

(2022-3)207 PLRIJ 047 (Kar.)
HIGH COURT OF KARNATAKA (DHARWAD BENCH)
Before : Justice M.Nagaprasanna
BHAVANKUMARJHA – Petitioner,
versus
STATE OF KARNATAKA – Respondent
Criminal Petition No 100271/2022

Criminal Procedure Code, 1973 (I of 1974) Section 207 - CCTV - Complete documents i.e., electronic record that is marked by the prosecution should be furnished to the accused - A document would also mean an electronic record which may even be audio and video content - According to the prosecution, the entire case rests upon the CCTV footage - It is the primary evidence against the petitioner - Investigating agency directed shall furnish the entire CCTV footage and its report filed before the Court to the accused before commencement of the trial.

Avi Nash M Angadi, Ramesh Chigari, HCGP, for the parties.

ORDER

(8th February, 2022) – Heard Shri Avinash M. Angadi, the learned counsel appearing for the petitioner and Shri Ramesh Chigari, the learned counsel appearing for the respondent.

2. The petitioner is before this Court calling in question the proceedings in Sessions Case No.5029/2021 pending before the V Addl. District and Sessions Judge, Dharwad, sitting at Hubballi, registered for the offence punishable under Section 302 of the Indian Penal Code, 1860.

3. The only ground of challenge to the proceedings is, the investigating agency not furnishing the entire evidence produced against the petitioner. The petitioner is accused committing murder on 18.2.2020, of one Momahmed Nadim S/o.Mohammed Haroon. The Investigating Officer submits the charge sheet in S.C.No.5029/2021 at which point in time produced a CCTV footage and a report on the said CCTV footage. The entire report is not made available to the petitioner.

4. A truncated version being handed over to the petitioner, drives the petitioner to file an application under Section 207 of the Code of Criminal Procedure, 1973. The trial Court having rejected the said application, drives the petitioner to this Court in the subject petition. The order of the trial Court, which is called in question reads as follows:

“On the application of learned counsel for the accused this matter is taken up on today’s board.

At this stage he files the application U/sec.227 of Cr.P.C. Learned PP prays time to file an objection.

At this stage learned counsel for the accused submits that this court by considering his application filed U/sec.207 of Cr.P.C. directed the prosecutions to provide CCTV footage if they have stored a copy in their computer.

Now the learned PP submits that she got a information from the I.O. who said that copy of the CCTV footage had not been stored in their computer. The CD consisting of CCTV footage is filed before the court.

Learned PP submits that the CCTV footage which is submitted before this court has been seized in the presence of the panchas by drawing a mahazar.

As the CCTV has been submitted along with a charge sheet, while making a committal of this case either the accused or his. counsel have not objected for order for committal of this case for non supplying of the CCTV footage. But at this stage he is making submission by reporting non furnishing of CCTV footage.

As the CD cannot be opened unless played and shown to the panchas and to the

concerned 1.0 to confirm whether the CCTV footage furnished before this court, is connected to this case seized in their presence. Thus this court cannot supply the CCTV footage to the accused. The accused shall wait till commencement of the trial on that ground the request of the learned counsel for the accused on furnishing the CCTV footage at this stage is hereby rejected.

For objection on application filed U/sec.227 of CrP.C. Call on by 17-12-2021."

5. It is not in dispute that the complete report of the CCTV footage is not furnished to the petitioner. According to the prosecution, the entire case rests upon the CCTV footage. It is the primary evidence against the petitioner. It is also the case of the prosecution that the CCTV footage has captured the entire act of the petitioner who is alleged of the offence of murder under Section 302 of the IPC.

6. The issue whether the complete documents i.e., electronic record that is marked by the prosecution should be furnished to the accused or not is no longer *res-integra* as the Apex Court in the case of *P.Gopalkrishnan alias Dileep v. State of Kerala* (2020) 9 SCC 161, has held as follows:

28. As aforesaid, the respondents and intervenor would contend that the memory card is a material object and not a "document" as such. If the prosecution was to rely only on recover/ of memory card and not upon its contents, there would be no difficulty in acceding to the argument of the respondent/intervenor that the memory card/pen drive is a material object. In this regard, we may refer to Phipson on Evidence, and particularly, the following paragraph(s):

"The purpose for which it is produced determines whether a document is to be regarded as documentary evidence. When adduced to prove its physical condition, for example, an alteration, presence of a signature, bloodstain or fingerprint, it is real evidence. So too, if its relevance lies in the simple fact that it exists or did once exist or its disposition or nature. In all these cases the content of the document, if relevant at all, is only indirectly relevant, for example to establish that the document in question is a lease. When the relevance of a document depends on the meaning of its contents, it is considered documentary evidence," (emphasis supplied)

Again at page 5 of the same book, the definition of "real evidence" is given as under:

"Material objects other than documents, produced for inspection of the court, are commonly called real evidence. Thus, when available, is probably the most satisfactory kind of all, since, save for identification or explanation, neither testimony nor inference is relied upon. Unless its genuineness is in dispute [See *Belt v Lav^es*, *The Times*, 17 November 1882.], the thing speaks for itself.

