

Before Arvind Singh Sangwan, J.

RAJ KUMAR BHATIA—Petitioner

versus

CENTRAL BUREAU OF INVESTIGATION—Respondents

CRR No.94 of 2020

February 19, 2020

Criminal Procedure Code, 1973—S. 173(4)—Indian Penal Code, 1860—S. 120B, 417, 420, 467, 468 and 471—Permission for Production of documents—Special Judicial Magistrate, allowed production-cum-receipt memo, seizure memo, receipt memos to be placed on record as these documents were prepared by Investigation Officer but inadvertently, same were not part of report submitted under Section 173 Cr.P.C., 1973—Held, documents prepared during investigation but not attached with report under Section 173 Cr.P.C., 1973 can be placed on record in terms of Section 173 (5) Cr.P.C., 1973—Hence, permission for production of documents proper.

Held that, in view of the judgment of the Hon'ble Supreme Court in *R.S. Pai's case (supra)*, there is no dispute about the well settled principle of law that the documents which are prepared during the investigation but could not be attached with the report under Section 173 Cr.P.C. can be placed on record in terms of Section 173 (5) Cr.P.C.

(Para 11)

Raj Kumar Bhatia
Petitioner in person.

Sumeet Goel, Advocate
for the respondent.

ARVIND SINGH SANGWAN, J. (Oral)

(1) Prayer in this revision petition is for setting-aside the order dated 20.12.2019 passed in FIR No.16 (RCCHG2016A0016) dated 29.07.2016 registered under Sections 120-B, 417, 420, 467, 468, 471 of the Indian Penal Code, 1860 (in short 'IPC') at Police Station CBI/ACB, Chandigarh, vide which the trial Court/Special Judicial Magistrate, CBI, Chandigarh, has allowed the production-cum-receipt memo dated 09.05.2016, seizure memo dated 22.02.2016, receipt memos dated 03.03.2016 and 06.04.2016, to be placed on record as

these documents were prepared by the Investigation Officer but inadvertently, the same were not part of the report submitted under Section 173 Cr.P.C.

(2) Brief facts of the case are that a case bearing No.RCCHG2016AD016 was registered in CBI, ACB Chandigarh on 29.07.2016 on the basis of PECHG2016A0001 dated 10.02.2016 conducted by CBI, ACB, Chandigarh as per the order dated 18.11.2015 issued by the Hon'ble Supreme Court of India, in Civil Appeal No.13471 of 2015. After detailed preliminary enquiry on all the aspects mentioned in the FIR it is found that during the year 2011 Raj Kumar Bhatia, Advocate and Jatinder Singh Birgi connived together, with some unknown person to grab the property i.e. House No.1149, Sector 8-C, Chandigarh by preparing forged documents i.e. Rent Deed dated 14.03.2011 in respect of House No. 1149, Sector 8, Chandigarh between Meenu Vaid and Jatinder Singh Birgi, Agreement to Sell dated 16.03.2011 in respect of House No.1149, Sector 8, Chandigarh in favour of Sh. Jatinder Singh Birgi executed by Meenu Vaid and a Will executed by Meenu Vaid in favour of Jatinder Singh Birgi drafted by Sh. Raj Kumar Bhatia, Advocate for using them for the purpose of cheating and using them a genuine, knowing that they are forged. As such *prima facie* an offence under Sections 120-B, 420, 467, 458 & 471 IPC is made out against Sh. Raj Kumar Bhatia S/o Sh. Hans Raj R/o House No. 5-B, Sector 44-A, Chandigarh and Sh. Jatinder Singh Birgi S/o Sh. Harbans Singh R/o House No.158, Sector 46-A, Chandigarh and unknown persons.

(3) After recording the examination-in-chief of the Enquiry Officer M.K. Tiwari as PW23, an application was moved under Section 173(5) Cr.P.C. for production of the aforesaid documents as these were prepared by the accused which were not attached with report under Section 173 Cr.P.C. The CBI moved an application for granting permission to prove these documents on record at a stage when examination-in-chief of M.K. Tiwari was partly recorded.

(4) The petitioner contested the same on the ground that these documents are not supported by any evidence recorded under Section 161 Cr.P.C. and, therefore, these documents cannot be permitted to be placed on record. The trial Court vide impugned order dated 20.12.2019 allowed the said application. The operative part of the said order, reads as under:-

“5. CBI has moved the present application stating therein that certain memos referred above were prepared during the investigation and same were supposed to have been filed along with challan but inadvertently these were overlooked by the Investigating Officer and he failed to attach those documents along with charge sheet filed in the Court. Perusal of these documents shows that these are simply production memos and seizure memos vide which certain documents were taken in possession by the investigating agency which are already available on record but it appears that inadvertently he failed to file seizure memos and receipt memo along with charge-sheet. The court is not convinced with the arguments of the accused Raj Kumar Bhatia as in the statement of Sh. M.K. Tiwari recorded under Section 161 Cr.P.C., there is clear reference to these seizure memo and receipt memos. It appears that while filing the charge sheet, IO inadvertently missed out on these documents. It is also significant to mention that PW namely Sh. M.K. Tiwari has been partly examined in chief and further examination-in-chief and cross-examination of this witness is yet to be conducted and therefore, the accused would have ample opportunity to cross examine this witness regarding these documents.

