

(1984) 06 DEL CK 0005

In the Delhi High Court

Case No : Criminal Misc. (Main) No. 193 of 1984 (Against order of S.L. Khanna, Addl. Chief Metropolitan Magistrate, D/- 13-12-1983)

M/s Viniyoga International, New Delhi and another

APPELLANT

Vs

The State

RESPONDENT

Date of Decision : 11-06-1984

Acts Referred:

Citation : (1985) CriLJ 761

Hon'ble Judges : H.L. Anand, J;H.C. Goel, J

Bench : Division Bench

Judgement

H.L. Anand, J.—At what stage of the proceedings, on a complaint by a public servant of an offence, which has been duly investigated by the Police, under the provisions of the Code of the Criminal Procedure, is the accused entitled to copies of statements recorded u/s. 161 of the Code, and of documents, sought to be used at the trial is the only question that calls for decision in this petition u/s. 482 of the Code.

2. Petitioners are facing prosecution for offences u/s. 120-B read with Sections 420/468/471, I.P.C., and u/s. 5 of the Imports and Exports (Control) Act, 1947, on a complaint filed by the Deputy Chief Controller of Imports and Exports. The offences, alleged against the petitioners, though duly investigated by the Central Bureau of Investigation in accordance with the provisions of the Code did not, however, culminate in a report u/s. 173 of the Code, as an investigation by the Police would normally do, because cognizance of an offence under S. 5 of the Imports and Exports (Control) Act could not be taken by any Court except on a complaint by the competent majority by virtue of Section 6 of the Act. The complainant, respondent herein, is the competent authority for the purpose. In the course of investigation, large number of documents were seized by the Police and a number of persons were examined under S. 161 on the Code. On being summoned, by the court seized of the complaint, the petitioners sought copies of the aforesaid statements and documents on the ground that, though instituted

on a complaint, the case for all practical purposes was an investigated case the accused to the copies.

3. The application was opposed on behalf of the complainant. By an order of December 30, 1983 sought to be quashed, the trial court partly accepted the application holding that the accused would be entitled to copies, but only when the witnesses are produced in court, and when the documents are filed in the court by the complainant. It was further observed that it would be open to the complainant to request that the accused "may inspect the record if a document is voluminous and copy thereof cannot be supplied." The trial court, however, negated the claim of the accused to copies being supplied before the commencement of the trial, as in a trial on a police report. In the course of arguments before the trial court, parties sought support from the decisions of the Supreme Court in the case of Assistant Collector of Customs and Another Vs. L.R. Malwani and Another, and Superintendent and Remembrancer of Legal Affairs, West Bengal Vs. Satyen Bhowmick and Others, as well as on unreported decision of this court, Ansari, J., in the case of M. L. Gupta (Cr.R. No. 256/72, D/-5-12-1972). The case of Melwani (supra) was relied upon on behalf of the complainant for the proposition that the accused, in a case filed on a complaint, was not entitled to copies at the commencement of the trial but the trial court held that in that case, the court did not hold that the accused was not entitled to copies of the statements and documents at any stage of the trial. The trial court further observed that Ansari, J. had discussed the aforesaid decision in the case of M. L. Gupta (supra), and while holding that the accused was not entitled to copies before the commencement of the trial, he was nevertheless, entitled to the same when the witness was produced and the documents were filed in the Court. The trial Court also dealt with the case of Satyen Bhowmick (supra) which was relied upon on behalf of the accused, and read it as laying down that, notwithstanding the provision of Section 14 of the Official Secrets Act, 1923, the accused was entitled to copies. The aforesaid decision has also been understood by the trial court as entitling the accused to the aforesaid copies on the application of the principle that any procedure must be "right, just and fair", as enunciated by the Supreme Court in the case of Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another, . The complainant has not challenged the order and has apparently reconciled to the right of the accused to be furnished with copies when the witness is produced at the trial, and when the documents are produced in the court. The accused are not satisfied, and challenge the order to the extent it denies to them the right to complete disclosure of the material before the commencement of the trial, which is described as being not only contrary to the provisions of the Code, but also in contravention of the principles of natural justice, and in violation of the principle that every procedure in proceedings affecting rights, interests or liberties of a citizen must be right, just and fair."

