

HIGH COURT OF MADHYA PRADESH
BENCH AT INDORE

CRR No.6286/2018
(Mohan Vaswani Vs. State of MP)

Cr.R No.6288/2018
(Rajkumar Vs. State of MP)

Cr.R No.6289/2018
(Rajesh Vs. State of MP)

Cr.R No.6291/2018
(Durga Vs. State of MP)

Indore, dated : 31/01/2019:-

Shri S.K Vyas, learned senior counsel with Shri L.S.Chandiramani, learned counsel for the petitioners.

Shri Girish Desai, learned counsel for the objector.

Shri Swapnil Sharma, learned counsel for the respondent/State.

Petitioners of all these four petitions are facing trial under section 307 read with section 120-B of the IPC (ST No. 263/2019). Their grievance is that after almost 10 years of the trial and after withdrawing the application to file call details of the accused persons along with certificate under section 65-B of the Evidence Act and without reserving their right to file additional charge-sheet at the time of filing of the charge sheet, the prosecution has filed the additional charge-sheet, which, according to them, is sheer abuse of process of law.

2. According to the prosecution case on 23.08.2009, one Nalin Sharma met with an accident. His son Jayant Sharma brought him to the hospital and informed the incident. A simple case of accident at crime No. 207/2009 under section 304-A of the IPC was registered at the Police Station Madhonagar, District Ujjain against unknown vehicle/driver but in investigation, it was found that actually this was not a simple case of accident but was a case of intentional homicide. It was revealed that the deceased was occupying a premises belonging to one of

the petitioner Mohan Vaswani, who was asking and pressurizing him to vacate the same. He even offered him money for vacating the premises but that also did not yield the desired result as the deceased was not agree or ready to vacate the premises. Therefore, petitioner Mohan Vaswani hatched a conspiracy and in its furtherance, petitioner Durga intentionally ran over the vehicle on the deceased resulting in his death. After completing the investigation, the police filed the charge sheet under section 302, 201, 109 and 120-B of the IPC before the Judicial Magistrate on 05.06.2009, which was later committed and now pending for trial.

3. Attack of the petitioners is mainly on two planks. First plank is that the prosecution has never reserved its right to file charge-sheet at the time of filing of the main charge-sheet against them 9 years back and, Second plank is that no certificate under section 65-B of the Evidence Act was filed with the main charge-sheet. An application was filed to take the certificate obtained on 13.07.2016 on record but as the certificate was not fulfilling the conditions prescribed under section 65-B of the Evidence Act, therefore, this application was withdrawn and inventing a via-media, they obtained another certificate and after 7 years of filing of the charge-sheet filed additional charge-sheet along with this fresh certificate obtained on 14.03.2018 and the same call details, which were already available on record. This, according to the petitioners is nothing but a reprehensible way to produce the said call details and to fill up the *lacuna*, which cannot be permitted at that stage at all.

4. To understand the law relating to the grounds raised by the learned Senior counsel for the petitioners, it would be convenient to go through the concerned provisions. For this purpose Section 173 of the Cr.P.C. is being reproduced below:-

“**173. Report of police officer on completion of investigation.**—(1) Every investigation under this Chapter shall be completed without unnecessary delay.
[(1A) The investigation in relation to 2[an offence under sections 376, 376A, 376AB, 376B, 376C,

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376D, 376DA, 376DB or 376E of the Indian Penal Code (45 of 1860) shall be completed within two months] from the date on which the information was recorded by the officer in charge of the police station.]

(2) (i) As soon as it is completed, the officer in charge of the police station shall forward to a Magistrate empowered to take cognizance of the offence on a police report, a report in the form prescribed by the State Government, stating—

- (a) the names of the parties;
- (b) the nature of the information;
- (c) the names of the persons who appear to be acquainted with the circumstances of the case;
- (d) whether any offence appears to have been committed and, if so, by whom;
- (e) whether the accused has been arrested;
- (f) whether he has been released on his bond and, if so, whether with or without sureties;
- (g) whether he has been forwarded in custody under section 170;

[(h) whether the report of medical examination of the woman has been attached where investigation relates to an offence under [sections 376, 376A, 376AB, 376B, 376C, s[376D], 376DA, 376DB] 4[or section 376E of the Indian Penal Code (45 of 1860)].]

(ii) The officer shall also communicate, in such manner as may be prescribed by the State Government, the action taken by him, to the person, if any, by whom the information relating to the commission of the offence was first given.

(3) Where a superior officer of police has been appointed under section 158, the report shall, in any case in which the State Government by general or special order so directs, be submitted through that officer, and he may, pending the orders of the Magistrate, direct the officer in charge of the police station to make further investigation.

(4) Whenever it appears from a report forwarded under this section that the accused has been released on his bond, the Magistrate shall make such order for the discharge of such bond or otherwise as he thinks fit.

(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.

(6) If the police officer is of opinion that any part of any such statement is not relevant to the subject-matter of the proceedings or that its disclosure to the accused is not essential in the interests of justice and is inexpedient in the public interest, he shall indicate that part of the statement and append a note requesting the Magistrate to exclude that part from the copies to be granted to the accused and stating his reasons for making such request.

