

(2010) 07 DEL CK 0379

In the Delhi High Court

Case No : Criminal M.C. No"s. 1272 and 1356 of 2010

Sukhmohinder Singh Sandhu

APPELLANT

Vs

CBI
 Sumedh Singh Saini Vs State

RESPONDENT

Date of Decision : 26-07-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 154, 161(3), 162, 164, 173

Evidence Act, 1872 — Section 3

Penal Code, 1860 (IPC) — Section 120B, 342, 365

Citation : (2011) CriLJ 903 : (2010) 6 ILR Delhi 407

Hon'ble Judges : S.N. Dhingra, J

Bench : Single Bench

Advocate : K.K. Sud and Suraj Prakash, in Criminal M.C. No. 1272/2010, Ajay Burman, in Criminal M.C. No. 1356/2010, Ruchi Kapur, in Criminal M.C. No. 1861/2010 and A.K. Mehta, in Criminal M.C. No. 1862/2010, for the Appellant; A.K. Chandhoik, ASG and Harish Gulati, for the Respondent

Final Decision : Dismissed

Judgement

Shiv Narayan Dhingra, J.—These four Criminal Miscellaneous Petitions have been filed by four accused persons facing trial before the learned Sessions Judge u/s 342, 365 and 120B IPC. The petitioners have assailed order dated 1st April, 2010 dismissing their applications u/s 91 Cr.P.C., filed for directions to CBI to supply certain documents and statements allegedly in possession of CBI.

2. The petitioners/accused persons are police officials against whom this FIR was registered at the instance of High Court of Punjab & Haryana and investigation was handed over to CBI. Accused Sumedh Singh Saini was, at that time, SSP Ludhiana. It was alleged by the complainant that he had enmity with owner of M/s Saini Motors and during his tenure as SSP, a number of cases were registered against the owner and other family members of M/s Saini Motors. Local police while conducting investigation of FIR No. 22 of 1994 found that there are business transactions between M/s Saini Motors and Walia family. So, local police roped in Walia family also along with Saini Motors in many criminal cases. Vinod

Kumar and Ashish Kumar were members of Walia family. Vinod Kumar and Ashish Kumar filed petitions before the High Court about threat to their lives at the hands of police officials. Vinod Kumar went missing. He was last seen alive with accused Sumedh Singh Saini, SSP of Ludhiana, in the evening of 15th March, 1994.

3. After his disappearance, on a petition filed before the High Court, the High Court directed CBI to investigate the matter and to file progress report from time to time before the High Court. In the progress report filed by the CBI before the High Court in 1995, the CBI mentioned that till then it had recorded statements of about 70 persons and collected documents from various agencies. However, the investigation continued and challan was filed in the year 2000. It would not be relevant here to discuss as to why and how so much time was taken by CBI in investigating the matter. However, the challan was filed before the Court of M.M. at Ambala as per the directions of High Court of Punjab & Haryana and accused persons were supplied copies of charge-sheet along-with documents of the case u/s 207 Cr. P.C. by the court of MM at Ambala. After supply of copies, the matter was committed to the Sessions court at Ambala being a sessions trial case. The accused persons seemed to have filed applications for transfer of trial from Ambala to Delhi before the Supreme Court. As a result thereof, this trial got transferred to a Delhi Court. After the trial was transferred to Delhi and was assigned to the court of ASJ, the concerned ASJ heard arguments on charge and framed charges against all the four accused persons on 9th January, 2007. However, the trial did not proceed further as all the four accused persons filed Criminal Revision Petitions before this Court (High Court of Delhi) against framing of charge, which are pending disposal. Meanwhile, one of the witnesses i.e. Smt. Amar Kaur made an application before the High Court that she was of quite old age and may not live to depose in the court and see the end of trial if the trial proceeded at the pace it is proceeding and her statement be recorded. It was under these circumstances that this Court directed recording of statement of witnesses. While PW-1 was being recorded before trial court, all accused persons made applications u/s 91 of Cr.P.C. asking the court for directions to CBI to produce certain documents and statements. In the applications it was mentioned that CBI had withheld and had not placed on record of the trial court some vital and relevant documents and evidence i.e. statements of witnesses recorded during the course of investigation which could have serious ramifications regarding outcome of the case. It was alleged that certain crucial and critical documents were disclosed and supplied by various persons and witnesses to CBI during investigation and those documents were very important in the matter and would go a long way in proving the innocence of applicants. These documents were absolutely necessary for perusal of the Trial Court for imparting justice.