4. I have heard learned Counsel for the parties. While the claim of the accused persons to complete disclosure of material including copies of the statements and of documents, sought to be relied upon at the trial at the commencement of it,

was sought to be reinforced with reference to the principles of natural justice the fundamental requirement of a fair trial, and on the application of the principle that any procedure in a proceeding likely to affect interests, right and liberties of a citizen must be "just, fair and reasonable", whether incorporated in a statutory provision or otherwise the right of disclosure, except when the witnesses are produced at the trial, and the documents are filed in court, was sought to be denied on the ground that the Code, which regulated the trial, does not, in terms confer any such right on the accused in proceedings instituted otherwise than on a police report. In support of rival contentions, counsel for the parties sought support from the decisions cited before the trial court and referred to above. On behalf of the complainant, support was also sought from a decision of this Court, Prithvi Raj, J., in the case of A. N. Lewis v. The State, 2nd (1974) 1 Del 410.

5. The right of disclosure in any enquiry, domestic or otherwise, or in any trial, or other proceedings, which are capable of affecting rights, interests and liberties of a citizen, may have either a statutory genesis, including a provision in the Constitution, or may be based on well recognized principles of natural justice, mandatory requirements of a fair trial, or be founded on a principle, otherwise well-established elsewhere, but made popular in India more recently by the decision in the case of Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another, , and reiterated since that decision in successive decisions of the Supreme Court, and of this Court, inspired by the decisions of the United States Supreme Court based on the "due process" clause of the American Constitution, that every procedure must satisfy the requirement that it is just, fair and reasonable. The decision in the case of Maneka Gandhi (supra) has led to a reorientation of judicial thinking on the interaction between Articles 14 and 21 of the Constitution of India and the test of this principle has been extended not only to executive action, but also to legislative action.

6. If the right to disclosure at the threshold of the trial is considered at (as ?) the touchstone of the aforesaid principles keeping the statutory or the Constitutional provisions aside there would be little difficulty in holding that where cognizable offences have been investigated into by the Central Bureau of Investigation, under the Code, along with an offence u/s 5 of the Imports and Exports (Control) Act, 1947, which though cognizable is nevertheless an offence of which cognizance cannot taken by any court except on a complaint by a specified authority, where number of witnesses were examined in the course of investigation u/s. 161 of the Code, and large number of documents were seized in the course of investigation, a procedure which enables the complainant as if in a case on a "private complaint" properly so-called, to supply copies of statements, as and when an individual witness is produced at the trial, and to give copies of documents or to permit its inspection by the accused, only when such document is filed in the court could not be considered either "just or fair or reasonable" and to sanctify such a procedure would not only be to unjustifiably adequate an ordinary private complaint with a complaint based on investigation by the police under the Code and to permit the prosecution to play hide and seek

in the proceedings. It would be a travesty of fair procedure to say that the accused need not know at the commencement of the trial as to the case he is supposed to meet or as to the material sought to be used against him, and that it is enough if such material is disclosed to him in a piecemeal manner as and when a witness is produced or a document filed with the obvious liberty to the prosecutor to produce witnesses and file the documents in the order in which he may decide for his own reasons. To my mind, it is not possible for an accused in such a case to have an integrated picture of the case before him when he is called upon to cross-examine the witnesses and this infirmity in the procedure is in no way cured nor its rigour moderated merely because the Code provides for a second opportunity to cross-examine the witnesses after the charge in cases instituted on a complaint. But this safeguard may be and in fact often is rendered illusory because of a common practice in such cases of examining one or two witnesses before the charge. Moreover, if the accused is entitled to be discharged, before that stage reaches, and this is possible only if he has the benefit of a complete disclosure, any procedure which compels him to undergo the entire gamut of the trial cannot but be described as unreasonable. It is, to my mind, unfair for the prosecution in such cases to deny the accused a right of complete disclosure merely because with a view to control institution of proceedings, Section 6 of the Imports and Exports (Control) Act makes special provision barring cognizance of an offence u/s. 5 of that Act by a court except on a complaint filed by an appropriate authority. This provision could not and was not intended to equate such a prosecution with a "private complaint", properly so called, because an ordinary complainant has neither the opportunity nor the power or resources to carry out any investigation and the only disclosure he could make is what he has said in the complaint or the list of witnesses he proposes to call. If the right to disclosure is, Therefore, to be settled, with reference to the well-recognised principles mentioned above, I would have no difficulty in holding that but for a complete disclosure at the threshold, such a trial would be by a procedure which gives unfair advantage to the prosecution to the prejudice of the accused and is neither "just", nor "fair" no reasonable", if not entirely farcical.

