

Ashutosh Verma Vs. Cbi

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Court : Delhi

Decided On : Dec-04-2014

Judge : V.P.Vaish

Appellant : Ashutosh Verma

Respondent : Cbi

Advocate for Def. : Mr. Narender Mann, Mr. Manoj Pant, Ms. Utkarsha Kohli

Advocate for Pet/Ap. : Mr. Dayan Krishnan, Mr. Pramod Kumar Dubey, Ms. Smriti Sinha, Mr. Shri Singh, Ms. Swati Goswami, Ms. Vasundhara Nagrath, Mr. Pulkit Mishra, Ms. Namita Wali, Mr. Abhinav

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI Reserved on:

18. h September, 2014 Date of Decision:4thDecemher, 2014 % + CRL. M.C. 79/2014 ASHUTOSH VERMA Through: Petitioner Mr. Dayan Krishnan, Sr. Advocate with Mr. Pramod Kumar Dubey, Ms. Smriti Sinha, Mr. Shri Singh, Ms. Swati Goswami, Ms. Vasundhara Nagrath, Mr. Pulkit Mishra, Ms. Namita Wali and Mr. Abhinav, Advocates. versus CBI Through: Respondent Mr. Narender Mann, Spl. PP for CBI with Mr. Manoj Pant, Ms. Utkarsha Kohli, Advocates. CORAM: HON'BLE MR. JUSTICE VED PRAKASH VAISH1 By way of the present petition under Section 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as Cr.P.C.) read with Article 226 of the Constitution of India, 1950, the

petitioner has assailed impugned order dated 01.11.2013 passed by learned Special Judge (PC Act), CBI-02, Patiala House Courts, New Delhi in CC No.06/2013 arising out of RC No.AC-1-2008-A0001-ACU-1, New Delhi whereby application under Section 207 Cr.P.C. filed by the petitioner was partly allowed to the extent that documents mentioned in D-37 and the statement of witnesses mentioned at serial No.31 to 36 in the list of witnesses be made available to the petitioner. However, the statement of remaining witnesses Nos.(c) (d) and (g) in para 3 and witnesses (a) to (e) in para 4 of the application of the petitioner and three witnesses mentioned in para 6 of application of accused No.3 (Sanjeev Nanda) were declined.

2. The factual matrix of the case as set out in the FIR is that the petitioner, Ashutosh Verma the then Deputy Director (Investigation) of Directorate of Income Tax entered into a criminal conspiracy with other co-accused persons for manipulation of the appraisal report of income tax investigation, to show undue favour to the accused No.2 (Suresh Nanda). This was to be done by carrying out the necessary changes in the report and by way of withholding and destroying incriminating evidence which came to his knowledge during investigation before submitting the same to his senior officers. For this, the petitioner demanded and accepted a huge amount of illegal gratification. The intercepted conversation between accused No.4 (Bipin Shah) and the petitioner revealed that on several occasions the accused had discussed about insertion/ deletion/ modification of various facts in the said appraisal report. Thereafter, in February, 2008, the petitioner finalized a deal for the purchase of plot of land measuring 11615 sq. mtr. situated at Morgim Village, Goa from one Pradeep Sahni at a cost of Rs.4.40 crores (Rupees Four crores forty lakhs) through Shri Rajinder Kashyap. In the meantime, the petitioner was arrested while holding a secret meeting with the co-accused persons on 08.03.2008. On completion of investigation a charge-sheet for the offence under Section 120B IPC read with Sections 7, 11 and 12 of the Prevention of Corruption Act (hereinafter referred to as PC Act) was filed against the accused persons including the petitioner herein.

3. Thereafter, the petitioner moved an application under Section 207 Cr.P.C. for supply of certain missing documents that were not forwarded to the learned

Special Judge (PC Act), CBI-02. In the said application, the petitioner had mentioned that during the course of investigation, CBI had recorded statements of nine witnesses named from (a) to (i) in para 3 of the application and also of the Directors of five companies mentioned from (a) to (e) in para 4 of the said application which had not been supplied to the petitioner nor have been placed on record and the same were necessary and desirable for reaching at a just decision. The petitioner had also asked for some documents which are mentioned in the said application. Vide impugned order dated 01.11.2013, learned trial court dismissed the application regarding witnesses (c), (d) & (g) in para 3 and witnesses (a) to (e) in para 4 of the application filed by the petitioner.

