

(1996) 11 MAD CK 0007

In the Madras High Court

Case No : Criminal R.C. No. 612 of 1996

T.T.V. Dhinakaran

APPELLANT

Vs

The Enforcement Officer, Enforcement Directorate, Shastri
Bhavan, Madras-600 006

RESPONDENT

Date of Decision : 27-11-1996

Acts Referred:

Citation : (1997) 1 LW(Cri) 111

Hon'ble Judges : N. Arumugham, J

Bench : Single Bench

Advocate : B. Kumar, for the Appellant; K. Kumar, Special Public Prosecutor (FERA), for the Respondent

Judgement

N. Arumugham, J.—This Revision challenging the propriety and legality of the order passed by the learned Additional Chief Metropolitan

Magistrate (E.O.II), Egmore, Madras passed in M.P. No. 347/96 in E.O.C.C. No. 27/96 dated 9.8.1996 was sought to be admitted and on

ordering notice of motion, the Enforcement Directorate entered appearance through the Bar and opposed the very admission of this revision.

2. A written complaint against one T.T.V. Dinakaran was filed by the Enforcement Officer of the Enforcement Directorate, Madras before the trial

Court for the offences under Sections 8(1), 9(1)(a) and 14 of the Foreign Exchange and Regulation Act (herein after referred to as ""FERA""). This

complaint was filed as early as March 1996. Various allegations amounting to the facts constituting the violations of the provisions of the FERA

were alleged with details and before that it appears that the reply was sought for as evidenced from certain bank deposits in Barclays Bank,

England and about 13 instruments said to have been forwarded by the accused

to the credit of Dipper Investments. The documents pertaining to the said transaction have also been mentioned in the complaint. Memo of evidence as to what the witnesses mentioned in the complaint are going to speak in the course of evidence had not been given in the complaint. The written complaint consists of a list of witnesses numbering about 28 in all to be examined on behalf of the complainant. It appears further that various documents pertaining to the alleged nexus between the accused and various other facts have also been referred in the complaint.

3. After the issuance of process and entering of the appearance by the accused, the trial Court seems to have fixed the date for the commencement of the trial by the examination of witnesses on 12.8.1996.

4. It was at this stage, a petition on behalf of the accused was filed u/s 207 read with 244 of the Code of Criminal Procedure and Article 22(1) of the Constitution of India, seeking the direction to furnish or supply the copies of the documents and statements which the prosecution proposes to rely upon in the course of trial. The said petition was filed mainly on the ground that the non-supply of copies of such documents which the prosecution would rely upon during the trial would not facilitate the accused to cross examine the prosecution witnesses in an effective manner, with the result the accused would be prejudiced so seriously; and that secondly by the depriving of the right to have the copies supplied at the earliest point of time, the liberty granted under the Constitution, particularly, under Article 20 and 21 of the Constitution of India, would clearly be denied; and that thirdly, the principles of law underlined under Sections 207 and 173 of the Code of Criminal Procedure, even though were indicative of mere omission to provide such copies before the commencement of the trial, would take away the liberty of the citizen viz., the accused/revision Petitioner herein.

5. The petition was resisted mainly on the ground of factual aspects that it is intended to drag the proceedings to some time for the very reasoning that Sections 207 and 173 Code of Criminal Procedure would not come in the picture in the instant case as the complaint was lodged under the provisions of FERA, and as such the petition itself was not maintainable. Further Section 244 Code of Criminal Procedure says ""Evidence for Prosecution"" which would show that the Magistrate shall proceed to hear the

Prosecution and take such evidence as may be produced in support of the Prosecution. The referring of the above words do not at all mean the supplying of the copies in advance. There was no procedure contemplated under the Code for providing copies in advance in the private complaint cases in warrant proceedings. The prosecution has the prerogative of examining the witnesses and documents which would be produced only during the time of examination of witnesses in chief. It was contended further inter alia that Article 22(1) of the Constitution of India or Article 21 does not, in any way, come to the rescue of the Petitioner and that therefore, the petition itself is not maintainable. It was also stated that the accused was detained under COFEPOSA on 7.2.1996 and consequently confined as a detenu in Central Prison and it is a well known fact that the Detaining Authority has already furnished all the relevant documents including his statements and other documents which are now sought by the accused. However, the accused having been in possession of all the documents already, this petition was intended to delay the proceedings for some more time. Even otherwise, the accused and his representatives were given adequate opportunity for taking copies and scrutiny of the documents in the adjudication proceedings. The copies and other documents which are relied upon in the show cause notice have already been supplied to the Revision Petitioner.

6. Having heard the respective submissions by the Bar on behalf of both parties, the learned Trial Magistrate has rejected the contentions of the Petitioner and consequently dismissed the petition by passing the impugned order. Aggrieved at this order, the present revision was sought to be admitted. However on ordering the notice of motion, I have heard the Bar for the respective parties for disposal.

7. It was the very effect of Mr. B. Kumar learned Counsel appearing for the Petitioner from the very beginning that the non-furnishing of the copies of the documents relied on by the prosecution during the time of trial to the accused though not warranted nor spelt out specifically in Sections 244 and 245 of the Code of Criminal Procedure akin to Sections 173 and 207 Code of Criminal Procedure the said aspect amounts to mere omission made by the Legislature, however, the same could be inferred from the fact that the wordings ""evidence"" contemplated in Sections 244 and 245

Code of Criminal Procedure means and includes, chief examination, cross-examination and re-examination and if that was so, it is positively inclusive of the supplying of copies of the documents relied on by the Prosecution and that without the furnishing of the copies of the documents to the accused, effective cross-examination by and on behalf of the accused cannot be possible. He also contended that Sections 207 and 173 Code of Criminal Procedure provides the right to an accused in a case instituted on a Police report but however, in so far as the trial to be conducted in a case instituted otherwise than on a police report, in a warrant case, the statute is so silent about the said remedy and that therefore, the non-providing of any remedy for the supply of copies to the accused under Sections 244 and 245 Code of Criminal Procedure like the trial in a Police complaint under Sections 207 and 173 Code of Criminal Procedure clearly amounts to an inroad into the fundamental right of the accused, which infringes Articles 21 and 22 of the Constitution of India. Therefore, learned Counsel would contend that the impugned order passed by the learned Magistrate lacks the legality in this respect.

