

(2015) 03 GUJ CK 0080

In the Gujarat High Court

Case No : Criminal Revision Application No. 63 of 2015

Chandra Shekhar Das

APPELLANT

Vs

Central Bureau of Investigation and Others

RESPONDENT

Date of Decision : 27-03-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 173(5), 207
Evidence Act, 1872 — Section 3
Prevention of Corruption Act, 1988 — Section 13(1)(d), 13(2), 7

Citation : (2015) 2 GLR 1610 : (2015) 4 RCR(Criminal) 487

Hon'ble Judges : N.V. Anjaria, J

Bench : Single Bench

Advocate : Rajesh M. Agrawal, for the Appellant; R.C. Kodekar, Advocates for the Respondent

Final Decision : Dismissed

Judgement

N.V. Anjaria, J—The challenge in this Revision Application is directed against order dated 20th January, 2014, passed by learned Special Judge, C.B.I. Court No. 3, Mirzapur, Ahmedabad, whereby learned Judge rejected application Exh. 56 of the applicant for supply of copies of the documents being audio cassettes. The accused is charged with offences under Sec. 7 read with Sec. 13(2) and Sec. 13(1)(d) of the Prevention of Corruption Act, 1988. It appears that the allegation against the accused in connection with the commission of the said offences are inter alia that on 14th July, 2005 he demanded illegal gratification of Rs. 15,000/- from the complainant and accepted the said amount on 18th July, 2005 at a place in New Delhi which was for registration of complainant's Trust namely Andhjan Shikshan Mandal with another Trust at New Delhi. Against the applicant-accused Special Case No. 27 of 2005 was registered and is pending.

2. In the proceedings of aforesaid Criminal Case, applicant-accused applied for supply of copies of audio cassettes which recorded conversation between the accused and the complainant in course of commission of the offence of

demanding bribe. The documents namely cassettes supply of which was requested by the applicant-accused were the documents mentioned at serial Nos. 4, 5 and 6 of Exh. 25, Exh. 25 being photocopies of the documents and articles submitted before the Court by the prosecution on 14th February, 2012. The said items Nos. 4, 5 and 6 described as (i) one audio cassette of the make Sony-60 marked as A-1 containing conversation between complainants Shri Jetendra Dalia and Shri Chandra Shekhar on 14th July, 2005 marked as C.F.S.L.-2005/P-0653 (M.S. No. 248/05, Item No. 1), (ii) one audio cassette of the make Sony-60 marked as C-1 containing conversation between complainant Shri Jetendra Dalia and Shri Chandra Sekhar on 18th July, 2005 marked as C.F.S.L.-2005/P-0653 (M.S. No. 257 of 2005, Item No. 1), and (iii) one micro-audio cassette of the make sony-micro cassette M.C.-60 marked as specimen voice-1 containing specimen voice of Shri Chandra Shekhar marked as C.F.S.L.-2005/P-0653 (M.S. No. 267 of 2005, Item No. 1).

2.1. In the charge-sheet filed against the accused on 27th December, 2005. The charge-sheet contained the relevant part of the transcript of the conversation recorded in the said audio cassettes. The same was already supplied to the accused along with the other police papers and documents with the charge-sheet. The applicant-accused wanted the copies of very audio cassettes, even as the applicant was supplied the very audio cassettes.

2.2. It may be stated at this stage that the Court in course of the hearing requested learned Advocate for C.B.I. to produce the copies of relevant papers including the charge-sheet, relevant applications and the orders passed thereon by the Court. The copies of compilation of charge-sheet, other relevant papers of panchnama, etc., as well as the copies of applications and the orders passed thereon were made available for perusal of the Court.

2.3. The facts of the proceedings may be noted with relevance. The charge-sheet came to be filed by the Investigating Agency on 28th September, 2005, and the charge has been framed by the Court against the accused on 10th December, 2009. The charge was framed against the applicant-accused on 10m December, 2009 at Exh. 13 Thereafter, recording of evidence of P.W. 1 (Exh. 29) commenced and the same was recorded on 30th July, 2012.

2.4. The events thereafter of filing of various applications are relevant. On 3rd October, 2012, the applicant-accused filed an application (Exh. 38) praying to direct the prosecution to supply the copies of the audio cassettes contending that the prosecution had not supplied the copy of the alleged conversation which took place between the complainant and the accused and it was further contended that when the prosecution had been relying on the same, the audio cassettes which recorded the conversation ought to have been supplied under Sec. 207 read with Sec. 173(5) of the Code of Criminal Procedure, 1973.