4. Feeling aggrieved by the said order the petitioner has filed the present petition.

5. Learned senior counsel for the petitioner contended that the respondent CBI has concealed the relevant material from the trial court as it has relied upon specific statements of witnesses despite the fact that such statements have been recorded on more than one occasion. He pointed out that during investigation the prosecuting agency had recorded the statements of Nikhil Nanda, Deepak Chawla, Ajay Kumar Gupta, Ravinder Aggarwal, Amit Saxena and Pradeep Sahni on several occasions but their complete statements have not been provided. In addition to the above, pursuant to a search warrant, search and seizure was conducted on 11.11.2011 at the office of Amit Saxena (witness No.36), and some documents were seized from the said premises but the same have not been forwarded by the prosecuting agency as they have not been relied upon by CBI. The CBI had also recorded statements under Section 161 (3) Cr.P.C. of Rajpal Malik, Chhabi Lal and Vinit Khetan but has not filed them. Similarly, Directors of M/s. Blueview Commodities Pvt. Ltd., M/s. Kush Hotels and Resorts Pvt. Ltd., M/s. Longview Infrastructure Pvt. Ltd., M/s. Brijdham Properties & States Pvt. Ltd. and M/s. Tolly Commercial Pvt. Ltd. were examined by the CBI but their statements were not provided to the petitioner.

6. Learned senior counsel for the petitioner has also pointed out that vide order dated 03.06.2013, learned trial court directed the CBI to supply even those documents upon which the prosecution has not relied upon but have been seized

by the CBI and whereas by virtue of impugned order dated 01.11.2013, trial court has reviewed its own order which is not permissible in law.

7. Learned senior counsel for the petitioner has relied on judgments in S.J.

Chowdhary vs. The State, 1984 Cri.L.J.

864 and Dharambir vs. Central Bureau of Investigation, 148 (2008) DLT289 to contend that the CBI is bound to supply statements of all the witnesses recorded during investigation except those which have been expressly exempted by the Magistrate under Section 173(6) of Cr.P.C.

8. Per contra, learned Special PP for CBI urged that all the relied upon documents as well as those documents on which the prosecution has not relied including statement of witnesses have been supplied to the petitioner. The petitioner is trying to use dilatory tactics by filing the present petition and also numerous applications before the trial court. He also submitted that the petitioner is entitled to only those statements and documents on which the prosecution proposes to rely in support of its charge-sheet and the statements of witnesses and documents sought by the petitioner are not relied upon by the CBI.

9. Learned Special PP for CBI further submitted that the statements of Nikhil Nanda, Deepak Chawla, Ajay Kumar Gupta, Ravinder Aggarwal, Amit Saxena and Pradeep Sahni recorded by the investigating officer under Section 161 Cr.P.C. have already been supplied to the petitioner. However, the statements of Rajpal Malik, Chhabi Lal and Vinit Khetan were not supplied as they have not been relied upon as witnesses in the charge-sheet. Similarly, the Directors of M/s. Blueview Commodities Pvt. Ltd., M/s. Kush Hotels and Resorts Pvt. Ltd., M/s. Longview Infrastructure Pvt. Ltd., M/s. Brijdham Properties & States Pvt. Ltd. and M/s. Tolly Commercial Pvt. Ltd. were examined by CBI but their statements were not relied upon in the charge-sheet.

10. Learned Special PP also pointed out that vide order dated 03.06.2013, trial court directed to supply the documents relied upon and filed along with the charge-sheet and not the ones upon which CBI has not relied.

11. I have bestowed my anxious thought to the submissions made by learned counsel for the petitioner and learned Special PP for CBI and have also perused the material on record.