8. Mr. K. Kumar, learned Counsel appearing for the Enforcement Directorate, would submit on the other hand that though various provisions of the Code of Criminal Procedure underwent change on several occasions based on the Law Commission's report, Sections 244 and 245 did not spell out the remedy now being asked for and that particularly, the complainant being the Enforcement Directorate, who has filed the complaint for the FERA violations, is not bound to supply the copies as if u/s 207 Code of Criminal Procedure He would also contend that a relief that has not at all been provided by any statute or by any law cannot be asked for and that remedy cannot be insisted before the Court for the very reasoning that the procedural statute has significantly omitted to have it and on that score the law has been well settled and that therefore, he would justify the impugned order passed by the learned trial Magistrate.

9. In the context of the above trial position, the only question that arises for consideration is whether the impugned order has become vitiated with any illegality or impropriety as alleged?

10. The Code of Criminal Procedure indisputably does not contain any remedy for the supply of copies of the documents to the accused before

the trial commences in cases instituted otherwise than on a police report. Whereas it has been clearly spelt out under Sections 207 and 173 Code

of Criminal Procedure that copies of the material documents relied on by the Prosecution must be served on the accused before hand, namely,

before the commencement of the trial but the procedure provided for the cases instituted otherwise than on a police report is different and silent.

The Directorate of Enforcement Authority is not a Police Agency, even though they are also entitled to investigate a case, collect the materials,

record the statements, arrest the accused and institute a case like the Police Officers but however, it is settled that the statement recorded by the

Enforcement Directorate from the accused or the witnesses is not hit by Sections 24 and 25 of the Indian Evidence Act and that therefore, can be

admitted into evidence, whereas, in a case upon a police report, every statement recorded by the Police since hit by Section 21 of the Indian

Evidence Act cannot be made admissible in evidence and that is the vital distinction between the two procedures. In view of this glaring distinction

and difference, Section 207 Code of Criminal Procedure provides that the Magistrate shall, without delay, furnish to the accused, free of cost,

copy of the police report, first information report recorded u/s 154, 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 police officer under Sub-section (6) of Section 173, the confessions and statements, if any, recorded u/s 164 and any other document or

relevant extract thereof forwarded to the Magistrate with the police report under Sub-section (5) of Section 173, subject to the proviso added to

it.

11. Section 208 Code of Criminal Procedure provides for the furnishing of copies of statements and documents to accused in other cases triable

by a Court of Session, in a case instituted otherwise than on a police report.

12. After furnishing the copies to the accused before hand, Chapter 17 of the Code provides for further proceedings in detail to be followed. It is

thus seen that there are specific provisions for the one mode of trial to be conducted in accordance with law in cases instituted upon a police

report.

13. But however, there is another mode of trial to be conducted by the Court, particularly, in cases instituted otherwise than on a Police report in a warrant case under Chapter 15 of the Code. To appreciate the points and the questions raised in the case on hand, it has become necessary to advert and enumerate the relevant provisions of Chapter 15 and Chapter 14-B of the Code. Section 200 Code of Criminal Procedure runs as follows:

A Magistrate taking cognizance of an offence on complaint shall examine upon oath the complainant and the witnesses present, if any, and the substance of such examination shall be reduced to writing and shall be signed by the complainant and the witnesses and also by the Magistrate:

Provided that, when the complaint is made in writing, the Magistrate need not examine the complaint and the witnesses:

- a) if a public servant acting or purporting to act in the discharge of his official duties or a Court has made the complaint; or
- b) if the Magistrate makes over the case for inquiry or trial to another Magistrate u/s 192:

Provided further if the Magistrate makes over the case to another Magistrate u/s 192 after examining the complaint and "the witness, the latter

Magistrate need not re-examine them.

Section 201 provides that if the complaint is made to a Magistrate who is not competent to take cognizance of the offence, he shall

- a) if the complaint is in writing, return it for presentation to the proper Court with an endorsement to that effect,
- b) if the complaint is not in writing, direct the complaint to the proper Court.

Section 202 goes to say that "any Magistrate on receipt of a complaint of an offence of which he is authorised to take cognizance or which has

been made over to him u/s 192, may, if he thinks fit, postpone the issue of process against the accused, and either inquire into the case himself or

direct an investigation to be made by a police officer or by such other person as he thinks fit, for the purpose of deciding whether or not there is

sufficient ground for proceeding: provided that no such direction for investigation shall be made":

- a) Where it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Session; or

b) Where the complaint has not been made by a Court, unless the complainant and the witnesses present (if any) have been examined on oath u/s

200.

2) In an enquiry under Sub-section (1) the Magistrate may, if he thinks fit, take evidence of witnesses on a oath:

Provided that if it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Session, he shall call upon the

complainant to produce all his witnesses and examine them on oath.

3) If an investigation under Sub-section (1) is made by a person not being a police officer, he shall have for that investigation all the powers

conferred by this Code on an officer in-charge of a police station except the power to arrest without warrant.

Section 203 provides that if after considering the statements on oath (if any) of the complainant and of the witnesses and the result of the inquiry or

investigation (if any) u/s 202, the Magistrate is of opinion that there is no sufficient ground for proceeding, he shall dismiss the complaint and in

every such case, he shall briefly record his reasons for so doing.

14. Thus the mandates provided u/s 200 to 203 Code of Criminal Procedure are exercised by the Magistrate and upon considering the statements

on oath of the complainant and the witnesses as a result of an inquiry or investigation conducted u/s 202 Code of Criminal Procedure if the

Magistrate finds that there is a ground to proceed, it is warranted that he shall issue the process to the accused u/s 204 by issue of summons to the

accused for attendance. It is thus seen that upon the filing of a complaint, a Magistrate who receives it for the purpose of taking cognizance is

mandated to do some sort of legal exercise with the judicial mind in the interest of fair play and justice and satisfy with the existence of the ground

to proceed further against the accused and once, he identifies the existence of the said ground, then, he shall issue the process, namely, the

summons to the accused for his attendance and that once process or summons is issued to the accused, what are all the documents that must

accompany the process have been categorically spelt out u/s 204 Code of Criminal Procedure Section 204 runs as follows:

1) If in the opinion of a Magistrate taking cognizance of an offence there is sufficient ground for proceeding, and the case appears to be

a) a summons-case, he shall issue his summons for the attendance of the accused, or

b) a warrant case, he may issue a warrant, or, if he thinks fit, a summons for causing the accused to be brought or to appear at a certain time

before such Magistrate or (if he has no jurisdiction himself) some other Magistrate having jurisdiction.