3. Learned Advocate Mr. R.M. Agrawal submitted that the applicant-accused is entitled to get the exact copies of the cassettes since they were relied on by the

prosecution. It was submitted that application made under Sec. 207 and Sec. 173(5), Cr.P.C. ought to have been granted by the learned Judge. It was submitted that the accused is entitled to all the police papers and the material relied on by the prosecution forming part of charge-sheet. It was submitted that this right of the accused is part of fair-trial and in the facts of the case, the fair-trial principle stands violated. Learned Advocate further submitted that the cassettes copies of which were demanded by the applicant-accused, they were got converted into Compact Disc form (CD.) by the Forensic Science Laboratory, however it was the submission of learned Advocate for the applicant that it was possible that tampering might have been taken place in the process; what the learned Advocate harped on was that the accused ought to have been supplied the audio cassettes only and not the Compact Disc obtained from the cassettes. Learned Advocate further raised apprehension that it was not sure whether the voice test of the accused was undertaken or not, and therefore, also the prosecution ought to have supplied the audio cassettes. It was submitted that non-supply of audio cassettes was vitiating aspect and against the norms of fair-trial.

3.1. Learned Advocate for the applicant also relied on the definition of document in Sec. 3 of the Evidence Act, 1972 and submitted that it includes audio cassettes as well. He relied on decision of the Supreme Court in *Tukaram S. Dighole Vs. Manikrao Shivaji Kokate*, AIR 2010 SC 965 : (2010) 1 JT 631 : (2010) 2 SCALE 109 : (2010) 4 SCC 329 : (2010) 3 SCR 396 : (2010) 2 UJ 900 , in particular Paragraph 20 thereof in which it was observed that the tape records of the speeches are "documents" as defined under Sec. 3 of the Evidence Act, on no different footing. There is no dispute that the audio cassettes fall within the purview of the document under the Evidence Act and could be dealt with like any other document to be used in trial and to be subjected to proof.

3.2. Learned Advocate for the applicant relied on the following decisions in support of his submissions: (i) *Yusufalli Esmail Nagree Vs. The State of Maharashtra*, AIR 1968 SC 147 : (1968) CriLJ 103 : (1967) 3 SCR 720 ; (ii) *Ram Singh and Others Vs. Ram Singh*, AIR 1986 SC 3 : (1985) 2 SCALE 1142 : (1985) SCC 611 Supp : (1985) 2 SCR 399 Supp ; (iii) *State of Gujarat v. Kalidas Nanjibhai Parmar*, 1980 GLR 533 ; (iv) *Manjeet Singh Khera Vs. State of Maharashtra*, (2013) 6 ABR 521 : (2013) 9 AD 210 : (2013) CriLJ 4884 : (2013) 4 JCC 2773 : (2013) 11 JT 465 : (2013) 4 RCR(Criminal) 496 : (2013) 10 SCALE 525 : (2013) 9 SCC 276 ; (v) *Joginder Kaur Vs. Surjit Singh*, AIR 1985 P&H 128 ; (vi) *K.S. Mohan Vs. Sandhya Mohan*, AIR 1993 Mad 59 ; (vii) *Tukaram S. Dighole Vs. Manikrao Shivaji Kokate*, AIR 2010 SC 965 : (2010) 1 JT 631 : (2010) 2 SCALE 109 : (2010) 4 SCC 329 : (2010) 3 SCR 396 : (2010) 2 UJ 900 and (viii) *Jahid Shaikh and Others Vs. State of Gujarat and Another*, (2011) 7 JT 220 : (2011) 3 RCR(Criminal) 608 : (2011) 7 SCALE 327 : (2011) 7 SCC 762 : (2011) 10 SCR 1 . He next relied on decision of the Supreme Court in *Natasha Sing v. C.B.I. (State)*, 2013 SAR (Cri.) 629 more particularly Paragraph 15 thereof to emphasise that fair-trial is the main object of the criminal procedure,

and it is the duty of the Court to ensure that such fairness is not hampered or threatened in any manner and interest of the accused which include granting to him fair and proper opportunities as to be protected which is his constitutional and human rights.

