

CT Case No.34/2022  
ECIR/DLZO-I/01/2019 dt. 24.01.2019.  
ED Vs. M/s OPG Securities Pvt. Ltd. & Anr.  
CNR No. DLCT11-000811-2022

14.02.2024

**(Present proceedings have been conducted on Hybrid Mode)**

Present : Mr. Mohammad Faraz, Ld. PP for ED along with IO

Anuj Kumar, Assistant Director, ED.

Shri Harshit Sethi, Ld. counsel for A-1 and A-2 through VC (Cisco Webex) A-2 Sanjay Gupta through VC (Cisco Webex) on bail who also represent A-1 M/s OPG Securities Pvt. Ltd.

It is submitted by Ld. counsel for (A-2) Sanjay Gupta that his application U/s 207/208 Cr. P.C. for supply of deficient documents/material is pending.

It is submitted by counsel for applicant that it is revealed that amongst the documents supplied by the ED, there are certain material documents which are relied upon by the prosecution but the same have not been incorporated in the list of documents and not supplied to the applicant. It is further submitted that there are certain documents which are dim/illegible which are mentioned in para 5 of the application and the same are required to be supplied to the applicant. It is further submitted that numbering of some of the documents is wrong and certain documents which are relied upon are missing which are mentioned in para 6 of the application and these documents are required to be supplied to the applicant.

It is further submitted that that ED has recorded statement of certain witnesses and accused persons but has chosen not to supply the same to the applicant. It is stated that it is the boundened duty of ED to place on record all the documents including statements of witnesses collected by them during their investigation although not relied upon and the issue pertaining to supply of all statements to the accused has been settled by the Hon'ble High Court of Delhi in various judgments. It is submitted that at the stage of scrutiny of document u/s 207/208 Cr.PC, the court is duty bound to supply list of unrelid documents, relied upon documents and the statements without which the applicant will not be in a position to argue the matter on charge. Ld counsel for applicant has prayed that ED be directed to make a complete disclosure of the witnesses so examined and statements so recorded by them during investigation, to supply the list of all the material documents and statements recorded/collected by them during investigation but does not form part of the record and to allow inspection to the application of the entire material seized by the ED during investigation. Ld. counsel has relied upon the following judgments i.e. **CBI Vs. INX Media Pvt. Ltd. & Others (2021 SCC Online Del 4932)** and **Dheeraj Wadhawan Vs. CBI (Crl. MC 5108/2023 & Crl. M.A. 19403/2023)** .

Reply has already been filed by ED stating therein that the investigation in the present case is still going on and the Hon'ble Apex Court has stated in several cases that the accused can call for the documents only at the stage of trial and the application is pre-mature and liable to be dismissed.

To dispose of the application of (A-2) Sanjay

Gupta, for supply of unrelayed documents, statements and disclosure of unrelayed documents, supply of complete and legible copies of documents, supply of illegible and missing documents, judgment of Hon'ble Mr. Justice Dinesh Kumar Sharma in Dheeraj Wadhawan Vs. CBI (Crl. M.C. 5108/2023, Crl. MA 19403/2023) (Page 9 to 27) is necessary to be discussed and relevant portion of this judgment is as under:

*“9. This court has come across this question in various petitions as has rightly been highlighted by Mr. Aggarwal, learned counsel for the petitioner. However, fortunately, today both the learned counsel for the petitioner and learned Special PP for CBI have advanced extensive arguments and therefore this court deems it proper to dispose of the present petition in light of the judgments of the Hon’ble Supreme Court in the cases of **Re Suo Motu** (supra), **Siddharth Vashisht @ Manu Sharma** (supra), **Manoj** (supra) and **P. Ponnusamy** (supra). In this regard it would be advantageous to refer to the observation made by the Hon’ble Supreme Court.*

