



**IN THE HIGH COURT OF MADHYA PRADESH  
AT INDORE**

**BEFORE**

**HON'BLE SHRI JUSTICE SUBODH ABHYANKAR**

**ON THE 21<sup>st</sup> OF SEPTEMBER, 2024**

**MISC. CRIMINAL CASE No. 46527 of 2023**

***SUNIL***

***Versus***

***THE STATE OF MADHYA PRADESH***

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**Appearance:**

*Shri S. K. Vyas – Senior Advocate with Shri Harshvardhan Pathak –  
Advocate for petitioner.*

*Ms. Mridula Sen – G.A./P.L. for respondent/State.*

*Shri Amar Singh Rathore – Advocate for objector/prosecutrix.*

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**ORDER**

- 1] Heard finally, with the consent of the parties.
- 2] This petition has been filed by the petitioner under Section 482 of Cr.P.C. against the order dated 14.08.2023 passed by VIII Additional Sessions Judge, Indore in Sessions Trial No.96 of 2022 arising out of Crime No.71 of 2021, registered at Police Station – Mahila Thana, Indore under Sections 376 & 506 of IPC whereby, an application filed by the prosecutrix under Section 242 of Cr.P.C. has been allowed.



3] In brief, the facts of the case are that the petitioner is facing the aforesaid trial under Sections 376 & 506 of IPC, which is at the stage of recording of evidence. During the proceedings, an application under Section 242 of Cr.P.C. has been filed by the prosecutrix along with 43-45 documents, contending that the police did not file the aforesaid documents due to some error on their part. The aforesaid application was opposed by the petitioner; however, the learned Judge of the trial Court, vide the impugned order dated 14.08.2023, has allowed the application, and the aforesaid documents have been directed to be taken on record with the observations that the petitioner would have the opportunity to rebut the same.

4] Shri S. K. Vyas, learned Senior counsel for the petitioner has submitted that the application under Section 242 of Cr.P.C. in itself was not maintainable as the same is applicable in warrant cases and the learned Judge of the trial Court has erred in law invoking the aforesaid provision in a sessions trial. Senior counsel has also relied upon a decision rendered by the Single Bench of Bombay High Court in the case of **Bhagyashree Prashant Wasankar Vs. State of Maharashtra, Through Police Station Officer** reported as **2021 SCC OnLine Bom 1064** deciding the same issue that, “*Whether a witness appearing for the prosecution in a sessions trial can produce documents which were not part of the charge-sheet filed before the Court.*” Thus, it is submitted that the impugned order is liable to be set aside.



5] Shri Vyas has also submitted that the Code of Criminal Procedure provides that the cases triable by Sessions Court are committed to the Sessions Court by the Judicial Magistrate, and the aforesaid procedure is provided only to ensure that once the charge-sheet is filed and the case is committed to the trial Court, no further documents are filed on record, otherwise it would lead to chaos in the Court as the witnesses would keep on filing the documents on record, which is not the intention of the legislature.

6] Shri Vyas, learned senior counsel has also submitted that although this Court in the case of **Smt. Sarla Shrivastava Vs. State of M.P. &Ors.** passed in **Criminal Revision No.1388 of 2024 dated 12.07.2024**, has also allowed such an application bringing additional documents on record, but in the said case also, the application was filed by the prosecution and not by the witness, and the Division Bench of this Court at Principal Seat, Jabalpur in the case of **Manoj Patel Vs. State of M.P.** in **M.Cr.C. No.4648 of 2024 dated 13.02.2024**, has also allowed such an application, but the aforesaid case was also related to the Prevention of Corruption Act, 1988 in which procedure prescribed by Cr.P.C. for trial of warrant cases by Magistrate was applicable, which has also been noted by the Division Bench in para 5 of the said judgement. Thus, it is submitted that both the aforesaid decisions would also be of no avail to the respondent.

7] Shri Amar Singh Rathore, learned counsel appearing for the prosecutrix, on the other hand, has submitted that although the



application was filed by the prosecutrix herself, however, the same was also supported by the prosecutor before the trial Court, which is also reflected in the impugned order and thus, it is submitted that the decision rendered by the Bombay High Court in the case of **Bhagyashree Prashant Wasankar (supra)** is distinguishable. Counsel for the respondent has also relied upon Section 91 and 230 of Cr.P.C.

8] Shri Rathore, counsel for the prosecutrix has also relied upon the decision rendered by the Calcutta High Court in the case of **Smt. Papiya Das Vs. State of West Bengal and Anr.** passed in **C.R.R. No.1546 of 2021 dated 26.08.2021**, wherein also an application was filed by the prosecutrix to bring on record certain photographs and hard copies of some WhatsApp messages in a case arising under Sections 376, 417 and 506 of IPC, and after referring to the various decisions of the Supreme Court, the Calcutta High Court has allowed the aforesaid application by setting aside the order passed by the Sessions Judge. Shri Rathore has also relied upon the decision rendered by the Karnataka High Court in the case of **BL Udaykumar and Others Vs. State of Karnataka** reported as **2018 CriLJ 3925 (Criminal Petition No.4398 of 2018)** dated **23.07.2018**, wherein also the question framed was *“Whether the documents which are not the part of the charge-sheet could be received in evidence for prosecution after the commencement of trial?”*

9] Heard counsel for the parties and perused the record.