4. Accused No. 2 SSP Sumedh Singh Saini in his application stated that there was sufficient material so show that missing person namely Vinod Kumar had a long criminal background and had a strong motive to abscond on 15th March, 1994 and there was also material to show that after he went missing on 15th

March, 1994, he re-surfaced and met at least four independent and reliable witnesses. He also appeared in a court on a subsequent date. It was stated in the application that in its status report filed before the Punjab & Haryana High Court in 1995, CBI had submitted that it recorded statement of ASI Jagrup Singh, Ct. Surinder Singh, Ct. Gurnam Singh, Ct. Bhupinder Singh, Ct. Jagrup Singh, Ct. Baldev Singh, HC Harjit Singh, HC Kulwant Singh and HC Gurwinder Singh, but CBI filed statement of only HC Kulwant Singh and statements of remaining 8 persons were not placed on record. It is also stated that CBI had examined Darshan Singh, Gurdayal Singh, Om Prakash Sikka, Ashwini Sekhari and Rajesh Chadha but their statements were not placed on record. It was submitted by this accused (accused No. 2, Sumedh Singh Saini) that non supplying of these statements shall cause serious prejudice to the applicant in setting up his defence and failure of CBI in supply of these documents amounted to violation of principles of natural justice and deprived the applicant from his right of setting up a defence. The applicant had constitutional guarantee and fundamental right of setting up best defence and it was mandate of law that prosecution should produce every bit and piece of evidence collected by it during the course of investigation irrespective of the fact whether the material goes against or in the favour of the accused. It is stated that supply of these documents and statements were not going to prejudice the state in any manner and therefore these documents/statement of witnesses should be supplied to the applicant.

5. Similar applications were made by other accused persons taking almost similar pleas. The learned trial court noted down history of allegations made against the accused persons before the Punjab & Haryana High Court and also noted down how Vinod Kumar, arrested by police was not sent to Judicial Custody despite the order of the Court and was illegally kept in police custody. He also noted the sequence of events leading to disappearance of Vinod Kumar, victim and the allegations made against the accused persons and after noting down contentions of both sides, the trial court came to conclusion that the applications were not maintainable.

6. The order passed by the learned trial court is attacked by the counsel for the applicants on the ground that the trial court had not at all given reasons for rejecting the application and had merely reproduced the facts as disclosed from the charge-sheet and reply to the application and dismissed the application without reasons. The other ground for attack on the order of the trial court is that the trial court did not even consider if these documents were essential or not essential for defence of the accused and for cross-examination of the witness who was under cross examination.

7. It is argued by the counsels that withholding of the evidence by prosecution has been condemned by the courts and it has been consistently held by the courts that investigating agency should do fair investigation and the entire evidence collected by the IO should be made part of the charge-sheet. Reliance

was placed on *Shakuntala Vs. The State of Delhi*, . It was further submitted that the accused has a right to move an application at the stage of cross examination and reliance was placed by the applicant on *Rajeshwar Singhal v. CBI* 2007 (3) JCC 2083. *Kashinath Bhattacharjee Vs. State of Tripura and Another*, was relied upon to insist that not giving of reasons by the trial court for rejecting prayer for production of documents was bad in law. Reliance was placed on *State of Kerala Vs. Raghavan etc.*, to impress that prosecution cannot pick and choose and refuse to supply to accused copies of statements which are contradictory to the prosecution case on the ground that the prosecution was not going to rely on these statements. *State of Punjab v. Mohinder Singh and Ors.* 1974 C.L.R. 301 was relied upon to plead that provisions of Sections 162, 173(4) and 207A(3) Cr.P.C. impose an obligation upon the prosecution agency to supply copies of statements of witnesses to enable the accused to obtain a clear picture of the case and enable the accused to utilize them during the course of cross examination to establish his defence. *S.J. Chowdhary v. The State* 1984 Cri. L.J. 964 was cited to impress upon the court that rejection of prayer for supply of copies of the documents/photographs was illegal since the defence was likely to suffer at the time of cross examination.