*10. In **In Re: To Issue Certain Guidelines Regarding Inadequacies and Deficiencies in Criminal Trials vs The State of Andhra Pradesh & Ors., Suo Moto Writ (Crl) Nos.1/2017**, it was inter alia held as under:*

*11. The amici pointed out that at the commencement of trial, accused are only furnished with list of documents*

*and statements which the prosecution relies on and are kept in the dark about other material, which the police or the prosecution may have in their possession, which may be exculpatory in nature, or absolve or help the accused. This court is of the opinion that while furnishing the list of statements, documents and material objects under Sections 207/208, Cr. PC, the magistrate should also ensure that a list of other materials, (such as statements, or objects/documents seized, but not relied on) should be furnished to the accused. This is to ensure that in case the accused is of the view that such materials are necessary to be produced for a proper and just trial, she or he may seek appropriate orders, under the Cr.PC. for their production during the trial, in the interests of justice”.*

*11. In **Re-Suo Motu** (supra), the Model Draft Rules were also framed. The relevant Model Draft Rule is as under:*

**"4. SUPPLY OF DOCUMENTS UNDER SECTIONS 173, 207 AND 208 Cr.PC**

*i. Every accused shall be supplied with statements of witnesses recorded under Section 161 and 164 Cr.P.C. and a list of documents, material objects and exhibits seized during investigation and relied upon by the Investigating Officer in accordance with Section 207 and 208 Cr.P.C.*

*Explanation: The list of statements, documents, material objects and exhibits shall specify statements, documents, material objects and exhibits that are not relied upon by the Investigating Officer.*

*12. Proceeding further, in **Manoj & Ors. vs State of Madhya Pradesh** (supra) it was inter*

*alia held as under:*

*“188. This view was endorsed in a recent three judge decision of this court in Criminal trials guidelines regarding Inadequacies and Deficiencies, in re v. State of Andhra Pradesh. This court has highlighted the inadequacy mentioned above, which would impede a fair trial, and inter alia, required the framing of rules by all states and High Courts, in this regard, compelling disclosure of a list containing mention of all materials seized and taken in, during investigation-to the accused. The relevant draft guideline, approved by this court, for adoption by all states is as follows:*

***“4. SUPPLY OF DOCUMENTS UNDER SECTIONS 173, 207 AND 208 Cr.P.C.***

*Every Accused shall be supplied with statements of witness recorded under Sections 161 and 164 Cr.PC and a list of documents, material objects and exhibits seized during investigation and relied upon by the Investigating Officer (I.O) in accordance with Sections 207 and 208, Cr. PC.*

*Explanation: The list of statements, documents, material objects and exhibits shall specify statements, documents, material objects and exhibits that are not relied upon by the Investigating Officer.*

*189. In view of the above discussion, this court holds that the prosecution, in the interests of fairness, should as a matter of rule, in all criminal trials, comply with the above rule, and furnish the list of statements, documents, material objects and exhibits which are not relied upon by the investigating officer. The presiding officers of courts in criminal trials shall ensure compliance with such rules.”*

*13. Thereafter in P. Ponnusamy (supra), the*

*Hon'ble Apex Court inter alia held as under:*

*"17. As stated earlier, the requirement of disclosure elaborated on in Manoj, not only was premised on the formulation of draft rules, but normatively premised on the ratio of the three-judge bench decision in Manu Sharma (supra). In these circumstances, the proper and suitable interpretation of the disclosure requirement in Manoj (supra) would be that:*

*(a) It applies at the trial stage, after the charges are framed.*

*b) The court is required to give one opportunity of disclosure, and the accused may choose to avail of the facility at that stage. (c) In case documents are sought, the trial court should exercise its discretion, having regard to the rule of relevance in the context of the accused's right of defence. If the document or material is relevant and does not merely have remote bearing to the defence, its production may be directed. This opportunity cannot be sought repeatedly -the trial court can decline to issue orders, if it feels that the attempt is to delay.*