7. The statutory right to copies of statements recorded u/s 161 of the Code sought to be examined, and of copies of documents, sought to be relied in proceedings in a criminal court, instituted otherwise than on a police report, is, however, not free from doubt. Offence u/s 120-B, 420, 468, 471, I.P.C. and S. 5 of the Imports and Exports Control Act, 1947 are no doubt cognizable offences in terms of the First Schedule of the Code and by virtue of Section 156 of the Code any officer in charge of a police station, may without the order of a Magistrate investigate into any of these offences, The investigation in relation to an offence u/s. 5 of Imports and Exports (Control) Act, unlike that of the other offences mentioned above, need not culminate in a report u/s. 173(2)(i) of the Code because a report under that sub-section has to be forwarded to a Magistrate empowered to take cognizance of the offence on a "Police report". As has been

pointed out above, by virtue of Section 6 of the aforesaid Act, no court can take cognizance of an offence u/s 5 of the Act "except on a complaint" by a competent authority, and that being so, no Magistrate is empowered to take cognizance of the offence under that section "on a police report" with the result that, in so far as investigation into that offence is concerned, sub-section (2) of Section 173 is inapplicable. The investigating officer would, however be bound to communicate the action taken by him to the officer by whom the information relating to the commission of the offence was first given and this is provided in clause (ii) of sub-section (2) of Section 173. The composite investigation in the present case could, however, lead to an anomaly. In so far as the investigation was of offences, which are outside purview of Section 6 of the Act, it could be said, with some justification, that the requirement of sub-section 2(i) of Section 173 had to be complied with, on the conclusion of investigation, and the investigating officer must forward to a Magistrate empowered to take a cognizance of the offence on a police report, a report in the form prescribed and stating the particulars required in sub-clauses (a) to (g) of clause (i) of sub-section (2). The same could not, however, be said of the investigation in so far as it pertains to an offence u/s. 5 of the Act because of the bar contained in Section 6 of it. The effect of the composite nature of the investigation was not raised either before the trial court or in this court and I would, Therefore, assume for my present purpose that cognizance of the offence, investigated by the police, could not be taken on a police report by virtue of Section 6 of the Act. By this assumption, it would follow that the accused would not be entitled, in terms, to the benefit of Section 207 of the Code, which provides that in any case, where the proceedings have been instituted on a police report, the Magistrate shall without delay furnish to the accused "free of cost" a copy of each of the following :

"(1) the police report;

(2) the first information report recorded u/s 154;

(3) the statements recorded under sub-section (3) of Section 161 of all persons whom the prosecution proposes to examine as its witnesses, excluding there from any part in regard to which a request for such exclusion has been made by the police officer under sub-section (6) of Section 173;

(4) the confessions and statements, if any recorded u/s 164.

(5) any other document or relevant extract thereof forwarded to the Magistrate with the police report under sub-section (5) of Section 173."

