

**THE HIGH COURT OF MADHYA PRADESH, JABALPUR**

**Misc. Criminal Case No.** : **32592 of 2021**  
**Parties Name** : Bablu Pasi vs. The State of M.P. & ors  
**Bench Constituted** : Hon'ble Justice Shri Rajendra Kumar (Verma)  
**Whether approved for reporting** : Yes/No  
**Name of counsel for parties** : **For Petitioner:**  
Shri Rakesh Sahu, Advocate.  
**For respondent/State:**  
Sushri Geeta Yadav, Panel Lawyer.

**Law Laid Down**  
**Significant Paragraphs**

**Jabalpur, Dated: 30.07.2021.**

The applicant has filed this Misc. Criminal Case under Section 482 of the Cr.P.C. being aggrieved by order dated 25.02.2020 passed by Learned Sessions Judge, Jabalpur in S.T. No.565/2019 whereby learned Sessions Judge has rejected the application under Sections 91, 104 read with Section 207 of the Code of Criminal Procedure.

2. The facts necessary for disposal of this miscellaneous criminal case may briefly be stated thus:

The complainant has lodged a criminal case against the accused/applicant and the same is pending for adjudication before the Sessions Court, Jabalpur. It is alleged that the applicant has committed an offence under Section 436 of the I.P.C. and made an accused on the basis of C.D. recording. The prosecution has produced the C.D. of the alleged incident. It is stated by the prosecution that entire incident has been recorded through CCTV camera and C.D. was prepared by the prosecution to prove the offence.

3. Learned counsel for the applicant submitted that due to political pressure and previous enmity, the FIR has been lodged against the applicant as previously wife of

the applicant made a complaint before the S.D.M. against the present complainant. There was a dispute between the parties with regard to some transaction of money. On the basis of assumption and presumption the applicant was made an accused. If the C.D. will not be provided, then the right of the accused will be affected.

4. Learned Panel Lawyer for the respondent/State on the other hand has opposed the application.

5. Heard learned counsel for the parties and perused the record.

6. The applicant/accused tried for offence under Section 436 of the I.P.C. and therefore, he preferred an application under Section 91, 104 read with Section 207 of the Cr.P.C. with prayer to supply the copy of the C.D. Learned Sessions has rejected the application with observation that there is no provision under Section 207 of the Cr.P.C. to provide the copy of the C.D. during trial before the Sessions Court.

7. One of the basic principles of a fair hearing in a grave crime is that the individual charged with a criminal offence be informed regarding the evidence that supports the allegations that have been formally lodged against him in a Court of law. The provisions of the Code of Criminal Procedure recognize the said right and the accused has a right under Section 173 to obtain the documents made mention of in the said provision. Sub section (5) of Section 173 is particularly relevant, which reads as under:

"(1) xxxxx xxxxxx

(2) (i) xxxxx xxxxxx

xxxxx xxxxxx

(5) When such report is in respect of a case to which section 170 applies, the police officer shall forward to the Magistrate along with the report-

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

(b) the statements- recorded under section 161 of all the persons whom the prosecution proposes to examine as its witnesses."

8. Thus, it is imperative on the part of the Investigating Officer to forward all

documents and relevant extracts, which the prosecution proposes to rely, so as to enable the learned Magistrate to hand over the same to the accused.

9. Application filed by applicant under Section 91 104 read with Section 207 of the Cr.P.C. was rejected by the learned Sessions Judge, Jabalpur holding that committal Court shall provide the copies before committing the case under Section 207 of the Cr.P.C. No provision is thereto supply copy of C.D. during trial by the Sessions Court. The applicant filed an application under R.T.I. Act before the control room of CCTV Camera Officer as well as Police Station House Officer, Cantt but copy of the C.D. was not provided to him.

10. The scheme of Cr.P.C. is such, which recognize the process of investigation to be a unilateral exercise where accused gets no opportunity of being represented or heard. It is only after filing of the charge sheet when the Court takes cognizance of the offence alleged that the copy of the charge sheet is supplied to the accused where after process which follows is bilateral in nature where complainant/State and the accused are heard before reaching any conclusion of interim or final nature. The evidence collected by the prosecution during investigation culminate into preparation and filing of the charge sheet, copy of which is supplied to the accused in terms of section 207 of the Cr.P.C. Thus, it is obvious that Cr.P.C. mandatorily recognizes documents/ material to be supplied to the accused as mentioned in Section 207 of the Cr.P.C.