*(d) At the appellate stage, the rights of the accused are to be worked out within the parameters of Section 391 CrPC."*

*14. There cannot be any dispute as to the contentions raised by Mr. Aggarwal, Learned counsel for the petitioner that the principles of natural justice have to be adhered to strictly for the purposes of fair trial to the accused. The provisions of the Cr.P.C. are also to be read in consonance and in sync with the basic canons enshrined in the Constitution of India which*

*guarantees a right of fair trial to every accused persons. The provisions as contained in Section 207 and 208 Cr.P.C. are also in line with such golden principles that to enable the accused persons to face the trial the copies have to be supplied to the accused persons.*

*15. Section 207 and 208 of Cr.P.C. read as under:*

*“207. Supply to the accused of copy of police report and other documents.—In any case where the proceeding has 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:*

*(i) the police report;*

*(ii) the first information report recorded under section 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 therefrom 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 under section 164;*

*(v) any other document or relevant extract thereof forwarded to the Magistrate with the police report under sub-section (5) of section 173:*

*Provided that the Magistrate may, after perusing any such part of a statement as is referred to in clause (iii) and considering the reasons given by the police officer for the request, direct that a copy of that part of the statement or of such portion thereof as the Magistrate thinks proper, shall be furnished to the accused:*

*Provided further that if the Magistrate is satisfied that any*

*document referred to in clause (v) is voluminous, he shall, instead of furnishing the accused with a copy thereof, direct that he will only be allowed to inspect it either personally or through pleader in Court.”*

*“208. Supply of copies of statements and documents to accused in other cases triable by Court of Session.— Where, in a case instituted otherwise than on a police report, it appears to the Magistrate issuing process under section 204 that the offence is triable exclusively by the Court of Session, the Magistrate shall without delay furnish to the accused, free of cost, a copy of each of the following:—*

*(i) the statements recorded under section 200 or section 202, of all persons examined by the Magistrate;*

*(ii) the statements and confessions, if any, recorded under section 161 or section 164;*

*(iii) any documents produced before the Magistrate on which the prosecution proposes to rely:*

*Provided that if the Magistrate is satisfied that any such document is voluminous, he shall, instead of furnishing the accused with a copy thereof, direct that he will only be allowed to inspect it either personally or through pleader in Court.”*

*16. Before proceeding further, it is also necessary to refer to Section 173 (5) of Cr.P.C., which reads as under:*

*“173. Report of police officer on completion of investigation—*

*(5) When such report is in respect of a case to which section 170 applies, the police officer shall forward to the Magistrate along with the report—*

*(a) all documents or relevant extracts thereof on which the*

*prosecution proposes to rely other than those already sent to the Magistrate during investigation;*

*(b) the statements recorded under section 161 of all the persons whom the prosecution proposes to examine as its witnesses.”*

*17. There also cannot be any dispute to the submissions of the Learned counsel for the petitioner that Section 207 and 208 Cr PC is wider in amplitude than Section 173 (5) Cr.P.C. as has been stated by the Hon’ble Apex Court also in **Siddharth Vashisht @ Manu Sharma** (supra), wherein it was inter alia held as under:*

*“219. The role and obligation of the Prosecutor particularly in relation to disclosure cannot be equated under our law to that prevalent under the English system as afore referred to. But at the same time, the demand for a fair trial cannot be ignored. It may be of different consequences where a document which has been obtained suspiciously, fraudulently or by causing undue advantage to the accused during investigation such document could be denied in the discretion of the Prosecutor to the accused whether the prosecution relies or not upon such documents, however in other cases the obligation to disclose would be more certain. As already noticed the provisions of Section 207 have a material bearing on this subject and make an interesting reading. This provision not only require or mandate that the court without delay and free of cost should furnish to the accused copies of the police report, first information report, statements, confessional statements of the persons recorded under Section 161 whom the prosecution wishes to examine as witnesses, of course, excluding any part of a statement or*

