

CRM-M-16317-2022 (O&M) and
CRM-M-19965-2022 (O&M)

-1-

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-16317-2022 (O&M)
Date of Decision: 18.11.2022

(I)
Ashok Solomon

....Petitioner(s)

Versus

Directorate of Enforcement

.....Respondent(s)

CRM-M-19965-2022 (O&M)

(II)
M/s. QVC Realty Company Limited and another

....Petitioner(s)

Versus

Directorate of Enforcement

.....Respondent(s)

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Manav Gupta, Advocate,
Mr. Abhinav Sood, Advocate,
Mr. Anmol Gupta, Advocate and
for the petitioner in CRM-M-16317-2022.

Mr. Keshav Pratap Singh, Advocate and
Mr. Sukhsandesh S. Chahel, Advocate,
for the petitioners in CRM-M-19965-2022.

Mr. Shobit Phutela, Advocate,
for the respondent-ED.

JASGURPREET SINGH PURI, J.

The present two petitions which have been filed under Section
482 of the Code of Criminal Procedure are being taken up together for final

disposal with the consent of learned counsels for the parties since the impugned order dated 22.03.2022 is a common order in both the cases.

One application was filed before the learned Special Judge exercising the powers under the Prevention of Money Laundering Act, 2002 (hereinafter referred to as 'PMLA') by petitioner Ashok Solomon for supply of the copies of documents seized vide seizure memo dated 22.08.2019 and another application was filed by petitioner Parkash Gurbaxani also seeking supply of documents and list thereof, seized by the Directorate of Enforcement from the office/premises of the petitioner during conduct of raids. The learned Special Judge, Gurugram has dismissed both the applications vide impugned order dated 22.03.2022 and the aforesaid order has now been assailed by filing two separate petitions under Section 482 of the Code of Criminal Procedure.

The facts are being taken from *CRM-M-16317-2022*, titled '*Ashok Solomon Versus Directorate of Enforcement*'.

The Directorate of Enforcement conducted raids on different premises of the accused and seized various documents and seizure memo was prepared on 22.08.2019. Thereafter, complaint under Sections 44 and 45 of the PMLA was filed before the learned Special Judge, Gurugram. Vide Annexure P-2, petitioner Ashok Solomon filed an application before the learned Special Judge, Gurugram for supply of copies of the documents seized vide seizure memo dated 22.08.2019, with a further prayer that the framing of charges may be deferred until the copies of the documents are supplied to the petitioner. This application was filed under Section 208 of the Code of Criminal Procedure. The prayer made by the petitioner in the

aforesaid application is reproduced as under:-

“In lieu of the above submissions, the Applicant/Accused most humbly prays:

(i) that this Hon'ble Court directs the ED to supply the copies of the documents seized vide seizure memo dated 22.08.2019 and,

(ii) that the process of framing of charges may be deferred by this Hon'ble Court until a copy of the documents sought by this application are supplied to the Applicant/Accused.”

Similar prayer was made by the petitioner Parkash Gurbaxani in the other case and the prayer made by him is reproduced as under:-

“In view of the aforesaid fact, it is therefore prayed that the applicant/accused may kindly be supplied the documents & list thereof seized by the Directorate of Enforcement from the office and premises of the applicant/accused during raids in the interest of justice”. सत्यमेव जयते

The Directorate of Enforcement filed separate replies to the aforesaid applications.

It has specifically stated in the reply in the case of Ashok Solomon that all the documents which have been relied upon by the complainant have been supplied in the best possible condition as available with the Directorate of Enforcement and those documents mentioned in the application which are not relied upon with the impugned prosecution complaint, with that regard the investigation is continuing and ongoing and therefore, the list of remaining documents will be filed before

the Court on completion of investigation. Para No.2 and 3 of the aforesaid reply in Ashok Solomon's case is reproduced as under :-

“2. That the complainant submits that all the documents which have been relied upon by the complaint have been supplied in the best possible condition as available with the Directorate of Enforcement.

3. That it is further contended that the documents mentioned in the application which are not relied upon with impugned prosecution complaint, it is submitted that the investigation is continuing and ongoing, therefore the list of remaining documents will be filed before this Hon'ble Court on completion of investigation. It is pertinent to mention here that since the matter is still under investigation it is not possible to categorize the un-relied documents at this stage and grave prejudice will be caused to the investigation if the present application is allowed”.

