CRL.P No. 5712 of 2022

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 06TH DAY OF JULY, 2022

BEFORE

THE HON'BLE MR JUSTICE M.NAGAPRASANNA

CRIMINAL PETITION NO. 5712 OF 2022

BETWEEN:

SRI CHIRAG R. MEHTA

...PETITIONER

(BY SRI MURTHY D.NAIK, SR.ADVOCATE FOR
SRI VIKRAM RAMALINGAM R., ADVOCATE)

AND:

THE STATE OF KARNATAKA
BY COTTONPET POLICE STATION,
BENGALURU.
REP. BY STATE PUBLIC PROSECUTOR,
HIGH COURT OF KARNATAKA,
HIGH COURT BUILDING,
BENGALURU – 560 001.

...RESPONDENT

(BY SRI K.S.ABHIJITH, HCGP)

CRL.P No. 5712 of 2022

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF CR.P.C., PRAYING TO SET ASIDE THE ORDER DATED 17.06.2022 PASSED BY THE 50th ADDL. CITY CIVIL AND SESSIONS JUDGE, BANGALORE (CCH-51) IN SPL.C.C.NO.808/2021 VIDE ANNEXURE-A.

THIS CRIMINAL PETITION COMING ON FOR ADMISSION THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

The petitioner is before this Court calling in question order dated 17-06-2022 passed by the 50th Additional City Civil and Sessions Judge, Bengaluru City in Special C.C.No.808 of 2021, whereby the learned Sessions Judge declines to furnish copies of documents that are enclosed to the charge sheet on the ground that the Investigating Officer has not produced them before the Court.

2. Heard the learned senior counsel Sri Murthy D.Naik, appearing for the petitioner and Sri K.S.Abhijith, learned High Court Government Pleader appearing for the respondent.

3. *Sans* details, facts germane are as follows:-

Petitioner is the accused in Special C.C.No.808 of 2021 registered for offences punishable under Sections 364A and 506 of the IPC. On 29-12-2021 accepting the charge sheet filed by the Police, the learned Sessions Judge frames charges against the petitioner. After framing the charges, the petitioner files an application under Section 207 of the Cr.P.C. seeking copies of documents mentioned in three different property lists. The learned Sessions Judge partly allowed the application by permitting the counsel for the accused to inspect electronic records before the Court and directs the matter to be listed for further evidence. It is this order that is called in question by the petitioner on the ground that the accused is entitled to all copies that form part of the charge sheet and denial of them would be denying a fair trial to the petitioner.

4. The learned senior counsel representing the petitioner would vehemently contend that Section 207 of the Cr.P.C. mandates copies of documents that form part of the charge sheet to be furnished to the accused as fair trial demands so.

5. The learned High Court Government Pleader would however refute the submissions to contend that it is open for the petitioner to seek such documents in a manner known to law and the prosecution is not obliged to furnish every document that the accused wants and seeks dismissal of the petition.

6. I have given my anxious consideration to the submissions made by the respective learned counsel and perused the material on record.

7. The only issue that falls for my consideration is,

'*Whether the petitioner/accused would be entitled to copies that he has sought for in terms of Section 207 of the Cr.P.C.?*'

8. The issue need not detain this Court for long as this Court in the case of ***MUZAMMIL PASHA v. NATIONAL INVESTIGATING AGENCY***[1] has held as follows:

> *"7. Since the application is filed before the Sessions Judge under Section 207 of the Cr.P.C., it is germane to*

[1] ***W.P.No.19012 of 2021 decided on 6-06-2022***

notice Section 207 of the Cr.P.C. Section 207 of the Cr.P.C., which reads as follows:

"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 sub-section***

(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 sub-section (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."