2) No summons or warrant shall be issued against the accused under Sub section(1) until a list of the prosecution witnesses has been filed.

3) In a proceeding instituted upon a complaint made in writing, every summons or warrant issued under Sub-section (1) shall be accompanied by a

copy of such complaint.

4) When by any law for the time being in force any process fees or other fees are payable, no process shall be issued until the fees are paid and, if

such fees are not paid within a reasonable time, the Magistrate may dismiss the complaint.

5) Nothing in this section shall be deemed to affect the provisions of Section 87.

Sub-section (3) of Section 204 Code of Criminal Procedure has specifically spelt out the mode that a copy of the complaint made in writing shall

accompany the process or summons when it was issued under this Section. These all would mean and are intended that when the accused receives

the summons or process, he must be able to know what are all the averments, allegations and the circumstances and the substratum of the

complaint pertaining to his commission of offence in detail inclusive of a list of prosecution witnesses. It is thus seen that though for the trial of a

case instituted otherwise than on a police report, a different mode of procedure has been laid by the statute unlike the trials to be conducted on a

police report in a warrant or summons case and that is, what has been spelt out in Section 204 Code of Criminal Procedure Considering Sub-

clause (b) of Section 204(1), Sub-sections(2) and (3) of Section 204, the same power or remedy has been provided by the statute as provided u/s

207 of the Code.

15. Then, with regard to the further procedures to be followed in private complaints, the relevant provisions stated under the Code are Sections

244, 245 as well as 246 of Chapter, B of Chapter 19 of the Code Section 244 provides the evidence to be let in by the prosecution in the

following way:

1) When, in any warrant case instituted otherwise than on a police report, the accused appears or is brought before a Magistrate, the Magistrate

shall proceed to hear the prosecution and take all such evidence as may be produced in support of the prosecution.

2) The Magistrate may, on the application of the prosecution, issue a summons to any of its witnesses directing him to attend or to produce any document or other thing.

Then, Section 245 comes in, which runs as follows:

1) If, upon taking all the evidence referred to in Section 244, the Magistrate considers; for reasons to be recorded, that no case against the

accused has been made out which, if unrebutted, would warrant his conviction, the Magistrate shall discharge him.

2) Nothing in this section shall be deemed to prevent a Magistrate from discharging the accused at any previous stage of the case if, for reasons to be recorded by such Magistrate, he considers the charge to be groundless.

Section 246 also has become relevant to be adverted here, which runs as follows:

1) If, when such evidence has been taken, or at any previous stage of the case, the Magistrate is of opinion that there is ground for presuming that

the accused has committed an offence triable under this Chapter, which such Magistrate is competent to try and which, in his opinion, could be

adequately punished by him, he shall frame in writing a charge against the accused.

2) The charge shall then be read and explained to the accused, and he shall be asked whether he pleads guilty or has any defence to make.

3) If the accused pleads guilty, the Magistrate shall record the plea, and may, in his discretion, convict him thereon.

4) If the accused refuses to plead, or does not plead or claims to be tried or if the accused is not convicted under Sub-section (3), he shall be

required to state, at the commencement of the next hearing of the case, or if the Magistrate for reasons to be recorded in writing so thinks fit,

forthwith, whether he wishes to cross-examine any, and, if so, which, of the witnesses for the prosecution whose evidence has been taken.

5) If he says he does so wish, the witness named by him shall be recalled and, after cross-examination and re-examination (if any), they shall be

discharged.

6) The evidence of any remaining witnesses for the prosecution shall next be taken, and after cross-examination and re-examination (if any), they shall also be discharged.

Section 247 then provides that accused should be called upon to enter upon his defence and produce his evidence and that the provisions of

Section 243 shall apply to the case.

16. Thus, it is worthwhile to note at this stage Sections 244, 245 and 246 of the Code of Criminal Procedure provide the mode and the ways in

which, the Magistrate has to take or record all the evidence produced, with the power to discharge the accused upon the adduced evidence so far

if no ground of offence is made out, and if not, to proceed in accordance with various limbs of Section 246 of the Code. It is also worthwhile to

note that none of the provisions of the case referred to above has provided that the prosecution shall provide or supply the copies of the

documents before trial. Perhaps, this was the main plank of reason and ground, the Respondent herein declines to furnish any copies of the

documents on which they have relied upon, which seems to be justifiable also. As I have already observed, there is nothing in the Code to ask for

the supply of documents before the commencement of the trial in case instituted otherwise than on a police report.

17. To my mind, the scheme of the provisions of the Code of Criminal Procedure with regard to the trial of the case by a Court of law in a case

instituted otherwise than on a police report is quite clear and the trial shall be and should be conducted only in accordance with the procedure and

procedural law laid down in this regard, and for the specific omission of the right, to require copies of such of the documents before trial cannot be

inferred or substituted or added with for the well settled principle that the concept of liberal interpretation cannot be introduced for interpreting the

provisions of the special Act. Procedure is the handmaiden of law and the two are so interrelated that the one cannot be separated from the other

and any deviation from the procedure laid down by law on a purported liberal interpretation is not only unwarranted and untenable but is also

illegal and is fraught with undoubted prejudice being caused to one of the parties to the proceedings, vitiating the ultimate trial. Justice, after all, is in

accordance with law.

18. Pertinent it is at this stage to note the legal proposition pronounced by the Supreme Court in Assistant Collector of Customs and Another Vs.