Similarly reply was also filed by the Directorate of Enforcement in the second case in which it was stated that the petitioner was hiding the fact that it is already in possession of the list of the documents seized during the course of search and that all the documents which have been relied upon by the complainant in the prosecution complaint have been supplied in the best possible condition as available with the Directorate of Enforcement. Para No.4, 5 and 6 of the aforesaid reply are reproduced as under:-

“4. That the complainant submits that the accused is hiding the fact that it is already in possession of the list of the documents seized during the course of search. Further, the stated documents have been seized from the premise of accused itself and the

contents of the same are well within their knowledge.

5. *That the complainant further submits that all the documents which have been relied upon by the complainant in the prosecution complaint have been supplied in the best possible condition as available with the Directorate Enforcement.*
6. *That it is further contended that the documents mentioned in the application which are not relied upon with impugned prosecution complaint, it is submitted that the investigation is continuing and ongoing, therefore the list of remaining documents will be filed before this Hon'ble Court on completion of investigation. It is pertinent to mention here that since the matter is still under investigation it is not possible to categorize the un-relied documents at this stage and grave prejudice will be caused to the investigation if the present application is allowed. It is submitted that the documents are required for the purpose of investigation as well as adjudication u/s 8 of PMLA”.*

The learned Special Judge, Gurugram considered the issue raised by their respective parties that it has to be seen whether at this stage when on the one hand, the charges are yet to be framed and the trial is yet to commence and on the other, the investigation is still in progress and therefore whether a direction should be issued to the complainant to return the un-relied upon documents or supply copy thereof, to the petitioners or not. The learned Special Judge, Gurugram noted that it is most relevant aspect that in the instant case the trial has not yet commenced as the charges are yet to be framed against the accused persons and therefore, it

has to be kept in mind that the case is still at an enquiry stage and also relied upon the judgment of the Supreme Court in *State of Orissa Versus Debendra Nath Padhi [2005 (1) SCC 568]* that at the time of framing of charges or taking cognizance, the accused has no right to produce any material. The learned Special Judge further went on to observe that since the present case is at the stage of framing of charges only and as such the accused has no right to seek the assistance of any document or refer such document, which is not part of the record. Since the petitioners/accused have no right to place any document in their defence at this stage, the argument of the learned counsel had no force that the failure of complainant to supply un-relied upon documents is likely to cause any prejudice to the rights of the petitioners. However, at the appropriate stage, the abovementioned argument may be valid and relevant. The learned Special Judge further observed that the second relevant aspect which is required to be noted was that in the present case this fact cannot be ignored that the right of defence of an accused is a valuable right but the material question relevant is the stage when such right can be exercised. It observed that once the trial commences, then the stage will arrive when the petitioners will be given opportunity to adduce evidence in their defence and at that stage, the request of the applicants/petitioners to supply the copies of un-relied upon documents may be relevant but at this stage when the trial is yet to commence the above request was pre-mature. It further observed that the petitioners have no right to produce any document on record and otherwise also the investigation of the case is still in progress and therefore, returning of documents not yet relied by the complainant may

be prejudicial to further investigation and therefore, dismissed both the applications.

The issue therefore arises in the present two petitions is as to whether the petitioners are entitled for supply of documents which have been allegedly seized by the Directorate of Enforcement or not.

**Submissions made by learned counsels
for the petitioners**

Learned counsel appearing on behalf of petitioner in the case of Ashok Solomon made the following submissions:

1. Every document seized during investigation is required to be produced before the trial Court and should be furnished to the accused and the trial Court is bound to consider the evidence collected by the Investigation Officer during the investigation of the case whether relied upon or not by the prosecution.

2. He referred to the judgment of the Hon'ble Supreme Court in

Re: To Issue Certain Guidelines Regarding Inadequacies and Deficiencies in Criminal Trials Versus The State of Andhra Pradesh and others [Suo Moto Writ (Crl.)

