

AFR
HIGH COURT OF MADHYA PRADESH, JABALPUR

Misc. Criminal Case No.16361 of 2016

K.K.Mishra

Vs.

State of M.P.

Present : **Hon'ble Shri Justice Rajendra Menon,**
 Acting Chief Justice
 Hon'ble Shri Justice Anurag Shrivastava

Shri Siddharth Gupta, counsel for petitioner.

Shri P.K.Kaurav, learned Additional Advocate General for respondent.

Whether approved for reporting: Yes/No.

ORDER
(12.9.2016)

Per Anurag Shrivastava, J :

In this Misc. Criminal Case under section 482 of Code of Criminal Procedure, 1973 (hereinafter referred to as 'Cr.P.C.' for short) the petitioner/accused has prayed for quashing of the order dated 22.8.2016 (Annexure A-1) and order dated 10.8.2016 (Annexure A-2) passed by learned Special Judge in Criminal Case S.T.No.573/2014, by which the applications moved by the petitioner under section 91 of Cr.P.C., for supplying the documents are rejected.

2. The prosecution case, as it appears from the complaint petition in short is that the respondent/complainant is a public prosecutor duly authorized by the Government, has filed a complaint (Annexure A-3) under section 199(2) of Cr.P.C., on 24.6.2016 against the present petitioner for

commission of offence under section 500 of IPC, alleging that the petitioner as a spokesperson of a particular political party held a press conference and issued statement regarding large scale irregularities in the selection examination conducted by the Professional Examination Board (in short referred as 'VYAPAM') for recruitment on the post of Transport Constables in the Transport Department, Government of Madhya Pradesh in the year 2013. Allegations were leveled against the Chief Minister and his family members regarding their conduct and role in the recruitment process by which a large number of candidates from Gondia, Maharashtra were got selected in the examination by corrupt means. The imputations which are false to the satisfaction of the Government and also defamatory in nature and made in order to malign the public image and reputation of Chief Minister. After preliminary enquiry learned Additional Sessions Judge registered the criminal case under section 500 of IPC against the petitioner and trial is being conducted following the procedure as enumerated under section 237 of Cr.P.C.

3. During trial the prosecution has examined a witness Mr.Sanjay Choudhary, erstwhile Transport Commissioner as P.W.3 and at the time of examination-in-chief on 6.5.2016, the said witness produced the complete files (marked as Articles separately by Court) pertaining to every student selected in the Transport Constable Examination and prosecution has exhibited only the domicile certificates of every student, and not all the other documents which are filed by the candidates alongwith their applications.

4. It is contended by learned counsel for petitioner that the prosecution has intentionally produced only domicile certificates of students in evidence and the copies of these certificates only have been given to petitioner. The copies of other documents like 10th pass marksheet, 12th pass marksheet and relevant papers enclosed in the file of students have not been supplied to him. He has moved an application on 1.8.2016 (Annexure A-12) for furnishing various documents produced/carried by witness Sanjay Choudhary, which had been rejected by the trial Court by the impugned order dated 10.8.2016 (Annexure A-2), holding that the documents are voluminous and copies thereof cannot be supplied to petitioner. The petitioner immediately moved a subsequent application under section 208 of Cr.P.C., on 11.8.2016 (Annexure A-13), in which he expressed his willingness to pay for the fees and expenses that may be occurred in the supply of the complete documents contained in the files/articles produced by the witness Sanjay Choudhary. The trial Court through its subsequent order dated 22.8.2016 (Annexure A-1) rejected the prayer holding that it cannot review its previous order dated 10.8.2016 where the request for supply of documents has already been rejected.