*document as contemplated under Section 173(6) of the Code, any other document or relevant extract thereof which has been submitted to the Magistrate by the police under sub-section (5) of Section 173. In contradistinction to the provisions of Section 173, where the legislature has used the expression —documents on which the prosecution relies are not used under Section 207 of the Code. Therefore, the provisions of Section 207 of the Code will have to be given liberal and relevant meaning so as to achieve its object. Not only this, the documents submitted to the Magistrate along with the report under Section 173(5) would deem to include the documents which have to be sent to the Magistrate during the course of investigation as per the requirement of Section 170(2) of the Code.*

*18. It is pertinent to mention here that in **Re-Suo Motu** (supra)[three judge bench], **Manoj** (supra) [three judge bench] and **P. Ponnusamy** (supra) [three judge bench] are later in time to **Siddharth Vashisht @ Manu Sharma's** case [two judge bench]. These are the broad principles but while deciding a particular question of law, the court has to take into account the relevant provisions of law and the judicial dictums. It is also relevant to mention here that it has repeatedly been held that at the stage of charge, the court is only required to look into the material placed by the prosecution. At the stage of charge, the court cannot look into the documents being placed by the defence. This position has been crystallized in a three judges*

bench decision in ***State of Orissa Vs. Debendra Nath Padhi***, (2005) 1 SCC 568, wherein the Hon'ble Apex Court while overruling the division bench decision rendered in ***Satish Mehra vs Delhi Admn***, 1996 (9) SCC 766, has inter alia held as under:

“23. As a result of the aforesaid discussion, in our view, clearly the law is that at the time of framing charge or taking cognizance the accused has no right to produce any material. *Satish Mehra* case [(1996) 9 SCC 766 : 1996 SCC (Cri) 1104] holding that the trial court has powers to consider even materials which the accused may produce at the stage of Section 227 of the Code has not been correctly decided.

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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. Insofar as the accused is

*concerned, his entitlement to seek order under Section 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 under Section 227, 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. Under Section 91 summons for production of document can be issued by court and under a written order an officer in charge of a 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.*

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*27. Insofar as Section 91 is concerned, it was rightly held that the width of the powers of that section was unlimited but there were inbuilt, inherent limitations as to the stage or point of time of its exercise, commensurate with the nature of proceedings as also the compulsions of necessity and desirability, to fulfil the task or achieve the object. Before the trial court the stage was to find out whether there was sufficient ground for proceeding to the next stage against the accused. The application filed by the accused under Section 91 of the Code for summoning and production of document was dismissed and order was upheld by the High Court and this Court. But observations were made in para 6 to the effect that if the accused could produce any reliable material even at that stage which might totally affect even the very sustainability of the*

case, a refusal to look into the material so produced may result in injustice, apart from averting an exercise in futility at the expense of valuable judicial/public time, these observations are clearly obiter dicta and in any case of no consequence in view of conclusion reached by us herein before. Further, the observations cannot be understood to mean that the accused has a right to produce any document at the stage of framing of charge having regard to the clear mandate of Sections 227 and 228 in Chapter 18 and Sections 239 and 240 in Chapter 19.

28. We are of the view that jurisdiction under Section 91 of the Code when invoked by the 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.”

19. However, in case of any documents which makes the story of the prosecution preposterous, the court will also have a right to deal with the same in accordance with the law as has been laid down in **Nitya Dharmananda @ K. Lenin & Anr. Vs. Sri Gopal Sheelum Reddy**, AIR 2017 SC 5846. In **Nitya Dharmananda** (supra) after discussing **Debendra Nath Padhi** (supra) and **Hardeep Singh vs. State of Punjab** (2014) 3 SCC 92, it was inter alia held as under:

8. Thus, it is clear that while ordinarily the Court has to proceed on the basis of material produced with the charge-sheet for dealing with the issue of charge but if the court is