3.3. Learned Advocate Mr. R.C. Kodekar for the Central Bureau of Investigation on the other hand supported the order. He submitted that the stage in the trial had have reached when the evidence of prosecution witness started at which juncture the application came to be made by the accused for supply of the documents-cassettes. He submitted that the articles cassettes, copies of which were claimed were then lying deposited with the Court as muddamal articles submitted with list (Exh. 25). The relevant part of the transcript of the conversation from the cassettes, which form the part of the charge-sheet which were already given to applicant along with all the papers accompanying the charge-sheet. He submitted that it was after long time thereafter that the application (Exh. 56) was made. He submitted that no complaint was made during the period until the evidence of the prosecution commenced. It was submitted that the application (Exh. 56) was an afterthought, and that too, it was after the applicant was supplied the Compact Disc which was duly obtained from the cassettes. Learned Advocate submitted that the request was not liable to be granted and the application made by the applicant appeared to be for whiling away time and was made for sake of it. He submitted that all the papers including the copies of cassettes were supplied to the applicant-accused.

4. The Court in course of the hearing, by passing an order required learned Advocate for the Central Bureau of Investigation to call for and make available the relevant papers of charge-sheet and the applications filed in the course of the proceedings. Thereupon, copy of entire charge-sheet with its all accompaniments, as well as the copies of applications being Exhs. 24, 25, 38, 41, 49, 56 and the relevant orders passed thereon were made available to the Court for perusal.

4.1. Proceeding to examine the case of the applicant that he was denied the right to supply the documents in question and further that thereby the norms of fairness in criminal trial against him were violated, the entire edifice of the case so put forth crumbles once the facts are noticed. It could be seen that Exh. 56 application was in a way application in repeat. After the evidence of prosecution witness (Exh. 29) started and was recorded on 30th July, 2012, the accused filed an application on 3rd October, 2012 being Exh. 38 submitting inter alia that the prosecution had not supplied copy of the alleged conversation which took place between the complainant and the accused which was in audio cassettes produced by the prosecution marked as A/1, C/1 and Micro-Sony MC 60 and they being documents, were required to be supplied under Sec. 207 read with Sec. 173(5) of the Code. A direction was therefore sought against the prosecution to supply the copies of said audio cassettes. It appears that C.B.I., in view of said request by the accused, submitted a purshis/request application (Exh. 41) on 22nd

January, 2013 before the Court seeking permission to get those audio cassettes copied through Forensic Science Laboratory. The Court passed order which reads as under: "The Nazir is directed to return an article No. 4 audio cassette A/1, article No. 5 (C/1) and article No. 6 (Micro-Sony MC 60) to the C.B.I. personnel for making copies from the F.S.L., Gandhinagar." The audio cassettes were received in the sealed condition and accordingly the same were in the custody of Nazir which were returned as above in the sealed condition.

4.2. The fact that the audio cassettes when received by the Court were in sealed condition was fortified from the relevant papers made available as above. The cassettes were got converted into Compact Disc form from the Forensic Science Laboratory and were re-deposited with the Court as per Exh. 49 application on 2-8-2103. The report of the Nazir recorded in the writing indicated that the same was received in sealed cover. The copies of audio cassettes were got converted into Compact Disc and the said copies in C.D. form were then made available to the applicant-accused which were accepted as per endorsement made dated 2nd August, 2013 on Exh. 49.

4.3. Having received on 2nd August, 2013, on behalf of the applicant, application Exh. 56 was made on 14th October, 2013 repeating prayer of the previous application (Exh. 38) which was satisfied as above, asking the copies of the said muddamal articles-cassettes at Serial Nos. 4, 5 and 6. It could not be said that the total document being the contents of the audio cassettes were not supplied to the accused. The accused was given the transcript with the charge-sheet and thereafter as above was made available the entire contents of audio cassettes in the above acceptable form. It is difficult to see as to how any right of the applicant was violated by not receiving the documents and the relevant part thereof.

5. Learned Advocate for the applicant proceeded further in course of his submissions that the cassettes might have been tampered with and therefore not the CDs., but the cassettes themselves ought to have been supplied which would defeat the right of the accused to be treated fairly. This submission is wholly unfounded and totally misconceived. It could be further seen that on 13th September, 2005, the Central Bureau of Investigation addressed letter to the Director, Central Forensic Science Laboratory submitting a questionnaire and the sealed audio cassettes being the above-mentioned articles, as also the transcription memo dated 14th July, 2005 and 31st August, 2005 containing 13 and 3 sheets respectively of the recordings contained in the cassettes. The F.S.L. was requested that the voice may be considered and the opinion may be sent. The same was sealed and brass-seal impression used for sealing was also enclosed. The very article Nos. 4, 5 and 6 were thus sent to F.S.L. along with the questionnaire and they were in sealed condition.

