



Non-Reportable

**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NOS.4718-4719 OF 2024

Sameer Sandhir

... Appellant

versus

Central Bureau of Investigation

... Respondent

J U D G M E N T

ABHAY S. OKA, J.

FACTUAL ASPECTS

1. A very short controversy arises in these appeals. The appellant is accused No. 7, who, along with others, is facing trial in Case No. RC-217/2013/A0004 (CC No.3 of 2013) registered for various offences under the Prevention of Corruption Act, 1988 (for short, 'the PC Act'). An FIR was registered on 3rd May 2013 for the offences punishable under Section 120-B of the Indian Penal Code, 1860 (for short, 'the IPC') and Sections 7, 8 and 10 of the PC Act. The dispute revolves around two Compact Discs.

2. Between 8th January 2013 and 1st May 2013, the Ministry of Home Affairs had granted permission to intercept the telephone calls of accused nos.2, 3, 5, 6 and 8. The Ministry of Home Affairs also granted permission during this period to intercept the telephone calls of one Manoj Garg. On

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4th May 2013 and 10th May 2013, two CDs (hereafter referred to as 'the CDs'), containing call records of 189 and 101 calls, respectively, were seized. On 27th May 2013, the CDs were sent to the Central Forensic Science Laboratory (for short, 'the CFSL') for analysis. Sanction was granted thereafter on 2nd July 2013 under Section 19 of the PC Act. A charge sheet was filed by the respondent, the Central Bureau of Investigation (CBI), on July 2, 2013. On 4th July 2013, cognizance was taken by the Special Court of the offences punishable under Section 120-B of the IPC and Sections 7, 8, 9 and 10 of the PC Act.

3. On 25th October 2013, the CFSL forwarded its report and original sealed CDs back to the respondent, CBI. On 30th October 2013, though a supplementary chargesheet was filed along with the CFSL report, the CDs were not filed. On 11th March 2014, charges were framed against the accused. Ultimately, the recording of the evidence of the Prosecution Witnesses (PWs) commenced on 15th September 2014.

4. On 16th September 2014, while recording the evidence of PW-3, the CDs which were not filed on record were sought to be played by the prosecution. An objection was raised by the learned counsel representing the accused that the CDs were neither relied upon nor filed in the Court. Moreover, copies of the CDs were not supplied to the accused.

5. On 17th September 2014, the respondent-CBI filed an application for preparing copies of the said CDs. Thereafter,

the evidence of PW-5 was recorded, and the evidence of PW-6 was partially recorded. The application made by the respondent, CBI, was strongly opposed by some of the accused. On 27th September 2014, the learned Special Judge passed an order allowing the application of the respondent, CBI. As the appellant was not heard before the order was passed, a quashing petition was filed by the appellant before the Delhi High Court. By the order dated 12th May 2015, the Delhi High Court allowed the petition. While setting aside the order dated September 27, 2014, the Delhi High Court issued a direction to the learned Special Court to permit the respondent-CBI to file an application to bring on record the CDs.

6. Accordingly, an application was filed by the respondent-CBI for production of the CDs by invoking Section 173(5) of the Code of Criminal Procedure, 1973 (for short, 'the CrPC'). On 13th October 2015, an order was passed by the learned Special Judge directing playing of the two CDs in the Court and comparing the same with unsealed CDs which were in Malkhana of the respondent-CBI. An application made by the accused opposing the prayer for playing the CDs was rejected by the order dated 31st October 2015. A petition was filed by the appellant before the Delhi High Court challenging the orders dated 13th October 2015 and 31st October 2015.

7. On 6th November 2015, the orders were set aside by the Delhi High Court with a direction to the Special Court to first

decide whether the application of the respondent-CBI for production of CDs can be allowed. On 6th February 2016, the learned Special Judge allowed the application of the respondent-CBI to place the two CDs on record. On the same day, the learned Special Judge dismissed the application made by the appellant for return of chargesheet. The order dated 6th February 2016 allowing the application made by the respondent-CBI was challenged before the Delhi High Court by the appellant by filing a quashing petition. By the impugned judgment dated 26th April 2017, the petition was dismissed by the High Court. The High Court basically relied upon the decision of a Bench of three Judges of this Court in the case of **Central Bureau of Investigation v. R S Pai and Anr¹**.