L.R. Malwani and Another, in the following words:

We also see no merit in the contention that the accused in this case are entitled to the benefit of Section 173(4), Code of Criminal Procedure which

provides that before the commencement of the enquiry or trial the officer in-charge of the police station who forwards a report u/s 173, Code of

Criminal Procedure, should furnish or cause to be furnished to the accused, free of cost, a copy of the report forwarded u/s 173(1), Code of

Criminal Procedure, of the first information report recorded u/s 154, Code of Criminal Procedure, and all other documents or relevant extracts

thereof on which the prosecution proposes to rely, including the statements and confessions, if any, recorded u/s 164, Code of Criminal

Procedure, and the statements recorded under Section.161, Code of Criminal Procedure, of all the persons whom the prosecution proposes to

examine as its witnesses.

(11). On a plain reading of Section 173, Code of Criminal Procedure, it is clear that the same is wholly inapplicable to the facts of the present

case. In the instant case no report had been sent u/s 173, Code of Criminal Procedure. Therefore that provision is not attracted. That provision is

attracted only in a case investigated by a police officer under Chapter 14 of the Code of Criminal Procedure, followed up by a final report u/s 173,

Code of Criminal Procedure. It may be remembered that Sub-section (4) of Section 173, was incorporated into the Code of Criminal Procedure

for the first time by Central Act 26 of 1955, presumably because of the changes effected in the mode of trials in cases instituted on police reports.

Before the Code of Criminal Procedure was amended by Act 26 of 1955, there was no difference in the procedure to be adopted in the cases

instituted on police reports and in other cases. Till then in all cases irrespective of the fact whether they were instituted on police reports or on

private complaints, the procedure regarding enquiries or trials was identical. In both type of cases, there were two distinct stages i.e., the enquiry

stage and the trial stage. When the prosecution witnesses were examined in a case before a charge is framed, it was open to the accused to cross-

examine them. Hence there was no need for making available to the accused the documents mentioned in Sub-section (4) of Section 173, Code of

Criminal Procedure. The right given to him u/s 162, Code of Criminal Procedure was thought sufficient to safeguard his interest. But Act 26 of

1955 as mentioned earlier made substantial changes in the procedure to be adopted in the matter of enquiry in cases instituted on police reports.

That procedure is now set out in Section 251(A), Code of Criminal Procedure. This new procedure truncated the enquiry stage. Section 251(A),

Code of Criminal Procedure says that the Magistrate if upon consideration of all the documents referred to in Section 173 and making such

examination if any, of the accused as he thinks necessary and after giving the prosecution and the accused an opportunity of being heard considers

the charge against the accused to be groundless, he shall discharge him but if he is of opinion that there is ground for presuming that the accused

has committed an offence triable as a warrant case which he is competent to try and which, in his opinion could be adequately punished by him, he

shall frame in writing a charge against him. Under the procedure prescribed in Section 251(A), Code of Criminal Procedure but for the facility

provided to him u/s 173(4) of that Code an accused person would have been greatly handicapped in his defence. But in a case instituted on a

complaint, like the one before us and governed by Sections 252 and 259 of the Code of Criminal Procedure, no such difficulty arises. Therein the

position is as it was before the amendment of the Code of Criminal Procedure in 1955.

(12). We are unable to agree with the learned Judges of the High Court that the Legislature did not make available the benefit of Section 173(4),

Code of Criminal Procedure in cases instituted otherwise than on police reports by oversight. The observation of the learned Judges in the course

of the judgment that ""Even the great Homer occasionally nods. There is nothing to show that the Legislature has applied its mind to the question of

the amendment of the procedure so far as the investigation of an offence under the Sea Customs Act is concerned at the time when it was

considering amendments to the Code of Criminal Procedure"" is without any basis. In the first place, it is not proper to assume except on very good

grounds that there is any lacuna in any statute or that the Legislature has not done its duty properly. Secondly, from the history of the Legislation to

which reference has been made earlier, the reason for introducing Section 173(4) is clear. The learned Judges of the High Court were constrained

to hold that Section 173(4) Code of Criminal Procedure in terms does not apply to the present case. But strangely enough that even after coming

to the conclusion that provision is inapplicable to the facts of the present case, they have directed the learned Magistrate to require the prosecution

to make available to the accused, the copies of the statements recorded from the prosecution witnesses during the enquiry under the Customs Act.

They have purported to make that order u/s 94(1), Code of Criminal Procedure which to the extent material for our present purpose reads:

Whenever any Court... considers that production of any document or other thing is necessary or desirable for the purposes of any... enquiry, trial

or other proceeding under this Code by or before such Court... such Court may issue a summons... to the person in whose possession and 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.

This Section does not empower a Magistrate to direct the prosecution to give copies of any documents to an accused person. That much appears

to be plain from the language of that Section. It was impermissible for the High Court to read into Section 94, Code of Criminal Procedure the

requirements of Section 173(4), Code of Criminal Procedure. The High Court was not justified, in indirectly applying to cases instituted on private

complaints the requirements of Section 173(4), Code of Criminal Procedure.

(13). That apart we do not think that the High Court was justified in interfering with the discretion of the learned Magistrate. Whether a particular

document should be summoned or not is essentially in the discretion of the trial Court. In the instant case the Special Public Prosecutor has assured

the learned trial Magistrate that he would keep in readiness the statements of witnesses recorded by the Customs authorities and shall make

available to the defence Counsel the statement of the concerned witness and when he is examined. In view of that assurance the learned Magistrate

observed in his order:

The recording of the prosecution evidence is yet to commence in this case and at present there are no materials before me to decide whether or

not the production of any of the statements and documents named by the accused in his application is desirable or necessary for the purpose of the enquiry or trial. As stated at the outset, the learned Special Prosecutor has given an undertaking that he would produce all the relevant statements

and documents at the proper time in the course of the hearing of the case. The request made for the issue of the summons u/s 94, Code of Criminal

Procedure is omnibus

The reasons given by the learned Magistrate in support of his order are good reasons. The High Court has not come to the conclusion that the

documents in question, if not produced in Court are likely to be destroyed or tampered with or the same are not likely to be made available when

required. It has proceeded on the erroneous basis that the accused will not have a fair trial unless they are supplied with the copies of those

statements even before the enquiry commences. Except for very good reasons, the High Court should not interfere with the discretion conferred on

the Trial Courts in the matter of summoning documents. Such interferences would unnecessarily impede the progress of cases and result in waste of

public money and time as has happened in this case.

