

MHBU010013032018



Sessions Trial No.48/2018
State Vs.Ganesh

ORDER BELOW EXHIBIT NO.85

(Passed on this 5th day of December 2022)

1] Instant application (Exh.85) has been filed by learned APP Shri Khatri that prosecution side should be permitted to file important documents on record which are filed along with list of document dated 8.11.2022. Those documents are seizure panchnama dated 11.5.2018 and certificate issued under Section 65-B of the Evidence Act.

2] Learned Counsel of accused has strongly opposed such application by contending that application (Exh.85) is totally silent why prosecution has not filed above-mentioned documents earlier. Application (Exh.85) is vague one. There is no legal ground to allow the application. Lastly, it is prayed for rejecting the application (Exh.85).

3] I have heard learned APP Shri Khatri and learned Counsel Shri Chopade for accused.

4] Learned APP has placed his reliance on the judgment reported in **B.L.Udaykumar Vs. State of Karnataka, 2018 Cri.L.J.3925.**

5] I have also heard both the parties on the application Exh.85 and on the judgment passed by Hon'ble Apex Court reported in **Central Bureau of Investigation Vs. R.S.Pai and Anr, passed by Hon'ble Apex Court in Appeal (Cri.) 1045 of 2000 on 3.4.2002.** This is the point -

whether prosecution can produce additional document which are gathered during investigation, after submitting charge-sheet under Section 173 of Code of Criminal Procedure,1973. It's material para is re-produced as under-

“From the aforesaid sub-sections, it is apparent that normally, the Investigating Officer is required to produce all the relevant documents at the time of submitting the charge-sheet. At the same time, as there is no specific prohibition, it cannot be held that the additional documents cannot be produced subsequently. If some mistake is committed is not producing the relevant documents at the time of submitting the report or charge-sheet, it is always open to the Investigating Officer to produce the same with the permission of the Court. In our view, considering the preliminary stage of prosecution and the context in which Police Officer is required to forward to the Magistrate all the documents or the relevant extracts thereof on which prosecution proposes to rely, the word 'shall' used in sub-section (5) cannot be interpreted as mandatory, but as directory. Normally, the documents gathered during the investigation upon which the prosecution wants to rely are required to be forwarded to the Magistrate, but if there is some omission, it would not mean that the remaining documents cannot be produced subsequently. Analogous provision under Section 173(4) of the Code of Criminal Procedure, 1898 was considered by this Court in Narayan Rao Vs. The State of Andhara Pradesh (1958) SCR 283 at 293] and it was held that the word 'shall' occurring in sub-section 4 of Section 173 and sub-section 3 of Section 207A is not mandatory but only directory. Further, the scheme of sub-section (8) of Section 173 also makes it abundantly clear that even after the charge-sheet is submitted, further investigation, if called for, is not precluded. If further investigation is not precluded then there is no question of not permitting the prosecution to produce additional documents which were gathered prior to or subsequent to investigation. In such cases, there cannot be any prejudice to the accused. Hence, the impugned order passed by the Special Court cannot be sustained.”

6] On the touchstone of legal observation re-produced above, I find substance in the application of prosecution. On perusal of documents which are intended to be filed on record from the side of prosecution, they are not new one and it can be stated that they are within the knowledge of accused. Its background has been already created on record. In such situation, in order to decide the case on merit, it is essential to allow the production of documents. No prejudice will be caused to the accused, if production of documents is allowed. There is no legal ground available on record so as to reject the application (Exh.85). As such, application (Exh.85) needs to be allowed. In the result, following order is passed.

ORDER

- 1] Application (Exh.85) is allowed regarding production of documents as prayed.
- 2] Both the parties to note it.
- 3] Case to proceed further.

Buldana
Date-5.12.2022

(R.N. Mehare)
Addl.Sessions Judge,
Buldana

Certificate

“I affirm that, the contents of this PDF file judgment are same word for word as per original judgment.”

Name of Steno : D.V.Matre, Stenographer, Grade 1,

Name of Court : District Judge-1 & ASJ, Buldana,

Date of judgment/order : 5.12.2022

Judgment/order uploaded on : 8.12.2022