12. Before advertng to the facts of the present case, it is necessary to consider the relevant provisions of Sections 173 and 207 of Cr.P.C., which read as under: 173. Report of police officer on completion of investigation (1) Every investigation under this Chapter shall be completed without unnecessary delay. [(1A). The investigation in relation to rape of a child may be completed within three months from the date on which the information was recorded by the officer in charge of the police station.]. (2) (i) As soon as it is completed, the officer in charge of the police station shall forward to a Magistrate empowered to take cognizance of the offence on a police report, a report in the form prescribed by the State Government, stating- (a) the names of the parties; (b) the nature of the information; (c) the names of the persons who appear to be acquainted with the circumstances of the case; (d) whether any offence appears to have been committed and, if so, by whom; (e) whether the accused has been arrested; (f) whether he has been released on his bond and, if so, whether with or without sureties; (g) whether he has been forwarded in custody under section 170; [(h) whether the report of medical examination of the woman has been attached where investigation relates to an offence under Section 376, 376A, 376B,376C [Section 376D or Section 376E of the Indian Penal Code (45 of 1860)]..]. (ii) The officer shall also communicate, in such manner as may be prescribed by the State Government, the action taken by him, to the person, if any whom the information relating to the commission of the offence was first given. (3) Where a superior officer of police has been appointed under section 158, the report, shall, in any case in which the State Government by general or special order so directs, be submitted through that officer, and he may, pending the orders of the Magistrate, direct the officer incharge of the police station to make further investigation (4) Whenever it appears from a report forwarded under this section that the accused has been released on his bond, the Magistrate shall make such order for the discharge of such bond or otherwise as he thinks fit. (5) When such report is in respect of a case to which section 170 applies, the police officer shall forward to the Magistrate along with the report- (a) all documents or relevant extracts thereof on which the prosecution proposes to

rely other than those already sent to the Magistrate during investigation; (b) the statements recorded under section 161 of all the persons whom the prosecution proposes to examine as its witnesses. (6) If the police officer is of opinion that any part of any such statement is not relevant to the subject-matter of the proceeding or that 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 and append a note requesting the Magistrate to exclude that part from the copies to be granted to the accused and stating his reasons for making such request. (7) Where the police officer investigating the case finds it convenient so to do, he may furnish to the accused copies of all or any of the documents referred to in sub-section (5). (8) Nothing in this section shall be deemed to preclude further investigation in respect of an offence after a report under sub-section (2) has been forwarded to the Magistrate and, where upon such investigation, the officer in charge of the police station obtains further evidence, oral or documentary, he shall forward to the Magistrate a further report or reports regarding such evidence in the form prescribed; and the provisions of sub-sections (2) to (6) shall, as far as may be, apply in relation to such report or reports as they apply in relation to a report forwarded under sub-section (2) xxxx xxxx xxxx 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 under section 154; (iii) the statements recorded under subsection (3) of section 161 of all persons whom the prosecution proposes to examine as its witnesses, excluding therefrom any part in regard to which a request for such exclusion has been made by the police officer under subsection (6) of section 173; (iv) the confessions and statements, if any, recorded under section 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.

13. On perusal of Section 173 of Cr.P.C. it is manifestly clear that after completion of investigation, the investigating officer shall make a detailed report and the concerned Officer In-Charge of the police station shall forward this report to the Magistrate having jurisdiction to take cognizance. Thereafter, the Magistrate would consider the charge-sheet and the accompanying documents as well as the statements of the witnesses and would decide whether to take cognizance of the offence or not. In terms of Section 207 Cr.P.C. after appearance of the accused, the Magistrate is required to furnish to the accused persons following reports: (i) Copies of police report; (ii) First Information Report; (iii) Statements recorded under sub-section (3) of Section 161 Cr.P.C. of all the persons whom the prosecution proposes to examine as its witnesses excluding therefrom 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 of Cr.P.C.; (iv) The confessions and statements, if any, recorded under Section 161 of Cr.P.C.; and (v) Any other document or relevant extract thereof forwarded to the Magistrate with police report under sub-section (5) of Section 173 of Cr.P.C.