19. In paragraph 5 and 6 of the impugned order, learned Magistrate has observed as follows:

Here this case is filed by the Enforcement Officer, Enforcement Directorate, Madras, who is a public servant, against the accused. The case was

taken on file in E.O.C.C. 27/96. Copy of the complaint was furnished to the accused. The case is posted for trial. According to Section 244 Code

of Criminal Procedure the Magistrate shall proceed to hear the prosecution and take all such evidence. Documents gathered during investigation by

the Respondent will be produced and marked through the relevant witnesses. After examination of witnesses, and marking of documents, if the

Court finds any prima facie case against the accused, charge will be framed against the accused according to law. The accused may cross examine

the prosecution witnesses either before framing of charge or after framing of charge. Therefore, there is sufficient and reasonable time for the

Petitioner to go through the records, documents and statement of witnesses before his cross examination. Therefore, there is no force in the

argument of the counsel for the Petitioner that there will be no proper and

effective cross examination by the accused, if the accused is not supplied with copies of documents, before commencement of trial.

(6.) The counsel for the Petitioner argued that the accused is arrested and detained in Central Prison, and he is entitled to defend a counsel of his

choice. If proper opportunity is not given to the accused, it will deprive the personal liberty of the accused. The counsel for the Respondent replied

that resorting to Article 22(1) and 22(5) does not come into the picture at all in this case. The personal liberty of the accused is deprived only in

due process of law. The accused has already engaged a counsel to defend not only the case but also the detention order. The case against the

accused has been filed in March 96 itself. Copy of complaint was furnished and he has engaged a counsel. Sufficient and reasonable time was

given to the counsel. Show cause notice and copies of documents have already been supplied to the accused during the course of detention under

COFEPOSA and therefore, there is no merit in the argument of the counsel for the Petitioner, that the personal liberty of the accused is affected.

20. In the instant case, it is not in controversy that the case is posted for the examination of witnesses in the trial and it was at this stage this

Revision was sought to be admitted. However, under the circumstances, learned trial Magistrate has to take necessarily the evidence of all the

witnesses and the documents filed on behalf of the prosecution and the accused is entitled to cross-examine for the purpose of providing full

meaning to the word "evidence". After going through all the evidence recorded, the Magistrate has necessarily to frame the charges and

consequently, the various procedures prescribed u/s 246 Code of Criminal Procedure has to be followed. It is under these circumstances, the

observation made by the learned trial Magistrate appears to be very correct and on par with law, totally within the purview of the identity of the

facts of the case above referred and the case law decided by the Apex Court in the previous paragraph.

21. While dealing with the fiscal laws, the Supreme Court in Goodyear India Ltd., Gedore (India) Pvt. Ltd., Kelvinator of India Ltd. and the Food

Corporation of India and Another Vs. State of Haryana and Another, at page 782 has held as follows:

It has been said and said on numerous occasions that fiscal laws must be strictly

construed, words must say what they mean, nothing should be presumed or implied, these must say so. The true test must always be the language used.

22. In *S.P. Gupta Vs. President of India and Others*, , the Supreme Court has held the law in the following words:

Thus, on a full and complete consideration of the decisions classified under the various categories, the propositions that emerge from the decided

cases of this Court and other foreign Courts are as follows:

1) Where the language of a statute is clear and unambiguous, there is no room for the application either of the doctrine of *casus omissus* or of

pressing into service external aid, for in such a case the words used by the Constitution or the statute speak for themselves and it is not the function

of the court to add words or expressions merely to suit what the courts think is the supposed intention of the legislature.

2) Where, however, the words or expressions used in the constitutional or statutory provisions are shrouded in mystery, clouded with ambiguity

and are unclear and unintelligible so that the dominant object and spirit of the Legislature cannot be spelt out from the language, external aids in the

nature of parliamentary debates, immediately proceeding the passing of the statute, the report of the Select Committee or its Chairman, the

Statement of Objects and Reasons of the statute, if any, or any statement made by the sponsor of the statute which is in close proximity to the

actual introduction or insertion of the statutory provision so as to become, as it were, a result of the statement made, can be pressed into service in

order to ascertain the real purport, intent and will of the legislature to make the constitutional provision workable. We might make it clear that such

aids may neither be decisive nor conclusive but they would certainly assist the courts in interpreting the statute in order to determine the avowed

object of the Act or the Constitution as the case may be.

3) Except in the aforesaid cases, a mere speech of any member made on the floor of the House during the course of a Parliamentary or Legislative

debate would not be admissible at all because the views expressed by the speaker may be his individual views which may or may not be accepted

by the majority of the members present in the House.

4) Legislative history of a constitutional provision though not directly germane

for the purpose of construing a statute may, however, be used in exceptional cases to denote the beginning of the legislative process which results in the logical end and the finale of the statutory provision but in no case can the legislative history take the place of or be a substitute for an interpretation which is in direct contravention of the statutory provision concerned.

5) Where the scheme of a statute clearly shows that certain words or phrases were deliberately omitted by the Legislature for a particular purpose

or motive, it is not open to the Court to add those words either by conforming to the supposed intention of the Legislature or because the insertion

or the omission suits the ideology of the Judges deciding the case. Such a course of action would amount not interpretation but to interpolation of

the statutory or constitutional provisions, as the case may be, and is against all the well established canons of interpretation of statutes.

The main reason behind the principles enunciated above is that the Legislature must be presumed to be aware of the expanding needs of the nation,

the requirements of the people and above all, the dominant object which the legislation seeks to subserve.

Thus, where the language is plain and unambiguous the Court is not entitled to go behind the language so as to add or supply omissions and thus

play the role of a political reformer or of a wise counsel to the legislature.

The above propositions declared by the Apex Court and that too, by the Constitutional Bench of the Supreme Court, is categorical in saying that

where the language of the provision of a statute is plain and unambiguous, the Court is not entitled to go behind the language so as to add or supply

omissions and play the role of a political reformer or a wise counsel to the Legislature. Therefore, the whole of the observation can be totally

imported to the facts of the instant case, as a categorical and clear answer to the first contention raised by learned Counsel Mr. B. Kumar, appearing

on behalf of the Revision Petitioner. Besides this, I do not intend to add anything more in the instant case than what I have observed already.