6. After considering the factual matrix of the present case as well as the other material available on record, the Court deems appropriate to take these documents on record and accordingly, the present application is allowed and the CBI is permitted to file these documents.”

(5) The petitioner, who is present in the Court in person, has argued that the application was filed by the CBI under Section 173 (5) Cr.P.C. on the ground that these documents could not be produced inadvertently and due to oversight when the final report under Section 173 Cr.P.C. was filed. It is further argued that there is no such provision under Section 173(5) Cr.P.C. for granting permission to produce these documents without there being an order by the Court to further investigate the case and only in such eventuality, the same can be allowed.

(6) The petitioner further submitted that he contested this application by filing a reply, on the ground that the documents attached as Annexure D122, there is a tampering at Page 1-182 and on

documents Annexure D123, there is a tampering on the date and therefore, the application is prepared by the Investigating Officer Harjit Singh cannot be allowed. The petitioner has further argued that, in fact, this application has been filed just to fill up the lacuna, which is not permissible.

(7) The petitioner has referred to the statement of PW23 – M.K. Tiwari to submit that this witness has stated that he has never associated Harjit Singh, during his enquiry and further referred to the statement of PW24 – Harjit Singh, who has stated that earlier he was posted in Chandigarh Police and enquiry was conducted by the Chandigarh Police but he was not involved in that enquiry but he can identify his signatures on a document. The petitioner has, thus, argued that, in fact, PW24 – Harjit Singh is an interested witness being a relative of Rajbirinder Singh Chahal, Advocate.

(8) In reply, counsel for the respondent – CBI has opposed the submissions made by the petitioner on the ground that 03 documents i.e. seizure memo is already exhibited as Ex.PW23/1, receipt memo as Ex.PW23/6 and another receipt memo as Ex.PW23/7 while recording the examination-in-chief of PW23 – M.K. Tiwari, who had partly conducted the investigation. It is further submitted that the application was moved just to place on record these documents as additional documents, as 03 of the documents have already been exhibited but since these were not part of the final report under Section 173 Cr.P.C., in order to prove their admissibility, the application was moved for filing the additional documents, which has rightly been allowed by the trial Court.

(9) Counsel for the CBI has further submitted that since the petitioner has already partly cross-examined PW23 on these documents, no prejudice will be caused to the petitioner.

(10) Counsel for the CBI has referred to the judgment dated 03.04.2002 passed by the Hon'ble Supreme Court in "**CBI versus R.S. Pai and another**" passed in **Civil Appeal No.1045 of 2000** wherein the Hon'ble Supreme Court has held that the additional documents which are collected during the investigation but not attached with the report under Section 173 Cr.P.C. can be produced before the trial Court later on. The operative part of the said judgment, reads as under:-

“...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 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 Police Officer is required to forward to the Magistrate all the documents or the relevant extracts thereof on which 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. The State of Andhra Pradesh* [(1958) SCR 283 at 293] and it was held that the word 'shall' occurring in sub-section 4 of Section 173 and sub-section 3 of Section 207A 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 investigation. In such cases, there can not be any prejudice to the accused. Hence, the impugned order passed by the Special Court cannot be sustained.

In the result, the appeal is allowed and the impugned judgment and order passed by the Special Court is set aside. The application filed by the appellant for production of additional documents is allowed. The Special Court to proceed with the matter in accordance with law.”

(11) After hearing the counsel for the parties, I find no ground to interfere in the findings recorded by the trial Court. In view of the judgment of the Hon'ble Supreme Court in *R.S. Pai's* case (supra), there is no dispute about the well settled principle of law that the documents which are prepared during the investigation but could not be

attached with the report under Section 173 Cr.P.C. can be placed on record in terms of Section 173 (5) Cr.P.C.

(12) Admittedly, out of 04 documents, 03 have already been exhibited in the examination-in-chief of PW23 – M.K. Tiwari and the petitioner has also cross-examined him with reference to these documents, as per own case of the petitioner, therefore, finding no illegality or infirmity in the impugned order dated 20.12.2019, the revision petition fails and is accordingly dismissed.

(13) However, it is made clear that the petitioner will be granted further opportunity to further cross-examine PW23 – M.K. Tiwari, if he want his further cross-examination on the aforesaid 04 documents, which are allowed by the trial Court.

Ritambhra Rishi