14. A bare reading of provisions contained in Section 207 of Cr.P.C. shows that it is the obligation of the Magistrate to see that all the documents which are necessary for the accused for proper conduct of his defence, are furnished to him well before the trial.

15. A conjoint reading of section 173(5), 173(6) and first proviso attached to Section 207 of Cr.P.C. leaves no scope of doubt that it is the bounden duty of the police officer to forward to the Magistrate all the statements mentioned in sub-section (5)(b) of Section 173 of Cr.P.C. without any exception so as to enable the Magistrate to discharge his duty under Section 207 of Cr.P.C. by furnishing copies of such statements to the accused. In case the police officer considers that the disclosure of any part of such statements would not be expedient in the public interest nor essential in the interest of justice, he is supposed to append a note in

his forwarding memorandum to the Magistrate to that effect along with his reasons for withholding such statements or parts thereof from the accused. Wherever any such reservation is made by the police officer, it still lies within the discretion of the Magistrate whether to allow such request or not and it is only in the event where Magistrate agrees with the reasons given by the police officer for not supplying any statement or part thereof to an accused, he may order accordingly while agreeing with the objection raised by the police official.

16. In other words, it is only when specific request has been made by a police officer in his forwarding memorandum of the charge-sheet while being forwarded to the Magistrate stating that any particular statement recorded under Section 161(3) of Cr.P.C. or any document or any part thereof should not be supplied to the accused that the, Magistrate shall on the basis of the discretion conferred upon him, by virtue of first proviso attached to Section 207 of Cr.P.C. after considering the reasons given by the police officer making such request, would either issue directions for furnishing copy of that part of statement or would issue directions for furnishing any relevant portion of that statement thereof to the accused or otherwise. It thus, necessarily follows therefrom that in case where no such specific request has been made by a police officer while forwarding the chargesheet to the Magistrate then the copies of all the statements recorded under Section 161(3) of Cr.P.C., documents or relevant extract thereof, etc. as provided in clause (i) to (v) of Section 207 of Cr.P.C are required be provided to the accused.

17. There is a great purpose behind the relevant provisions incorporated under Section 173(5) and 173(6) and Section 207 of Cr.P.C. by the legislature. In case on perusal of certain documents or extracts thereof and/ or statements under Section 161(3) of Cr.P.C. filed along with the charge-sheet, Court finds that there are discrepancies between those statements and the deposition of the witnesses made during trial and such discrepancies are found to be of serious nature than prejudice would definitely be said to have been caused to the accused as in such an eventuality, the accused would be denied proper opportunity of discrediting those witnesses by bringing on record the contradictions which exists between their evidence in the Court and their earlier statements recorded by the police.

18. Now advertent to the facts of the present case, a perusal of charge-sheet filed before the Court below, would reveal that no specific request has been made by the police officer forwarding the charge-sheet, to the Magistrate for withholding any statement under Section 161(3) of Cr.P.C. or any particular document or portion thereof from the petitioner what to say of citing reasons thereof in this backdrop. The opposition made by respondent/ CBI to the request of petitioner for supplying the requisite statements under Section 161(3) of Cr.P.C. of prosecution witnesses namely Rajpal Malik, Chhabi Lal and Vinit Khetan as well as Directors of M/s. Blueview Commodities Pvt. Ltd., M/s. Kush Hotels and Resorts Pvt. Ltd., M/s. Longview Infrastructure Pvt. Ltd., M/s. Brijdham Properties & States Pvt. Ltd. and M/s. Tolly Commercial Pvt. Ltd., as also the copies of the documents as mentioned in Paras 8, 9, 10 & 11 of the application dated 14.01.2013 filed before the Court below is considered to be unjustified and not tenable in the eyes of the law.