5.1. When the documents-article Nos. 4, 5 and 6 and the list of muddamal at Exh. 25 were received to be deposited with the Court in sealed condition. The report of the Nazir in writing dated 14th February, 2012 clearly states that the

relevant articles including Serial Nos. 4, 5 and 6 were in sealed conditions. The sealed articles were sent to F.S.L. and when they received back from the F.S.L. to be re-deposited, they were also in the sealed condition as reflected in the Nazir report dated 2nd August, 2013 aforementioned. The factual narration of the seals applied could also be seen from the letters and the panchnama in that regard forming part of the papers made available.

5.2. Another submission made by learned Advocate for the applicant, which was also misconceived on facts, was that the specimen voice test of the applicant-accused was not taken. The documents submitted along with the charge-sheet by the prosecution as per Exh. 24, mentioned at Serial No. 12 about panchnama dated 22nd July, 2005 in respect of taking of specimen voice of the accused. The said panchnama, seen from the papers made available, recorded inter alia that fresh sealed micro-audio cassettes were arranged, they were opened and tested on both sides and found to be blank. The voice of both the witnesses was recorded and the accused identified himself and read out the text provided to him. Similarly voices of witnesses were also recorded. Thus the specimen voice was taken by the Investigating Agency.

5.3. From the above, it was clearly shown that the audio cassettes in their entire contents obtained in Compact Disc form through Forensic Science Laboratory were made available to the accused. The relevant part of the transcript thereof was part of the police papers with the charge-sheet and the said transcript was already supplied to the accused along with the charge-sheet papers. Thereafter, as above, the entire of them was made available. The sending of audio cassettes for conversion into Compact Disc form was eminently justified inasmuch as in the CD. form the document could be preserved and the trial may take time and that the possibility of erosion or damage to the cassettes and the voice content therein. The Court does not see any irregularity in this procedure, rather the same was quite justified for the purpose of preservation and to rule out the damage and dilution of the document-the cassettes. The case and plea of the applicant on the aforesaid counts have to be rejected.

6. Learned Judge, C.B.I. Court properly recorded and concluded thus in the impugned order, reproduced in part here in below:

"In the instant case from the record of the case, it is clear that along with the copy of the charge-sheet given to the accused on 27-12-2005, a copy of the transcription memo has already been provided, and thereafter, the muddamal articles Nos. 4, 5 and 6 have been produced in a sealed condition by the prosecution before the Court. That the article Nos. 4, 5 and 6 are the audio cassettes and after recording have been sealed in the presence of witnesses and sent to Director, C.F.S.L., New Delhi for opinion on the conversation between the complainant and the accused during the trap proceedings, and thereafter, have been received from C.F.S.L., New Delhi in a sealed condition and produced before the Court. Thereafter, the sealed article Nos. 4, 5 and 6 have been handed over to the C.B.I. personnel and the same have been sent to the D.F.S., Gandhinagar

in a sealed condition for making copies of the audio cassettes, and thereafter, have been returned in a sealed condition to this Court. That copies of the audio cassettes could not have been made by the Investigating Officer as they have been immediately sealed and sent to C.F.S.L., New Delhi, and hence, were not provided for along with the copies of the charge-sheet and only pursuant to the order passed by my predecessor on Exh. 38, the copies of article Nos. 4, 5 and 6 have been made by D.F.S., Gandhinagar. That the accused has been provided with a sealed copy of the same sealed by D.F.S., Gandhinagar and it does not appear that there is any irregularity or that any prejudice has been caused to the accused. That the accused, after being handed over the copies of the charge-sheet on 27-12-2005, has not demanded any copy of the muddamal articles Nos. 4, 5 and 6 till 3-10-2012 and after being provided with a copy sealed by D.F.S., Gandhinagar, has preferred this appellant at Exh. 56."