The second proviso to the Section empowers the Magistrate to direct that instead of furnishing copy of the document which is voluminous, the accused may be allowed to inspect it either personally or through pleader in court. The present proceedings obviously commenced with a complaint by a competent authority, which would attract the procedure laid down in Section 244 to 247 of the Code, none of which in terms, entitles an accused to copies, either of the statement, or any document, whether at the commencement of the trial or when the witness is

summoned or a document is produced. Sub-section (1) of Section 244 enjoins a Magistrate to hear the prosecution and take all such evidence as may be produced in support of the prosecution. Section 245 provides that, if upon taking all the evidence so produced, the Magistrate considers that no case against the accused has been made out, which if unrebutted, would warrant his conviction, he shall discharge him. Sub-section (2) enables a Magistrate to discharge the accused at any previous stage of the case, if he considers the charge to be groundless. Section 246 deals with the situation where the accused is not discharged and where a charge has to be framed against the accused. Sub-section (4) of this Section obliges the court to ask the accused, if he wishes to cross-examine any of the witnesses whose evidence has been taken and such witnesses have to be recalled if the accused so desires. Sub-section (6) of this section provides for the evidence of any remaining witnesses for the prosecution being then recorded. On a combined reading of these provisions, it follows that the Investigating Officer was not bound to forward to any Magistrate a report u/s 173(2) of the Code and since the proceedings have been instituted on a complaint, the benefit of Section 207 would not be available to the accused thereby relieving the Magistrate of any duty to furnish to the accused "free of cost" copies of documents mentioned in that section and the accused is, in terms, not entitled at any stage, to either copies of statements recorded u/s 161 of the Code or of any documents produced in the Court.

8. A comparison of the two distinct parts of Chapter XIX of the Code, dealing with trial of warrant cases by Magistrate one dealing with cases instituted on a police report, embodied in Section 238 to 243, and the other, in cases instituted otherwise than on a police report, embodied in sections 244 to 247 of the Code clearly brings out the distinction between the two sets of procedure provided in the trial of these case. In cases instituted on a police report, the court is to consider the question of charge or discharge on a consideration of the police report u/s 173 and the document sent with it, and the examination of the accused, if any. The charge or discharge of an accused in case instituted otherwise than on a police report has reference to the "evidence" produced in support of the prosecution. In the first class of cases, there is no right of the accused to recall any witness, who has been examined in support of the prosecution, while in the other class of cases, there, is a statutory right to recall any of the witnesses already examined. It is not difficult to see the reason why a separate and distinct procedure has to be followed in the two classes of cases. The cases instituted on a police report are duly investigated and the result of an investigation is before the court and it is on that basis that Magistrate proceeds. In cases instituted otherwise than on a police report, there is ordinarily no investigation. These are cases ordinarily based on what is described as a "private complaint" and Section 2(d) of the Code defines a complaint as meaning "any allegation made made orally or in writing to a Magistrate with a view to his taking action under the Code and does not include a police report." Explanation to Section 2(d) provides that a report made by a Police Officer in the case which

discloses after investigation the commission of a non-cognizable offence, shall be deemed to be a complaint and the police officer by whom such report is made, shall be deemed to be a complainant. Complaints are ordinarily made by private parties, either because the allegations of the commission of an offence, which are not cognizable by the police, or because the police failed to take cognizance, even if it was cognizable, or the investigation led to a police report, which was not favorable to the aggrieved party. In all such cases, it is open to an aggrieved person to file a complaint direct to a court and the Explanation to Section 2(d) shows that it is in rare cases that a report made by a police officer is deemed to be a complaint.

9. It thus appears that, while there is no statutory right to disclosure at the threshold, in cases instituted otherwise than on a police report, such a right would be available to an accused even in such cases, on the application of the principles referred to above unless one takes the view that the procedure prescribed by the Code, for the trial of cases otherwise than on a police report, expressly or by necessary implication excludes the operation of these principles. There is obviously no express provision in the Code dealing with this class of cases excluding the operation of the principles of natural justice, and the other principles which would justify a complete disclosure. It is also not possible to read into any provision of the Code an implied exclusion of the operation of these principles. It is also well known that the exclusion of fundamental principles of natural justice and the requirements of a fair trial, and the requirement of a "just, fair and reasonable" procedure is not to be readily inferred from statutory provisions. These principles and requirements are so well entrenched in the jurisprudence of this country that their exclusion can be justified only with reference to the express provisions or by necessary intendment. In this view of the law, the accused person would have the right, albeit a non-statutory right, to complete disclosure of material, at the threshold of a trial, even in cases otherwise than on a police report if the proceedings were preceded by police investigation.