No.1/2017, decided on 20.04.2021] wherein the Hon'ble Supreme Court had directed for adoption of the "Draft Rules of Criminal Practice, 2021" by all the High Courts. Reference was made to para No.11 in which it was observed that while furnishing the list of statements, documents and material objects under Sections 207/208 of the Code of

Criminal Procedure, 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. Para No.21 of the judgment relates to the Draft Criminal Rules and referred to para No.4 pertaining to supply of documents under Sections 173, 207 and 208 of the Code of Criminal Procedure. He further submitted that the aforesaid Draft Rules have already been duly adopted by this Court.

3. Learned counsel relied upon a judgment of Delhi High Court in ***Central Bureau of Investigation Versus M/s. INX Media Pvt. Ltd. and others [CRL. M.C No.1338 of 2021, decided on 10.11.2021]*** and has submitted that all the documents which were seized by the Enforcement Directorate should be supplied to the petitioner irrespective of the fact whether or not they were relied upon in the charge-sheet/complaint or not. Learned counsel further referred to another judgment of Delhi High Court in ***Ashutosh Verma Versus CBI [2014 SCC Online Delhi 6931]*** and contended that it was held by the Delhi High Court that the 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 and that it would be the duty of the Investigating Officer to make such

documents available to the accused.

4. Learned counsel submitted that the learned trial Court has proceeded on erroneous understanding of Section 208 of the Code of the Criminal Procedure and ought to have allowed the application of the petitioner seeking copy of documents seized by the Enforcement Directorate during the course of investigation and deliberately not made part of the complaint before proceeding to the stage of framing of charges. The learned counsel further submitted that the learned Special Judge has erroneously interpreted the judgment of the Hon'ble Supreme Court in ***State of Orissa Versus Debendra Nath Padhi (Supra)***.
5. Learned counsel also referred to Section 46 of PMLA which provides that the provisions of Code of Criminal Procedure 1973 shall apply to the proceedings before a Special Court and for the purpose of the said provisions, a Special Court shall be deemed to be a Court of Sessions and the person conducting the prosecution before the Special Court, shall be deemed to be a Public Prosecutor. He submitted that since the provisions of Code of Criminal Procedure are applicable to the Money Laundering Act, the provisions of Section 208 and all other proceedings will also apply and therefore, the petitioner was entitled for the grant of all the documents whether relied upon or unrelayed upon even before the framing of the charges.

6. Learned counsel for the petitioner in CRM-M-19965-2022 raised an additional argument by submitting that the right to fair trial is a right guaranteed under the Constitution of India and when the Enforcement Directorate has seized several documents and properties, then there was no justification for denying a copy of the same to the petitioner since denial of the same will cause prejudice to the petitioner. He submitted that it is only on the basis of the documents which have been seized and provided to the petitioners, he will be able to confront the prosecution witnesses and therefore, it was within his right to claim those documents. He has further submitted that since it was a case of a complaint case, the filing of supplementary charge-sheet, if any, under Section 173 (8) of the Code of the Criminal Procedure will not apply to the present case and that there can be no supplementary charge-sheet and therefore the unrelayed upon documents cannot be denied to the petitioner.

**Submissions by learned counsel for
the respondent**

Mr. S.V. Raju, learned Additional Solicitor General of India with Mr. Shobit Phutela, Advocate argued on behalf of the respondent on 09.08.2022.

He made the following submissions:

1. Mr. Raju submitted that the petitioner in the case of

Ashok Solomon has already confined the scope of the present petition only to the extent of inspection of the unrelieved upon documents at the first instance and has reserved his right to seek copy of the same in accordance with law and this has been specifically recorded by this Court while issuing notice of motion on 21.04.2022.

Therefore, the petitioner in Ashok Solomon's case has already given up his prayer for supply of unrelieved upon documents and has limited his prayer only to the inspection of the same.

2. He submitted that all the documents relied upon by the Directorate of Enforcement in the prosecution complaint have already been supplied to the accused persons including the petitioners of the present two cases. However, the documents which are now being sought by them are unrelieved upon documents and it is a settled principle of law that an accused is entitled only to the relieved upon documents and has no right to seek unrelieved upon documents at the stage of framing of charges. He submitted that the charges have not been framed till date and at this stage no right vests in the petitioners to seek the unrelieved upon documents. He further submitted that the Enforcement Directorate is conducting further investigation in the matter and the documents being sought by the petitioners which have

not been relied upon in the prosecution complaint are subject matter of further investigation and for that reason, the petitioners are not entitled for the same.