8. Every trial must be a fair trial and fair trial is the theme song of provisions of Criminal Procedure Code. The concept of fair trial cannot vary from case to case, accused to accused and person to person. It has to be a consistent concept applicable to all cases. In fact, detailed procedure laid down by Cr.P.C. takes care of ensuring fair trial to the accused. Thus a trial according to Cr.P.C. has to be considered a fair trial. It is only if provisions of Cr.P.C. are not followed, one can say that the trial is not fair trial. An important facet of fair trial is that trial must conclude within a reasonable time and it must not be fair only to the accused but must be fair to the society, to the victim and to the witnesses. Where a case registered of an incident that took place in 1995 of a person allegedly illegally kept in police custody & presumably murdered at the instance of a senior police officer and the trial starts sometime in 2007 after framing of charges, and impediments are put to see that the trial does not proceed, so much so that a witness feels compelled to make an application to the Court that look by the time the court decides the revision petition, I may die, the trial cannot be considered as fair to the society or to the victim or to witness howsoever fair it may be considered to the accused, in the facts and circumstances of the case.

9. The report of CBI on which the petitioners have relied was filed before the Punjab & Haryana High Court in 1995. This report was within the knowledge of the petitioners when charge-sheet was filed by CBI before the Court at Ambala in year 2000. It is not the claim of the petitioners that an application was made to the learned MM for supply of alleged documents or other documents or statements of persons and it was rejected by the learned MM. The accused persons are police officials and one of them had held a post of Superintendent of Police. He was not a naive in the field of criminal law and he knew the importance of the documents. It is also not the case of the accused persons that

these documents formed part of the charge-sheet and were still not supplied despite demand.

10. An investigation is a complex process. Investigation involving accused persons, who included a high police official, well versed in criminal law would be more complex. During investigation, in order to find out the evidence, the investigating agency may have to examine hundreds of persons to find out as to who were the persons who had knowledge of the facts concerning the crime. Merely because CBI tells the court that it has examined 70 persons, the accused does not get a right to ask that CBI should produce the statement of all 70 persons before him. The rights of the accused have been crystallized by the Cr.P.C. in categorical manner regarding copies. u/s 207 Cr.P.C., the rights of accused are crystallized in respect of supply of document as follows:

(i) The police report;

(ii) The first information report recorded u/s 154:

(iii) 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.

(iv) The confessions and statements, if any, recorded u/s 164;

(v) Any other document or relevant extract thereof forwarded to the Magistrate with the police report under Sub-section (5) of Section 173.

Section 91 of Cr.P.C. comes into play during the course of trial. Section 91 of Cr.P.C., under which the accused persons have made applications, reads as under:

(1) Whenever any court or any officer in charge of a police station considers that the production of any document or other thing is necessary or desirable for the purposes of any investigation, inquiry, may issue a summons, or such officer a written order, to the person in whose possession or power such document or thing is believed to be requiring him to attend and produce it or to produce it at the time and place stated in the summons or order.

(2) Any person required under this section merely to produce a document or other thing shall be deemed to have complied with the requisition if he causes such document or thing to be produced instead of attending personally to produce the same.

In State of Orissa Vs. Debendra Nath Padhi, , Supreme Court while considering this provision observed as under:

25. Any document or other thing envisaged under the aforesaid provision can be ordered to be produced on finding that the same is "necessary or desirable for the purpose of investigation, inquiry, trial or other proceedings under the Code". The first and foremost requirement of the section is about the document being

necessary or desirable. The necessity or desirability would have to be seen with reference to the stage when a prayer is made for the production. If any document is necessary or desirable for the defence of the accused, the question of invoking Section 91 at the initial stage of framing of a charge would not arise since defence of the accused is not relevant at that stage. When the section refers to investigation, inquiry, trial or other proceedings, it is to be borne in mind that under the section a police officer may move the Court for summoning and production of a document as may be necessary at any of the stages mentioned in the section. In so far as the accused is concerned, his entitlement to seek order u/s 91 would ordinarily not come till the stage of defence. When the section talks of the document being necessary and desirable, it is implicit that necessity and desirability is to be examined considering the stage when such a prayer for summoning and production is made and the party who makes it, whether police or accused. If u/s 207 what is necessary and relevant is only the record produced in terms of Section 173 of the Code, the accused cannot at that stage invoke Section 91 to seek production of any document to show his innocence. u/s 91 summons for production of document can be issued by Court and under a written order an officer in charge of police station can also direct production thereof. Section 91 does not confer any right on the accused to produce document in his possession to prove his defence. Section 91 presupposes that when the document is not produced process may be initiated to compel production thereof.

