

(2023) 01 BOM CK 0064

In the Bombay High Court

Case No : Criminal Writ Petition No. 1299 Of 2022

Amanulla And Others

APPELLANT

Vs

State Of Maharashtra And Others

RESPONDENT

Date of Decision : 16-01-2023

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 156(3), 242(3)
Indian Penal Code, 1860 — Section 34, 173, 173(2), 172(3), 172(4), 172(5), 172(6),
173(4), 173(8), 191, 209, 242, 417, 420, 465, 468, 469, 471

Citation : (2023) 01 BOM CK 0064

Hon'ble Judges : Kishore C. Sant, J

Bench : Single Bench

Advocate : P. R. Katneshwarkar, Amol G. Vasmatkar, D. S. Jape, G. R. Syed

Final Decision : Dismissed

Judgement

Kishore C. Sant, J

1. Rule. Rule made returnable forthwith. By the consent of the parties taken up for final hearing.

2. The present petition is filed by the original accused persons challenging an order passed under Section 242 sub section (3) of the Code of Criminal Procedure (for short "Cr.P.C.") by the learned C.J.M., Latur dated 02.07.2022. By way of impugned order, the learned Trial Judge has allowed the application filed by the prosecution seeking permission to produce on record the documents as per the list during the course of evidence.

3. The facts are that the informant is the owner of land Gat No. 57 admeasuring 80 R from village Borwati, Taluka and District Latur. She became owner of the land by purchasing the land in the year 1985. It is the allegation that the accused persons by forging the documents and by forging the signature of the informant created certain documents and on the basis of those documents have filed suit against her. On receiving a summons in the suit the respondent No. 2/

original complainant tried to lodge FIR against the present petitioners for the offences punishable under Sections 420, 468, 469, 471, 465, 417, 191, 209 r/w section 34 of the Indian Penal Code. The said complaint was however, not taken by the police. The respondent No. 2 therefore filed an application seeking direction to the police to investigate into an offence under Section 156 (3) of the Cr.P.C.

4. In the application it is stated that the informant was served with the summons in R.C.S. No. 196/2009 issued by the Civil Judge Senior Division. It was found that the suit was filed for specific performance. In the said suit it was found that a bogus agreement to sale is produced on which the signature of the informant is forged. The accused Nos. 2 to 4 have signed as witnesses to the document. On going through the application the learned J.M.F.C. issued direction to the police under Section 156 (3) of the Cr.P.C. and on the basis of which FIR came to be lodged and investigation started. After investigation, a charge-sheet also came to be filed. The trial later on came to be transferred to the Court of learned J.M.F.C., Latur.

5. During the course of trial at the stage of evidence, the prosecution filed an application below Exhibit 120 seeking permission from the Court to produce on record some important documents which were necessary for the purpose of trial. The documents are (i) opinion obtained from the handwriting expert, Vakalatnama and Copy of the civil suit, (ii) registered sale deed executed by the owner of the land in favour of the informant dated 08.03.1985 and (iii) copy of application sent by the informant to the police along with R.P.A.D. receipt. The application of the prosecution was opposed by the accused persons/present petitioners stating that till filing of the charge-sheet and framing of charges these documents were not produced by the prosecution. There is no provision in Cr.P.C. to produce the additional documents through witness at the time of recording of the evidence. The documents may be manipulated or tampered.

6. The learned Magistrate after hearing the parties was pleased to allow the application with the aid of section 242 of the Cr.P.C. It is observed that, the exercise of power under Section 242 of the Cr.P.C. is not regulated and controlled by the provisions of Section 173 (8) of the Cr.P.C. It is further observed that, the Magistrate is empowered to take all such evidence as may be produced in support of the prosecution. While deciding the application, the learned Trial Judge has considered various judgments delivered by High Court and the Hon'ble Supreme Court.