19. It is settled rule of law that impartial and fair opportunity in a trial are Constitutional as well as human right. It is an undeniable duty of the Court to ensure that nothing causes a threat to such a right. It is the right of an accused to adduce evidence in order to raise defence failing which it may tantamount to jeopardizing the right to fair trial. Justice can only be ensured if the rules of procedure that have been designed are diligently adhered to. No court shall allow breach of these principles. Furthermore, incompletely adduced evidence would lead to incomplete defence, which may result in incorrect or incomplete answers consequently strengthening the prosecution case against the accused.

20. In S.J.

Chowdharys case (supra), this Court after considering the relevant provisions of Section 161, 162, 172, 173 and 207 of Cr.P.C. observed as under: 6. The reading of Section 173(5)(b) and Section 207(iii) would go to show that the emphasis is on the persons whom the prosecution proposes to examine as its witnesses during trial and not on their statements on which the prosecution proposes to rely for proving charge against an accused person and this distinction is doubly re-assured from the use of the word whom in these two provisions of law which must

necessarily refer to the persons and not to their statements for which the word which would have been used instead. This distinction is of great significance from the standpoint of an accused person inasmuch if the investigating agency has recorded the statement of a witness more than once, there may be material contradictions in the same and the accused may like to utilise the same for his benefit and the ends of justice in that behalf can be secured by providing to him the copies of all such statements but such a purpose would be frustrated if the copies of only such statements as are sought to be relied upon by the prosecution, are supplied to the accused and by denying the supply of the rest and this would be the case if the emphasis were on the supply of copies of those statements relied upon by the prosecution. The emphasis on the witnesses relied upon by the prosecution would mean that the prosecution would be bound to supply all the statements even if recorded more than once of such witnesses as contemplated under Section 161(3) of the Code whether recorded in a police diary or otherwise and thereby a very valuable right has been conferred upon an accused person and the same cannot be denied to him and was wrongly denied to him by the prosecution as also by the learned committing magistrate by rejecting the prayer of the accused-petitioner in that behalf by wrongly placing emphasis on the statements sought to be relied upon by the prosecution in a contra-distinction to the witnesses making them. The provision of Sub-section (3) of Section 161 of the Code was introduced only to put a halt to the curious and rather perverted ingenuity of the police officers in following the practice of incorporating oral statements made to them by the witness in the case diaries under Section 172 of the Code in the belief that by doing so those statements could be kept back from the knowledge of the accused but that practice was not abolished by the law and is maintaining its continuance to subserve the surreptitious mischief of an Investigating Officer. These interpretations also find support from certain authorities. It was held In - State of Kerala v. Raghavan, 1974 Cri. L.J.

1373 as follows: The prosecution cannot pick and choose and refuse to supply to the accused the copies of the statements which are contradictory to the prosecution case on the ground that the prosecution is not going to rely on the statements of those witnesses. Otherwise it would mean deviation from the mandatory provisions of criminal law and to deny the accused the just and fair trial.

In *State of Punjab v. Mohinder-Singh*, (1974) 76 Pun LR364 it is laid down as under: If the police officer does not record the statements of all or some of the witnesses under Section 161(3), Cri. P. C., but cleverly incorporates the same in the case diary maintained under Section 172, Cr.P.C. in the belief that by doing so those statements can be kept back from the knowledge of the accused, then the accused cannot be deprived of the copies of those statements. The provisions of Sections 162, 173(4) and 207(3), Cr.P.C. impose an obligation upon the prosecution agency to supply copies of statements of witnesses, who are intended to be examined at the trial to enable the accused to obtain a clear picture of the case against him to utilise them in the course of cross-examination to establish his defence and also to shake the testimony of the prosecution witnesses. The words "such statement or any record thereof, whether in a police diary or otherwise, or any part of such statement or record" in Sub-section (1) of Section 162, Criminal Procedure Code, make it abundantly clear that statements of witnesses during investigation even if taken down in the police diary maintained under Section 172, Cr.P.C. can be used by the accused for the purposes specified in proviso to Section 162(1) Cr. P.C. A very valuable right is given to the accused under the proviso to Section 162(1) and he can exercise this right only if the copies of all the statements made by the witnesses during the investigation, whether recorded under Section 161(3) or in the police diary maintained under Section 172, Cr.P.C. are supplied to him. It follows, therefore, that the accused is entitled to the copies of statements of persons whom the prosecution proposes to examine as witnesses even though those statements are recorded in the police diary maintained under Section 172, Criminal Procedure Code. 21. In *Shakuntala vs. State of Delhi*, ILR (2007) I Delhi 1005, this Court held as under: 4. It is settled law that fair and just investigation is a hallmark of any investigation. It is not the duty of the Investigating Officer to strengthen the case of prosecution by withholding the evidence collected by him. If an Investigating Officer withholds the evidence collected by him, the accused has a right to rely upon that evidence and tell the Court to take that evidence into account while framing the charges. The Court while framing charges may not take into account the defence of the accused or the documents in custody of the accused which were not produced by the accused before the Investigating Officer or which did not form part of the investigation but the Court is duty bound to

