

CRR 1162 of 2025

In the matter of: **Sinjini Mukherjee.**

...petitioner

Ms. Jhuma Sen
Mr. Samsul Laskar
Mr. Purbayan Chakraborty

..for the petitioner.

Mr. Amarta Ghose
Mr. Prabal Das

...for the State

Challenging the order dated 06.02.2025 passed by learned Judicial Magistrate, 17th Court, at Calcutta in connection with GRS No. 798 of 2022, the present application has been preferred by the petitioner/de facto complainant/victim. By the impugned order, learned Court below has rejected the petitioner's/victim's prayer for supply of legible copies of the documents mentioned in the Application which are all part of the result of the investigation only on the ground that when the charge sheet was filed and trial commenced, the Cr.P.C. was in force and that section 207 of Cr.P.C. and criminal rules and order do not provide any provision for supply of copies to the victim, in respect of the documents which the prosecution intends to rely upon during the course of trial.

Being aggrieved by the aforesaid order, learned counsel for the petitioner submits that the application was filed before the trial Court on 15th July, 2024 and though it has been wrongly mentioned in the Application that it was filed under Section 207, but in fact, it was

filed under the provisions of Section 230 of the BNSS, which stipulates that the proceeding which has been instituted on a police report, the Magistrate shall without delay and in no case beyond 14 days from the date of production or appearance of the accused furnish to the accused and the victim (if represented by an advocate), free of costs of the documents mentioned in that section. Therefore, the petitioner/victim has a right to get the documents as also she is not satisfied with the result of investigation and if instructed, she is willing to file a protest petition against the investigation.

In this context, she also submits that the learned Court below has failed to consider the ratio decided by the Supreme Court in ***Jagjeet Singh and others -vs- Ashish Mishra alias Monu and another*** reported in (2022) 9 SCC 321 and also the ratio laid down in ***Sangita Ghosh (Sengupta) -vs- State of West Bengal and others*** reported in 2023 SCC OnLine Cal 131. She strenuously argued that the Court below has in fact failed to consider that the victim has an indispensable right to participate in every stage of proceeding and denial of giving copies of said document to the victim would amount to deprive her to participate in the proceeding. Therefore, the order impugned which has been passed mechanically and without application of judicial mind is not sustainable in the eye of law.

Learned counsel appearing on behalf of the State submits that a bare perusal of the application it appears that it was filed under Section 207 of the Code of Criminal Procedure, which does not prescribe any scope to serve the copies mentioned in the application to the petitioner/victim. In this context, he relied upon the judgments

of ***Vivek Kumar Gaurav –vs- Union of India in W.P. (C) 1603 of 2024*** dated February 5, 2024. He also relied upon the judgment of ***State of Jharkhand and another –vs- Govind Singh*** reported in **(2005) 10 SCC 437** and contended that where literal construction of a particular clause is very clear and does not suffer from absurdity, there is no scope to interpret the said provision by the High Court and since the Application has been made under the provision of Section 207 of the Cr.P.C, there is no question of giving any copy of the documents to the alleged victim/ petitioner herein. He further argued that in the absence of any specific provision to give such copies to the complainant, the Court below cannot pass any direction to supply such copies to the victim and therefore, the order impugned does not suffer from any perversity or illegality and therefore, does not call for interference by this High Court.

I have considered submissions made on behalf of both the parties.

It is true that the application dated 15.07.2024 has stated that the petitioner/ victim has sought for the copies of the documents mentioned in the impugned application under Section 207 of the Cr.P.C. though the provisions of the BNSS came into force on 01.07.2024.

Therefore, it is clear that when the application was filed, the provision of the BNSs has already been invoked.

In this context, it would be worthwhile to mention the provision laid down in Section 531 (1) and 531 (2) (a) of the BNSS 2023. The said repeal and savings clauses have clearly laid down that the Code of Criminal Procedure 1973 is repealed on and from 01.07.2024 but

not withstanding such repeal if immediately before the date on which the BNSS comes into force, there is any appeal, application, trial, inquiry or investigation pending, then such appeal application, trial, inquiry or investigation shall be disposed of, continued, held or made as the case may be in accordance with the provisions of the Code of Criminal Procedure 1973 as enforced immediately before such commencement, as if the BNSS had not come into force.