(7) Where the police officer investigating the case finds it convenient so to do, he may furnish to the accused copies of all or any of the documents referred to in sub-section (5).

(8) Nothing in this section shall be deemed to preclude further investigation in respect of an offence after a report under sub-section (2) has been forwarded to the Magistrate and, where upon such investigation, the officer in charge of the police station obtains further evidence, oral or documentary, he shall forward to the Magistrate a further report or reports regarding such evidence in the form prescribed; and the provisions of sub-sections (2) to (6) shall, as far as may be, apply in relation to such report or reports as they apply in relation to a report forwarded under sub-section (2).”

5. This provision unambiguously makes it clear that the police while filing the charge-sheet, is not required to reserve any right of filing of any additional charge-sheet in future. The provision simply says that “Nothing in this section shall be deemed to preclude further investigation in respect of an offence after a report under sub-section (2) has been forwarded to the Magistrate and, where upon such investigation, the officer in charge of the police station obtains further evidence, oral or documentary,”

6. Section 65-B of the Evidence Act is as follows:-

“65B. Admissibility of electronic records. — (1) Notwithstanding anything contained in this Act, any information contained in an electronic record which is printed on a paper, stored, recorded or copied in optical or magnetic media produced by a computer (hereinafter referred to as the computer output) shall be deemed to be also a document, if the conditions mentioned in this section are satisfied in relation to the information and computer in question and shall be admissible in any proceedings, without further proof or production of the original, as evidence or any contents of the original or of any fact stated therein of which direct evidence would be admissible.

(2) The conditions referred to in sub-section (1) in respect of a computer output shall be the following, namely: —

(a) the computer output containing the information was produced by the computer during the period over which the computer was used regularly to store or process information for the purposes of any activities regularly carried on over that period by the person having lawful control over the use of the computer;

(b) during the said period, information of the kind contained in the electronic record or of the kind from which the information so contained is derived was regularly fed into the computer in the ordinary course of the said activities;

(c) throughout the material part of the said period, the computer was operating properly or, if not, then in respect of any period in which it was not operating properly or was out of operation during that part of the period, was not such as to affect the electronic record or the accuracy of its contents; and

(d) the information contained in the electronic record reproduces or is derived from such information fed into the computer in the ordinary course of the said activities.

(3) Where over any period, the function of storing or processing information for the purposes of any activities regularly carried on over that period as mentioned in clause (a) of sub-section (2) was regularly performed by computers, whether—

(a) by a combination of computers operating over that period; or

(b) by different computers operating in succession over that period; or

(c) by different combinations of computers operating in succession over that period; or

(d) in any other manner involving the successive operation over that period, in whatever order, of one or more computers and one or more combinations of computers, all the computers used for that purpose during that period shall be treated for the purposes of this section as constituting a single computer; and references in this section to a computer shall be construed accordingly.

(4) In any proceedings where it is desired to give a statement in evidence by virtue of this section, a certificate doing any of the following things, that is to say, —

(a) identifying the electronic record containing the statement and describing the manner in which it was produced;

(b) giving such particulars of any device involved in the production of that electronic record as may be appropriate for the purpose of showing that the electronic record was produced by a computer;

(c) dealing with any of the matters to which the conditions mentioned in sub-section (2) relate, and purporting to be signed by a person occupying a responsible official position in relation to the operation of the relevant device or the management of the relevant activities (whichever is appropriate) shall be evidence of any matter stated in the certificate; and for the purposes of this subsection it shall be sufficient for a matter to be stated to the best of the knowledge and belief of the person stating it.

(5) For the purposes of this section, —

(a) information shall be taken to be supplied to a computer if it is supplied thereto in any appropriate form and whether it is so supplied directly or (with or without human intervention) by means of any appropriate equipment;

(b) whether in the course of activities carried on by any official, information is supplied with a view to its being stored or processed for the purposes of those activities by a computer operated otherwise than in the course of those activities, that information, if duly supplied to that computer, shall be taken to be supplied to it in the course of those activities;

(c) a computer output shall be taken to have been produced by a computer whether it was produced by it directly or (with or without human intervention) by means of any appropriate equipment.

Explanation. —For the purposes of this section any reference to information being

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derived from other information shall be a reference to its being derived therefrom by calculation, comparison or any other process.]”

7. A bare perusal of this section makes it clear that no time limit is prescribed to obtain or to submit certificate under this section. No any other law could be pointed out which prescribes any limitation for such submission.

8. Further looking to the nature of documents/evidence, proposed to be produced by the prosecution at this stage, does not appear that it would cause any prejudice to the petitioners rather it appears that it would help the Court to reach on just and proper conclusion.

9. Further no allegations of distorting, concocting or tampering the evidence proposed to be produced have been made by the petitioners. In such a situation, despite adroit efforts put by the petitioners, I am not convinced that there is any illegality or perversity in the impugned order. Therefore, the petitions are devoid of merits and are **dismissed** as such.

Digitally signed by SOURABH
YADAV
Date: 2019.02.11 17:38:33 +05'30'

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(Virender Singh)
Judge