10. Learned counsel for the complainant, however sought to justify the denial of the right on the basis of the decision of the Supreme Court in the case of Assistant Collector of Customs and Another Vs. L.R. Malwani and Another, and two decisions of this court in the cases of M. L. Gupta (supra) and A. N. Lewis (2nd 1974) 1 Delhi 410 (supra). Counsel for the petitioner, however, relied on the decision of the Supreme Court in the case of Superintendent and Remembrancer of Legal Affairs, West Bengal Vs. Satyen Bhowmick and Others, and urged that the earlier decisions of the Supreme Court must be read and understood in the context of the new judicial thinking incorporated in the decisions of the Supreme Court, in the case of Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another, .

11. It would, Therefore be useful to consider these decisions, as indeed, certain other decisions in which the question as to the right of copies was considered by various courts in different contexts.

12. In the case of *In Re: Veerappa Giramani*, , which is perhaps the earliest case, dealing with the right to receive copies at a trial in a criminal court, the High Court observed that copies have to be prepared and furnished to accused in all cases where there was police investigation under Chapter XIV. It was further observed that while there are provisions in Section 207A(3) and Section 251-A(1) of the Code, requiring the Magistrate to satisfy himself that the documents referred to u/s 173 had been furnished to the accused before the commencement of committal enquiry in a warrant case, there was no such provisions with regard to the trial of summons cases. The High Court, however, expressed the view that in spite of this difference, it is open to an accused to bring it to the notice of the Court, even in summons case, that the provisions of Section 173 had not been complied with and it would then be the duty of the Magistrate to see that it is complied with before proceedings further with the case. The case with which the Madras High Court was concerned was, however a case instituted on a police report u/s 173(1) of the Code of Criminal Procedure as it stood after the amendment of the Code in 1955. In the case of *In Re: Kanhaiyalal Daulatramji*, , the Madhya Pradesh High Court expressed the view that whether a case is instituted on a police report or a complaint, the accused is entitled to the previous statement of the complainant, whether made to the police, or otherwise, as also to copies of documents, on which the prosecution wishes to rely, or which are in the possession of the police. It was further observed that from a reading of sub-section (4) of Section 173 as it then stood, it was incumbent upon the police to give copies of documents, on which the prosecution relied, and observed that simply because no duty was cast to inquire whether the accused has received the copies or not in a case instituted on a complaint, it does not mean that the accused is not entitled to the documents referred to by section 173, if he is otherwise entitled to the same. In this case, a report had been forwarded by the police after investigation recommending that the case be dropped but a further inquiry had been ordered u/s 202 of the Code of Criminal Procedure and the Court took cognizance of the offence on receipt of the report of the Magistrate under that section. In the case of *Supdt. and Remembrancer of Legal Affairs, West Bengal Vs. Vimla Dassi and Others*, , it was observed that even when cognizance was taken on the basis of a complaint in a case which had been preceded by an investigation under Chapter XIV of the Code, but where no report u/s 173 had been filed, the accused was entitled to the benefit of Section 173(4) of the Code, as it stood at that time. This conclusion was sought to be supported by the reasoning that if on the conclusion of investigation, the police officer chose not to submit a report under S. 173, but instead made over the material collected in the course of investigation to some other authority or person to enable it or him to file a complaint, even so the law would not permit remissness on the part of the police officer in the matter of submitting a report u/s 173(1) of the Code. If the police officer did not do his duty, that would not take away the right of the accused to get copies and the duty to furnish copies would in such case be transferred to the prosecutor, who would benefit by the result of investigation. This view was, however, not shared

