

ORDER BELOW EXH.77

Prosecutor prayed to allow him to produce the documents filed along with list. It is submitted that the Investigation Officer had not collected the said documents from the informant during the investigation. However these documents are necessary to prove the prosecution case as well as helpful to adjudicate the case on merit.

02. Per contra accused opposed the application and submitted that part evidence of the prosecution has been recorded. To fill up the lacuna the prosecutor has filed the present application. It is also submitted that if it is necessary to allow the production then accused be permitted to cross examine the prosecution witnesses No. 1 to 4 to the extent of proposed documents. It is also submitted that the accused have disclosed their defence in the evidence of prosecution witnesses and thereafter intentionally prosecutor has filled the present application. Prosecutor is trying to create the evidence. Application is filled at belated stage. Also reasons are not put forth in the application. Hence it is prayed to reject the application.

03. Heard the argument of Ld. Prosecutor **Adv.G.R.Majgaonkar** for state. Heard the argument of **Ld. Adv. Shri.G.R.Parkar** for accused.

04. As per record in this case evidence of five prosecution witnesses have been recorded and case is for further evidence of prosecution. In the meanwhile the prosecutor has filed the present application. The accused have opposed this application, on the ground that application is not tanable at this statge, therefore question arise that whether prosecutor can be allowed during the stage of trial to produce the documents. This questions is answered by the Hon'ble High Court of Karnataka in the Judgment "**B.L.Udaykumar & Ors. Vs. The State of Karnataka (2018 ALL MR (Cri) JOURNAL 497)**" which is relied by the prosecutor *wherein it is observed that -*

“Thus it is clear that sub section (3) of section 242 casts a mandatory duty on the Magistrate to take all such evidence as may be produced in support of the prosecution. The word produced in sub section (3) also cannot be given a restrictive meaning to hold that only the materials collected during investigation could be permitted to be produced in evidence. Such a construction would defeat the very purpose of trial. If the main object of criminal trial is to discover truth, necessarily all and every piece of evidence while could help the court to arrive at a just decision should be allowed to come on record. Therefore, it is immaterial whether the evidence sought to be produced during trial was either collected in the course of investigation or subsequent thereto. Section 91 Cr.P.C. no doubt empowers the court or the officer in charge of the Police Station to ensure the production of any document or other thing necessary or desirable for the purpose of any investigation, enquiry or other proceedings by issuing summons or written order to the person in whose possession or power such document or thing is, but section 242(3) Cr.P.C. requires the court to take all such evidence which the prosecution desires to produce including the documents which are not mentioned in sub section (5) of section 173 Cr.P.C. subject of course furnishing to the accused a copy thereof and providing him a reasonable opportunity to meet the same. The only safeguard or restriction that could be thought of in view of the provisions of the Evidence Act is that such evidence must relate to the matters of fact in enquiry. In other words, as long as the proposed evidence, either oral or documentary, is relevant and in support of the prosecution case the Magistrate cannot refuse to receive it.”

05. Also the Hon'ble Court of Bombay in the judgment of "Niwas Keshav Rautq Vs. The State of Maharashtra (Criminal Writ Petition No. 4712 of 2014)" observed that -

“ The significant aspect of Section 294 Cr.P.C., one must note, is that it no where places any embargo upon the prosecution or accused to file a document at a stage subsequent to filing of the charge-sheet. It only says that if any document is sought to be produced before the Court, it should be included in the list of the documents and then the other side should be called upon to either admit or deny the genuineness of the document. It means by necessary implication that a document can be filed subsequent to filing of charge-sheet subject to following the procedure prescribed in Section 294.”

06. Therefore in view of ratio laid down by the Hon'ble High Court of Bombay and Hon'ble High Court of Karnataka as well as in view of Section 294 as well as 242(2) of the Code of Criminal Procedure this court has power to allow the production of documents in the course of trial, though they are not collected during the investigation by the investigation officer. The accused has also opposed this application on the ground that prosecutor is trying to fill up the lacuna. In response to this it must be understood what is meant as lacuna in the prosecution case. The Hon'ble Supreme Court of India explained the concept “what is meant by lacuna in a prosecution case” in the Judgment “Rajendra Prasad Vs. Narcotic Cell through its Officer Incharge, Delhi A.I.R. 1999 Court 2292” wherein it is observed that -

“ A lacuna in prosecution is not to be equated with the fallout of an oversight committed by a public prosecutor during trial, either in producing relevant materials or in eliciting relevant answers from witnesses. The adage ‘to err is human’ is the recognition-of the possibility of making mistakes to which humans are proved. A corollary of any such latches or mistakes during the conducting of a case cannot be understood as the lacuna which a court cannot fill up. Lacuna in the prosecution must be understood as the inherent weakness or a latent wedge in the matrix of the prosecution case. The advantage of it should normally go to the accused in the trial of the case, but an over sight in the management of the prosecution cannot be treated as irreparable lacuna. No party in a trial can before closed from correcting errors. If proper evidence was not adduced or a relevant material was not brought on record due to any inadvertence, the court should be magnanimous in permitting such mistakes to be rectified. After all function of the Criminal court is administration of criminal justice and not to count errors committed by the parties or to find out and declare who among the parties performed better.”

Therefore in such circumstances by the present application it cannot be said that prosecutor is trying to fill up the lacuna. The counsel of accused also requested for permission of re-cross examination of the prosecution witnesses if the production of documents is allowed. It is to be noted that none of the prosecution witness No. 1 to 4 have stated anything about the said proposed documents. The prosecutor is mere asking the production of documents. In the further evidence if prosecution relied on the said documents automatically accused will get an opportunity to cross examine the further prosecution witnesses on the said documents, therefore in such circumstances if the application is allowed no prejudice will cause to the accused.

07. I have also gone through the judgment of the Hon’ble High Court of Karnataka relied by the counsel of accused in "N Gopalkrishna Vs Shri. J N Manjunath and ors." In the judgment also it is observed that in

view of section 242 of Cr.PC. magistrate can permit production of documents on the application filed by the prosecution. The question of locus-standi of defacto complainant is not in the case in hand. Therefore this judgment is more helpful to the prosecution than accused.

08. Therefore certainly I found substance in the application. Hence I proceed to pass the following order.

ORDER

1. Application is allowed.
2. Production of documents as prayed is allowed.

Date :- 29/01/2025.

(M. B. Sontakke)
Judicial Magistrate First Class,
Kankavali.