

G.P. Pathak Vs. State of M.P.

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Court : Madhya Pradesh

Decided On : Oct-07-2002

Reported in : 2003(1)MPHT174

Judge : S.P. Khare, J.

Acts : Code of Criminal Procedure (CrPC) , 1974 - Sections 173(5) and 207

Appeal No. : Criminal Revision No. 375/2002

Appellant : G.P. Pathak

Respondent : State of M.P.

Advocate for Def. : G.S. Ahluwalia, Govt. Adv.

Advocate for Pet/Ap. : Arvind Chouksey, Adv.

Judgement :

ORDER

S.P. Khare, J.

1. This is a revision by the accused against order dated 7-1-2002 of the Special Judge, Sagar.

2. This revision was listed before another Bench, In the order-sheet dated 3-9-2002 it is recorded : 'List the matter before some other Bench'. On the note-sheet

put up by the Registry on 9-9-2002 Hon'ble the Chief Justice directed for posting this matter before this Bench. The petitioner through his Counsel submitted an application on 13-9-2002 (LA. No. 1331 of 2002) for transferring it to the same Bench where it was listed earlier. The direction of the Chief Justice in such matters is final and that cannot be questioned before the Bench where the case is listed in pursuance of such direction.

3. A charge-sheet under Section 173, Cr.PC has been filed before the Special Judge, Sagar in which the petitioner is accused of the charge under Section 13(1)(e) read with Section 13(2) of the Prevention of Corruption Act, 1988 for being found in possession of the assets disproportionate to the known sources of his income. 51 floppies have also been produced with the charge-sheet. On 7-11-2000 in Criminal Revision No. 1434/2000 the following order was passed by this Court :--

'The learned Counsel for the applicant states that he shall be satisfied if the data accumulated in 51 floppies, is given to him by way of its print out. The learned Counsel for the respondent has also stated in his reply that the prosecution shall make a print out of the data stored in 51 floppies and shall file it in Court. Under these circumstances, there could be no objection in supplying the copies of the print out to the learned Counsel for the applicant'.

4. Accordingly the fifty-one floppies were handed over to the prosecution by the Trial Court on 5-10-2001 for compliance with the order of this Court. These were taken to the National Informatics Centre, Sagar and 51 duplicate copies of these floppies were prepared. Th NIC expressed its inability to prepare the 'print-out' of these floppies for the reasons given in its letter dated 10-10-2001. In respect of 34 floppies in Boxes 'B' and 'C' it was said that these contain data files which can be read and printed by the 'software' with which it were created and since that software is not available these files cannot be printed. For the remaining 17 floppies it was said that the files in these floppies are operating system files, game software and other utility software which cannot be printed. 'Directory listing' of 51 floppies were enclosed with this letter. All this material was again produced in the Court with the letter of the NIC. The duplicate 51 floppies were supplied to the

defence Counsel and he acknowledged the same in the order-sheet. On 10-10-2001 29 pages were supplied to the defence Counsel which are in reality the print out of the 'Directory listing'. These are the index of the files present in the 51 floppies. These are not the print-outs of the electronic data of the various files recorded in the 51 floppies. According to the petitioner the print-outs of the data stored in 51 computer floppies would cover about 10,000 sheets. The petitioner has filed this revision for a direction to comply with the order of this Court passed on 7-11-2000.

5. After presentation of this revision petition this Court by order dated 22-7-2002 again directed the prosecution to supply the print-out of the floppies to the petitioner. On 26-8-2002 the Additional Director General of Police, Special Police Establishment was directed to remain present in the Court on 5-9-2002 to explain why the order dated 22-7-2002 of the Court remained uncomplished with. On his behalf an application has been submitted on 2-9-2002 for exemption from personal appearance. It has been clarified in this application that the 51 floppies were seized during the course of investigation and no further investigation has been done on the basis of these floppies and the prosecution does not rely upon them. It is also expressed that the prosecution has no objection if the original 51 floppies are directed to be returned to the petitioner. It is submitted that all possible efforts have been made to prepare the print out and whatever print out could be prepared has been supplied.

6. During the course of hearing of this revision it has been expressed by the Government Advocate that the prosecution has no objection if all the 51 original floppies are directed to be given to the accused as the prosecution does not want to rely upon them since it could not be found out on investigation that there is any incriminating material in the floppies to establish the charge against the accused.

7. The legal position emerging from Sections 173(5) and 207, Cr.PC is that the prosecution is required to supply the copies of those documents to the accused on which it 'proposes to rely'. The accused can also request for furnishing copies of those documents which are with the prosecution or in the custody of the Court which may enable him to support his defence. As already stated, the prosecution

in the present case has expressed that it does not want to rely upon any data stored in the 51 floppies and therefore these can be returned to the accused in original. The duplicates of these floppies have already been supplied. The accused may, if necessary, get the print-out of these floppies prepared if that is needed for his defence.

8. The orders passed earlier can be modified. Instead of supplying the 'print out' the original floppies can be returned to the accused and he will give back the duplicate floppies to the Trial Court which were received by him from that Court.

9. It is, therefore, directed in modification of the earlier orders that the 51 original floppies be returned to the accused by the Trial Court on his giving back the duplicate floppies which he has received from the Court. Now the print-out of the floppies need not be supplied to the accused. This revision stands disposed of. No further order is required on the interim applications.

10. Before parting with the case it must be observed that on going through the contents of the petition and the interim applications submitted by the learned Counsel for the petitioner it has been noticed that the language used in drafting them is not proper. The Counsel should exhibit more decency and sobriety instead of using words and epithets which are derogatory, offensive and provocative. The words casting aspersion on the 'integrity of the Trial Court' and the use of words like 'cheat and bluff, 'undue support to the prosecution', 'tricky compliance/fraudulent compliance' are indecent and indecorous. A mountain has been made out of the mole hill because the date '5-10-2001' has been wrongly mentioned instead of '10-10-2001' in the order dated 7-1-2002. The Counsel for the petitioner is advised to refrain from using such language in drafting the petitions to be submitted before this Court in future and learn the art of good advocacy.