

HIGH COURT OF PUNJAB AND HARYANA**Bench: Justice Manjari Nehru Kaul****Date of Decision: 25th April 2024**

CRM-M No.18316 of 2024 (O&M)

Kalyani Singh Petitioner**Versus****Central Bureau of Investigation, Chandigarh ... Respondent****Legislation and Rules:**

Sections 173(2), 173(8), 207, 208, 91, 172(3) of the Cr.P.C.

Subject: Petition for quashing of order dismissing the application under Section 207 Cr.P.C., which sought documents listed in a seizure memo relied upon by the CBI in its charge sheet.

Headnotes:

Quashing of Order under Section 207 Cr.P.C. - Petitioner sought quashing of order that denied supply of documents listed as 'unrelied upon' by CBI in the seizure memo (D/5) - Supreme Court earlier ordered the provision of materials supplied to the deceased's family to the petitioner - Court findings highlighted that materials provided to the petitioner included all 'relied upon' documents, and those supplied to the family of the deceased as per Supreme Court's direction - Documents sought by petitioner, listed under Sr. No. 6(a) and 6(b) of the seizure memo, not relied upon by prosecution nor included in materials provided to the family of the deceased - Petitioner's entitlement under Section 207 limited to 'relied upon' documents - Petition for unfettered access to case diaries denied due to statutory restrictions under Section 172(3) Cr.P.C. - Court concluded no prejudice to the petitioner as all relied upon documents were provided - Petition dismissed. [Paras 1-12]

Referred Cases:

- In Re: To Issue Certain Guidelines Regarding Inadequacies And Deficiencies In Criminal Trials vs. The State Of Andhra Pradesh & Ors. (2021) 10 SCC 598

Representing Advocates:

Petitioner: Mr. R.S. Cheema, Senior Advocate with Mr. S.S. Narula, Mr. Siddarth Bhukkal, Mr. Satish Sharma, Mr. Harish Mehla, Mr. Prabhat Gupta

Respondent/CBI: Mr. Ravi Kamal Gupta, Spl. Public Prosecutor

Complainant: Mr. Amarjeet

MANJARI NEHRU KAUL, J.

CRM No.17628 of 2024

In view of the averments made in the application and in the interest of justice, the same is allowed as prayed for, subject to all just exceptions. The rejoinder of the petitioner to the reply filed on behalf of the respondent/CBI along with supporting documents (Annexures P-15 to P-18A-C) are taken on record.

CRM-M No.18316 of 2024

1. The petitioner, in the instant petition, filed under Section 482 Cr.P.C., is seeking quashing of order dated 06.04.2024 (Annexure P-2) passed by the Court of learned Special Judge, CBI, Chandigarh vide which her application under Section 207 of the Cr.P.C. was dismissed.
2. It has been contended by the learned senior counsel that documents listed at Sr.No.6(a) and 6(b) of seizure memo (D/5) annexed at Annexure P-5 be supplied to the petitioner inter alia on the following grounds:
 - (i) That the CBI has relied on seizure memo (annexed as Annexure P-5) in both its reports filed under Section 173(2) and 173(8) of the Cr.P.C. Despite this, the CBI is now claiming that certain documents which form part of the seizure memo, are 'unrelied upon' documents since they are not a part of the challan. Rather, a perusal of the seizure memo clearly reveals that it contains ten items in total, from Sr.No. 'a' to 'j', and the entire seizure memo has been relied upon by the CBI in its report under Section 173(8) Cr.P.C., without making any distinction qua the documents, which now as per the CBI are 'unrelied

upon documents'. In support, attention of this Court has been drawn to Sr. No. 5 of the Charge Sheet, annexed as Annexure P-2;

- (ii) that this bifurcation which has been drawn for the first time is only an excuse to deny the supply of documents to the petitioner, even though she is legally entitled to the same; further the reasoning now being given by the CBI that at Sr. No. 5 of Annexure P-2 (in the reply filed by the CBI, i.e. chargesheet) only specifically listed documents in the column were being relied upon, i.e. from Sr. No.(i) to (iv), is totally contrary to the material on record; no doubt, the CBI has listed only four documents in this column, however, the seizure memo clearly shows that in fact, it contains a total of ten documents;
- (iii) that the petitioner has already been provided with 08 out of the 10 documents mentioned in the seizure memo, which documents, are in addition to those being claimed as 'relied upon' by the CBI in its chargesheet filed against the accused before the learned CBI Court. Hence, it is evident that the entire seizure memo is being relied upon by the CBI, or else why would they have unhesitatingly supplied the allegedly 'unrelied upon documents' to the petitioner and the mother of the deceased;
- (iv) that no doubt, there is a statutory restriction on supplying copies of case diaries/police file to the accused under the Cr.P.C., however, this restriction would not apply in the present case as the case diaries pertain to the initial investigation carried out by the Chandigarh Police. Thereafter, the Chandigarh police had no role to play as the investigation was transferred to the CBI, who then presented the final reports under Sections 173(2) and 173(8) Cr.P.C. In case these diaries were supplied to the petitioner, it would not cause any prejudice to the prosecution, as they did not pertain to the investigation carried out by the CBI, but only to the initial investigation carried out by the Chandigarh Police;
- (v) that while referring to the contents of paragraph 16.80 in the untraced report (Annexure P-15) filed by the CBI, attention of this Court has been drawn to certain lapses, (e.g. destruction of evidence), committed by then SHO namely Poonam Dilawari and ASP Chandigarh Police Guriqbal Singh Sidhu, which had seriously '*handicapped*' the progress of investigation, and for which a major penalty had also been recommended against them; thus, to ascertain whether the investigation was botched up initially as claimed by the CBI, it could only be possible by perusing and examining the case diaries and police files;