(Emphasis supplied)

Section 207 of Cr.P.C. deals with supply of copies of police report and other documents to the accused. The Section contains 5 postulates of what should be furnished. The Apex Court in ***CRIMINAL TRIALS GUIDELINES***

REGARDING INADEQUACIES AND DEFICIENCIES, IN RE v. STATE OF ANDHRA PRADESH – (2021) 10 SCC 598, *interpreting the aforesaid provision of law has in a suo motu proceedings under Article 32 of the Constitution of India noticed common deficiencies which occur in the course of criminal trial and certain practices adopted by trial Courts in criminal proceedings. Therein, what was the cause for such anomaly was considered and a direction was issued to adopt uniform practice. Paragraph 11 of the said judgment reads as follows:*

"11. ***The Amici Curiae pointed out that at the commencement of trial, accused are only furnished with list of documents and statements which the prosecution relies on and are kept in the dark about other material, which the police or the prosecution may have in their possession, which may be exculpatory in nature, or absolve or help the accused. This Court is of the opinion that while furnishing the list of statements, documents and material objects under Sections 207/208 CrPC, the Magistrate should also ensure that a list of other materials, (such as statements, or objects/documents seized, but not relied on) should be furnished to the accused. This is to ensure that in case the accused is of the view that such materials are necessary to be produced for a proper and just trial, she or he may seek appropriate orders, under CrPC*** *["91. Summons to produce document or other thing.--(1) Whenever any court or any officer in charge of a police station considers that the production of any document or other thing is necessary or desirable for the purposes of any investigation, inquiry, trial or other proceeding under this Code by or before such Court or officer, such Court may issue a summons, or such officer a written order, to the person in whose possession or power such document or thing is believed to be, requiring him to attend and produce it, or to produce it, at the time and place stated in the summons or order.(2) Any person required under this section merely to produce a document or other thing shall be deemed to have complied with the requisition if he causes such document or thing to be produced instead of attending personally to produce the same.(3) Nothing in this section shall be deemed—(a) to affect Sections 123 and 124 of the Indian Evidence Act, 1872 (1 of 1872), or the Bankers' Books Evidence Act, 1891 (13 of 1891) or (b) to apply to a letter, postcard,*

telegram or other document or any parcel or thing in the custody of the postal or telegraph authority."] for their production during the trial, in the interests of justice. It is directed accordingly; the Draft Rules have been accordingly modified. [Rule 4(i)]."

(Emphasis supplied)

The Apex Court accepts the contention of Amici Curiae therein, that in a trial the accused are only to be furnished with list of documents and statements which the prosecution relies on and cannot be kept in dark about other materials which the Police or the prosecution may have in their possession. These documents may help the accused in getting themselves absolved of the crime. The Apex Court opined that while furnishing list of statements, documents and material objects under Sections 207 and 208 of Cr.P.C., the Magistrate should ensure that a list of other materials, even though not relied on, should be furnished to the accused as they would be imperative for a fair trial.

8. On a conjoint reading of Section 207 of the Cr.P.C. and the aforesaid opinion of the three Judge Bench of the Apex Court in a suo motu proceedings, what would unmistakably emerge is, the statements recorded by the Police under Section 161 or 164 of the Cr.P.C., after registration of the crime should be furnished to the accused. Sub-section (5) of Section 173 of the Cr.P.C. imposes a duty on the Police to submit a charge sheet against the accused persons along with all material documents or relevant extracts on which they propose to rely on. On the bedrock of the statute and the opinion of the Apex Court, the case at hand requires to be considered. As noticed hereinabove, the crime was registered on 12-08-2020, for the afore-quoted offences against the petitioner and several others, at which point in time the Police recorded statements of several witnesses under Section 161 of the Cr.P.C. Long after investigation had progressed, the Government of India on 21.09.2020 transferred the investigation to NIA. By then, as stated hereinabove, the Police conducting investigation had recorded several statements. The entire material was lock stock and barrel transferred to the NIA pursuant to the order of the Government of India. The respondent/NIA subsequently

filed a charge sheet claiming to have conducted investigation into the matter.

9. The statements under Section 161 of Cr.P.C. recorded by the Police which were transferred to NIA did not become a part of the charge sheet. NIA is in custody of those statements and it being the prosecution, ought to have furnished all those documents to the accused. The arrangement of witnesses was in the form of tables. Table-I reflects public witnesses who are 21 in number; Table-2 reflects police witnesses who are 94 in number and Table-3 depicts 26 in number. Statements of witnesses mentioned in Table-3 were not furnished to the accused though they formed part of the charge sheet. Statements of witnesses mentioned at Tables 1 and 2 did not form part of the charge sheet and as such they are also not furnished. Out of the witnesses in Tables 1 and 2, there are 21 public witnesses and 94 police witnesses. Section 173(5) of the Cr.P.C. mandates when a report in respect of a case of which Section 170 of the Cr.P.C. applies, the Police officer shall forward to the Magistrate along with the report of statements recorded under Section 161 of the Cr.P.C., all of the persons whom the prosecution proposes to examine as witnesses.