by a Division Bench of that Court in the case of Ramendra Singh Vs. Mohit Choudhary and Others, . This was case under Sections 120-B, 124-A and 505 of the Indian Penal Code and Section 11 of the West Bengal Security Act and Section 3 of the Official Secrets Act. Investigation had been carried out by the Central Bureau of Investigation. No report was, however filed u/s 173 but a complaint was instead filed by the Deputy Superintendent of Police, as required by Section 13 of the Official Secrets Act. The accused asked for copies of the documents referred to in Section 173(4) of the Code, and the trial Magistrate took the view that the complaint filed by the Deputy Superintendents of Police was a report u/s 173(1) of the Code and the accused was, Therefore, entitled to copies of the statements and of documents under sub-section (4) of Section 173. The High Court, however, took a contrary view and held that the accused was not entitled to copies of the statements under sub-section (4) of Section 173, as the provision of Section 13 of the Official Secrets Act contained a special procedure for taking cognizance, which superseded the General procedure laid down in the Code. It was further observed that in such a situation, section 252 of the Code was applicable which contained no compulsory provision of giving copies of documents referred to in Section 173 of the Code. In the case of Labhu Ram, 1970 Cri LJ 553 (Punj), the right to copies was denied with reference to the provisions of Sections 4, 173, 204, 251 and 251-A of the Code on the ground that the prosecution had been instituted on a complaint filed by the Municipal Committee Act for an offence u/s 78 of the Punjab Municipal Act, and it was pointed out that the provisions in Sections 173(4) and 251-A(1) of the Code for furnishing copies of the documents to the accused, introduced in the Code by the amendment of 1955, contain no parallel provision in respect of documents appended to a complaint or relied upon in support thereof. It was pointed out that if the Legislature intended to treat a complaint at par with a police report in this behalf there was reason why similar provisions should not have been specifically made part of the Code with regard to cases instituted on complaints. In the case of Hind Cycles Ltd., (Cri R. No. 1037/70, D/- 14-7-1971) (Bom), it was held that in cases instituted a upon complaint even though after an investigation by the Central Bureau of Investigation of an offence u/s 5 of the Imports and Exports (Control) Act, 1947, accused was not entitled to copies of the statements etc. u/s 173(4) of the Code. Here again, it was held that where cognizance could not be taken by a Magistrate of an offence except on a complaint, sub-section (1) of Section 173 of the Code did not come into the picture at all and if there was no duty to forward a report under that sub-section, there would not be an obligation to take any further steps under sub-section (4) of that Section. The matter came before the Supreme Court in the case of Melwani, (1970 Cri LJ 885) (supra) where the question before the Supreme Court was whether Section 173(4) of the Code, as it stood then, was applicable to a case filed on a complaint of an offence u/s 120-B, I.P.C. read with Section 167 of the Customs Act and Section 5 of the Imports and Exports (Control) Act. The accused had, at the threshold sought copies of the statements and documents, on which the prosecution relied, but the request was turned down. The High

Court had held that the accused were entitled to copies by virtue of Section 173(4) of the Code. This was reversed by the Supreme Court and the decision of the Magistrate was restored. It was pointed out that by the Supreme Court that on its plain reading, Section 173 of the Code, as it then stood, was wholly inapplicable to a case instituted on a complaint because even though the complaint was filed at the end of an investigation, by the Customs Authorities under the provisions of the Sea Customs, no report had been sent u/s 173 of the Code, because that provision was attracted only in a case investigated by a police officer under Chapter XIV of the Code, followed up by a final report u/s 173 of the Code. The contention that the Legislature did not make available the benefit of section 173(4) of the Code in cases instituted otherwise than on a police report by oversight, was repelled. This was, however a case in which no investigation had been done by the police under the provisions of the Code. In the case of M. L. Gupta (supra), a learned single Judge of this court, Ansari J., was dealing with a case which had been investigated under the Code, but which came to the court on a complaint because of the bar to cognizance by virtue of Section 6 of the imports and Exports Control Act, 1947. Some of these decisions were cited before the learned Judge and a contention was raised that the facts of the case before the Supreme Court in the case of Melwani (supra) were distinguishable in that case there was no investigation by the police but only by the Customs authorities in the exercise of power under the Customs Act, while in the case before the learned Judge the filing of the complaint had been preceded by investigation by the police under the Code. The learned Judge, however, expressed the view that this difference "was not material" for the application of the rule laid down by the Supreme Court to the case because trial in the case will have to be held under the provisions of section 252 of the Code and the Sections that followed and under this procedure, the accused would have an opportunity to cross-examine prosecution witnesses, both before and after the charge is framed. It was further observed that as and when the prosecution witnesses are examined, it would be open to the accused to ask for copies of their statement u/s 161 of the Code as also of documents as and when they were filed and that if this procedure was followed, the accused will not suffer any prejudice. In the case of A. N. Lewis and another (supra) another learned Judge of this Court, Prithvi Raj J., was faced with an exactly similar situation and held that the accused in such a case was not entitled to the benefit of sub-section (4) of Section 173 of the Code as that sub-section would be attracted only if a report had been made under sub-section (1) of Section 173 of the Code. It was further held that Section 173(4) was not attracted because one of the offences for which the accused was being tried could not be taken cognizance of by any court, except on a complaint made by a duly authorised person, by virtue of Section 6 of the Imports and Exports Control Act. On behalf of the accused, reliance was placed on the decisions in the cases of In Re: Veerappa Giramani, , State of Bombay Vs. Seikh Kadar Seikh Amir and Others, Vimla Dassi and Kanhaiyalal Daulatramji 1965 (1) Cri LJ 298 (supra). The contention was, however, negatived following the decision of Ansari J., in the case of Gupta (supra) and of the