3. He submitted that it is a settled principle of law that at the stage of framing of charges, an accused is not entitled to any documents other than those relied upon in the police report or the complainant. He referred to a judgment of the Hon'ble Supreme Court in the case of *State of Orissa Versus Debendra Nath Padhi (Supra)* in this regard and submitted that it is clear that at the stage of framing of charges what is to be considered is only the material filed by the prosecution and the documents submitted therein and nothing more and therefore, what is to be seen at the stage of framing of charges is the relied upon documents and not the unrelieved upon documents.

4. He submitted that it is also evident that the petitioners are seeking the unrelieved upon documents for the purposes of their defence. However, as per the aforesaid decision, the defence of the accused cannot be seen at the stage of framing of charges and therefore, the purpose for which the petitioners are seeking the unrelieved upon is not justified.

5. He submitted that the scheme of PMLA provides for initiation of proceedings on the filing of a complaint by

virtue of Section 44 (1) (b) of PMLA and it is evident that the cognizance of the offence is taken upon a complaint. He further submitted that it is a settled principle of law that an accused is not entitled to documents, let alone unrelayed documents, filed along with a complaint and made reference to Section 204 of the Code of Criminal Procedure which provides for a issue of process and sub Section 3 provides that in a proceeding instituted upon a complaint made in writing, every summons or warrant issued under sub-section (1) shall be accompanied by a copy of such complaint and therefore, in view of the aforesaid position, the petitioners were entitled only for a copy of the complaint which has already been supplied to the petitioners. Even if it is to be assumed but no admitted that a term complaint refers to the documents filed along with the complaint, even then the accused is entitled to the documents relied upon in the complaint and cannot seek unrelayed documents.

6. He further referred to a judgment of Supreme Court in the case *Assistant Collector of Customs Versus L.R Melwani [1969(2) SCR 438]* and also a judgment of Calcutta High Court in the case of *Rajendra Prasad Pansari Versus Shiv Nath Prasad [2018 SCC OnLine Calcutta 24]* to contend that an accused is not entitled

to documents in a case instituted upon a complaint and since the process under the PMLA is initiated upon filing of a complaint, the accused cannot seek copies of the documents.

7. He further submitted that at the most the accused is entitled only to a list of unrelieved upon documents and not the documents. He made reference to the latest judgment of the Supreme Court in ***Re: To Issue Certain Guidelines Regarding Inadequacies and Deficiencies in Criminal Trials Versus The State of Andhra Pradesh and others*** (Supra) wherein guidelines were laid down and even Draft Rules were framed wherein the entitlement is only to the list of unrelieved upon documents and not the documents itself. He submitted that as per the judgment of the Supreme Court in para 11 it was held that the list be supplied 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 the Code of Criminal Procedure for their production during the trial in the interest of justice. Had the unrelieved upon documents been required to be supplied, the Hon'ble Supreme Court ought not have noted that the purpose of the list is so that the documents may be summoned at the appropriate stage of the trial. Therefore, the purpose of the list is only to let

an accused know the documents which have been seized so that the same may be summoned at the appropriate stage when required.

8. He further submitted that as per the directions of the Hon'ble Supreme Court in the aforesaid judgment, the Punjab and Haryana High Court has also incorporated Draft Rules in Volume III, Chapter I, Part D in Rule 6 which also provides that an accused should be supplied a list of documents, material objects and exhibits seized during the investigation and relied upon by the Investigating Officer in accordance with Sections 207 and 208 of the Code of Criminal Procedure. Even the explanation appended to the aforesaid Rule 6 provides that 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. He submitted that even as per the aforesaid explanation to Rule 6, the accused is entitled only to the list documents which are not relied upon and not the documents itself. He further submitted that Section 208 Cr.P.C under which the present application was filed by the petitioners is not applicable in the present case and the aforesaid provision applied only in cases where a case is to be committed to the Court of Sessions by a Magistrate. However, a