11. Section 207 of the Code makes it mandatory for the Court to furnish to the accused the following documents:

"(i) the police report;

(ii) the first information report recorded under section 154;

(iii) the statements recorded under subsection (3) of section 161 of all persons whom the prosecution proposes to examine as its witnesses, excluding therefrom any part in regard to which a request for such exclusion has been made by the police officer under sub-section (6) of section 173;

(iv) the confessions and statements, if any, recorded under section 164;

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

12. In **Sidhartha Vashisht (2010) 6 SCC 1**, the Apex Court held that the Code provides a right to the accused to receive all documents and statements as well as to move an application for production of any record or witness in support of his case. This constitutional mandate and statutory rights given to the accused place an implied obligation upon the prosecution to make fair disclosure. The same view was taken by the Apex Court in **V.K. Sasikala v. State, (2012) 9 SCC 771**, wherein it was held that though it is only such reports which support the prosecution case that required to be forwarded to the Court under Section 173 (5) of the Cr.P.C., in every situation where some of the seized papers and documents do not support the prosecution case and, on the contrary, supports the accused, a duty is cast on the Investigating Officer to evaluate the two sets of documents and materials collected and, if required, to exonerate the accused at that stage itself. The Apex Court also had occasion to visualize a situation where the investigating officer ignores a part of the seized documents which favour the accused and forwards to the Court only those documents which support the prosecution. In such an event, the Court may have a duty to make available such documents to the accused regardless of the fact whether the same may not have been marked and exhibited by the prosecution. In other words, it will be the duty of the prosecution to disclose evidence to the accused persons, especially that, which might be potentially exculpatory or otherwise, which may have a negative impact on the weight of the evidence led by the prosecution or such evidence, which may support a proposed defence theory.

13. The same view was taken in **Tarun Tyagi v. CBI, (2017) 4 SCC 490**, wherein it was held that every document relied upon by the prosecution has to be supplied to the defence / accused at the time of supply of the charge sheet to enable such an accused to demonstrate that no case is made out against him and also to enable him to prepare his cross-examination and defence strategy.

14. In **Sadhvi Ritumbhara v. State of M.P** 1997 Cr.L.J. 1232(M.P.) it is held by this Court that rejection of accused's prayer for supply of copy of audio/ video cassettes is improper.

15. In **Harendra Singh Vs. State of M.P.** (M.Cr.C. No.3389/2017 order dated

23.8.2018) it is held that the inherent powers of this Court can be invoked for ensuring free and fair investigation and trial to seek relief which the Cr.P.C. does not grant in expressed terms provided there is no expressed or implied bar for grant of such relief.

16. In the case relied by petitioner i.e. **P. Gopalkrishanan @ Dileep Vs. State of Kerala and another (2020) AIR (SC) 1** the Apex Court has held that all documents including “electronic record” produced for the inspection of the Court alongwith the police report and which prosecution proposes to use against the accused must be furnished to the accused as per the mandate of section 207 of the Cr.P.C. except the privacy of the victim and her identity. The case in hand is a case where there is no matter of privacy or identity of victim involved. The said CCTV footage is said to be recording of incident for the offence under Section 436 of the Cr.P.C.

17. Though, in section 207 of the Cr.P.C. the word magistrate is used, the trial Court or Sessions Court is not there. However, it is mandate of this provision that copies of the documents forwarded to the Magistrate with the police report under sub section (5) of Section 173 of the Cr.P.C. must be supplied to the accused.

18. In view of the above discussions, the M.Cr.C. filed by the petitioner is allowed. It is ordered that copy of compact disk containing CCTV footage of the alleged incident be supplied to the petitioner by the prosecution at the earliest.

19. Consequently, it is allowed and disposed of.

C.C. as per rules.

**(Rajendra Kumar (Verma))**  
**Judge**

*ahd*

-( 6 )-

**THE HIGH COURT OF MADHYA PRADESH JABALPUR**

**(SB : HON. SHRI JUSTICE RAJENDRA KUMAR (VERMA) )**

M.Cr.C. No.32592/2021

**Petitioner:** Bablu Pasi

Vs.

**Respondent:** State of M.P. and others.

**O R D E R**

**Post for: -07-2021**

**(Rajendra Kumar (Verma))  
Judge  
-07-2021**

*ahd*