*satisfied that there is material of sterling quality which has been withheld by the investigator/prosecutor, the court is not debarred from summoning or relying upon the same even if such document is not a part of the charge-sheet. It does not mean that the defence has a right to invoke Section 91 CrPC de hors the satisfaction of the court, at the stage of charge.*

*20. It is also relevant to mention that as per Articles 141 and 142 of the Constitution of India, all the courts are strictly bound to adhere to the dictum of the Hon'ble Apex Court. Para 11 in **Re: Suo Motu** which has been read and relied by both the learned counsels, if read holistically with an objective mind, makes it clear that the Apex court expressed the opinion that while furnishing the list of statements, documents and material objects under Sections 207/208 Cr.P.C., the magistrate should also ensure that a list of other materials, (such as statements, or objects/documents seized, but not relied on) should be furnished to the accused. The apex court also *inter alia* observed that this is necessary to ensure that in case the accused is of the view that such materials are necessary to be produced for a proper and just trial, the accused may seek appropriate remedies under the Cr.P.C. for their production during the trial in the interest of justice. This direction has to be read along with the Draft Criminal Rules on Practice, 2021, which*

*forms part of this judgment. A perusal of the draft rules states that every accused shall be supplied with statements of witnesses recorded under Section 161 and 164 Cr.P.C. and a list of documents, material objects and exhibits seized during investigation and relied upon by the Investigating Officer in accordance with Section 207 and 208 Cr.P.C. Thus, at the stage of Section 207 and 208 Cr.P.C. as per the draft rules, the accused is only to be supplied with the relied upon documents. However, the explanation appended to it states that list of statements, documents, material objects and exhibits shall specify statements, documents, material objects and exhibits that are not relied upon by the Investigating Officer.*

*21. Thus, a conjoint reading of the both makes it clear that in respect of the unrelieved documents only the list of statements, documents, material objects and exhibits are to be supplied, however such documents, material objects and exhibits should specify documents, material objects and exhibits. Thus, the contention of the learned counsel for the petitioner that the reading of this provides that along with the list of documents, the documents also have to be supplied, cannot be accepted.*

22. Now the question remains that at what stage such list of unrelieved documents have to be supplied. For this, it is imperative to advert to the case of **P. Ponnusamy** (supra), wherein in para 17 it was inter alia held that the disclosure requirement would indicate that it applies at the trial stage, i.e. after the charges are framed. Learned Special PP for CBI wants this court to read the judgment of **P. Ponnusamy** (supra) in a manner that even the list of documents is to be supplied only at the trial stage after the charges are framed. However, this court finds it difficult to agree with the Learned Special PP for CBI on this point. In view of the specific finding given in Re: Suo Motu case, the list of other materials (such as statements, or objects/documents seized, but not relied on) has to be furnished to the accused at the stage of Section 207/208 Cr.P.C.

23. Thus, the discussion made above to the mind of this court makes the following positions clear:

a. That at the stage of Section 207 & 208 Cr.P.C., the list of other material (such as statements, or objects/documents seized, but not relied on) should be furnished to the accused.

b. The accused has a liberty to call for such unrelieved documents at the at the stage of trial in accordance with the relevant provisions of Cr.P.C. i.e. Section 91Cr.P.C.

24. *Learned Special PP for CBI has submitted that in fact in the present case, the petitioner had not asked for the list of unrelieved documents before the learned trial court and therefore the proper course would be to direct the petitioner to move an appropriate application before the learned trial court for supply of list of unrelieved documents. However, I consider that this would amount to simply delay the proceedings. Thus, this court deems it appropriate to dispose of the present petition with a direction that the list of other material (such as statements, or objects/documents seized, but not relied on) should be furnished to the accused before the framing of charge and the documents may be furnished to the accused after the framing of the charge in accordance with law, which are not relied upon by the prosecution in accordance with the judgments delivered in **Re: Suo Motu** (supra) and **P. Ponnusamy** (supra).*