Therefore said provision under section 531(2) (a) of the BNSS made it abundantly clear that the saving clause only saves an Application which is pending as on 01.07.2024. Thus, any application filed on 01.07.2024 or thereafter shall be governed by the provisions of BNSS 2023 for the reason that by that date, the provision of Cr.P.C. 1973 stands repealed.

I have already mentioned above that the Application for obtaining copies was filed by the petitioner after the BNSS comes into force and therefore, in the instant case, the provision laid down in Section 230 of the BNSS clearly attracts which provides that the Magistrate is duty bound to give copies mentioned in the said Section, free of costs, within a period of 14 days from the production or appearance of the accused to the victim as well. Therefore, the order impugned is clearly suffers from perversity where the Court below has blatantly refused to give copies to the victim ignoring the specific provisions laid down in Section 230 of the BNSS. Relying upon the judgment reported in **(2005) 10 SCC 437**, it may be reiterated that where the language provided in Section 230 read with Section 531 of the BNSS is clear and unambiguous, the Trial Court did not have any occasion to interpret the said provision as well as the prayer made by the

petitioner in a different way because the Court below is not supposed to reframe the legislation, as it has no power to legislate.

It is true that the impugned application demonstrates that the prayer for getting documents has been made mentioning Section 207 of the Cr.PC. It is needless to reiterate that mentioning of a wrong section can never be fatal for a relief made by the victim. The Prayer always has to be considered in substance and not merely in its form. This is because it is the business of the court to know the law and it is only incumbent upon the litigant to come before the court and state the facts in respect of which she seeks the remedy and there is no obligation on her to inform the court under which statute or under which section she is entitled to claim the remedy. If she states a wrong statute or wrong section that in no way relieves the court of the obligation of itself applying the appropriate section, also because a proper recitation of the appropriate section is not necessary for the victim for obtaining of a remedy.

Moreover, rule 252 of Calcutta High Court Criminal (subordinate Courts) Rules 1985 clearly prescribes that parties to a criminal proceeding are entitled to obtain both certified and uncertified copies of inquiry including such police papers as may be made use of as evidence at the trial or inquiry and final report submitted by the police under section 173 of the Cr.P.C.

Therefore, I find sufficient merit in the submissions made on behalf of the petitioner who is aggrieved by the order impugned.

There is another facet in the issue in controversy. The petitioner has specifically argued that she has every right to be informed about the result of the investigation done by the Investigating Authority and

that can only be made in a constructive way, if the documents mentioned in Section 230 of the BNSS is supplied to the victim and this is the sole purpose why the said provision has been newly incorporated in the Sanhita.

It is needless to say that the right of the complainant/victim to be heard at the time of taking cognizance and even in pre-trial criminal proceeding has already been recognized by the Apex Court in ***Jagjeet Singh and others -vs- Ashish Mishra @ Monu and another*** reported in **(2022) 9 SCC 321**. In the said judgment, the Supreme Court has held that wherever the victim comes forward to participate in the criminal proceeding, he or she will be accorded an opportunity of a fair and effective hearing. Therefore, if a victim approaches the trial Court for having the copies of document under Section 230 of the BNSS in order to ascertain as to whether the investigation was done in a proper direction or not, she must be given opportunity to avail such provision because she has every right to participate in the criminal proceeding.

It has been categorically held in the said judgment that a victim within the meaning of Cr.P.C cannot be asked to await the commencement of trial for asserting his/her right to participate in the proceeding. He/she has legally vested right to be heard at every step post the occurrence of an offence and such a victim has unbridled participatory right from the stage of investigation till the culmination of the proceeding.

Having considered the aforesaid facts and circumstances of the case, along with settled position of law, the instant application being **CRR 1162 of 2025** is **allowed**.

The impugned order dated 06.02.2025 passed in G.R. 798 of 2022 which pertains to refusal of petitioner's prayer for supply of copies is hereby set aside. The trial Court is directed to handover copies of the documents mentioned in Section 230 of the BNSS to the victim/petitioner within a period of 10 days from date of communication of the order.

Urgent Xerox certified photo copies of this order, if applied for, be given to the parties upon compliance of the requisite formalities.

(Dr. Ajoy Kumar Mukherjee,J.)