23. The next contention dealt by Mr. B. Kumar learned Counsel appearing for the Petitioner is that the word ""evidence"" provided on more than

one occasion in Sections 244 and 245 of the Code, includes ""evidence"" contemplated under the provisions of the Indian Evidence Act, namely,

Section 137 of the Indian Evidence Act, which reads as follows:

Examination-in-chief- The examination of a witness by the party who calls him shall be called his examination-in-chief.

Cross-examination-The examination of a witness, by the adverse party shall be called his cross-examination.

Re-examination- The examination of a witness, subsequent to the cross-examination by the party who called him, shall be called his re-examination.

The order of examination provided by Section 138 of the Indian Evidence Act is that the witnesses shall be first examined-in-chief, then (if the adverse party so desires) cross-examined, then (if the party calling him so desires) re-examined and further the examination and cross-examination

must relate to relevant facts but the cross-examination need not be confined to the facts to which the witness testified on his examination-in-chief.

Re-examination shall be directed to the explanation of matters referred to in cross-examination; and if new matter is, by permission of the Court, introduced in-re-examination, the adverse party may further cross-examine upon the matter.

24. A combined reading of the above two sections would lead necessarily to a conclusion that the recording of the evidence consists of three

elements, namely, chief-examination, cross-examination and reexamination and if these three elements are fulfilled while examining a witness, then,

it is deemed to be complete and it assumes the concept of "evidence". Therefore, during the trial, before framing the charge, if any, of the

Prosecution witness is in the box and gives certain evidence, it is for the accused, namely, the adverse party, to cross-examine, which the court

may allow but the learned Counsel for the revision Petitioner on this score would then contend that without the supplying of the copies of the

documents which the prosecution would intend to mark through the chief-examination, no effective cross-examination which the adverse party,

namely, the accused so desires, can be done, which according to him, not only would result in great prejudice but also tantamount to negation of

his fundamental right enshrined in Articles 21 and 22 of the Constitution of India. In short, learned Counsel would go to the extent to say that the

absence of any provision in the Code for not supplying any of the documents

which the prosecution wants to rely, before the commencement of the examination, would definitely come within the mischief of Articles 21 and 22 of the Constitution of India and for this reasoning. Court is empowered to clothe a remedy for the accused in order to controvert the mishap caused very much to the accused. Of course, it is true that the Code of Criminal Procedure is silent about the fact of the supplying of the copies of the documents before the commencement of the trial is there but for the reasons and observations made by me already, the access to the copies of the document or the opportunity to look into the copies of the document or the contents of the same was at no point denied to the accused by the prosecution party. But however, the procedure laid down, made applicable to the trial of the cases instituted otherwise than on a police report in warrant cases, is such, which postpones the supply of the copies or access by the accused to the same and except this, nothing had happened in the scheme of the Code.

25. Reliance was placed on the findings by the Apex Court in *Mrs. Maneka Gandhi Vs. Union of India (UOI)* and *Another*, for the following:

Now, the question immediately arises as to what is the requirement of Article 14: What is the content and reach of the great equalising principle

enunciated in this Article? There can be no doubt that it is a founding faith of the Constitution. It is indeed the pillar on which rests securely the

foundation of our democratic republic. And, therefore, it must not be subjected to a narrow, pedantic or lexicographic approach. No attempt

should be made to truncate its all-embracing scope and meaning, for to do so would be to violate its activist magnitude. Equality is a dynamic

concept with many aspects and dimensions and it cannot be imprisoned within traditional and doctrinaire limits. We must reiterate here what was

pointed out by the majority in *E.P. Royappa v. State of Tamil Nadu* 1974 SC 555 namely, that "from a positivistic point of view, equality is

antithetic to arbitrariness. In fact equality and arbitrariness are sworn enemies; one belongs to the rule of law in a republic, while the other, to the

whim and caprice of an absolute monarch. Where an act is arbitrary, it is implicit in it that it is unequal both according to political logic and

constitutional law and is therefore violative of Article 14". Article 14 strikes at arbitrariness in State action and ensures fairness and equality of

treatment. The principle of reasonableness, which legally as well as philosophically is an essential element of equality or non-arbitrariness pervades

Article 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 Article 14. It must 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.

How far natural justice is an essential element of procedure established by law?

The question immediately arises: Does the procedure prescribed by the Passports Act, 1967, for impounding a passport meet the test of this

requirement? Is it "right or fair or just?". The argument of the Petitioner was that it is not, because it provides for impounding of a passport without

affording reasonable opportunity to the holder of the passport to be heard in defence. To impound the passport of a person, said the Petitioner, is

a serious matter, since it prevents him from exercising his constitutional right to go abroad and such a drastic consequence cannot in fairness be

visited without observing the principle of audi alteram partem. Any procedure which permits impairment of the constitutional right to go abroad

without giving reasonable opportunity to show cause cannot but be condemned as unfair and unjust and hence, there is in the present case, clear

infringement of the requirement of Article 21. Now, it is true that there is no express provision in the Passports Act, 1967 which requires that the

audi alteram partem rule should be followed before impounding a passport, but that is not conclusive of the question, if the statute makes itself clear

on this point, then no more question arises. But even when the statute is silent, the law may, in a given case, make an implication and apply the

principle stated by Byles, J. Cooper v. Wandsworth Board of Works (1863) 14 C.B.N.S. 180: "A long course of decisions, beginning with Dr.

Bentley's case (1723) 1 Str 557 and ending with some very recent cases, establish that although there are no positive words in the statute requiring

that the party shall be heard, yet the justice of the common law will supply the omission of the Legislature. The principle of audi alteram partem

which mandates that no one shall be condemned unheard, is part of the rules of natural justice. In fact, there are two main principles in which the

rules of Natural justice are manifested, namely, Nemo Judex in Sua Causa and

audi alteram partem. We are not concerned here with the former since there is no case of bias urged here. The question is only in regard to the right of hearing which involves the audi alteram partem rule. Can it be imported in the procedure for impounding a passport?