complaint under the PMLA is filed directly before the Court of learned Special Judge and therefore, since there is no committal, the provision of Section 208 Cr.P.C is not attracted. He submitted that Section 208 Cr.P.C is applicable only to a Magistrate before he commits a case to the Court of Sessions but a Special Judge trying an offence under PMLA is neither a Court of Magistrate nor a Court of Sessions but is a Special Court by virtue of Sections 43 and 44 of the PMLA and therefore, Section 208 Cr.P.C will not apply in the present case. He submitted that there is no provision under the Code of Criminal Procedure or under the PMLA which provides a right to the petitioners to seek a copy of unrelieved upon documents and in the absence of any such provision there is no right vested in the petitioners. He further submitted that the petitioners while filing applications before the learned Special Judge did not make any prayer for the supply of the list of the unrelieved upon documents or for the inspection of the same in their applications under Section 208 Cr.P.C nor any such prayer has been made in the present petitions. Therefore, in the absence of any specific prayer either before the learned Special Judge or in this Court, the petitioners cannot be entitled to the said reliefs. He further submitted that although an oral prayer

was made at the time issuance of notice for inspection of documents on the basis of judgment of Delhi High Court in *CBI Versus INX Media Pvt. Ltd. (Supra)* but the aforesaid case is distinguishable from the present case since inspection was allowed in that case in view of the CBI Manual which provided the same. However, under the PMLA or the Cr.P.C, there is no such provision for inspection of unrelayed upon documents and therefore, the aforesaid judgment in *CBI Versus INX Media Pvt. Ltd. (Supra)* is not applicable in the present case.

Consideration of submissions made by learned counsel for the parties.

Both the petitioners had filed separate applications before the learned Special Judge, Gurugram exercising the powers under the PMLA for supply of copies of documents seized vide seizure memo dated 22.08.2019 during the conducting of raids. In fact it was precise prayer made by petitioner Ashok Solomon before the learned Special Judge, Gurugram seeking direction to the respondent-ED to supply copies of the documents which were seized and the precise prayer made by another petitioner namely Parkash Gurbaxani was that the petitioner be supplied documents and list thereof seized by the Directorate of Enforcement from the office and premises of the petitioner during raids. Both the applications were dismissed by way of a common impugned order. The gist of prayers made in both the

applications was for supply of the documents which according to the petitioners were seized during the raids by the respondent-ED. However, in the prayer made by the petitioner Parkash Gurbaxani in addition to seeking the documents, the list of the same was also demanded.

The core issue involved in the present case was as to whether in a complaint case like the present case filed under the provisions of the PMLA, the documents which were seized by the ED during raids could be supplied to the petitioners or not. There can be a further split in the aforesaid issue as to what kind of documents can be supplied to the petitioners which can be bifurcated into 'relied upon documents' and 'unrelied upon documents'. Apart from the above, whether the petitioners are entitled for the documents which were not relied upon by the complainant or only list thereof.

The learned counsel for both the petitioners have submitted that every document seized during investigation was required to be produced before the trial Court and should be furnished to the accused whether relied upon or not relied upon by the prosecution. It was further argued by the learned counsels that in case all the documents are not supplied to the petitioners, then it prejudices their rights and withholding of such documents will prevent them from properly defending them and it is the duty of the Investigating Officer to make available all the documents which were seized at the time of raid. The learned counsels have also relied upon the provisions of Section 208 of the Code of Criminal Procedure and some judgments of Hon'ble Supreme Court and other High Courts. The arguments pertaining to right of fair trial were also pressed upon by the learned counsels for the petitioners. However, the learned Additional Solicitor

General of India appearing on behalf of the respondent-ED repelled all the arguments raised by the learned counsels for the petitioners and had submitted that no right vests in the petitioners for seeking unrelieved upon documents and also referred to various judgments of the Hon'ble Supreme Court and also Rules and Orders of Punjab and Haryana High Court in this regard.