consider the evidence collected by the Investigating Officer during the investigation of the case. If it is brought to the notice of the Court by the accused that some of the evidence or documents have been withheld by the Investigating Officer or the prosecution deliberately, so that truth does not come out before the Court, the Court, before framing of charge can order the Investigating Officer to place the entire investigation before it and ask him to produce case diaries. Fair investigation is the right of the accused and this right can be exercised by the accused at the time of charge and the accused can insist upon the Court to consider the evidence collected by the Investigating Officer but not made part of the charge-sheet. In this case the evidence relied upon by the accused is not produced by the accused from his custody but is the evidence collected by the Investigating Officer. These are the supplementary statements of complainant under Section 161, Cr.P.C. recorded by the I.O. The complaint and the statements clearly show that the couple had separated from parents of Naginder Singh in October, 2000, after the divorce petition and at that time they had gone to a rented accommodation along with bag and baggage. Even if, in October, 1999 some entrustment was made by the complainant to the petitioner, that came to an end in October, 2000 when she separated from her in-laws and took away all her belongings. She made no complaint after October, 2000 till September, 2001 that her mother-in-law or father-in-law had any part of her *istriddhan* with her. All her complaints were against her husband, who had remarried and made her life miserable. Her father-in-law and mother-in-law were co-operating her for an action against their son. They had gone to the extent of disowning their son, and issued a public notice to that effect. They made complaint to the police against their son for the action for his second marriage. However, when the complainant could not see her husband behind bars for conducting second marriage during the persistence of first marriage with her perhaps she thought that she should use Sections 498A and 406 against the family members to teach a lesson to everybody. The Court cannot be swayed by the feelings of hatred of the complainant. Even at the time of framing charges the Court has to consider the entire evidence collected by the I.O. or deliberately left out by the I.O. Criminal trial impinges on the liberty of a person and must not be taken casually. 22. Further in *Dharambir vs. Central Bureau of Investigation*, 148 (2008) DLT289??, it was held: - 8.2 The scheme of the above

two Sections indicates that the Legislature has intended to differentiate between documents forwarded to a court by the police along with the charge sheet or sent to it earlier during the course of investigation on the one hand and the statements of prospective witnesses recorded by the police during investigation under Section 161 Cr.P.C., copies of which are also forwarded to the Court along with the charge sheet, on the other. This is plain from the language of Section 173(5)(a) when compared with that of Section 173(5)(b) read with Section 173(6) and the first and second provisos to Section 207(v) Cr.P.C. For instance, the reference in Section 173(6) to 'any such statement' is to the statement of witnesses referred to in Section 173(5)(b), Cr.P.C. i.e. statements recorded of prospective witnesses under Section 161 Cr.P.C. In relation to these statements the police officer has a discretion under Section 173(6) Cr.P.C. to withhold a part thereof if he forms an opinion that it is inexpedient in public interest to do so and inform the Magistrate accordingly. Further, the first proviso to Section 207(v) gives a discretion to the Magistrate to provide to the accused even those statements which 'the Magistrate thinks appropriate' shall be furnished. 8.3 This is in contrast to the position regarding documents. Section 173(5)(a) Cr.P.C. refers to documents 'on which the prosecution proposes to rely' other than 'those already sent to the Magistrate during the investigation'. These documents are to be forwarded to the Magistrate along with report. Therefore at the stage when the supply of documents has to be made in terms of Section 207(v) Cr.P.C. what the Magistrate has with him are those documents which have already been sent to the Magistrate during the course of investigation and those documents that are forwarded by the police officer along with the charge sheet. Under Section 207(v), the Magistrate has no discretion in the matter of not supplying such documents. The only limited discretion that the Magistrate has in terms of the second proviso to Section 207(v) Cr.P.C. is if the documents are so voluminous he can direct that the accused will be permitted only an inspection of the documents. 8.4. Since considerable importance is attached, on a reading of the aforementioned two provisions of the Cr.P.C., to the supply to the accused of all the 'documents' proposed to be relied upon by the prosecution, the question that arises is whether the HDs are documents of which copies can be asked for by the accused. If the HDs are not documents at all and only storage devices as contended by the CBI, then the