26. Emphasising the above observations and based on it, it was the endeavour of the learned Counsel Mr. B. Kumar to say that the trial of the

case must be right, just and fair but however should not be arbitrary, fanciful or oppressive and if so, it would come within the mischief of Article

21 of the Constitution of India, having gone through the pronouncements made by the larger Bench in the above decision and applying the same to

the facts of the instant case., I do not find any force in this argument for the very reasoning that non-supplying of the copies of the documents to the

accused prior to the commencement of trial in a case instituted otherwise than on a police report in a warrant case involves very much no

fundamental right enshrined in Articles 14,19,21 and 22 of the Constitution of India. If at all, the non-supply of the copies beforehand is said to

have a bearing in this case, it could be argued under the herding of prejudice being caused to the accused and not by way of fundamental right.

Even, whether that prejudice is made available in this case or not is a question to be gone into.

27. Then, reliance was placed in the decision in Francis Coralie v. Union Territory of Delhi AIR 1981 SC 746 at page 750 for the following

observations:

Our Constitution does recognise the existence of this power, but it is hedged in by various safeguards set out in Articles 21 and 22. Articles 22 in

Clauses (4) to (7), deals specifically with safeguards against preventive detention and any law of preventive detention or action by way of

preventive detention taken under such law must be in conformity with the restrictions laid down by those clauses on pain of invalidation. But apart

from Articles 22, there is also Article 21 which lays down restrictions on the power of preventive detention. Until the decision of this Court in Mrs.

Maneka Gandhi Vs. Union of India (UOI) and Another, a very narrow and constricted meaning was given to the guarantee embodied in Article 21

and that article was understood to embody only that aspect of the rule of law, which requires that no one shall be deprived of his life or personal

liberty without the authority of law. It was construed only as a guarantee against executive action unsupported by law. So long as there was some law, which prescribed a procedure authorising deprivation of life or personal liberty, it was supposed to meet the requirement of Article 21. But in Maneka Gandhi's case (supra), this Court for the first time opened-up a new dimension of Article 21 and laid down that Article 21 is not only a guarantee against executive action unsupported by law, but is also a restriction on law making. It is not enough to secure compliance with the prescription of Article 21 that there should be law prescribing some semblance of procedure for depriving a person of his life or personal liberty but the procedure prescribed by the law must be reasonable, fair and just and if it is not so, the law would be void as violating the guarantee of Article 21. This Court expanded the scope and ambit of the right to live and personal liberty enshrined in Article 21 and sowed the seed for future development of the law enlarging this most fundamental of Fundamental Rights. This decision in Maneka Gandhi's case became the starting point the spring-board for a most spectacular evolution of the law culminating in the decisions in Madhav Hayawadanrao Hoskot Vs. State of Maharashtra, Hussainara Khatoon and Others Vs. Home Secretary, State of Bihar, Patna, the first Sunil Batra Vs. Delhi Administration and Others etc., and the second Sunil Batra Vs. Delhi Administration and Others etc., The position now is that Article 21 as interpreted in Maneka Gandhi's case (supra) requires that no one shall be deprived of his life or personal liberty except by procedure established by law and this procedure must be reasonable, fair and just and not arbitrary, whimsical or fanciful and it is for the Court to decide in the exercise of its constitutional power of judicial review whether the deprivation of life or personal liberty in a given case is by procedure, which is reasonable, fair and just or it is otherwise. The law of preventive detention has, therefore, now to pass the test not only of Article 22, but also of Article 21 and if the constitutional validity of any such law is challenged, the Court would have to decide whether the procedure laid down by such law for depriving a person of his personal liberty is reasonable, fair and just. But despite these safeguards laid down by the Constitution and creatively evolved by the Courts, the power of preventive detention is a frightful and awesome power with drastic consequences affecting personal liberty, which is the

most cherished and prized possession of man in a civilized society. It is a power to be exercised with the greatest care and caution and the courts

have to be ever vigilant to see that this power is not abused or misused.

28. With great respect and constraint, the pronouncement made by the Apex Court in the above case is to be prevailed and followed and no one

can dispute it. But I am at every difficulty to find out the very relevancy of the said findings to the factual aspects of the instant case. As I have

adverted to, there is a vital distinction between the fundamental rights and the prejudice caused to one person during the time of trial. Prejudice

always cannot be clubbed or mixed with the fundamental right for the very reasoning that fundamental right is one a person is to be guaranteed

with, to be provided by the State and not again to any prejudice caused to a person, who is facing a trial before a Court of law. The prejudice is

something which causes the deprivation of the facts to be known for the accused in order to have a full-fledged trial whereas the fundamental right

is something totally different and cannot be equated with. Therefore, the non-supply of copies of the documents is not at all an infringement of the

fundamental right and the refusal, if any, by the statute or Code may not amount to the abridgment of the fundamental right so as to invoke the aid

of Articles 21 or 22 of the Constitution of India.

29. Then the learned Counsel for the Petitioner dwelt his next attack on the question of fair play and natural justice and the doctrine of audi alteram

partem.

30. The Supreme Court in Union of India and another Vs. W.N. Chadha, has observed as follows:

The rule of audi alteram partem is not attracted unless the impugned order is shown to have deprived a person of his liberty or his property. The

rule of audi alteram partem is a rule of justice and its application is excluded where the rule will itself lead to injustice. There is exclusion of the

application of audi alteram partem rule to cases where nothing unfair can be inferred by not affording an opportunity to present and meet a case.

This rule cannot be applied to defeat the ends of justice or to make the law lifeless, absurd, stultifying and self-defeating or plainly contrary to the

common sense of the situation and this rule may be jettisoned in very exceptional circumstances where compulsive necessity so demands. There

are certain exceptional circumstances and situations whereunder the application of the rule of audi alteram partem is not attracted.

It is no doubt true that the fact that a decision, whether prima facie case has or has not been made out, is not by itself determinative of the exclusion

of hearing, but the consideration that the decision was purely an administrative one and a full-fledged enquiry follows is a relevant and indeed a

significant factor in deciding whether at the stage there ought to be hearing which the statute did not expressly grant.