7. Adverting to the decisions cited by the learned Advocate for the appellant, in Yusufalli Esmail Nagree Vs. The State of Maharashtra, AIR 1968 SC 147 : (1968) CriLJ 103 : (1967) 3 SCR 720 the Supreme Court stated that if statement is relevant and accurate tape record of the statement is also relevant and admissible and that the time place and accuracy of the recording must be proved by leading evidence. In other words, the document cassette and the recoded statement will be/would be subjected to proof in respect of its accuracy, etc. In Jahid Shaikh and Others Vs. State of Gujarat and Another, (2011) 7 JT 220 : (2011) 3 RCR(Criminal) 608 : (2011) 7 SCALE 327 : (2011) 7 SCC 762 : (2011) 10 SCR 1 , the Supreme Court highlighted the need for fair-trial and stated that the supplying of documents under Sec. 207 is not a formality. In Manjeet Singh Khara Vs. State of Maharashtra, (2013) 6 ABR 521 : (2013) 9 AD 210 : (2013) CriLJ 4884 : (2013) 4 JCC 2773 : (2013) 11 JT 465 : (2013) 4 RCR(Criminal) 496 : (2013) 10 SCALE 525 : (2013) 9 SCC 276 the Supreme Court held that the prosecution had relied on the material which was collected during the investigation and it was not that some materials/documents were collected by the investigating agency which were suppressed by the prosecution. The Court held that non-supply of the complaint of contents thereof did not violate the principle of fair-trial and did not prejudice the petitioner. In Kalidas Nanjibhai Parmar, [1980 GLR 533] this Court highlighted the same principle of fair-trial stating about the duty of the prosecution. The decision of Punjab & Haryana High Court in Joginder Kaur Vs. Surjit Singh, AIR 1985 P&H 128 was with regard to the tape recorded version which was not proved by leading evidence. The Madras High Court decision in K.S. Mohan Vs. Sandhya Mohan, AIR 1993 Mad 59 was dealt with the aspect of admissibility of tape recorded statement. The accuracy of recorded statement was proved in course of evidence and the tape recorded statement was held admissible.

7.1. Therefore the judgments relied on by the learned Advocate for the applicant stand true on their own facts, and at the same time evince a principle that the tape recorded version of the statements would be subjected to leading of evidence in respect of aspects of its accuracy, the other facts in issue arising

there from and will have to be proved in course of the trial.

8. The submission of learned Advocate for C.B.I. that the application and the request was an afterthought and was belated, could not be brushed aside. As the dates noted above, the charge-sheet was filed by the prosecution on 28th September, 2005, the accused appeared before the Court on 27th December, 2005 and the entire copy of charge-sheet along with the copy of transcription of audio cassettes were given to him. The charge was framed on 10th December, 2009, the evidence of the prosecution commence and witness (Exh. 29) was examined on 30th July, 2012; it is where after that on 3rd October, 2012, the applicant accused filed application (Exh. 38) asking for the copies of the cassettes being muddamal article Nos. 4, 5 and 6. The events and orders in the proceedings thereafter have been noted hereinabove. Therefore, from the date of receipt of charge-sheet papers till the stage of prosecution, evidence reached, the applicant was silent. Application (Exh. 38) was made in course of the recording of prosecution witness. Application (Exh. 56) was filed even though, the converted form of Compact Disc having the contents of the cassettes obtained through F.S.L. were already made available to the accused and accepted by him.

9. In the facts of the case, the right of the accused to get the documents under Sec. 207 is in no way violated. The accused is treated with fairness in the matter of supply of the documents. The entire charge-sheet papers which accompanied the transcript being the relevant extract from the contents recorded in the cassettes were supplied. The whole recorded content was also supplied in form of Compact Disc obtaining it from the cassettes. The cassettes were received by the Court, sent to F.S.L. and obtained back along with converted Compact Discs, were all in sealed condition and thus was a tamper-proof procedure. The norms of fair-trial have been negated in no way. The contention that the non-supply of original audio cassettes violated the accused right to fair-trial was in no way tenable or acceptable.

9.1. The ultimate test for assessing the right of the accused to get documents under Sec. 207, Cr.P.C. is the fair treatment to him and observing the norms of fair-trial. The test is of prejudice. If the accused is prejudiced by non-supply of any of the documents forming part of the charge-sheet called police papers sought to be relied on by the prosecution, the norm of fairness would be violated. The vitiation of trial is to be assessed from the total picture. In the present case, there is no prejudice at all to the accused, on the contrary, having been already supplied the relevant transcript from the audio cassettes with the charge-sheet, subsequently the accused is supplied the entire contents of the audio cassettes as above. The contention coming out about prejudice being caused to the applicant is stated to be rejected.

For the forgoing reasons and discussion, the impugned order is eminently proper and legal. No interference is required. Consequently, the present Revision Application is dismissed.