

IN THE HIGH COURT OF MADHYA PRADESH
BENCH AT INDORE

(SB: Hon'ble Mr. Justice Alok Verma)

CRR No.1133/2015

Smt. Jyoti Maurya W/o Rajendra Maurya

Vs.

State of MP

Shri Vikas Yadav, learned counsel for the applicant.
Shri Rahul Vijayvargiya, learned counsel for the respondent/State.

ORDER

(Passed on this 11th day of December, 2015)

This Criminal Revision is directed against the order passed by learned 12th Additional Sessions Judge, Indore in Sessions Trial No.754/2014 on 17.07.2015.

2. The brief facts giving rise to this revision are that present applicant is facing trial under sections 409 and 167 of IPC in Sessions Trial No.754/2014 before 12th Additional Sessions Judge, Indore. On 05.03.2015, statement of prosecution witness Dinesh PW-5 was recorded by the trial Judge. In his statement, he proved documents which were marked as Ex.P/12-1, P/12-7 and Ex.P/13 to 22.

3. The objection was raised by counsel for the applicant

which was decided by learned trial Court vide impugned order dated 17.07.2015. According to the objection raised by the counsel, the documents which were exhibited as Ex.P/12 to P/22, were not part of the charge-sheet. No copy was supplied to him under section 207 of Cr.P.C. Learned trial Court observed in the impugned order that such documents were exhibited, as according to him, it could be presumed that while committing the case to the Court of Sessions, the Magistrate must have supplied all the copies under section 207 of Cr.P.C., therefore, trial Court opined that the objection had no force and accordingly, it was dismissed.

4. Counsel for the State submits that such documents were necessary for disposal of the case, therefore, if they were exhibited by the trial Court, no interference could be drawn at this stage.

5. I have gone through the certified copy filed by counsel for the applicant of statements of prosecution witnesses as well as copy of the charge-sheet.

6. The documents in question, which were marked as Ex.P/12 to P/22 by the trial Court, were not included in the list of the documents in the charge-sheet, however, it is apparent

that they were seized during investigation by the Investigating Officer and seizure memo dated 03.11.2012 is marked as Ex.P/3. From the statements of PW-5 and seizure memo dated 03.11.2012, it is apparent that such documents were not appended with the charge-sheet and were not included in the list but they were part of the charge-sheet as articles seized during investigation.

7. Section 207 (v) of Cr.P.C. provides 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)-----

(ii)-----

(iii)-----

(iv)-----

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

8. Section 5(a) of section 173 of Cr.P.C. provides as under:-

5(a) all documents or relevant extracts thereof on which the prosecution proposes to rely other than those already sent to the Magistrate during investigation.

9. It is apparent that any document seized during investigation should be forwarded to the Magistrate and when such documents are forwarded and were not included in the list of documents, even then copies of such documents should be given to the accused persons under section 207 of Cr.P.C.

10. In this case, however, learned trial Judge erred and apparently, he did not take into consideration the fact that these documents were not included in the list of the documents in the charge-sheet but forwarded to the Magistrate as articles seized during investigation. They may be seized as articles but they were documents and, therefore, copies should have been provided prior to their admission in the evidence. Apparently, no copy was provided to the accused persons which resulted in causing prejudice to the defence of the accused. Also, to avoid further complications, the documents should have been marked as articles and not as exhibits but this irregularity is procedural irregularity which do not vitiate the proceedings, therefore, no interference is required. However, looking to the facts as stated aforesaid, it is necessary that copies of the documents should be provided to the accused persons.

11. Counsel for the applicant submits that the documents

under question exhibited by the prosecution where statements recorded at the time of departmental enquiry including statements of the applicant herself, who is accused and facing trial according to him, these statements are previous statements and, therefore, should not be exhibited. They can be used only for the purpose of proving omission and contradiction. In my opinion, this argument cannot be accepted. These statements were not recorded admittedly by the police officer during any enquiry or investigation. It was par of the departmental enquiry, therefore, they are not previous statements as stated by the counsel.

12. So far as the evidentiary statements of accused recorded during departmental enquiry are concerned, their evidentiary value can be seen at the time of final disposal of the case. At this stage, no comments are required.

13. In this view of the matter, this revision is partly allowed.

14. It is directed that the trial Court should provide copies of the documents which were exhibited as Ex.P/12 to P/22. Thereafter, the prosecution witness, who proved these documents before the Court should be recalled for cross examination. It is further clarified that evidentiary value of

these documents shall be evaluated at the time of final hearing.

15. With these observations and directions, this Criminal Revision stands disposed of.

Certified copy as per rules.

(Alok Verma)
Judge

Kratika/-