10. The contention of the learned counsel appearing for the respondent is that, those statements do not form part of the charge sheet and what does not form part of the charge sheet need not be furnished to the accused. It is accepted by the respondent that though the statements recorded by the jurisdictional police while conducting investigation under Section 161 of the Cr.P.C. admits that they are not furnished to the accused. It is in that light the application under Section 207 of the Cr.P.C. was preferred by the petitioner before the learned Sessions Judge which came to be rejected on the ground that only the statements recorded by the prosecution have to be produced and the prosecution in this case being the NIA it has to produce the documents or statements of witnesses, which it recorded and not the statements of witnesses recorded by the earlier Investigating Officer. When the prosecution itself is not relying upon the statements recorded by the earlier Investigating Officer, there was no reason to compel the prosecution to produce statements of those witnesses. The

Court further observed that the accused have every liberty to elicit the said statements during the course of recording of evidence of the IO.

11. The aforesaid reasons rendered by the learned Sessions Judge to reject the application, in my considered view, is fundamentally flawed as the accused in the opinion of the Apex Court in the afore-quoted judgment would become entitled to even those statements or objects not relied on by the prosecution. It is also germane to notice the judgment of the Apex Court in the case of ***NITHYA DHARMANANDHA @ LENIN AND ANOTHER v. GOPAL SHEELUM REDDY[2],*** *wherein the Apex Court holds that ordinarily the Court has to proceed on the basis of the material produced along with the charge sheet for dealing with the issue. But if the Court is satisfied that there is material of sterling quality which has been withheld by the Investigator or the Prosecutor, the Court is not debarred from summoning or relying upon the same even when such document is not a part of the charge sheet. Sub-section 6 of Section 173 of the Cr.P.C. permits investigating agency to withhold that portion of the statements recorded by them under Section 161 of the Cr.P.C., which is not relevant to the subject matter or the disclosure of which to the accused is not essential in the interest of justice and is inexpedient in public interest. This power to withhold statements or documents cannot be unbridled or uncanalised. It can only be used under the circumstances narrated in sub-section (6) of Section 173 of the Cr.P.C. Therefore, the investigating agency is not entitled to use the power according to its whim to deny the document that would be necessary for the defense of the accused.*

12. The contention of the learned counsel appearing for the respondent, which has been accepted by the learned Sessions Judge, is unacceptable. It can be no argument that the accused can seek for documents withheld by the prosecution at the time of entering his or her defense. The defense has to be built up from the commencement of trial and not on ad hoc basis. Unless all the evidence collected during the course of investigation is furnished to the accused, it cripples construction of proper defense. Right to

[2] ***(2018) 2 SCC 93***

defend cannot be rendered illusory by tying the hands of the accused, depriving him of necessary evidence to defend himself and still claim a fair trial is being conducted.

13. In the light of what is observed hereinabove, it is germane to notice the objections filed by the NIA to the application of the petitioner filed under Section 207 of the Cr.P.C. Paragraphs 5 and 6 of the objections, read as follows:

"5. With regard to the allegation in para No.2 of the application, the respondent/NIA denies all such allegations by the accused applicant and submits that the NIA has filed the charge sheet based on the facts emerged during the extensive investigation conducted by the investigating officers. There is no classification of accused into any categories as alleged by the applicant. The charge sheet contains details of offences committed by each person. The crime in the instant case was committed by a lot of people led by a few miscreants, who had conspired in advance to commit the crime. Therefore, it is absolutely legal on the part of the respondent to prosecute the accused persons based on offences committed by them, as revealed during the investigation based on the evidence collected.

