

(2019) 03 MP CK 0160

In the Madhya Pradesh High Court

Case No : Criminal Revision No. 3695, 3696 Of 2018

Central Bureau Of Investigation

APPELLANT

Vs

Chandra Kant Mishra Abnd Ors

RESPONDENT

Date of Decision : 06-03-2019

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 161, 207, 207A(3), 397, 401
Evidence Act, 1872 — 65B
Indian Penal Code, 1860 — Section 120B, 420, 467, 468, 471
Prevention Of Corruption Act, 1988 — Section 13(1)(d), 13(2)
Madhya Pradesh Recognized Examinations Act, 1937 — Section 3(d)(i), 3(d)(ii), 4
Information Technology Act, 2000 — Section 66
Copyright Act, 1957 — Section 14(b)(ii), 63, 63B

Citation : (2019) 03 MP CK 0160

Hon'ble Judges : S.K. Seth, CJ;Vijay Kumar Shukla, J

Bench : Division Bench

Advocate : J.K. Jain, Qasim Ali

Final Decision : Allowed

Judgement

Vijay Kumar Shukla, J

1. Since common question of facts and law are involved in both the cases, therefore, they were heard analogously and are being disposed of by a common order.

2. For the sake of clarity and convenience the facts adumbrated in Cr.R. No.3695/2018 are referred. The present revision is filed under Section 397/401 of the Code of Criminal Procedure [hereinafter referred to as the 'CrPC'] challenging the order dated 7-5-2018 passed by the learned IX Additional Sessions Judge/Special Judge, CBI (Vyapam Cases), Bhopal in S.T. No.704/2014 arising out of Crime No.20/2013 instituted at the Police Station, Special Task Force (STF), Bhopal - CBI Case No.RC2172015A0016, whereby the learned trial Judge has directed the applicant to furnish mirror images of Hard Disk Drive (HDD) - C-1 & G-1 to the accused/non-applicant.

3. The Apex Court vide order dated 9-7-2015 in the matter of W.P. (Civil) No.372/2015 along with various petitions - W.P. (Civil) No.417/2015 [Digvijay Singh vs. State of M.P. and Ors.] transferred the investigation of criminal cases related to VYAPAM scam from S.T.F., Bhopal to C.B.I. Pursuant to the said order passed by the Apex Court, the cases were re-registered by the CBI and further investigations were carried out. During course of investigation in RRC217015A0108 (STF Crime No.539/2013) by the CBI the forensic images of the HDDs C-1 & G-1 were obtained by the CBI from the trial Court with the help of forensic experts from the CFSL, Hyderabad. Thereafter, the aforesaid HDDs and their forensic images were forwarded to the CFSL, Hyderabad for forensic analysis.

4. The data relied upon by the prosecution in the instant case - RC2172015A0016 was obtained from the CFSL, Hyderabad in the form of a compact disk along with the expert analysis report thereon which is based on the data retrieved from the HDDs sent for forensic examination in the CBI Case No.RC2172015A0108 and the said data is duly authenticated by the Hash Value and the certificate under Section 65-B of the Indian Evidence Act.

5. The present case is an offshoot of the examination of the Hard Disk Drive (HDD) seized from the office of Nitin Mohindra in Crime No.539/2013, dated 7-7-2013 of the Police Station, Rejendra Nagar, Indore. The Hard Disk Drive seized on 26-7-2013 from the office chamber of Nitin Mohindra, the then Principal Sysem Analyst, VYAPAM was examined by FSL, Gandhi Nagar and thereafter their report, DFA-EE-2013-CF-327 Part Report-I, dated 25-10-2013 and the retrieve data in a CD was provided by FSL, Gandhi Nagar. In the said CD, two files viz. GRADE_2_3_ROLLNOS.xls and GRADE_2_3_ROLLNOS.xlsx under folder Annexure-B-1/RAR, Files/RAR Files Report_files\0004-000.rar were found to contain details, such as, serial number, roll numbers, names, remarks, names of the mediators etc., in respect of S-2, S-3 and AG-3 examinations conducted by VYAPAM. These excel files were containing multiple excel sheets. In one of the excel sheets, there were names of 40 candidates with Roll numbers in respect of Samvida Shala Shikshak Partata Pareeksha Var-2 (Contractual School Teacher's Eligibility Test Grade-II). On verification from VYAPAM, Special Task Force (STF) ascertained that there were discrepancies in the marks of 36 candidates mentioned in the excel sheet.