5. It is argued by learned counsel for petitioner that the prosecution has filed the documents relating to selection of candidates on the post of Transport Constables. As per petitioner a large scale irregularities, malpractice and illegalities have been committed in the recruitment process. The petitioner have been continuously trying to get the documents of these selections to demonstrate his allegations,

but the Government has not provided him the informations. The application under section 91 of Cr.P.C., (Annexure A-9) moved by petitioner for summoning various documents in this regard has been rejected by the trial Court. Against this the petitioner preferred M.Cr.C.No.8563/2015 before Hon'ble High Court, in which vide order dated 23.6.2015 the High Court directed that the petitioner may move an appropriate application when witnesses are produced by the prosecution. Thereafter before entering into cross-examination of prosecution witness Mr.Sanjay Choudhary P.W.3, the petitioner has again moved the applications Annexure A-2 and Annexure A-1 for getting certified copies of the record, which have been rejected by the trial Court. This will cause prejudice to petitioner as, for want of documents he will be completely handicapped to effectively cross-examine the prosecution witness Sanjay Choudhary and to put forth his defence in order to substantiate his allegations. The petitioner on the basis of these documents would be able to demonstrate that no case is made out against him for framing of charge. The petitioner has right to cross-examine the prosecution witnesses before charge. For effective cross examination, he has a right to obtain the copies of all records which are produced by the prosecution. It is further submitted by learned counsel that Hon'ble Supreme Court in matters of **Sunil Mehta and another Vs. State of Gujarat and others** [(2013) 9 SCC 209], **Ajay Kumar Ghosh Vs. State of Jharkhand and others** [(2009) 14 SCC 115, **Dhananjay Kumar Singh Vs. State of Rajasthan** (RajH.C.) – (2016) Cr.L.J. 3873 wherein in all the judgments, it has been held uniformly that the accused in complaint cases instituted otherwise than on police report, fair and able

opportunity should always be provided to the accused to defend himself effectively during trial, including effective opportunity of cross examining the witnesses being produced by the prosecution at the pre-charge stage.

6. The learned Additional Advocate General Shri P.K.Kaurav, appearing on behalf of respondent/complainant submitted that the petitioner has leveled false allegations against the Chief Minister without any evidence only to gain the political advantage. The files purporting to selected candidates were brought by the witness P.W.3 Mr.Sanjay Choudhary. The files contains large number of papers and documents, many of which are not relevant at all, therefore the copies thereof cannot be provided to the petitioner. He can go through the records and prepare for cross-examination of the witnesses. Actually petitioner wants to linger on the trial by making false pretext. Therefore the trial Court has not committed any illegality in passing the impugned orders.

7. Considering the rival contentions of the learned counsel for the parties and on perusal of the record, it appears that the selection examination was conducted by the VYAPAM for recruitment of 332 posts of Transport Constables in the year 2013. The petitioner/accused is being prosecuted under section 500 of IPC for causing defamation to the Chief Minister. It is claimed by the petitioner inter alia that – “a large scale of irregularities and illegalities have been committed in the selection procedure. The candidates of other states have been selected on the basis of forged documents and certificate. In this scam the top Bharatiya

Janata Party leaders including the Chief Minister and his family members are involved”.

8. The complainant/respondent in support of prosecution has examined the then Transport Commissioner, Mr.Sanjay Choudhary (P.W.3), who has produced the files of selected candidates, which are marked as Article A & A-1 to A-59 and Article A-61 to A-316. The prosecution has exhibited the domicile certificate of candidates as Ex.P-12 to P-70 and Ex.P-73 to P-327. This shows that about 316 files of select candidates have been filed by the prosecution in which the relevant documents - domicile certificate of each selected candidates have been tendered in evidence and got exhibited.

9. Since the trial Court has taken cognizance of the alleged offence under section 199(2) of Cr.P.C., the trial of the offence should be conducted as per section 237 of Cr.P.C., which provides as under :-

“237. Procedure in cases instituted under section 199(2) – (1) A Court of Session taking cognizance of an offence under sub-section (2) of section 199 shall try the case in accordance with the procedure for the trial of warrant-cases instituted otherwise than on a police report before a Court of Magistrate :

Provided that the person against whom the offence is alleged to have been committed shall, unless the Court of Session, for reasons to be recorded, otherwise directs, be examined as a witness for the prosecution.

.....
.....”