SUBMISSIONS

8. The learned senior counsel appearing for the appellant submitted that the CDs were available to the prosecution/ investigating agency at the time of filing of the original chargesheet. His submission is that the CDs could have been produced only if they were seized while carrying out further investigation in accordance with sub-section (8) of Section 173 of the CrPC. Reliance was placed on the decision of this Court in the case of **Mariam Fasihuddin & Anr. v. State by Adugodi Police Station & Anr²**. The submission of the learned senior counsel is that the material available to the

1 (2002) 5 SCC 82

2 2024 SCC OnLine SC 58

prosecution prior to the filing of the chargesheet cannot be used by the prosecution under the guise of further investigation, as only the new material can be collected during further investigation. The learned senior counsel also relied upon what is held in the case of **Arjun Panditrao Khotkar v. Kailash Kushanrao Gorantyal & Ors**³. His submission is that in view of the said decision, additional documents can be produced by the prosecution only when the trial is at the nascent stage and the charge is not framed. The learned senior counsel submitted that the view taken by this Court in the case of **R S Pai**¹ requires reconsideration as sub-section (5) of Section 173 of the CrPC cannot be held to be directory. The learned senior counsel relied upon the decisions of this Court in the cases of **Sidhartha Vashisht alias Manu Sharma v. State (NCT)**⁴ and **V K Sasikala v. State rep. by Superintendent of Police**⁵. His submission is that in both decisions, this Court held that Section 207 of the CrPC is mandatory. He submitted that in the case of **R S Pai**¹, this Court relied upon its decision in the case of **Narayan Rao v. State of Andhra Pradesh**,⁶ which interprets sub-section (4) of Section 173 of the Code of Criminal Procedure, 1898 (for short, 'the CrPC of 1898'). He submitted that the language used in sub-section (4) of Section 173 of the CrPC of 1898 was completely different from the language used in sub-section (5) of Section 173 of the CrPC. He submitted that the

3 (2020) 7 SCC 1

4 (2010) 6 SCC 1

5 (2012) 9 SCC 771

6 AIR 1957 SC 737

decision in the case of **R.S. Pai¹** is no longer good law.

9. The learned Additional Solicitor General appearing for the respondent-CBI submitted that the CDs were seized on 4th and 10th May 2013, and they were sent to the CFSL on 27th May 2013. When the first chargesheet was filed on 2nd July 2013, the CFSL report was not available. He pointed out that the CFSL report was received on 25th October 2013. Thereafter, a supplementary chargesheet was filed, and the CFSL report was produced along with the supplementary chargesheet. He submitted that, inadvertently, the CDs were not produced. He submitted that there is no prejudice to the appellant if the CDs are ordered to be produced. He submitted that the decision of this Court in the case of **R.S. Pai¹** does not call for reconsideration at all.

CONSIDERATION OF SUBMISSIONS

10. We have already noted the factual aspects of the case. The factual aspects which emerge can be summarized as under:

- a.** The CDs were seized on 4th and 10th May 2013;
- b.** On 27th May 2013, the CDs were sent in a sealed envelope by the respondent to the CFSL;
- c.** On 2nd July 2013, when the first chargesheet was filed, the opinion/report of the CFSL was not received;

- d.** On 25th October 2013, the report of the CFSL was received; and
- e.** On 30th October 2013, supplementary chargesheet was filed under Section 173(8) of the CrPC. The CFSL reports were filed with the chargesheet. The supplementary chargesheet refers to the seizure of CDs and the fact that the specimen voices of the accused, including the appellant, were recorded and forwarded to the CFSL along with the seized CDs in a sealed envelope. Along with the chargesheet, apart from the original CFSL report and other documents, a Certificate under Section 65B of the Indian Evidence Act, 1872 (hereinafter referred to as the 'Evidence Act'), was produced.