Supreme Court in the case of Assistant Collector of Customs and Another Vs. L.R. Malwani and Another, . The judgment, however, does not deal with cases cited on behalf of the accused. The last in the series is the case of Superintendent and Remembrancer of Legal Affairs, West Bengal Vs. Satyen Bhowmick and Others, . This was the case under the Official Secrets Act, which though investigated under the Code did not culminate in a report u/s 173(1) of the Code, as it stood after its amendment in 1955 but before the Code of 1973. The case was instituted on a complaint, as required by Section 13 of the Official Secrets Act, which barred cognizance of an offence under that Act by any Court except on a complaint by a competent authority. Decision of the Calcutta High Court, as indeed the Supreme Court turned on the construction of the provision of Section 14 of the Official Secrets Act, which provides that the proceedings may be held in "camera" and the question was whether the provisions of Section 14 in any way deprived the "valuable right of the accused to get copies of the statement recorded by the Magistrate or statements of witnesses recorded by the police or the documents obtained by the police during the investigation" as envisaged by the Criminal Rules framed under the Code by the various High Courts, It was held that the entitlement to have copies of statements of witnesses recorded by the police was a "very valuable right" because without having the statements recorded by the police in his possession, "It would be difficult if not impossible for an accused to defend himself effectively". It was pointed out that if an accused was not supplied with the statements recorded by the police or the statements of witnesses recorded at the inquiry or the trial, "how can he possibly defend himself and instruct his lawyer to cross-examine the witnesses successfully and effectively so as to deprive the prosecution case". It was, Therefore held that section 14 of the Act could never have intended to take away or deprive an accused of "this valuable right, which has been conferred on him by the criminal law of the land." It was pointed out that the Legislature, when it passed the official secrets Act, 1923, was aware of the provisions of the Code which had conferred "the valuable right on an accused in order to defend himself, and if any of these rights were to be taken away, one would have expected a clearer and more specific language used in Section 14 to connote such an intention. "It was further pointed out that if the contention of the prosecution as to the scope of Section 14 was to be accepted, "the Section would have to be struck down as being violative of Articles 14 and 21 of the Constitution". The Court then referred to the principle enunciated in the case of Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another, while dealing with the attributes of a fair trial as contemplated in Article 21 and quoted the following observations in the case of Maneka Gandhi with approval :

"The principle of reasonableness, which legally as well as philosophically, is an essential element of equality or non-arbitrariness pervades Art. 14 like a brooding omnipresence and the procedure contemplated by Article 21 must answer the test of reasonableness in order to be in conformity with Art. 14. It must order to be "right and just and fair" and not arbitrary, fanciful or

oppressive; otherwise, it would be no procedure at all and the requirement of Article 21 would not be satisfied."