3. that furthermore, and pertinently, all these documents sought for, by the petitioner, had already been supplied to the mother of the deceased. Still further, a detailed protest petition (Annexure P-16) was filed by the mother/family of the deceased against the petitioner and officials of the Chandigarh Police, which left no manner of doubt that the mother/family of the deceased was privy to the contents of the case diaries/police file, including the ones mentioned at Sr. No.6(a) and 6(b) of the seizure memo; thus, in the circumstances, without delving into the semantics of the language of Section 207 Cr.P.C. the Court should adopt a broader perspective to serve the interests of justice and allow the petitioner to have access to these two crucial documents, which would aid in fully understanding the incriminatory evidence against her. Learned Special Public Prosecutor representing the respondent/CBI, while opposing the submissions and prayer of the learned senior counsel for the petitioner has inter alia made the following submissions:

- (i) That the case is at the stage of consideration on charges; while categorically asserting that documents at serial number 6(a) and 6(b) of the seizure memo are 'unrelied upon documents' and reiterating that they are not part of the challan presented before the CBI Court, coupled with the fact that charges can only be framed after considering the 'relied upon' documents, the petitioner in case, still seeks supply of those documents, then the appropriate course for the petitioner would be to file an application under Section 91 of the Cr.P.C., at an appropriate stage before the trial Court;
- (ii) that it is categorically refuted that the CBI (Investigating Agency) had supplied other 'unrelied upon material' to the family of the deceased. In support, attention of this Court has been drawn to seizure memo (Annexure P-5) prepared by the CBI, during transfer of the investigation from Chandigarh Police to CBI, and has been submitted that only entries from serial number 6(c) to 6(j) are the 'relied upon' documents/material by the prosecution; only these documents had been supplied to the mother/family of the deceased, which already stood supplied to the petitioner, as well;
- (iii) that the arguments raised by the learned senior counsel for the petitioner that the entire seizure memo D5 (Annexure P-5) was relied upon by the CBI, was totally misplaced; the Investigating Agency had bifurcated the seizure memo into 'relied upon' documents and articles in the Charge Sheet at Annexure 2; entries 6(a) & (b) of the seizure memo are not 'relied upon' by the prosecution, either in the list of 'relied upon' documents or in the list of articles in the

Chargesheet (Annexure 2), and thus, have not been supplied either to the petitioner or even the family of the deceased;

- (iv) that even otherwise through this petition, the petitioner is seeking access to material which she is not entitled to under Section 172(3) of the Cr.P.C.; rather, the petitioner is actually seeking the supply of case diary, supervision notes, which cannot be supplied to an accused under Sections 207 and 208 of the Cr.P.C., on account of the embargo contained in section 172(3) of the Cr.P.C.;
- (v) that the petitioner had previously also filed successive applications under Section 207 Cr.P.C. before the CBI Court; ever since the filing of the first application (Annexure R-1), the petitioner had received all relevant material, documents, soft data and other items. Following the orders of Hon'ble the Supreme Court dated 26.02.2024, the petitioner was further furnished with all the 'relied upon' documents, as well as those provided to the family of the deceased, including a list of 'unrelied upon' documents on 07.03.2024. Still further, on 21.03.2024, the public prosecutor carried out a thorough comparison of all the documents to ensure that the petitioner had been provided with the 'relied upon' documents as is evident from a perusal of Annexure P-12;
- (vi) that proper and complete compliance of the orders of Hon'ble the Supreme Court dated 26.02.2024 had also been noticed by the Ld. CBI Court in its orders dated 22.03.2024 and 03.04.2024. Not only this, the Ld. defence counsel had acknowledged receipt of the articles and the documents that had been supplied to the petitioner. It is thus, evident that the petitioner is now in receipt of all the relevant documents and material, including those provided to the mother/family of the deceased, and the present petition has been filed by the petitioner as a deliberate attempt to delay proceedings before the trial Court

4. FINDINGS OF THE COURT:

5. I have heard learned counsel for the parties and perused the relevant material on record.

6. Section 207 of the Cr.P.C. stands as a cornerstone in safeguarding the constitutional right of an accused to a fair trial. It ensures that the accused is informed of, and supplied all material, 'relied upon', by the prosecution, so as to prevent any surprise introduction of crucial evidence during trial that could deprive him or her of an opportunity to mount an

effective defence. The failure to comply with the provisions of Section 207 Cr.P.C. would severely prejudice and be detrimental to the accused, potentially vitiating the entire trial. Recognizing its significance, Hon'ble the Supreme Court has time and again interpreted the provisions of Section 207 Cr.P.C. to uphold not only the statutory framework, but also the right of an accused to a fair trial.