The respondent-ED has taken up categorical stand both while replying to the applications made by the petitioners before the learned Special Judge, Gurugram and also before this Court that all the documents relied upon by the Directorate of Enforcement in the present case have already been supplied to the accused persons including the petitioners of the present two cases. Replies filed by the respondent-ED before the learned Special Judge, Gurugram have already been reproduced above. Therefore, so far as the supply of the relied upon documents is concerned, there is no dispute with regard to the same that the same have already been supplied to the petitioners. A perusal of the prayers made in the applications filed by the petitioners before the learned Special Judge, Gurugram also shows that a prayer was made for supply of the copies of the documents seized during the raids vide seizure memo but no distinction has been made in the prayer clause with regard to relied upon or unrelieved upon documents. Since the relied upon documents have already been supplied to the petitioners, the question for determination would now be as to whether the petitioners have any right for the supply of unrelieved upon documents or not. This issue can be considered in the light of the judgment of the Hon'ble Supreme Court, other High Courts and Punjab and Haryana High Court Rules and Orders.

In *Re: To Issue Certain Guidelines Regarding Inadequacies and Deficiencies in Criminal Trials Versus The State of Andhra Pradesh and others (Supra)* para No.11 dealt with this issue. The learned *Amicus Curiae* before the Hon'ble Supreme Court had pointed out that at the commencement of trial, accused are only furnished with the list of documents and statements which prosecution relies upon and are kept in the dark about the other material and the Hon'ble Supreme Court observed that it is of the opinion that while furnishing the list of statements, documents and material objects under Section 207/208 Cr.P.C, the Magistrate should also ensure that a **list** of other materials (such as statements, or objections/documents seized, but not relied on) should be furnished to the accused 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 the Cr.P.C for their production during the trial, in the interest of justice. In para No.21 Draft Criminal Rules on Practice, 2021 have been incorporated and vide para 4 of the same it has been provided in the Draft Rules that every accused shall be supplied with statements of witnesses recorded under Section 161 and 164 Cr.P.C and a **list** of documents, material objects and exhibits seized during investigation and relied upon by the Investigating Officer in accordance with Sections 207 and 208 Cr.P.C. Para 11 and Para 21(4) are reproduced as under:-

XXX

XXX

XXX

“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, Cr.PC, 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 the Cr. PC. 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)].

XXX

XXX

XXX

21(4). Supply of documents under Section 173, 207 and 208 Cr.P.C-(i) 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 (IO) 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.”

A perusal of the aforesaid would show that the learned Amicus Curiae before the Hon'ble Supreme Court had pointed out with regard to the supply of documents and statements at the time of the commencement of trial and the Hon'ble Supreme Court was of the opinion that while furnishing the list of statements, documents and material objects, the Magistrate should also ensure that **list** of other materials, even if they are

not relied upon should be furnished to the accused. During the course of arguments Mr. Raju had submitted that even the Hon'ble Supreme Court was emphasizing on the list of statements, documents and material objects and not the supply of the documents which were unrelieved upon.

In pursuance of the aforesaid judgment the Hon'ble Punjab and Haryana High Court amended its Rules and Orders. Amendment was effected in Chapter-1, Part D of Volume III pertaining to Procedure in enquires and trials by Magistrate and Rule 6 was substituted on 10.12.2021.

The aforesaid Rule 6 is reproduced as under:

“6. Warrant case on Police report – Police to furnish copies to accused before the trial commences:-In a warrant-case (Chapter XIX of the Code of Criminal Procedure, 1973) the procedure would now depend on whether the case has been instituted on a police report or otherwise. Section 238 to 243 of Code of Criminal Procedure, 1973 govern the procedure in warrant cases instituted on police reports. When the accused appears or is brought before the magistrate, the magistrate should, at the commencement of the trial, satisfy himself that he has complied with the provisions of Section 207 Cr.P.C. Further, every accused should be supplied with statements of witness recorded under Sections 161 and 164 Cr.P.C and a list of documents, material objects and exhibits seized during investigation and relied upon by the Investigating Officer in accordance with Sections 207 and 208 Cr.P.C.

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.”

A perusal of the same would show that the same is in consonance with the aforesaid Draft Rules and these Rules also provide that every accused should be supplied with the statements of witness recorded under Sections 161 and 164 Cr.P.C and a **list** of documents, material objects and exhibits seized during investigation and relied upon by the Investigating Officer in accordance with Sections 207 and 208 Cr.P.C. The explanation further provides that 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.