further question whether they are being relied upon by the CBI and whether copies thereof therefore need to be supplied to the accused will not arise. 8.5 The meaning of the word 'document' used in Section 173(5)(a) as well as Section 207(v) has to be appreciated in the present case in the context of the nature of document the copy of which is being sought. Here we are concerned with digital copies, in the form of voice executable. WAV (sound format) files, of the intercepted telephone conversations which were directly recorded on to an electronic device viz., the hard disc.

23. The Apex Court in *Siddharth Manu Sharma vs. State of NCT of Delhi*, (2010) 6 SCC1 observed as under: 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 accused is not essential in the interest of justice and is expedient in the public interest he shall indicate that part of the statement refusing a Magistrate 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 refer to Sub-section 5 of the Section. xxxx xxxx xxxx 216. Under Section 170, the documents during investigation are required to be forwarded to the Magistrate, while in terms of Section 173(5) all documents or relevant extracts and the statement recorded under Section 161 have to be forwarded to the Magistrate. The investigating officer is entitled to collect all the material, what in his wisdom is required for proving the guilt of the offender. He can record statement in terms of Section 161 and his power to investigate the matter is a very wide one, which is regulated by the provisions of the Code. The statement recorded under Section 161 is not evidence per se under Section 162 of

the Code. The right of the accused to receive the documents/statements submitted before the Court is absolute and it must be adhered to by the prosecution and the Court must ensure supply of documents/statements to the accused in accordance with law. Under proviso to Section 162(1) the accused has a statutory right of confronting the witnesses with the statements recorded under Section 161 of the Code thus indivisible. xxxx xxxx xxxx 218. The liberty of an accused cannot be interfered with except under due process of law. The expression due process of law shall deem to include fairness in trial. The Court gives a right to the accused to receive all documents and statements as well as to move an application for production of any record or witness in support of his case. This constitutional mandate and statutory rights given to the accused places an implied obligation upon the prosecution (prosecution and the prosecutor) to make fair disclosure. The concept of fair disclosure would take in its ambit furnishing of a document which the prosecution relies upon whether filed in Court or not. That document should essentially be furnished to the accused and even in the cases where during investigation a document is bona fide obtained by the investigating agency and in the opinion of the prosecutor is relevant and would help in arriving at the truth, that document should also be disclosed to the accused.

219.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 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.This provision {Section 207} 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, statement, confessional statement 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 Sub-section 5 of Section 161. ...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. xxxx xxxx xxxx 221. It will be difficult for the Court to say that the accused has no right to claim copies of the documents or request the Court for production of a document which is part of the general diary subject to satisfying the basic ingredients of law stated therein. A document which has been obtained bonafidely and has bearing on the case of the prosecution and in the opinion of the Public Prosecutor, the same should be disclosed to the accused in the interest of justice and fair investigation and trial should be furnished to the accused. Then that document should be disclosed to the accused giving him chance of fair defense, particularly when non-production or disclosure of such a document would affect administration of criminal justice and the defence of the accused prejudicially. 24. At this juncture, it is relevant to mention that Section 172 (1A) of Cr.P.C. has been amended w.e.f. 31.12.2009 to expressly state that all the statements recorded under Section 161 Cr.P.C. have to be necessarily recorded in the case diary.

