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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Reserved on: 27th August, 2021

Decided on: 10th November, 2021

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CRL.M.C. 1338/2021 and CRL.M.A. 7654/2021 (stay)

CENTRAL BUREAU OF INVESTIGATION ... Petitioner

Represented by: Mr. Anupam S Sharma, SPP for CBI
with Ms. Sudha Rani Ralangi,
Director of Prosecution-CBI, Mr.
Prakarsh Airan and Ms. Harpreet
Kalsi, Advs.

versus

M/S. INX MEDIA PVT. LTD. & ORS. Respondents

Represented by: Mr. Shailesh Poria, Adv. for R-1.
Mr. Sidharth Luthra, Sr. Adv. with
Mr. Akshat Gupta, Mr. Pankaj
Singhal and Ms. Shubhangi Jain,
Advs. for R-3.
Mr. Pramod Kumar Dubey, Sr. Adv.
with Mr. Nitin Saluja, Mr. Vikalp
Sharma and Mr. Akshat Sharma,
Advs. for R-4.
Mr. Vikas Pathak, Adv. for R-7.
Mr. Kumar Vaibhaw, Mr. Himanshu
Gupta, Mr. Mohd. Ashaad, Advs. for
R-8.
Mr. Aditya Wadhwa, Mr. Sougat
Mishra and Mr. Ayush Shrivastava,
Advs. for R-9.
Mr. Sidharth Aggarwal, Sr. Adv. with
Mr. Varaz Maqbool, Mr. Abhinav
Sekhri, Mr. Chandan Kumar and Mr.
Chaitanya Sundariyal, Advs. for
R-10.
Mr. Vikas Arora and Ms. Radhika

Arora, Advs. for R-11.
Mr. Sandeep Kapur, Mr. Mridul
Yadav, Mr. Aashneet Singh Anand,
Advs. for R-13.
Mr. N. Hariharan, Sr. Adv. with Mr.
Arshdeep Singh Khurana, Mr. Ayush
Aggarwal, Mr. Siddharth S. Yadav,
Mr. Varun Deswal, Ms. Akriti G.
Mittal, Mr. Harsh Mittal, Advs. for R-
14.

CORAM:
HON'BLE MS. JUSTICE MUKTA GUPTA

1. By this petition, the CBI challenges the impugned order dated 5th March, 2021 passed by the learned Special Judge on the applications filed by the accused under Section 207 Cr.P.C. seeking supply of documents.
2. By the impugned order, the learned Special Judge noted that the documents sought through these applications were broadly:
 - a. Deficient documents
 - b. Dim or illegible copies
 - c. Incomplete or torn documents
 - d. Part of documents which have been filed in Court by CBI
 - e. The documents though seized or collected during investigation, but not filed in Court
 - f. The documents referred to or reflected in correspondence of CBI and other authorities or in statements of witnesses
3. During the course of hearing before the learned Trial Court, no dispute was raised by the CBI in respect of the documents mentioned at serial Nos. (a), (b) and (c), however documents mentioned at serial Nos.(d),

(e) and (f) were disputed and the stand of the CBI was that since the same were not relied upon by the CBI in the charge-sheet, the documents mentioned in the category (d), (e) and (f) cannot be given to the accused.

4. Vide the impugned order, the learned Special Judge directed CBI to supply all the pages/parts thereof or the entire documents in relation to the documents few pages whereof or parts of the said documents are relied upon and filed by the CBI i.e. the documents at serial No. '(d)'. As regards the documents at serial nos. '(e)' and '(f)' are concerned, referring to the various decisions of the Hon'ble Supreme Court and this Court as also relying upon Clause 12.32 of the CBI (Crime) Manual, 2020 which lays down the procedure of inspection of documents kept in the Malkhana on Court orders, the learned Special Judge permitted inspection of records of the case lying in Malkhana of CBI during the working hours of the CBI Malkhana as per provisions contained in Clause 12.32 of CBI (Crime) Manual and other clauses of the Manual and the policy, guidelines or rules framed on this issue, if any, to the learned defence counsel or their associates as per the requirements by way of a written authorization. The concerned SP was also directed to give necessary directions to the Officer Incharge of CBI Malkhana to depute requisite and responsible staff to facilitate the inspection under the direct supervision of some responsible officer. The HIO or IO of the case was also directed to be present at the time of said inspection so as to facilitate in finding the nature and relevance of such documents. The Court also directed that the security of records had to be maintained and any tampering thereof shall have to be ruled out and the inspection be completed within 10-15 days.