13. A review of these decision leaves no manner of doubt that, except in the last case mentioned above courts were not called upon to consider the right to obtain copies of statements and documents on the application of any principle of natural justice or the concept of a fair trial or as a component of a just, fair and reasonable procedure. All these cases were concerned with the question if, in different fact situation, the law, as it stood as the material time, conferred a right to the copies, following from the statute, as distinct from a right based on well-settled principles and fundamental requirements of a fair procedure. In the case of Melwani (supra) also the Supreme Court has not concerned with the situation in which there had been any investigation by a police officer under the Code. Even in the case of Bhowmick (supra), the right was claimed with reference to the statutory provisions and was conceded even though in relation to case instituted otherwise than on a police report. The principles of natural justice of the fundamental requirements of a fair trial or the essential ingredients of a procedure which is just, fair and reasonable were not in term involved, although the decision was eventually inspired by the way the Supreme Court had looked at the interaction between Article 14 and 21 of the Constitution, in the case of Maneka Gandhi (supra) and found the test of reasonableness embedded in the two Articles and the requirement that any procedure to be consistent with the Constitutional requirements "must be right and just and fair and not arbitrary, fanciful or oppressive." And it was observed that at all and the requirements of Article 21 would not be satisfied.

14. A contention was, however, raised on behalf of the complainant that the decision of the Supreme Court in the case of Assistant Collector of Customs and Another Vs. L.R. Malwani and Another, was a decision by a Constitution Bench of the Supreme Court, and it was not open to the two-Judge Bench of the Supreme Court in the case of Bhowmick 1981 Cri LJ 1341 (supra) to ignore it. The decision in the case of Melwani (supra) was, no doubt neither cited nor discussed, in the case of Bhowmick, but I see no conflict between the two decision, and even if the decision had been cited, it would still not have made any difference in the ratio or the reasoning of the Court in the case of Bhowmick (supra). In the case of Melwani (supra), the Supreme Court was not concerned with a case, which had been investigated by the police under the Code. It was no the country dealing with a case in which there has been no investigation at all and the complaint was preceded by what may be described an inquiry by customs authorities under the Sea Custom Act. In such a case, Therefore obviously there was no question of Section 173 being attracted. In the case of Melwani (supra), the right to copies was also not claimed with reference to any of the principles mentioned above, but purely as matter of construction, of the provision of Sections 173(1) and 173(4) which, with respect, was rightly negated, as Section 173(1) could not be attracted to a case in which there had been no investigation by the police, and if that be so, there was no question of benefit of sub-section (4) being available

to an accused person. The two decisions of the learned single Judge of this Court also do not seem to stand in my way as they considered the right purely with reference to the status and the right was, with respect, correctly repelled on the construction of the statute itself. The larger question as to the right of disclosure, founded on principles of natural justice, or the other principles referred to above, and notably the principle evolved by the Supreme Court in the case of Maneka Gandhi, and reiterated in a somewhat similar fact situation in the case of Bhowmick (*supra*), was neither pressed into service nor considered. There were, in any event, decisions of this court prior to the decision in the case of Maneka Gandhi, and would have to be read in the context of the further development in the law, since these decisions were rendered.

15. I have Therefore, no hesitation in holding that while right to copies of statements and of documents, expressly embodied in Section 173(i)(sic) and 207 of the Code are not available to the accused persons, they are certainly entitled to the right of complete disclosure of material at the threshold of the trial, including the supply of copies of statement and documents, to satisfy the requirements of the principles of natural justice, the mandatory requirements of a fair trial, and the essential components of a procedure, which because of constitutional constraints, must be "right, just and fair" to be constitutionally valid.

16. In the result, the petition succeeds and the impugned order is modified to the extent it denies the right to copies of statements and documents at the commencement of the trial. The petitioners would be supplied copies of statements, recorded u/s 161 of the Code, in the course of investigation, as also copies of documents, which were seized in the course of investigation, and are sought to be used at the trial, subject, however to the rider that if the trial court consider any document to be voluminous it may instead of directing a supply of its copy permit the petitioners to inspect the document and make copies thereof before the commencement of the trial. It would, however, be open to the court to moderate the question of cost of supplying copies since the right could not extent to copies "free of cost" as envisaged by the Code.

17. Parties are directed to appear before the trial court on July 11, 1984.

18. Order accordingly.