25. The words such statement or any record thereof, whether in a police diary or otherwise, or any part of such statement or record in sub-section (1) of Section 162 of Cr.P.C. make it abundantly clear that the statement of witnesses recorded during investigation even if taken down in police diary maintained under Section 172 of Cr.P.C., can be used by the accused for the purposes specified in proviso to Section 162(1) of Cr.P.C. A very valuable right is given to the accused under proviso to Section 162(1) of Cr.P.C. and he can exercise this right only if the copies of the statements made by the witnesses during the investigation, whether recorded under Section 161(3) of Cr.P.C. or in the police diary maintained under Section 172 of Cr.P.C. are supplied to him. It follows that the accused is entitled to the copies of statement of persons whom the prosecution proposes to examine as witnesses even though those statements are recorded in the police diary maintained under Section 172 of Cr.P.C.

26. If the arguments of learned Special PP for CBI are to be accepted, it would mean that the prosecution can at its own will and pleasure pick and choose the statement of witnesses in respect of which the copies are to be and are not to be,

furnished to the accused to suit its convenience, thus eliminating all chances of witnesses being confronted with their previous statement in consistence with or contradictory to the case which the prosecution seeks to establish, which could never be the intention of the legislature.

27. In case the prosecution is permitted to withhold what might be vital evidence for an accused to establish his case, the unscrupulous investigating agency would be with utmost ease able to keep the court in the dark. Since the charges framed by CBI are of criminal nature, the petitioner under such circumstances has the full right to lay down his defences for the purposes of which all necessary disclosures have to be duly made in accordance with the procedures laid down under Cr.P.C. Accused can ask for the documents that withhold his defence and would be prevented from properly defending himself, until all the evidence collected during the course of investigation is given to the accused. Defence has to be build up from day one and not on ad-hoc basis denying the same would seriously prejudice the rights of the accused as enshrined in the Constitution of India.

28. In view of the dictum in the aforementioned judgments, this Court is of the opinion that petitioner cannot be denied an access to the documents in respect of which prayers have been made in the petition merely because CBI does not consider it relevant. If there is a situation that arises wherein an accused seeks documents which support his case and do not support the case of the prosecution and the investigating officer ignores these documents and forward only those documents which favour the prosecution, in such a scenario, it would be the duty of investigating officer to make such documents available to the accused.

29. Consequently, the petition is allowed. The respondent is directed to supply copy of statements under Section 161(3) of Cr.P.C. of prosecution witnesses namely Rajpal Malik, Chhabi Lal and Vinit Khetan, Nikhil Nanda, Deepak Chawla, Ajay Kumar Gupta, Ravinder Aggarwal, Amit Saxena and Pradeep Sahni as well as Directors of M/s. Blueview Commodities Pvt. Ltd., M/s. Kush Hotels and Resorts Pvt. Ltd., M/s. Longview Infrastructure Pvt. Ltd., M/s. Brijdham Properties & States Pvt. Ltd. and M/s. Tolly Commercial Pvt. Ltd., as also the copies of the documents i.e. (i) Copy of the alleged Appraisal Report of Shri Suresh Nanda

Group of Cases; (ii) Copy of the missing pages of the CDRs forming a part of D17 and listed in Annexure A herein; (iii) Copy of the complete and correct transcription of the alleged telephone calls and conversations as alleged by the CBI & (iv) Copy of the complete and unedited video footage as seized by the CBI as per Seizure Memo dated 14.03.2008 (marked as D19) to the petitioner to establish his defence.

30. The petition stands disposed of. Crl. M.A. No.294/2014 The application is dismissed as infructuous. (VED PRAKASH VAISH) JUDGE DECEMBER04h, 2014 hs

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