26. Reliance on behalf of the accused was placed on some observations made in the case of Om Parkash Sharma Vs. Central Bureau of Investigation, Delhi, . In that case the application filed by the accused for summoning and production of documents was rejected by the Special Judge and that order was affirmed by the High Court. Challenging those orders before this Court, reliance was placed on behalf of the accused upon Satish Mehra's case (supra). The contentions based on Satish Mehra's case have been noticed in para 4 as under:

The learned Counsel for the appellant reiterated the stand taken before the courts below with great vehemence by inviting our attention to the decision of this Court reported in Satish Mehra Vs. Delhi Administration and Another, , laying emphasis on the fact the very learned Judge in the High Court has taken a different view in such matters, in the decision reported in Ashok Kaushik Vs. State, . Mr Altaf Ahmed, the learned ASG for the respondents not only contended that the decisions relied upon for the appellants would not justify the claim of the appellant in this case, at this stage, but also invited, extensively our attention to the exercise undertaken by the courts below to find out the relevance, desirability and necessity of those documents as well as the need for issuing any such directions as claimed at that stage and consequently there was no justification whatsoever, to intervene by an interference at the present stage of the proceedings.

28. We are of the view that jurisdiction u/s 91 of the Code when invoked by

accused the necessity and desirability would have to be seen by the Court in the context of the purpose - investigation, inquiry, trial or other proceedings under the Code. It would also have to be borne in mind that law does not permit a roving or fishing inquiry.

11. This provisions of Section 91 Cr.P.C. empower a court to summon or order production of any document which it think necessary or desirable for the purpose of inquiry or trial. The word "document" through not defined in Cr.P.C., however, has been defined in Section 3 of Evidence Act and would mean any matter expressed or described upon any substance by means of letter, figures or makes, or by more than one of those means. The accused u/s 91 Cr.P.C. cannot ask the production of documents as a matter of right. However, while making application he has to specify the document and show its relevance. He cannot ask the court to make roving and fishing enquiry as has been done in the applications under consideration. Only when he discloses the nature of document and its relevance, the court to decide if the documents sought to be summoned was necessary or desirable for the just decision of the case.

12. During arguments, counsel for the parties tried to impress upon the court that PW-1 was under cross examination and the documents sought in the application should be allowed before cross examination of this witness was completed. However, it has not been stated either in the application moved by the accused persons or during the arguments before this Court that how statement of any of the persons mentioned in the application, or any of the unknown, unspecified documents allegedly in custody of CBI was relevant for cross examination of PW-1 or PW-2. The only argument made was that these documents were necessary for defence of the accused and no prejudice was going to be caused to CBI and these documents should be supplied to the applicants.

13. When imputations are put to an accused person in the form of charge, the only question put to the accused person is whether he pleads guilty or not. No question is asked to the accused as to what is his defence. The only defence which is taken in all criminal trials is the defence of innocence of accused persons. Even in summon trial cases, where the law provides that accused can be asked question as to his defence, normally the only defence taken is "I am innocent". Defence is something known to the accused if the accused claims a specific defence and states that the documents were required to help him in cross examination of the witness so that he can ask questions to the witness about his defence then he has to disclose his defence to the Court in the application made by him and state how the witness could be asked questions on such defence with the help of document. The only defence taken in this case is that the victim was facing trial in several criminal cases and he had reasons to abscond. In order to prove this defence, the accused persons in their application were liable to say as to which of the alleged persons examined by CBI had given statement that victim was facing trials in different criminal cases or he had

absconded due to such cases and how the alleged statement of alleged persons were relevant for the court to consider at the stage of examination of PWs.

14. The arguments advanced by the counsels that the trial court did not consider the relevancy of these documents does not hold ground because in none of the applications, the applicants had stated or described the relevancy of each such document or statement to the Trial Court. If the applicants/accused chose to remain silent about the relevancy of the alleged unspecified documents and statements & did not disclose to the court what were the contents of these documents & statements and why they were relevant, they cannot expect the trial court to discuss the relevancy of the documents. In fact, the applications on this count are absolutely vague and from the arguments it can be gathered that the accused persons were trying to aim at an unknown target in darkness. None of the accused persons disclosed what were the statements made to CBI, what were the documents collected by CBI except that in one of the application accused has relied upon an order sheet of a civil court and reproduced the order-sheet showing attendance of the victim.