5. Further, to rule out the apprehension of CBI that inspection of

documents if permitted may hamper further investigation, the learned Special Judge also clarified that this permission of inspection of records lying in the Malkhana granted by the Court shall not be in respect of those documents in relation to which the investigation by the CBI is still pending, as has also been indicated in the charge sheet itself and even witnesses related to such documents have yet not been examined. It was also noted that the issue whether or not any document supplied to the accused persons as a result of this order is of sterling quality or can be considered at the stage of charge for uprooting the case of prosecution is kept open to be considered at the stage of framing of charge itself.

6. Contention of learned counsel for the CBI is that the respondent cannot seek production of the documents at this stage as any document which is required to be produced under Section 91 Cr.P.C. can be utilized by the accused at the stage of defence only to prove his innocence, as held by the Hon'ble Supreme Court in (2005) 1 SCC 568 State of Orissa Vs. Debendra Nath Padhi. Even in the decision relied upon by the learned Special Judge reported as AIR 2017 SC 5846 Nitya Dharmananda @ K. Lenin & Anr. Vs. Sri Gopal Sheelum Reddy it is made clear that the accused cannot invoke Section 91 Cr.P.C. at the time of framing of charge, however, if the Court is satisfied that there is material of sterling quality, which has been withheld by the investigator/ prosecutor, it can be summoned by the Court. It is stated that since the proceedings before the learned Special Judge are at the stage of compliance of Section 207 Cr.P.C. and has not reached the stage of charge as yet, hence the prayers in the application on which the impugned order was passed is premature. Further, if learned Special Judge is satisfied that prosecution has some document which has a

crucial bearing on the issue of framing charge and is of sterling quality, the Court can summon the same at the stage of charge. Thus, it is within the ambit of the learned Special Judge to summon the said documents and the accused cannot be permitted to carry out the inspection of the documents in the Malkhana records. It is further submitted that since further investigation is continuing, the effectiveness of the further investigation will be compromised, hence no inspection of the document be permitted to the accused. Further, as per Section 207 Cr.P.C. inspection of only relied upon documents referred in Clause (v) of Section 207 Cr.P.C. can be permitted in case the documents are voluminous.

7. According to learned counsel for the CBI, it is impossible for the CBI to pre-empt and segregate the documents which may be required later during investigation though not required for investigation at present. Since all documents relied upon by the CBI have been provided to the accused, no prejudice has been caused to them and their right to fair trial has also not been infringed. The right of fair trial has to be not only from the perspective of the accused but also from the rights of the society at large. It is claimed that the impugned order has been passed by the learned Special Judge in violation of Article 50 of the Constitution of India and reliance in this regard is placed on the decision of the Hon'ble Supreme Court reported as AIR 1980 SC 326 State of Bihar & Anr. Vs. J.A.C. Saldanha & Ors. It is further stated that even as per the CBI Manual inspection of the documents in Malkhana by the learned counsel for the accused can be only in respect of the documents mentioned in proviso to Section 207 Cr.P.C. and Para 12.32 of the CBI Manual only mentions the procedure to be adopted during such inspection. The accused do not have an indefeasible legal right to claim

every document on the Police file or even the portions which are permitted to be excluded from the documents annexed to the report under Section 173 Cr.P.C. Reliance placed by learned Special Judge on the decision reported as AIR 2013 SC 613 V.K. Sasikala Vs. State is misconceived as in the said decision the documents though not relied upon by the prosecution had been forwarded to the Court under Section 173(5) Cr.P.C. The decision of the Hon'ble Supreme Court in Suo Moto W.P.(CRL) No. 1/2017 titled 'In re: To issue certain guidelines regarding inadequacies and deficiencies in criminal trial Vs. State of Andhra Pradesh & Ors.' dated 20th April, 2021 pointed out during the course of hearing has no application to the facts of the case. The decisions relied upon by the respondents also have no application to the facts of the case and hence the petition be allowed and the impugned order be set aside.