7. Having said that, the applicability of the provisions of section 207 Cr.P.C. is limited to supplying the accused with documents and materials only 'relied upon' by the prosecution. In the case of '**In Re: To Issue Certain Guidelines Regarding Inadequacies And Deficiencies In Criminal Trials vs. The State Of Andhra Pradesh & Ors.**' 2021 (10) SCC 598, Hon'ble the Supreme Court did acknowledge situations where an accused could be caught unawares of other potentially exculpatory material in the possession of the prosecution. To address this, Hon'ble the Apex Court directed that along with furnishing statements, documents and other material objects under Sections 207 and 208 of the Cr.P.C., the Magistrate should also ensure that a list of seized but 'unrelied upon' materials be also provided to the accused, but, the accused could only seek those 'unrelied upon' documents under Section 91 of the Cr.P.C., and that too only at an appropriate stage, during the trial, however they cannot be furnished to the accused under Section 207 Cr.P.C. at this stage of the trial.

8. In the instant case, Hon'ble the Supreme Court, vide order dated 26.02.2024, ordered the CBI to supply all materials to the petitioner accused that had been supplied to the mother of the deceased.

9. Learned Spl. Public Prosecutor for the CBI, during the course of arguments before this Court has made an unequivocal and categorical statement that in compliance with the orders of Hon'ble the Supreme Court, the petitioner had already been furnished with all the materials 'relied upon' by the prosecution, along with a list of 'unrelied documents', and also all the documents which had been supplied to the family of the deceased. The said fact has also been noticed by the learned CBI Court in its order dated 21.03.2024 annexed as Annexure P-12. The learned Special Public Prosecutor for the CBI has further explicitly asserted and stated that the documents sought by the petitioner have not been 'relied upon' by the prosecution, nor have they been supplied to the family of the deceased. It has further been categorically asserted by the learned Spl. Public Prosecutor for the CBI that the entire seizure memo D5 had not been relied upon and had

rather been segregated into 'relied upon' documents and articles. The documents sought by the petitioner do not find mentioned even in the list of documents and articles 'relied upon' by the CBI in the charge sheet (Annexure 2) as well as the 'untrace report' (Annexure 3) filed by it, lending credence to the submissions made and undertaking given by the learned Spl. Public Prosecutor for the CBI that these documents have not been relied upon by the prosecution. Furthermore, a perusal of the Annexures P-7A to P-7D reveals that only materials/articles/documents 'relied upon' by the CBI in its 'untraced report' had been supplied to the mother of the deceased. Therefore, the apprehension and the contention of the learned senior counsel for the petitioner regarding the family of the deceased having access to the 'unrelied upon' documents including the ones being sought through the instant petition, cannot be accepted, in the absence of any supporting evidence or material, on record.

10. It is imperative to underscore that the prayer for unfettered right to inspect case diary entries based solely on an unsubstantiated apprehension that the family of the deceased/mother of the deceased, has been provided such access by the police or the Court is untenable and goes against settled ratio of law. Granting such broad access could potentially compromise public interest, especially when sensitive information like the identity of the informants is recorded in the case diary. Allowing unrestricted access to such information could endanger the safety of informants and also discourage cooperation with law enforcement agencies. Therefore, the restriction outlined in Sub Section (3) of Section 172 Cr.P.C. is essential to uphold the integrity of the legal processes and safeguard public interest. However, it is well settled law that, in case, some documents are relevant and may impact the case of an accused, even if not relied upon by the prosecution, recourse under Section 91 Cr.P.C. would remain available to her/him at the appropriate stage of the trial, which needless to emphasize has to be decided by a Court, in accordance with law.

11. Furthermore, with respect to the prayer made by the learned senior counsel for the petitioner for supply of case diaries/police file maintained by the Chandigarh Police during the initial stages of investigation, in the light of the statutory disentitlement provided in Section 172(3) of the Cr.P.C. the said prayer is untenable at the present stage. Although an accused may, under certain circumstances, have the right to peruse prior statements recorded in a police officer's diary under Section 145 or 161 of the Evidence Act, however, this right is hindered by the constraints imposed by Section 172(3) of the

Cr.P.C., and cannot thus be availed of, by the accused at this initial stage, under Section 207 of the Cr.P.C.

12. Consequently, this Court finds no merit in the present petition which is accordingly dismissed.

13. Nothing contained hereinabove, shall be construed to be an expression on the merits of the case.

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