15. I consider that the trial court, could have summarily dismissed the application on the ground that accused persons have not shown relevancy of the alleged undisclosed documents and merely saying that some alleged documents were necessary for the accused persons to take their defence is no argument. Unless accused persons disclosed the contents & nature of the documents and knew how the documents were going to affect their defence, the accused persons could not have asked for them.

16. The stage at which the applications are made by the accused persons i.e. when the examination of witnesses started after about 13 years of the incident itself, shows that the applications were made with the intention to delay the trial and not with an intention to take some specific defence. Moreover, trial court had given liberty to the accused persons to produce relied documents at the stage of defence. An argument is raised that by giving this liberty, the trial court has admitted the relevancy of the documents. I fail to understand how this argument could have been raised when neither trial court has seen nor the accused persons have seen the documents. The trial court could have commented upon the relevancy of documents had the same been seen by it. The documents/statements sought are in respect of a report made by CBI that it has examined 70 persons. It is not the case of CBI that those 70 persons were having knowledge of the facts of the case and were to be cited as witnesses in the case.

17. It is settled law that accused can demand copy of only those documents/statements on which reliance is placed by the prosecution to prove its case. If the accused has knowledge of other documents which can prove his innocence, he is at liberty to produce all such documents in his defence and if he seeks assistance of the court in producing those documents the contents of which are known to him, the court definitely would help in production of those documents which are available, but, accused cannot be allowed to scuttle the trial by making

frivolous applications and to stall the examination or cross examination of witnesses.

18. Various judgments relied upon by the petitioners are of no help to them. In *Neelesh Jain Vs. State of Rajasthan*, , the court had allowed production of earlier report filed by prosecutrix's father to be used by the accused to confront the father of prosecutrix when he stepped into witness box. Similarly, a report lodged by prosecutrix at Mahila Thana was allowed to be produced as that would have thrown some light on the controversy. In this case, the court had allowed the documents, the nature and contents of which were known to the accused and which were authored by the witness so that witness could be confronted with contents.

19. In *Shakuntala Vs. The State of Delhi*, the Revision Petition was filed by the appellant against the order on charge and the court observed that the entire material placed before the Court in the form of earlier complaint and statements made against the husband, should have been considered by the court since these statements showed that it was her own case that her father-in-law & mother-in-law were cooperating her for action against their son and they had gone to the extent of disowning their son and supported their daughter-in-law. However, daughter-in-law made both of them accused in her subsequent complaint. In *Rajeshwar Singhal v. CBI* 2007 (3) JCC 2083 (Supra), two documents stated in the application u/s 91 Cr.P.C. were seized by CBI in the search of petitioner's premises and the court allowed the application for production of these two documents since the accused relied upon these documents showing the relevancy of these documents. *State of Kerala Vs. Raghavan etc.*, , was not a case u/s 91 Cr.P.C. and the provisions of Section 91 were not even discussed. Similarly, in *State of Punjab v. Mohinder Singh and Ors.* 1974 CLR 301 (Supra), the court had not at all considered the provisions of Section 91 Cr.P.C. and had rather observed that accused had a right to the copies of statements made by the witnesses during investigation at the stage of supply of documents. This was not a case where documents were asked after charge was framed and statements of witnesses were being recorded. In *S.J. Chowdhary v. The State* 1984 Cri.L.J. 964, the accused had demanded a copy of cassette containing tape recorded conversation allegedly having taken place between accused and other persons. A transcript of conversation was supplied to the accused but duplicate cassette was not supplied. The court directed for supply of a duplicate cassette.

20. It is settled law that it is the statutory provisions which govern the trial and the court has to act in accordance with various provisions of Cr.P.C. The judgments of High Courts and Supreme Court are given in facts and circumstances of each case. Judgments are not to be read as a statute. Each case represents its own problem adjudicated upon by the Court and unless and until the High Court and Supreme Court lay down a general principle of law to be followed by the courts below, the judgments would have to be considered as adjudication of the particular issue before the Court. I, therefore, consider that

the judgment relied upon by the petitioner are of no help to the petitioner. The trial court rightly dismissed the applications made by the petitioners.