such proceedings to see to it that accused persons are not handicapped in their defence by any omission on the part of police officers concerned, to supply the necessary copies.'

12. In the same volume there is yet another case to the same effect, viz., *Gur Bachan Singh v. State of Punjab*, (S) AIR 1957 SC 623 in which their Lordships dealing with Section 173 (4) O. P. C. pointed out:

'It is clear from this new sub-section that when the police officer after completing the investigation sends his report to the Magistrate, copies of the statements and documents referred to should be furnished to the accused. The object of this provision is to put the accused on notice of what he has to meet at the time of the inquiry or trial .... Sub-section (4) of Section 173 read with Sub-section (3) of Section 207-A makes ample provision for the defence to be in possession of all the statements and documents before the inquiry begins.'

13. It was reiterated by the Supreme Court in *Noor Khan v. State of Rajasthan*, AIR 1964 SC 286 that

'The object of Sections 162, 173 (4) and 207-A (3) is to enable the accused to obtain a clear picture of the case against him before the commencement of the inquiry. The sections impose an obligation upon the Investigation Officer to supply before the commencement of the enquiry copies of the statements of the witnesses who are intended to be examined at the trial so that the accused may utilise those statements for cross-examining the witnesses to establish such defence as he desires to put up, and also to shake their testimony. The object of the provision is manifestly to give the accused the fullest information in the possession of the prosecution on which the case of the State is based, and the statements made against him'.

14. It has been conceded by the learned counsel for the parties that there is no specific provision in the Code of Criminal Procedure requiring copies of documents referred to in Section 173 (4), Cr. P. C. to be supplied to the accused before the

commencement of the sessions trial. But the salutary principle underlying Sections 173, 207-A and 251-A, Cr. P. C. should apply with equal force to sessions trial, viz., that the accused should not be taken unawares and he should have full acquaintance with and insight into the contents of the documents which are sought to be relied upon by the prosecution against him. If at the enquiry stage prosecution has failed to supply copies or necessary extracts of such documents on which it wants to place reliance in proof of its case against the accused, there is no reason why the prosecution cannot be required to furnish such copies to him before the commencement of the sessions trial, particularly when the accused insists that he requires such copies either for demolition of the prosecution case or for establishment of his defence.

It has been pointed out by their Lordships of the Supreme Court in the cases referred to above that if the copies of the documents referred to in Section 173 (4) had not been supplied to the accused till the end of the trial, it would not be vitiated on that account. But in a case like the present in which the accused has raised an objection at the initial stage, even before the commencement of the sessions trial, that he had not been supplied copies of all the documents sought to be relied upon by the prosecution, it is the duty of the Court to see that the same are duly supplied to him before proceeding with the trial, so that he may not be taken by surprise about their contents, and prejudice may not be caused to him on that account. In justice, equity and fairness to the accused it appears to be but proper that the prosecution should be required to furnish copies of such documents or necessary extracts thereof on which it wants to build its case against the accused. As observed earlier, in this particular case, copies of some of the documents have already been supplied to the accused either at the enquiry stage or after the admission of the instant revision, in pursuance of the order of Satish Chandra, J., dated 13-8-1964. However, according to its own indication, the prosecution wants to rely on numerous other documents at the trial, out of the list of papers submitted by the accused.

15. I, therefore, allow this revision, modify the order of the Sessions Judge and direct that the prosecution shall supply copies of the remaining documents or relevant extracts thereof on which it wants to rely in support of its case against the

accused at least one week before the commencement of the trial in the Sessions Court, so that the accused may have good notice thereof and be in a position to meet the same. If the prosecution has to rely, either during the examination of witnesses or otherwise, upon any other document of which a copy has not already been supplied to the accused, it will be the duty of the prosecution to supply its copy or extract to the accused in order to enable him to examine its contents and meet the same.

16. Let the record be sent down to the Court below forthwith with the direction that the Sessions Judge shall commence the trial with all expedition, keeping in view the observations made herein.

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