11. It is necessary to refer to the decision of this Court in the case of **R.S.Pai**¹. Paragraph 7 of the said decision is material, which reads thus:

“7. From the aforesaid sub-sections, it is apparent that normally, the investigating officer is required to produce all the relevant documents at the time of submitting the charge-sheet. At the same time, as there is no specific prohibition, it cannot be held that the additional documents cannot be produced subsequently. If some mistake is committed in not producing the relevant documents at the time of submitting the report or the

charge-sheet, it is always open to the investigating officer to produce the same with the permission of the court. In our view, considering the preliminary stage of prosecution and the context in which the police officer is required to forward to the Magistrate all the documents or the relevant extracts thereof on which the prosecution proposes to rely, the word “shall” used in sub-section (5) cannot be interpreted as mandatory, but as directory. **Normally, the documents gathered during the investigation upon which the prosecution wants to rely are required to be forwarded to the Magistrate, but if there is some omission, it would not mean that the remaining documents cannot be produced subsequently.**

Analogous provision under Section 173(4) of the Code of Criminal Procedure, 1898 was considered by this Court in *Narayan Rao v. State of A.P.* [AIR 1957 SC 737 : 1958 SCR 283 : 1957 Cri LJ 1320] (SCR at p. 293) and it was held that the word “shall” occurring in sub-section (4) of Section 173 and sub-section (3) of Section 207-A is not mandatory but only directory. Further, the scheme of sub-section (8) of Section 173 also makes it abundantly clear that even after the charge-sheet is submitted, further investigation, if called for, is not precluded. If further investigation is not precluded then there is no question of not permitting the prosecution to produce additional documents which were gathered prior to or subsequent to the investigation.

In such cases, there cannot be any prejudice to the accused. Hence, the impugned order passed by the Special Court cannot be sustained.”

(emphasis added)

This decision holds that if there is an omission on the part of the prosecution in forwarding the relied upon documents to the learned Magistrate, even after the chargesheet is submitted, the prosecution can be permitted to produce the additional documents which were gathered prior to or subsequent to the investigation.

12. The learned senior counsel appearing for the appellant relied upon what is held in paragraph 38 of the decision in the case of ***Mariam Fasihddin & Anr***², which reads thus:

“**38.** It is a matter of record that in the course of ‘further investigation’, no new material was unearthed by the investigating agency. Instead, the supplementary chargesheet relies upon the Truth Lab report dated 15.07.2013, obtained by Respondent No. 2, which was already available when the original chargesheet was filed. The term ‘further investigation’ stipulated in Section 173(8) CrPC obligates the officer-in-charge of the concerned police station to ‘obtain further evidence, oral or documentary’, and only then forward a supplementary report regarding such evidence, in the prescribed form.”

This decision is of the Bench of two Hon'ble Judges. It does not make any departure from the decision of this Court in the case of **R.S.Pai¹**.

13. Another Bench of this Court, consisting of three Hon'ble Judges, in its decision in the case of **Arjun Panditrao Khotkar³**, in paragraph 55, reiterated the law laid down in the case of **R.S.Pai¹**. Paragraphs 55 and 56 of the said decision read thus:

“55. In a criminal trial, it is assumed that the investigation is completed and the prosecution has, as such, concretised its case against an accused before commencement of the trial. It is further settled law that the prosecution ought not to be allowed to fill up any lacunae during a trial. As recognised by this Court in CBI v. R.S. Pai [CBI v. R.S. Pai, (2002) 5 SCC 82:2002 SCC (Cri) 950], the only exception to this general rule is if the prosecution had “mistakenly” not filed a document, the said document can be allowed to be placed on record. The Court held as follows : (SCC p.85, para 7)

“7. From the aforesaid sub-sections, it is apparent that normally, the investigating officer is required to produce all the relevant documents at the time of submitting the charge-sheet. At the same time, as there is no specific prohibition, it cannot be held that the additional documents cannot be produced

subsequently. If some mistake is committed in not producing the relevant documents at the time of submitting the report or the charge-sheet, it is always open to the investigating officer to produce the same with the permission of the court.”

