

GR No. 857/2015

Date : 13.03.2020

Today the record is fixed for further hearing of the petition dated 30.10.2019 filed by the accused person namely Rajendra Prasad Pansari.

Both the Ld. Lawyers are present.

The record is taken on board for hearing.

Heard the Ld. P.P-in-Charge as also Ld. Defence counsel.

Later for order.

Sd/-

M.M. 4th Court, Calcutta.

Later :

The instant petition has been filed by the accused person, namely Rajendra Prasad Pansari praying for direction upon the prosecution for supplying of the legible copies of documents mentioned in paragraph 4, copies of the documents mentioned in paragraph 6 as also praying for grant of reasonable time to the accused persons for preparation of defence.

Ld. Senior counsel appearing on behalf of the accused person during the course of hearing of the instant petition has pressed for supplying of legible copies of the documents mentioned in para 4 of the petition. He also pressed for supplying of the statements so recorded by the I.O during investigation of accused Rajendra Prasad Pansari. He has further pressed for supplying of the copies of the statements of the witnesses recorded by the I.O during investigation, who have not been shown as charge sheeted witnesses. He did not press for supplying of the copies of the case diary as mentioned in para 6. In support of his contention, the Ld. Lawyer for the accused person referred to the following citations :

1) Akash Kumar Sinha Vs. State of Chhattisgarh, of the Hon'ble High Court of

Chhattishgarh

2) Dinesh Puri Vs State (Government of NCT of Delhi), of the Hon'ble High Court of Delhi

3) Asutosh Verma Vs. CBI, of the Hon'ble High Court of Delhi

4) K. Ramajeyam Vs State, of the Hon'ble High Court of Madras

5) V. K Sasikala Vs. State, of the Hon'ble Supreme Court, India

6) Sasibala Vs State Government of NCT, Delhi & others , of the Hon'ble High Court of Delhi

7) Anil Dikshit Vs/ State of Jharkhand, of the Hon'ble High Court of

Jharkhand

By referring to the citations it has been argued by the Ld. Defence counsel that the prosecution is duty bound to supply copies of the statements of the witnesses, who have been examined and whose statements have been recorded during investigation by the I.O but not cited as charge sheeted witnesses, to the defence for the purpose of fair and just trial. He has also prayed for supplying of the copies of the statements of the accused Rajendra Prasad Pansari so recorded by the I.O on different dates during the course of investigation .

Ld. P.P-in-Charge did not raise any objection as regard to the prayer so made by the defence regarding supply of legible copies of the documents so mentioned in para 4 of the instant petition. But he raised objection apropos the prayers so made by the defence for supplying of the copies of the statements of the accused so recorded by the I.O during the course of investigation. He has also raised objection regarding the prayers so made by the defence for supplying of the copies of the statements of the witnesses who have been examined by the I.O during investigation but not charge sheeted. He referred to the following citation :

1) Balakram Vs. Uttrakhand and others of the Hon'ble Supreme Court of India.

Considered the submissions of both sides. Have had regard to the citations so referred to by the contesting parties. Perused the record so also the case docket in details.

At the very outset it requires mentioning here that the prayer for supplying the copies of the C.D to the defence stands redundant to be discussed of being not pressed by the defence at the time of hearing.

So far as supplying of the legible copies of the documents so referred to in para 4 of the petition, the same deserves merit to be allowed as this court thinks the same to be above board for the purpose of just and fair trial.

The next prayer of the defence regarding supplying of the copies of the statements of the accused person namely Rajendra Prasad Pansari, so allegedly recorded by the I.O during the course of the investigation but not supplied to the defence, deserves no merit and substance. Statement of an accused recorded by an investigating officer during the course of investigation bears no merit at all during the course of trial. Neither it is of any essence nor it is of any evidentiary value as per Indian Evidence Act, when a criminal lis comes up for trial. Statement of an accused recorded

during the course of investigation bears merit on two counts. **Firstly**, if the statement of an accused is recorded by an I.O, which comes under the purview of section 27 of the Indian Evidence Act, then the defence under all probabilities is bound to get the copies of the same. **Secondly**, if the statement of an accused is recorded by a Magistrate during the course of investigation, then the defence by all means is entitled to get the copy of the same. None of the above facts have happened in this case which capacitate the defence to get the copy of the statements of the accused, if at all any so have been recorded during investigation. The fact being so, the prayer of the defence on this score stands sans merit.

The last prayer of the defence was regarding the supplying of copies of the statements of the witnesses examined by the I.O during investigation but not charge sheeted. In this regard, the Ld. P.P-in-charge has raised objection. It is a settled rule of law that impartial and fair opportunity in a trial is a constitutional right. It is the undeniable duty of the court as to ensure that nothing causes threat to such right. Nothing can jeopardise the right of the accused to get fair trial. The prosecution cannot pick and choose and refuse to supply to the accused the copies of the statements which are contradictory to the prosecution case on the ground that the prosecution is not going to rely on the statements of those witnesses. Denying the same, would tantamount to denying the accused from getting just and fair trial. **State of Kerala Vs Raghavan** is relied upon.

Responsibilities of the investigating agency as well as that of the courts are to ensure that every investigation is fair and does not erode the freedom of an individual except in accordance with law. For just, fair and transparent trial, it is the right of an accused to get the copies of the statements of all the witnesses who have been examined by the I.O during the course of investigation but not charge sheeted. **Manu Sharma Vs State (NCT of Delhi)** (para 216) is relied upon.

On perusal of the C.D, it transpires that in all 45 witnesses have been examined and their statements have been recorded by the I.O during investigation. On query made to the Ld. Defence Counsel during the course of hearing, it has been admitted that statements of 45 witnesses have been supplied to them. That being so, no any statement of any

witness examined and recorded during the course of investigation by the I.O, has been eschewed from being given to the defence by the prosecution. The defence has been duly supplied with the statements of all the witnesses examined and recorded during the time of investigation by the I.O, to which they have valid and due right.

Hence,

ORDERED

that the petition so filed by the accused persons on 30.10.2019 stands allowed in part on contest without cost.

The accused/petitioner namely Rajendra Prasad Pansari is entitled to get the legible copies of the documents referred to in para 4 of the petition. The prosecution is directed to supply the said copies by or on 27.03.2020.

The prayer for supplying of the copies of the case diary stands rejected being not pressed.

The prayer for supplying of the copies of the statements of the accused Rajendra Prasad Pansari, if at all any so have been recorded during investigation by the I.O, stands rejected on account of the observation so made in the body of this instant order.

The prayer for supplying of the copies of the statements of the witnesses, who have been examined by the I.O during investigation but not charge sheeted stands merit to be allowed. But as it has been admitted by the defence that they have got the statements of all 45 witnesses, which are transpiring in the C.D, no direction in this regard is required of to be given to the prosecution.

To date for supplying of the copies as stated above.

C.D be returned.

Sd/-
M.M. 4th Court, Calcutta.