6. After completion of further investigation in Case No.RC2172015A0016 by the CBI, a final charge-sheet was filed on 8-02-2018 before the Trial Court against the accused/non-applicant and other co-accused persons under sections 120-B r/w 420, 467, 468 and 471 of the Indian Penal Code [for short 'the IPC']; under section 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988; section 66 of the I.T. Act; and under Section 4 r/w 3(d)(i)(ii) of the M.P. Recognized Examination Act.

7. The compact disk so received from the CFSL, Hyderabad along with certificate under section 65-B of the Indian Evidence Act is a relied upon document in this

case and as such it was duly submitted to the learned Trial Judge along with charge-sheet and a copy whereof is duly supplied to all the accused persons together with other relied upon evidence in compliance of Section 207 of the CrPC, vide Annexure-A and Annexure-B.

8. It is put forth that vide impugned order dated 7-5-2018 the trial Court on oral submission of the defence counsel of the non-applicant, was pleased to direct the CBI to supply to the accused/non-applicant, the mirror images of the HDDs C-1 & G-1.

9. Counsel for the applicant assiduously urged that since HDDs in question not having been seized in this case and investigating officer is not the custodian thereof, and further the statements recorded under Section 161 of the CrPC and all the relied documentary evidence along with charge-sheet have been duly supplied to the accused persons in compliance of Section 207 of the CrPC. It is further submitted that the trial Court failed to appreciate that the HDDs in question were neither seized nor relied upon in this case and it also did not appreciate the fact that electronic/digital documents/record in the present case are in CD form and copies of which along with certificate under Section 65-B of the Indian Evidence Act, have already been supplied to the non-applicants.

10. Per contra, learned counsel for the non-applicants supported the order of the trial Court directing to furnish mirror images of the HDDs C-1 & G-1 to the non-applicants. To substantiate his argument he placed reliance on the judgement of the Apex Court rendered in Tarun Tyagi vs. Central Bureau of Investigation, (2017) 4 SCC 490. He also produced a zerox of the judgment of the Delhi High Court passed in the case of Dharambir vs. Central Bureau of Investigation, 148(2008) DLT 289.

Besides, learned counsel for the non-applicants raised a preliminary objection regarding maintainability of the criminal revision against the impugned order directing supply of the documents on the ground that the said order is interlocutory in nature and, therefore, the revision is not maintainable.

11. We have heard the learned counsel appearing for the parties and bestowed our anxious consideration on the arguments advanced.

12. Before advertng to the validity of the impugned order, we think it apposite to consider first the preliminary objection of the non-applicant regarding maintainability of the present revision-petition. Learned counsel for the petitioner asseverated that the impugned order is interlocutory in nature and not a final order, therefore, the revision petition under Section 397 of the CrPC is not maintainable.

13. Upon perusal of the impugned order we find that the Trial Court has directed the investigating agency to furnish mirror images of HDDs C-1 & G-1 to the accused/non-applicant. Though the order is an interlocutory order, but regard being had to the tenor, effect and impact of the order, we find that the order

impugned is the semblance of final order.

14. In a recent judgment passed by the Apex Court in *Asian Resurfacing of Road Agency Pvt. Ltd. and anr. Vs. Central Bureau of Investigation*, AIR 2018 SC 2039 considered the scope of interference against an order framing charge under revisional or inherent jurisdiction and held that the order framing charge is neither purely interlocutory nor a final order. Jurisdiction of the High Court exercising either revisional or inherent power cannot be barred.

15. In view of the aforesaid, we do not perceive any merit in the preliminary objection raised by the learned counsel for the non-applicants as regards maintainability of the instant revision petition.

16. On 02-01-2019 this Court directed the counsel for the applicant to file an affidavit of the Investigating Officer regarding supply of relevant portion of the Hard Disk C-1 & G-1 to the accused persons under certificate. In compliance to the order dated 02-01-2019, the applicant filed report along with list of documents supplied to the accused persons including report of the C.F.S.L., Hyderabad, dated 23-12-2016; soft copies of the files and other ancillary documents (Annexures).