In other words it has been so provided by the aforesaid Rules that those documents which are not relied upon by the Investigating Officer, qua them a list should be supplied to the accused person. However, there is nothing in the aforesaid Rules that the unrelieved upon documents should also be supplied to the accused.

In the present case, the petitioners are seeking supply of all the documents which are either relied upon or not relied upon. However, the relied upon documents have already been supplied to the petitioners in view of categorical stand taken by the ED not only before the learned Special Judge but also before this Court. So far as the unrelieved upon documents are concerned, as per the aforesaid Punjab and Haryana High Court Rules and Orders, the petitioners may ask for a list of those documents which are not relied upon by the Investigating Officer. However, the petitioners have not prayed for seeking a list of the documents which are not relied upon by the prosecution either in the present petitions or before the learned Special Judge but they have prayed for supply of all the

documents.

The Hon'ble Supreme Court in *State of Orissa Versus Debendra Nath Padhi (Supra)* had observed that at the stage of framing of charges, roving and fishing inquiry was not permissible and in case the contention of the accused is accepted it would mean permitting the accused to adduce his defence at the stage of framing of charge and for examination thereof at that stage which is against the criminal Jurisprudence. It observed that at the stage of framing of charges what is to be considered is only the material filed by the prosecution and the documents submitted therein and nothing more and therefore, what is to be seen at the stage of framing of charges is the relied upon documents and not the unrelieved upon documents. In the present case the charges are yet to be framed and therefore, considering the aforesaid judgment of the Hon'ble Supreme Court as well as the Punjab and Haryana High Court Rules and Orders, the petitioners would not be entitled for the supply of unrelieved upon documents. At the most in case the petitioners so require or demand, then they may file appropriate application for supply of a list of the unrelieved upon documents before the learned Special Judge in accordance with law.

So far as the judgment relied upon by the learned counsels for the petitioners in *CBI Versus INX Media Pvt. Ltd. (Supra)* is concerned, the facts of the aforesaid judgment would not be applicable to the present case because the Delhi High Court had allowed inspection of the documents in view of CBI Manual which had provided for the same. There is a force in the argument raised by the learned counsel for the respondent that such kind of provision is not available either under the PMLA or under

the Cr.P.C and in the absence of any specific provision, no such order can be made for the inspection of the unrelieved upon documents and therefore, the aforesaid judgment relied upon by the learned counsel for the petitioner is distinguishable from the present case.

So far as the another argument raised by the learned counsel for the petitioners that non-supply of all the documents would prejudice the rights of the petitioners and in so far as the right of fair trial to the petitioners is concerned, the said argument seems to be attractive but does not cut any ice. There is no doubt that every accused has a right to fair trial but in the present case the trial has not commenced as yet. The charges have not been framed in the present case and the petitioners are seeking supply of unrelieved upon documents at the pre-charge stage and therefore, considering the aforesaid judgment of the Hon'ble Supreme Court in ***Re: To Issue Certain Guidelines Regarding Inadequacies and Deficiencies in Criminal Trials Versus The State of Andhra Pradesh and others (Supra), State of Orissa Versus Debendra Nath Padhi (Supra) and Punjab and Haryana High Court Rules and Orders***, the petitioners can at the most be permitted to file an appropriate application for supply of list of unrelieved upon documents, if they so require and so desire.

In view of the aforesaid facts and circumstances, this Court is of the view that both the petitions deserve to be dismissed. However, the petitioners shall be at liberty to move an appropriate application before the learned Special Judge, Gurugram seeking supply of list of any documents either relieved upon documents or not relieved upon documents and in case any such appropriate application is filed by the petitioners before learned

CRM-M-16317-2022 (O&M) and
CRM-M-19965-2022 (O&M)

-26-

Special Judge, Gurugram, then the same shall be considered and decided by the learned Special Judge, Gurugram in the light of aforesaid judgments, Punjab and Haryana High Court Rules and Orders and strictly in accordance with law as expeditiously as possible.

Accordingly, both the petitions are dismissed with liberty aforesaid.

18.11.2022

(JASGURPREET SINGH PURI)
JUDGE

rakesh

Whether speaking
Whether reportable

: Yes/No
: Yes/No



सत्यमेव जयते