8. Learned counsels for the respondents submit that at the stage of consideration of framing charge, the Court is bound to consider the evidence collected by the investigating officer during investigation of the case, whether relied upon or not by the prosecution. Every document which is seized is required to be produced before the Court. Hon'ble Supreme Court in Suo Moto W.P.(CRL) 1/2017 has laid down detailed guidelines and one of the guidelines which was left out i.e. in respect of list of all un-relied materials/ documents/ statements, has also been directed to be given to the accused. Relying upon the decision reported as 2014 SCC Online Del 6931 Ashutosh Verma Vs. CBI it is contended that even at the stage of scrutiny of documents under Section 207 Cr.P.C., the Court is required to supply all documents to the accused even if the same are not relied upon by the prosecution. A conjoint reading of Sections 207/208 read with Section 173

Cr.P.C. clarifies that even those documents which have been forwarded to the Magistrate during investigation are to be supplied to an accused person in addition to the documents relied upon by the prosecution. Without prejudice, it is further submitted that CBI cannot be allowed to be selective in supply of the documents; since the CBI has already supplied those un-relied documents which have been filed before the learned Trial Court while choosing not to supply those un-relied documents which are kept in the CBI Malkhana. There being no difference between the two sets of un-relied documents i.e. those placed before the Court and the one kept in CBI Malkhana, the respondents are entitled to at least an inspection of the said un-relied documents. It is only on inspection that the relevancy and the sterling quality of the documents can be found out. Further, the CBI Manual itself confers powers on the Court to grant inspection of the documents lying in the Malkhana of the CBI and reliance in this regard is placed on Clause 13.28 of the CBI Manual, 2005 which has been re-christened as Clause 12.32 in the CBI Manual, 2020. There being no illegality in the impugned order, the petition be dismissed.

9. The issue raised in the present petition is to a great extent dealt by the Hon'ble Supreme Court in *Suo Moto W.P.(CRL) No. 1/2017* wherein the Hon'ble Supreme Court issued guidelines regarding inadequacies and deficiencies in criminal trial and while the necessary draft rules were approved, in relation to the documents collected during the course of investigation and not relied upon by the prosecution thus not permitting copy thereof to the accused, the Hon'ble Supreme Court in Para 11 noted 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. It is directed accordingly; the draft rules have been accordingly modified. [Rule 4(i)]”

10. Further, reproducing Section 91 Cr.P.C. in the footnote does not qualify the directions in Para 11 of the judgment for the reason Hon'ble Supreme Court in response to the suggestion of the learned amicus curiae pointed out that there may be material with the Police or the prosecution which may be exculpatory in nature, or absolve or help the accused, however the accused is kept in dark with the said material. Hon'ble Supreme Court clearly directed that while furnishing the list of statements, documents and the material objects under Section 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 upon) should be furnished to the accused so as 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 Code of Criminal Procedure for their production during the trial. The draft Rules were

accordingly modified and considering the efficacy of the draft Rules, the Hon'ble Supreme Court directed all High Courts to take expeditious steps to incorporate the said draft Rules 2021 as part of the Rules governing criminal trial within six months from the date of the order i.e. April 2020.

11. In view of the decision of the Hon'ble Supreme Court, CBI cannot take the plea that since the Rules have not been notified as yet pursuant to the decision of the Hon'ble Supreme Court, the directions as laid down in Para 11 of the judgment whereby the draft Rules were amended, would not have the force of law till the Rules are notified. In the decision reported as (1997) 6 SCC 241 Vishaka and Others vs. State of Rajasthan & Ors. Hon'ble Supreme Court in a writ petition under Article 32 of the Constitution of India, in the absence of an enacted law to provide for the effective enforcement of the basic human right of gender equality and guarantee of sexual harassment and abuse and more particularly against sexual harassment at work places, laid down the guidelines and norms for due observance at all work places or other institutions, until a legislation is enacted for the purpose. Hon'ble Supreme Court noted that the guidelines were laid down in exercise of power under Article 32 of the Constitution of India for enforcement of the fundamental rights and further emphasized that the guidelines laid down should be treated as law declared by the Supreme Court under Article 141 of the Constitution of India. In Suo Moto Writ (Crl.) 1/2017 directions have been issued by the Hon'ble Supreme Court under Article 32 of the Constitution of India in order to ensure uniformity and clarity, to overcome the deficiencies which occur in the course of criminal trials and certain practices adopted by the trial courts in criminal proceedings thereby having a tendency of prolonging proceedings. Hon'ble

Supreme Court also noted that Draft Rules of Criminal Practice 2020 as formulated and directed to be notified were not contrary to the provisions of Cr.P.C. Contention of learned counsel for the CBI that the same is violative of Article 50 of the Constitution of India which provides for separation of judiciary from executive deserves to be rejected for the reason the Draft Rules were in no way repugnant or contrary to the provisions of the Cr.P.C.