17. It is candidly put forth by the learned counsel for the applicant that the relevant portion of the HDDs C-1 & G-1 have already been supplied to the accused persons under certificate. He also filed list of documents supplied to the accused persons including the report of the CFSL, Hyderabad and soft copies of the files and other ancillary documents. It is contended that the provision of Section 207 of the CrPC has been complied with in letter and spirit. The question which has cropped up for consideration is whether the applicant/CBI has complied with the provision engrafted in Section 207 of the CrPC in *stricto sensu* or not.

18. The object of the section is to enable the accused to obtain a clear picture of the case which he has to meet and secondly to expedite disposal of the case. Similar provisions like Section 207 CrPC were incorporated in Section 207A(3) in the Criminal Procedure Code, 1898 by amendment in 1958. The Apex Court in the case of *Noor Khan vs. State of Rajasthan*, AIR 1964 SC 286 considered the similar provision of Section 207A(3) of the Criminal Procedure Code, 1898 and held that the said provision has been brought by way of an amendment to enable the accused to obtain a clear picture of the case against him before commencement of the enquiry. The section imposes an obligation upon the investigating officer to supply before the commencement of the inquiry copies of the statements of the witnesses who are intended to be examined at the trial so that the accused may utilise those statements for cross-examining the witnesses to establish such defence as he desires to put up and also to seek their testimony. It was further ruled that the object of the provision is manifestly to give the accused the fullest information in the possession of the prosecution, on which the case of the State is based, and the statements made against him. But

failure to furnish statements of witnesses recorded in the course of investigation may not vitiate the trial. The provision relating to the making of copies of statements recorded in the course of investigation is undoubtedly of great importance, but the breach thereof must be considered in the light of the prejudice caused to the accused by reason of its breach. The Supreme Court referred a previous judgment rendered in the case of Narayan Rao vs. State of Andhra Pradesh, AIR 1957 SC 737. In the said case the Apex Court considered the object of the provision of Section 207A(3) of the Criminal Procedure Code and ruled that non-compliance of the provision itself would not vitiate the entire proceedings, unless prejudice to the accused has been demonstrated.

19. In the case of Tarun Tyagi (*supra*) investigation started on the basis of complaint lodged by one Mr. Alok Gupta who was the complainant and the FIR was registered by the CBI. The allegation was that the appellant had stolen the 'source code' of a software known as 'Quick Recovery' developed by the complainant's company and thereafter put it for sale on the website of the appellant company. Case was registered under Section 66 of the Information Technology Act, 2000 and sections 63 and 63B read with section 14(b)(ii) of the Copyright Act, 1957. The CBI took up the investigation and seized certain documents and material from the office/residential premises of the appellant after conducting search and seizure on August 03, 2007. The appellant moved, some time in January 2008, an application seeking release of the seized property. This application was rejected by the Court of Chief Metropolitan Magistrate, Patiala House Courts, New Delhi on March 03, 2008. The High Court of Delhi set aside this order in Criminal Misc. Case No.1518 of 2008, which was preferred by the appellant against the order of the trial Court rejecting this application. The order of the High Court is dated May 18, 2009. By this order, the High Court restored the application for release with direction to the concerned Magistrate to deal with the application afresh. In this factual backdrop the Apex Court had directed to supply the Hard Disk Drive with certain conditions.

20. In the present case, the applicant has already supplied relevant portion of the HDDs C-1 & G-1 to the accused/non-applicants. They have also supplied list of documents along with CFSL report, soft copies of the files and other ancillary documents. Learned counsel appearing for the non-applicants could not demonstrate before this Court as to how the mirror images of HDDs C-1 & G-1 would be relevant in his case. Besides, relevant materials, as stated by the investigating agency, have already been supplied to the accused persons qua non-applicants. The learned trial Court has erred while directing the applicant to furnish mirror images of HDDs C-1 & G-1. Thus, analysing the factual score of the present case, we find that the judgments relied upon by the non-applicants would not render any assistance to them.

21. Resultantly, both the revision petitions are allowed. The impugned order is set aside.