56. Therefore, in terms of general procedure, the prosecution is obligated to supply all documents upon which reliance may be placed to an accused before commencement of the trial. Thus, the exercise of power by the courts in criminal trials in permitting evidence to be filed at a later stage should not result in serious or irreversible prejudice to the accused. A balancing exercise in respect of the rights of parties has to be carried out by the court, in examining any application by the prosecution under Sections 91 or 311 CrPC or Section 165 of the Evidence Act. Depending on the facts of each case, and the court exercising discretion after seeing that the accused is not prejudiced by want of a fair trial, the court may in appropriate cases allow the prosecution to produce such certificate at a later point in time. If it is the accused who desires to produce the requisite certificate as part of his defence, this again will depend upon the justice of the case — discretion to be exercised by the court in accordance with law.”

14. Strong reliance was placed on the decisions of this Court in the cases of **Sidharth Vashisht⁴** and **V K**

Sasikala⁵. These two decisions operate in completely different fields. The decisions are on the right of the accused to get the copies of all the relied upon documents. Basically, these two decisions deal with Section 207 of the CrPC, which deals with the supply of a copy of the Police report and other documents to the accused. In the present case, the question is whether the respondent-CBI can be permitted to produce the CDs which were inadvertently not produced along with the supplementary chargesheet. Even if the documents or things which were inadvertently not produced along with the chargesheet are allowed to be produced, the decisions in the cases of **Sidharth Vashisht**⁴ and **V K Sasikala**⁵ will have no application.

15. In the facts of the case, the CDs were seized and referred for forensic analysis to the CFSL along with voice samples of the accused. The CDs were referred to in the supplementary chargesheet. After the report of the CFSL was received, the supplementary chargesheet was filed for placing on record the said report. Therefore, when the CDs were sought to be produced, in a sense, they were not new articles; the CDs were very much referred to in the supplementary chargesheet filed on 13th October 2013. There was only an omission on the part of the respondent-CBI to produce the CDs. Therefore, applying the law laid down in the case of **R.S.Pai**¹, the impugned judgments of the Special Court and the High Court cannot be faulted with. We do not see how the decision in the case of **R.S.Pai**¹ requires reconsideration.

16. However, in paragraphs 20 and 21 of the impugned judgment, the High Court has observed thus:

“20. Since, these documents are supported by required certificates under Section 65B of Indian Evidence Act, their authenticity cannot be suspected at this stage.

The Trial Court after hearing the contents of the CDs played in the Court was, prima facie, of the view that the contents of these CDs were in consonance with the transcript on record. As per prosecution, contents of both the CDs were found identical and there was no question of variance in their contents.

21. After the filing of the charge-sheet by the prosecution, the Trial Court forms its opinion to take cognizance without ascertaining the authenticity, genuineness and veracity of the documents filed along with it; it is to be done during trial. **In the instant case, merely because the CDs were filed at somewhat belated stage after the filing of the charge-sheet/supplementary charge-sheet, the prosecution is not expected to prove their authenticity and genuineness beyond reasonable doubt at this stage.** The petition and other accused persons will be at liberty to challenge the admissibility/ authenticity of CDs during trial.”

(emphasis added)

17. In our view, the High Court ought not to have gone into the issue of the authenticity of the CDs allowed to be produced. Whether the CDs produced were the same which were seized on 4th May 2013 and 10th May 2013, is something which will have to be proved by the prosecution. The issue regarding the legality of the Certificate under Section 65B of the Evidence Act ought not to have been dealt with at this stage. Even if the production was allowed, the issue of the CDs' authenticity remains open.

18. In the circumstances, we do not find fault with the impugned judgment of the Delhi High Court. However, the issue of whether the CDs produced were the same which were seized on 4th May 2013 and 10th May 2013 is left open. The issue regarding the validity of the certificate under Section 65B of the Evidence Act is also left open. The issue of the authenticity of the CDs is kept open. The CDs were sought to be produced after the recording of evidence of some of the prosecution witnesses. It will also be open for the appellant to recall the prosecution witnesses for cross-examination on a limited aspect of the CDs.

19. Subject to what is held above, the appeals are dismissed.

.....J.
(Abhay S. Oka)

.....J.
(Augustine George Masih)

**New Delhi;
May 23, 2025.**