12. In State of Bihar & Anr. Vs. J.A.C. Saldanha & Ors (supra) relied upon by learned counsel for the CBI, Hon'ble Supreme Court was dealing with an appeal against the order of the High Court which quashed the order of the Magistrate keeping in abeyance, acceptance of the final report submitted awaiting further investigation being carried out. In the light of these facts, Hon'ble Supreme Court held that general power of superintendence conferred by Section 3 of the Police Act, 1861 would comprehend the power of the State Government to direct further investigation if the circumstances so warrant and there is nothing in the Code of Criminal Procedure contrary thereto, so as to limit this power. Supreme Court further held that sub Section (8) of Section 173 is not the source of power of the State Government to direct further investigation, it enables the officer in charge of a police station to carry on further investigation even after a report under Section 173(2) is submitted to the Court. It was held that if State Government has otherwise power to direct further investigation, it is neither curtailed, limited nor denied by Section 173(8) Cr.P.C. It is in the light of these facts, the Hon'ble Supreme Court held that investigation of an offence is the field exclusively reserved for the executive through the police department, superintendence over which vests with the State Government. Once it investigates and finds an offence having

been committed, it is its duty to collect evidence for the purpose of proving the offence. Once that is completed and the investigating officer submits reports to the Court requesting the Court to take cognizance of the offence under Section 190 of the Code, its duty comes to an end.

13. In the present case after the Court has taken the cognizance and is in the process of supplying documents, applications have been filed under Section 207 Cr.P.C. wherein to ensure a fair trial, the impugned order has been passed by the learned Special Court keeping due regard to the fact that at that stage it was deciding neither the relevancy of the unrelayed documents nor whether they were of sterling quality.

14. Learned counsel for the CBI has vehemently relied upon the decision in Debendra Nath Padhi (supra). In the said decision Hon'ble Supreme Court clarified that the issue before it was not about the exercise of jurisdiction for quashing under Section 482 Cr.P.C. where alongwith the petition, the accused may file unimpeachable evidence of sterling quality and on that basis seek quashing, but about the right claimed by the accused to produce material at the stage of framing of charge. In the present case, the accused are not producing any document of their own but wanting to inspect and seek documents which are in the possession of CBI and are being kept back from the Court.

15. Further contention of CBI is that the documents can be sought under Section 91 Cr.P.C. only at the stage of defence and hence the stage for seeking inspection of the un-relayed documents in possession of the CBI and kept in CBI Malkhana has not arrived. It is trite law that an accused can build the defence not only by leading defence evidence but even while cross-examining the prosecution witness. Further, a document which is relevant and is of sterling

quality can also be looked into by the Court at the time of framing of charge and the Court is not barred to exercise its power to summon or rely upon the said document at the stage of charge, if it is of sterling quality and has a crucial bearing on the issue of framing of charge. Therefore, at the time of framing of charge an accused can bring to the notice of the Court that an unrelieved document recovered during the course of investigation and kept back by the investigating agency is relevant and has a bearing on the prosecution case only if the accused is aware of the said document.

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. Case of learned counsel for the CBI before this Court is that since further investigation is going on, permitting the accused or their representatives to inspect the documents lying in Malkhana will hinder the investigation. 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. Therefore, the apprehension of the CBI that inspection would hinder in the further investigation is wholly unwarranted. Claim of learned counsel for the CBI is that the CBI at the moment cannot pre-empt which document would be necessary for the further investigation. In the present case charge sheet has already been filed and thus the claim of CBI that it is not aware which document would be relevant for further investigation is unwarranted.

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.

20. In view of the discussion aforesaid and the judgment of the Hon'ble Supreme Court in *Suo Moto W.P.(CRL) No. 1/2017* this Court finds no infirmity in the impugned order passed by the learned Special Judge.

21. Petition and application are dismissed.

22. Order be uploaded on the website of this Court.

**(MUKTA GUPTA)
JUDGE**

NOVEMBER 10, 2021

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