10. Therefore the procedure for the trial of warrant cases instituted otherwise than on a police report before a Court of Magistrate as envisaged in section 244 to 247 of Cr.P.C., has been followed by the trial Court. Since the trial Court is a Court of Sessions therefore section 208 Cr.P.C., will be applicable for supply of copies of statements and documents to accused in cases instituted otherwise than on police report. Section 208 reads as under :-

“208. Supply of copies of statements and documents to accused in other cases triable by Court of Session – Where, in case instituted otherwise than on a police report, it appears to the Magistrate issuing process under section 204 that the offence is triable exclusively by the Court of Session, the Magistrate shall without delay furnish to the accused, free of cost, a copy of each of the following :-

- (i) The statements recorded under section 200 or section 202, or all persons examined by the Magistrate;
- (ii) the statements and confessions, if any, recorded under section 161 or section 164;
- (iii) any documents produced before the Magistrate on which the prosecution proposes to reply:

Provided that if the Magistrate is satisfied that any such document is voluminous, he shall, instead of furnishing the accused with a copy thereof, direct that he will only be allowed to inspect it either personally or through pleader in Court.”

11. Therefore, as per section 208 of Cr.P.C., it is not mandatory that all the documents/records produced by the prosecution before the Magistrate, the copies thereof has to be supplied to accused. The copies of documents on which

the prosecution proposes to rely has to be furnished to the accused and in this case, this has been done. However, it is not incumbent upon the Court to supply the copies of other documents/papers enclosed in the file which the prosecution does not propose to rely. A further discretion has been given to the Magistrate in the proviso to section 208 Cr.P.C., as if he is satisfied that such document is voluminous then instead of supplying the copies thereof, the accused will be allowed to inspect it either personally or through pleader in Court. The similar provision has also been given in cases instituted on police report under section 207 of Cr.P.C.

12. The Hon'ble Supreme Court in the case of **Sunita Devi Vs. State of Bihar** [2005 (2) MPLJ (SC) 406] held that "the documents in terms of section 207 and 208 of Cr.P.C., are supplied to make the accused aware of the materials which are sought by the prosecution to be utilized against him. The object is to enable the accused to defend himself properly. The idea behind the supply of copies is to put him on notice of what he has to meet at the trial".

13. In the present case, the prosecution relies upon the domicile certificates of the candidates and copies of these documents Ex.P-12 to P-70 and Ex.P-73 to P-327 have been supplied to petitioner/accused. There are about 316 files of various select candidates, in which large number of papers, documents are submitted by the candidates. Therefore, the trial Court has rightly observed that these files contain voluminous papers and documents and on exercising its discretion given under section 208 of Cr.P.C., after recording his satisfaction the presiding officer has directed the

petitioner/accused to inspect the records, either personally or through pleader in Court, instead of furnishing the petitioner with a copy thereof. The petitioner can inspect the records and thereafter cross examine the prosecution witnesses. The trial Court has given sufficient time for inspection of records. The prosecution has produced the entire file of selected candidates and provided opportunity of inspection of the same to petitioner. Therefore, it cannot be presumed that merely on denial of aforesaid copies of documents would prejudice the petitioner seriously. He can effectively cross examine the witnesses after inspection of the entire record/file of students.

14. The case laws relied upon by learned counsel for the petitioner in the cases of **Sunil Mehta, Ajay Kumar Ghosh** and **Dhananjay Kumar Singh** (supra) refers to the right of cross examination available to accused under section 244 to 246 of Cr.P.C. Hon'ble Apex Court in the case of **Ajay Kumar Ghosh** (supra) in para 51 held thus :

"The right to cross-examination is a very salutary right and the accused would have to be given an opportunity to cross-examine the witnesses, who have been offered at the stage of Section 244(1) Cr.P.C. The accused can show by way of cross-examination that there is no justifiable ground against him for facing the trial and for that purpose the prosecution would have to offer some evidence. While interpreting Section 246(1), the prejudice likely to be caused to the accused in his losing an opportunity to show to the court that he is not liable to face the trial on account of there being no evidence against him, cannot be ignored."

15. In the present case, the petitioner has been given full opportunity to cross examine the prosecution witnesses before charge, therefore, the above case laws are not applicable.

16. Therefore, it is found that the learned Court has found that the record is voluminous and he also allowed the petitioner through his counsel to inspect it.

17. Accordingly, we do not find any merit in this petition. The order passed by the Magistrate is proper and just. The petition seems to be filed by the petitioner only to delay the matter. The same is dismissed.

(Rajendra Menon)
Acting Chief Justice

(Anurag Shrivastava)
Judge