Under the scheme of Chapter 12 of the Code of Criminal Procedure, there are various provisions under which no prior notice or opportunity of

being heard is conferred as a matter of course to an accused person while the proceeding is in the stage of investigation by a police officer. The

accused has no right to have any say as regards the manner and method of investigation. Save under certain exceptions under the entire scheme of

the Code, the accused has no participation as matter of right during the course of the investigation of a case instituted on a police report till the

investigation culminates in filing of a final report u/s 173(2) or in a proceeding instituted otherwise than on a police report till the process is issued

u/s 204 as the case may be.

There are certain provisions under the Code empowering the Magistrate to give an opportunity of being heard under certain specified

circumstances, i.e. Sections 227, 228, 239, 235, 248. However, the provisions relating to the investigation under Chapter 12 do not confer any

right of prior notice and hearing to the accused and on the other hand, they are silent in this respect. True, there are certain rights conferred on an

accused to be enjoyed at certain stages under the Code of Criminal Procedure such as Section 50 where under the person arrested is to be

informed of the grounds of his arrest and to his right of bail u/s 57 dealing with person arrested not to be detained for more than 24 hours and u/s

167 dealing with the procedure if the investigation cannot be completed in 24 hours-which are all in conformity with the "Right to Life" and

"Personal Liberty" enshrined in Article 21 of the Constitution and the valuable safeguards ingrained in Article 22 of the Constitution for the

protection of an arrestee or detenu in certain cases. But so long as the investigating agency proceeds with his action or investigation in strict

compliance with the statutory provisions relating to arrest or investigation of a criminal case and according to the procedure established by law, no

one can make any legitimate grievance to stifle or to impinge upon the proceedings of arrest or detention during investigation as the case may be, in accordance with the provisions of the Code.

If prior notice and an opportunity of hearing are to be given to an accused in every criminal case before taking any action against him, such a

procedure would frustrate the proceedings, obstruct the taking of prompt action as the law demands, defeat the ends of justice and make the

provisions of law relating to the investigation lifeless, absurd and self-defeating. Further, the scheme of the relevant statutory provisions relating to

the procedure of investigation does not attract such a course in the absence of any statutory obligation to the contrary.

31. Though a catena of case laws have been relied by the learned Counsel appearing for the revision Petitioner to support his contention that non-

supply of the copies of the documents, which the prosecution is going to rely upon, before the commencement of the trial as has not been provided

by the statute amounts to not only the prejudice but also the violation of the fundamental right guaranteed under Articles 21 and 22 of the

Constitution of India, for the observations held by me supra that since the Code does not contain any provision for providing the copies of the

documents before the commencement of trial akin to Section 207 of the Code and in view of the decisions held by the Apex Court quoted above,

I feel the traversing of the other decisions are unnecessary in this case. In short, I may reiterate to say again that the non-supply of the copies of the

documents going to be relied on by the FERA authorities in the instant case before the commencement of the trial as provided by the provisions for

the private complaint in warrant cases neither amounts to the prejudice nor violates the fundamental right of the accused under Articles 21 and 22

of the Constitution of India. As I have already observed when a private complaint is filed u/s 200 Code of Criminal Procedure till the process is

issued u/s 204 of the Code after exercising all the powers by the Magistrate or the Special Judge, the accused, namely, the revision Petitioner,

cannot have any right to ask for the copies of the documents as a matter of right. After the issuance of the process on the basis of the complaint u/s

204 of the Code, if the accused entered appearance, then, the only course open to the Court to follow is the mandate provided u/s 244, which provides that the Court shall take all the evidence produced by the prosecution and if the accused desires to cross-examine he is entitled to cross examine, and to this extent the right and liberty of the accused person has been set right and safeguarded by the Courts in this country. In a private complaint procedure, after recording of the evidence produced by the prosecution, as submitted by the learned Counsel for the Petitioner, the evidence including the oral and documentary, consisting of chief-examination, cross-examination and re-examination, the Court is bound to evaluate the whole evidence in order to find out the existence of the prima facie case, so as to frame charge and proceed further u/s 246 of the Code. If, for any reason, by allowing the cross-examination or the ""evidence"" to be testified and analysed carefully by the Magistrate, then, under the limbs of Section 245, the Magistrate is empowered to discharge the accused in the middle irrespective of the stage. Therefore, it is under these exceptional circumstances, it cannot be said that the non-supply of the copies of the documents in advance to the accused will either cause prejudice or affect the fundamental right. It is certainly open for the Petitioner to ask for time from the trial Court to look into documents and cross-examine so as to fulfil the legal exercise to be done u/s 245 and to facilitate the Court to proceed in accordance with Section 246 by framing the charges. Even otherwise, the accused is at liberty to ask for the certified copies of the documents, if relied on by the prosecution during the first chief-examination by getting proper and adequate time from the Court and to cross-examine the witnesses. When remedy is available to this extent, it cannot be said that the silence of the statute for this remedy causes every violation of the fundamental rights of a citizen accused of an offence under Articles 21 and 22 of the Constitution of India or prejudice to any of the accused in a given case.

32. Mr. K. Kumar, learned Counsel appearing for the Respondent has brought to my knowledge the serving of the copy of the complaint as provided u/s 200 of the Code of Criminal Procedure to the accused containing the details of the averments of the offences and also the list of the witnesses enumerated therein to be examined. He also brought to my notice that before filing the complaint, a show cause notice was given to the

Revision Petitioner herein detailing all the averments and facts, which the complaint contains now, and in which, a list of documents has also been appended thereto, and that therefore, it is not possible for the accused to say that he was put in pitch darkness about the documents to be relied on by the prosecution and therefore, according to him, the attempt in the Revision cannot be sustained for any reason. I have carefully perused the case papers and the copy of the show-cause notice served upon the accused, which contains the description of some of the documents which the prosecution wanted to rely so much for the complaint. However, after having thus considered the whole gamut of the case and for all the foregoing reasonings given elaborately, I do not find any irregularity or illegality in the impugned order passed by the learned trial Judge. I have to say so for the reasoning that the learned trial Judge has neither refused nor denied the right to look into the documents once the examination of the witness starts. Reiterating my observations given above, I find that this Revision lacks in merits. Accordingly, it has to be rejected at this admission stage.

33. In the result, for all the foregoing reasonings, the Revision fails and accordingly, it is dismissed at this admission stage.