25. *Mr. Aggarwal submits that inspection of unrelieved documents can be allowed in view of the judgment in **M/s. INX Media Pvt. Ltd.** (supra).*

26. *In **M/s. INX Media Pvt. Ltd.**, CrI. M.C.1338/2021, a coordinate bench of this Court has inter alia held as under:*

*"16. Indubitably, while passing an order of inspection of unrelieved upon documents, the Court is bound to strike a balance between the competing interest of ensuring a fair trial to the accused as also maintaining the sanctity of further investigation, in case further investigation is to be carried on. .... As noted above, the learned Trial Court directed the CBI to supply copies of all the pages/ part thereof, or the entire document to the accused persons in relation to documents only a few pages or part of document were being relied by the CBI. In relation to the documents which have not been filed in the Court, the learned Trial Court did not direct the CBI to produce the said documents in Court and held that the ends of justice would be met if the accused persons are permitted to inspect the said documents lying in the Malkhana of CBI and to find out if any such document is relevant or vital for their defence or is of sterling quality to demolish the very case of prosecution and after making inspection learned counsel representing these accused shall let the Court know the details of these documents so that copies thereof can be supplied to them.*

*17. By the impugned order, the learned trial Court has already clarified that the permission to conduct inspection being granted by the Court was not in respect of those documents in relation to which the investigation by the CBI was still pending.....*

*18. In the decision reported as (2012) 9 SCC 771 V.K.Sasikala vs. State Hon'ble Supreme Court noted a common feature that seizure of a large number of documents takes place in the course of investigation in a criminal case and that after completion of the process of investigation and before submission of the report under Section 173 Cr.P.C., the investigating officer is bound to apply its mind to the two sets of documents i.e. the one*

*which support the prosecution case and the other which support the accused, however it is not impossible to visualise a situation where the documents favouring the accused are not forwarded to the Court, even though the prayer in the said case was in relation to the documents forwarded to the Court but not relied by the prosecution.*

*19. Further, Clause 12.32 of the CBI (Crime) Manual 2020 also lays down the procedure of inspection of documents kept in the Malkhana on Court order. Thus Clause 12.32 of the CBI (Crime) Manual 2020 recognizes the right of the accused to carry out inspection as per the procedure laid down in the Manual of the CBI."*

*27. Therefore, in view of the judgment in **M/s. INX Media Pvt. Ltd.** (supra) passed by this court in Crl.M.C.1338/2021 dated 10.11.2021, the inspection be allowed in accordance with clause 12.32 of the CBI (Crime) Manual, 2020. It is pertinent to mention that Special Leave to Appeal (Crl.) No.1274/2022 filed against the judgment passed by this court has already been dismissed. However, right to inspection shall not be in respect of the documents in relation to which the investigation by CBI is still pending."*

In view of the above stated judgment, at the stage of section 207 & 208 Cr. P.C., the list of other material (such as statements, or objects/documents seized, but not relied on) should be furnished to the accused.

The accused has a liberty to call for such unrelie

documents at the stage of trial in accordance with the relevant provisions of Cr.PC i.e. Section 91 Cr.PC.

In view of the above discussion, IO is directed to supply the list of other material such as statements or objects/documents seized but not relied on to the accused person. The accused has liberty to call for such unrelayed documents at the stage of trial in accordance with the provisions of Section 91 Cr. P.C. IO is also directed to supply complete and legible copies of relied upon documents to accused person. IO is also directed to clarify/provide the correct numbering of documents as mentioned in para 6 of the application of applicant/accused. In view of the above stated judgments, application cannot be permitted to inspect the documents in relation to which the investigation by ED is still pending.

Now put up for arguments on charge on **05.03.2024**.

**(Rakesh Kumar-III)**  
**Special Judge (PC Act)(CBI)-02**  
**Rouse Avenue District Court**  
**New Delhi/14.02.2024**