Unfortunately, however, the term "real evidence" is itself both indefinite and ambiguous, having been used in three divergent senses:

(1)

(2) Material objects produced for the inspection of the court. This is the second and most widely accepted meaning of "real evidence". It must be borne in mind that there is a distinction between a document used as a record of a transaction, such as a conveyance, and a document as a thing. It depends on the circumstances in which classification it falls. On a charge of stealing a document, for example, the document is a thing.

(3) _____

A priori, we must hold that the video footage/clipping contained in such memory card/pen-drive being an electronic-record as envisaged by Section 2(1)(t) of the 2000 Act, is “document” and cannot be regarded as a material object. Section 2(1)(t) of the 2000 Act reads thus:

“2(l)(t) “electronic record” means

data, record or data generated, image or sound stored, received or sent in an electronic form or micro film or computer generated micro fiche;”

37, Considering the aforementioned Reports, it can be concluded that the contents of the memory card would be a “matter” and the memory card itself would be a “substance” and hence, the contents of the memory card would be a “document”.

38. It is crystal clear that all documents including “electronic record” produced for the inspection of the Court along with 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 1973 Code. The concomitant is that the contents of the memory card/pen drive must be furnished to the accused, which can be done in the form of cloned copy of the memory card/pen drive. It is cardinal that a person tried for such a serious offence should be furnished with all the material and evidence in advance, on which the prosecution proposes to rely against him during the trial. Any other view would not only impinge upon the statutory mandate contained in the 1973 Code, but also the right of an accused to a fair trial enshrined in Article 21 of the Constitution of India.

7. Much earlier to the judgment rendered by the Apex Court in the aforesaid case, a co-ordinate Bench of this Court in the case of *Mohammed Imran v. The state of Karnataka*, in Crl.P.No.11202/2013 disposed off on 18.9.2013, has held as follows:

5. In the light of the above, the question before this court is-whether the documents maintained in the form of electronic media could be refused on the ground that the same are material objects, which are to be denied to the accused. As already pointed out, the definition of the expression “evidence” as contained in Section 3 of the IE Act, is as follows

“ “Evidence” - “Evidence” means and includes -

(1) all statements which the Court permits or requires to be made before it by witnesses, in relation to matters of fact under inquiry, such statements are called oral evidence;

(2) [all documents including electronic records produced for the inspection of the Court], such documents are called documentary evidence.”

By virtue of the amended provision, a document would also mean an electronic record which may even be audio and video content. Therefore, the electronic recording of voices and any videography which is produced before the court for inspection by the prosecution, could, necessarily be construed as documents. Section 207 of the Cr.PC, which contemplates the supply of a copy of the police report and other documents to the accused, reads as follows:-

“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) the police report;

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

- (iii) the statements recorded under sub-section (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 subsection (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;

Provided that the Magistrate may, after perusing any such part of- a statement as is referred to in clause (iii) and considering the reasons given by the police officer for the request, direct that a copy of that part of the statement or of such portion thereof as the Magistrate thinks proper, shall be furnished to the accused;

Provided further.' . that if the Magistrate is satisfied that any document referred to in clause-(v) 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."

The learned Additional State Public Prosecutor may be right in his contention that discretion is provided to the Magistrate in deciding as to the other documents, which the accused would be entitled to apart from the documents, to which the accused is entitled to as a matter of right, as enumerated above. However, in the case on hand, it is not in dispute that the voice recordings of the accused and certain videography are denied to the petitioners on the ground that they are material objects and not in the nature of documents. This reasoning is certainly erroneous. The same are necessarily to be construed as documents and transcripts of the voice recordings by itself could not be a true copy of the evidence that is contained in the compact discs. It would be more appropriate if the compact discs itself are copied and furnished to the accused as that is quite possible. Therefore, there is no impediment in furnishing the copies of the audio and video content that is available as a part of the record and the accused is entitled to the same. Therefore, the denial of the copies of the same to the petitioners on the ground that the said compact discs and other material are material objects and not documents is an incorrect premise. Further, the contention that the voice recordings are that of accused nos. 1 to 5 and it may not be relevant insofar as accused nos.2,6 and 7 are concerned, is again not a tenable contention for accused nos.2, 6 and 7 are certainly the accused in that case and any documents produced in that case are necessarily to be furnished to the accused in terms of Section 207 of the Cr.PC. The same cannot be segregated and furnished to some accused and denied to others as the trial is one. Therefore, it cannot be denied to the accused on that ground as there is no such condition placed in terms of Section 207 Cr.PC. Hence, that contention of the learned Additional State Public Prosecutor may not be relevant. Since all the documents are to be furnished free of costs, it would go without saying that if electronic material is to be considered as documents, the same should also be provided free of cost.

Consequently, the petition is allowed. The court below is directed to furnish the copies of the electronic material that is produced for the inspection of the court in the case.

8. Therefore, in the light of the judgment of the Apex Court and the judgment of the

co-ordinate Bench of this Court (supra), the order rejecting the application of the petitioner filed under Section 207 of the Cr.P.C. is rendered unsustainable. For the aforesaid reasons, the following:

ORDER

- i) The petition is allowed.
- ii) The order dated 15.12.2021, passed by the V Addl. District and Sessions Judge, Dharwad, sitting at Hubballi, in S.C.No.5029/2021 stands quashed.
- iii) The investigating agency shall furnish the entire CCTV footage and its report filed before the Court to the accused before commencement of the trial.

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