7. It is the submission of learned advocate for the petitioners that the Court does not have power to directly allow production of the documents during the course of evidence of witness. If at all, it was required to be produced in evidence, then it could have been produced only by invoking power under Section 173 (8) of the Cr.P.C. by directing further investigation. It is only the material that is collected during the course of evidence and is produced along with charge-sheet that can be relied upon by the prosecution. The material which is not provided to the

accused cannot be abruptly produced in the Court. Directly producing the documents in the Court takes the accused person by surprise and thereby a serious prejudice is caused to his right. It is further argued that, if the investigating officer wants to file further evidence, then he has to file evidence only referring to the provisions of sub sections (2) to (6) of Section 173 of the Cr.P.C. The documents in question are of the year 2010 which are sought to be produced after ten (10) years. No reason is assigned for not producing the documents earlier and at the time of filing of the charge-sheet. There is nothing on record to show that the prosecution has got the possession of the documents now. It is submitted that the copy of handwriting expert is obtained through one Mr. Pande, an advocate, however his statement is not recorded. Without giving details as to from whom the documents are taken, such documents could not have been produced in the evidence.

8. Learned advocate for respondent No. 2 submitted that the Court has rightly passed an order. There is no illegality committed by the learned J.M.F.C. It is submitted that the photocopies of these documents were very much there on record. During the course of evidence only the originals are produced by the prosecution and thereby no prejudice is caused to the accused as the accused are well aware of the documents and the contents. So, it cannot be said that, the documents are directly produced in the evidence.

9. Learned A.P.P. submits that the petition is premature. At this stage, the documents are only allowed to be produced on record. It is open for the accused or the defense to cross-examine witness on these documents.

10. In rebuttal, learned advocate for the petitioner submits that in view of Section 173 (4) of the Cr. P.C., this exercise is not permissible.

11. Learned advocate for the petitioners relies upon the judgment of the Hon'ble Apex Court delivered in the case of Central Bureau of Investigation Vs. R. S. Pai and another reported in (2002) 5 SCC 82. In the said judgment, in concluding paragraph No. 7, the Hon'ble Apex Court has held that, normally the investigating officer is required to produce all the relevant documents at the time of submitting the charge-sheet. At the same time, there is no specific prohibition that the additional documents cannot be produced subsequently. If some mistake is committed in not producing the relevant documents at the time of submitting the report or the charge-sheet, it is always open to the investigating officer to produce the same with the permission of the Court. Further, it is also observed that, as per the scheme of sub section

(8) of section 173 of the Cr.P.C., it is abundantly clear that, further investigation, if called for, is not precluded. If further investigation is not precluded then there is no question of not permitting the prosecution to produce additional documents which were gathered prior to or subsequent to the investigation. This case is of no use to the petitioners.

12. Learned advocate for the petitioners also relies upon the judgment of the

Hon'ble Apex Court in a case of Amrutbhai Shambhubhai Patel Vs. Sumanbhai Kantibhai Patel and Ors. reported in MANU/SC/0104/2017 wherein, the powers of Magistrate under Section 173 sub section 8 of the Code are discussed. It is held that the submission of the report under Section 173 of the Cr.P.C. is normally an end of investigation, however, after submitting the report if some evidence comes bearing on the guilt or innocence of the accused, the same can be collected and used.

13. Learned advocate for respondent No. 2 relies upon the judgment of this Court in the case of Mangesh Shyamrao Gulhane Vs. State of Maharashtra reported in AIR Online 2021 Bom 4083 wherein, this High Court, Bench at Nagpur has considered Section 173 (8) and Section 242 of the Cr.P.C. In the said case, the Court has considered the judgment delivered by the High Court of Karnataka in a case of B. L. Udaykumar and Ors. Vs. State of Karnataka reported in 2018 CRI. L. J. 3925 (Kar). In that case also the photocopies of the documents were already on record and the prosecution sought to produce were the originals of the same. It is concluded that, no prejudice to the accused will be caused if the prosecution is permitted to place on record the documents throwing light on the medical condition. In this case also, it is submitted that, the prosecution is only producing the evidence of which the photocopies are already there on record.

14. Considering the judgments cited by the parties, this Court holds that, no prejudice is caused to the petitioners/accused even if the documents are produced on record. This Court finds that there is no merit in the petition and the same is therefore dismissed.

15. Rule is discharged.