6. With regard to the contents in para No.3 of the application wherein it was discussed about document No.145 in Annexure-B, it is submitted that the said document No. refers to the handing over of the case documents and material objects by the City Crime Branch (CCB) and taking over of the same by NIA. The said document was submitted to the Hon'ble Court along with the charge sheet, to show the transfer of the case from CCB to NIA. While handing over the documents and material objects, the CCB has handed over all the documents and material objects collected in the case by them and all the statements recorded by them during the course of investigation. The NIA conducted the subsequent investigation and collected further documents and recorded statements of witnesses. After analyzing all the evidence collected, including oral and documentary, the documents and statements which are relevant to the case are identified and submitted before the Hon'ble Court. It is further submitted that "the statements recoded under 161 of all

the persons whom the prosecution proposes to examine as witnesses" have been submitted before this Hon'ble Court along with the charge sheet, in accordance with Section 173 (5)(b) of Cr.P.C. It is also submitted that a copy of the charge sheet, along with copies of all the relied upon documents and statements have also been supplied to the accused person herein."

The NIA at paragraph 6 accepts that document No.145 refers to handing over of case documents and material objects from the CCB to NIA. The document would show handing over of all documents and material objects collected in the case by them and of the statements recorded by them during the course of investigation. Learned counsel for the respondent - NIA admits that it was not a case of fresh investigation conducted by it but a subsequent investigation, collection of further documents and recording of further statements of witnesses. Therefore, it is a case where the documents/statements of witnesses recorded by the CCB earlier, prior to transfer have been relied on for analysis of evidence collected and preparation of the charge sheet but the NIA denies that those documents should be supplied to the accused. According to it, a copy of the charge sheet along with copies of all documents that would be relied upon and statements have been supplied to the accused. Therefore, it is a clear case where the statements of charge sheeted witnesses are also denied to the accused by the NIA which was highlighted by the petitioner in the application filed under Section 207 of the Cr.P.C. Reference being made to a recently rendered three judge bench judgment of the Apex Court in the case of ***MANJOJ AND OTHERS V. STATE OF MADHYA PRADESH***[3]*, wherein it is held as follows:*

"184. *In Manu Sharma, in the context of policy diaries, this court noted that* ***"the purpose and the object seems to be quite clear that there should be fairness in investigation, transparency and a record should be maintained to ensure a proper investigation". This object is rendered entirely meaningless if the police fail to maintain the police diary accurately. Failure to meticulously note down the steps taken during investigation, and the resulting lack of transparency, undermines the***

[3] *2022 SCC OnLine SC 677*

accused's right to fair investigation; it is up to the trial court that must take an active role in scrutinizing the record extensively, rather than accept the prosecution side willingly, so as to bare such hidden or concealed actions taken during the course of investigation.

185. *In the present case, the trial court ought to have inquired more deeply into the role of DW-1, given that by her own deposition she had admitted to analyzing call detail records and involvement in Neha's arrest - all of which had been suppressed by the prosecution side, for reasons best known to them. In this context, a reading of Section 91 and 243 CrPC as done in Manu Sharma, is important to refer to:*

"217. ..Section 91 empowers the court to summon production of any document or thing which the court considers necessary or desirable for the purposes of any investigation, inquiry, trial or another proceeding under the provisions of the Code. Where Section 91 read with Section 243 says that if the accused is called upon to enter his defence and produce his evidence there he has also been given the right to apply to the court for issuance of process for compelling the attendance of any witness for the purpose of examination, cross-examination or the production of any document or other thing for which the court has to pass a reasoned order."

186. *The court went on to elaborate on the due process protection afforded to the accused, and its effect on fair disclosure responsibilities of the public prosecutor, as follows:*

"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 (sic Code) 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 place 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. 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 aforereferred to. 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 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 sub-section (5) of Section 173. In contradistinction to the provisions of Section 173, where the legislature has used the expression "documents on which 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 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.***

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 bona fide 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 defence, particularly when non-production or disclosure of such a document would affect administration of criminal justice and the defence of the accused prejudicially.

222. The concept of disclosure and duties of the Prosecutor under the English system cannot, in our opinion, be made applicable to the Indian criminal jurisprudence stricto sensu at this stage. However, we are of the considered view that the doctrine of disclosure would have to be given somewhat expanded application. As far as the present case is concerned, we have already noticed that no

prejudice had been caused to the right of the accused to fair trial and non-furnishing of the copy of one of the ballistic reports had not hampered the ends of justice. Some shadow of doubt upon veracity of the document had also been created by the prosecution and the prosecution opted not to rely upon this document. In these circumstances, the right of the accused to disclosure has not received any setback in the facts and circumstances of the case. The accused even did not raise this issue seriously before the trial court.

(emphasis supplied)

187. *In this manner, the public prosecutor, and then the trial court's scrutiny, both play an essential role in safeguarding the accused's right to fair investigation, when faced with the might of the state's police machinery.*

188. *This view was endorsed in a recent three judge decision of this court in Criminal trials guidelines regarding Inadequacies and Deficiencies, in re v. State of Andhra Pradesh. This court has highlighted the inadequacy mentioned above, which would impede a fair trial, and inter alia, required the framing of rules by all states and High Courts, in this regard, compelling disclosure of a list containing mention of all materials seized and taken in, during investigation-to the accused. The relevant draft guideline, approved by this court, for adoption by all states is as follows:*

"4. SUPPLY OF DOCUMENTS UNDER SECTIONS 173, 207 AND 208 CR.PC

Every Accused shall be supplied with statements of witness recorded under Sections 161 and 164 Cr.PC and a list of documents, material objects and exhibits seized during investigation and relied upon by the Investigating Officer (I.O) in accordance with Sections 207 and 208, Cr. PC.

Explanation : The list of statements, documents, material objects and exhibits shall specify statements, documents, material objects and exhibits that are not relied upon by the Investigating Officer."

> ***189. In view of the above discussion, this court holds that the prosecution, in the interests of fairness, should as a matter of rule, in all criminal trials, comply with the above rule, and furnish the list of statements, documents, material objects and exhibits which are not relied upon by the investigating officer. The presiding officers of courts in criminal trials shall ensure compliance with such rules."***
>
> *(Emphasis supplied)*
>
> *If the case at hand is considered on the bedrock of the aforesaid enunciation of law in the aforesaid judgments of the Apex Court, it cannot but be held to be an unfair act on the part of the respondent which would lead to an unfair trial. The accused is entitled to a fair trial as the result of trial on rejecting the application could be taking away the personal liberty of the accused and therefore, affording of all opportunity to defend must be the very soul of a fair trial to be conducted against the accused."*

In the light of the judgment rendered by this Court, the petitioner/accused would become entitled to all copies of the charge sheet material, denial of which would undoubtedly be contrary to the principle of fairness and results in an unfair trial.

9. In the teeth of the findings of the Apex Court which are quoted in the judgment rendered by this Court, if the order passed is noticed, it would fall foul of what is held by the Apex Court and followed by this Court. The learned Sessions Judge

rejects the application by his order dated 17-06-2022, the relevant portion of which reads as follows:

> *"It is true that as per Section 207 of the Cr.P.C., the prosecution has to supply the copy of police report and other documents enabling the accused to make out his defence.*
>
> *However, the IO has submitted the electronic records sought for by the accused today before this Court upon being issued show cause notice to him, but failed to supply the copies of the same.*
>
> *In view of non-availability of the copies of the above said electronic records, having not supplied by the IO, the counsel for accused is permitted to inspect the electronic records before the Court.*
>
> *Accordingly, the application is allowed in part."*

The afore-quoted reason can hardly be said to be satisfactory for partly allowing the application under Section 207 of the Cr.P.C., particularly in the light of the law laid down by the Apex Court. Therefore, the order passed by the learned Sessions Judge *sans* countenance and is to be obliterated to the extent of not allowing the application in full and a direction ensue in favour of the petitioner to the prosecution to furnish documents that are sought in the application filed by the petitioner. While doing so, the prosecution shall bear in mind

the method of furnishing the same as is held by the Apex Court in the case of ***P. GOPALKRISHNAN @ DILEEP v. STATE OF KERALA AND ANOTHER*** – *(2020) 9 SCC 161* with particular reference to Paras 17, 18 and 21 in the said judgment.

10. For the aforesaid reasons, I pass the following:

O R D E R

(i) Criminal Petition is allowed.

(ii) The order dated 17-06-2022 passed by the 50th Additional City Civil and Sessions Judge, Bengaluru City in Special C.C.No.808 of 2021 is quashed and the application filed by the petitioner/accused in Special C.C.No.808 of 2021 for furnishing of documents is allowed.

(iii) The documents sought by the petitioner which are part of the charge sheet material be furnished to him, bearing in mind the observations made in this order and in tune with the judgment in the case of ***P.GOPALKRISHNAN*** *(supra)*.

Sd/-
JUDGE

BKP