**10]** From the record, this Court finds that the impugned order dated 14.08.2023 has been passed on an application filed by the prosecutrix under Section 242 of Cr.P.C. to bring the documents on record, including screenshots of WhatsApp chats between the parties, as also the various police complaints made by the prosecutrix from 11.10.2007 to 14.12.2020. Application was filed on the ground that although the aforesaid documents were furnished by the prosecutrix to the police during the course of investigation, but it appears that the police, on account of some oversight and negligence has not filed the same along with the charge-sheet. It was also stated that since the evidence of the prosecutrix has yet not commenced, hence, the same may be taken on record. The learned Judge of the trial Court has allowed the same, holding that since the prosecution evidence is yet to commence, the petitioner would have ample opportunity to rebut the documents.

**11]** So far as Section 242 of Cr.P.C. is concerned, apparently the same relates to trial of warrant cases by Magistrate under Chapter 19 of Cr.P.C., Sub-Section (2) of which provides that the Magistrate may, on the application of the prosecution, issue a summon to any of the witnesses directing him to attend or to produce any document or other thing. It is also found that in the impugned order, reference is also made to a decision relied upon by the Senior counsel for the petitioner in the case of **Bhagyashree Prashant Wasankar (supra)** and in the aforesaid decision also the same question arose before the Bombay High Court, which has been decided holding that such an application to produce



documents by a witness cannot be allowed. The relevant paras of the same read as under:-

“2. The question that arises for consideration in this Writ Petition is, as to whether a witness appearing for the prosecution in a sessions trial can produce documents which were not part of the charge-sheet filed before the Court and whether such procedure for production of documents directly by the prosecution witness is contemplated under the provisions of the Code of Criminal Procedure, 1973 (Cr.P.C.).

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5. During the course of the trial, a witness, Dr. Ashok Gajanan Lanjewar, was sought to be examined by the prosecution. The said witness moved an application bearing Exh. No.1106, before the Sessions Court seeking permission to produce additional documents. It was simply stated in the application that the said witness had misplaced the documents and since they were now found, he was seeking to place them before the Sessions Court. The said application was opposed by the petitioner and other accused persons, contending that such an application was not maintainable under the provisions of the Cr.P.C. The petitioner placed much emphasis before the Sessions Court on the scheme of the Cr.P.C. and the role of Public Prosecutor, while contending that the attempt on the part of the witness to produce documents directly in such a manner was unknown to the procedure contemplated under the Cr.P.C. It was submitted that grave prejudice was caused to the accused persons, including the petitioner and that additional documents, if any, could be produced only upon further investigation being undertaken under Section 173(8) of the Cr.P.C. by the Investigating Officer.

6. By the impugned order dated 11/12/2020, the Sessions Court allowed the aforesaid application at Exh.1106. The contentions raised on behalf of the petitioner and other accused persons were rejected. Reference was made to Sections 242 and 294 of the Cr.P.C., as also certain judgments of the Hon'ble Supreme Court and this Court.

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15. In the present case, it is at the stage of examination of the aforesaid witness that the said witness filed the application at Exh.1106, seeking to directly produce additional documents during the course of trial before the Sessions Court. There is no reference to any provision under the Cr.P.C. invoked by the witness for producing the documents directly in such a manner. The accused, including the petitioner, vehemently opposed such an attempt on behalf of the witness, contending that the application was not maintainable. The Sessions Court rejected the contentions raised on behalf of the accused and allowed the said application, the consequence of which



is that the documents that are not part of the charge-sheet and relied upon by the prosecution, have directly come on record in the sessions trial.

16. In the context of the specific contentions raised on behalf of the petitioner, it is necessary to refer to the manner in which sessions trials are conducted under the Cr.P.C. and the role of the Public Prosecutor while conducting such a trial. Public Prosecutors are appointed under Section 24 of the Cr.P.C. and Section 225 of Cr.P.C. specifically provides that in every trial before the Court of Sessions the prosecution be conducted by the Public Prosecutor. Section 226 of Cr.P.C. provides that the Prosecutor shall open his case by describing charge against the accused and stating that he proposes to prove the guilt of the accused. The role of the Public Prosecutor in the scheme of the Cr.P.C. is that of an independent office which assists the Sessions Court during the course of the trial to ascertain the truth of the allegations and charges levelled against the accused, in a fair manner. This is precisely the reason why the counsel for the complainant or victim is permitted to only assist the Prosecutor and not to lead the charge during the course of a sessions trial. There is every possibility of a sessions trial degenerating into a vindictive battle between the complainant / victim on the one hand and the accused on the other. It is the Prosecutor's office that leads the charge for the reason that it is the State which prosecutes the accused to prove the charge beyond reasonable doubt and the State acts on behalf of the society at large, because the offences alleged against the accused in sessions trial, by their very nature are offences against the State/society.

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19. Recourse to Section 294 of the Cr.P.C. can also not be taken for a witness to claim that he could directly produce additional documents during the course of trial or during the course of recording of his evidence. Section 294 of the Cr.P.C. pertains to no formal proof of certain documents and it opens with the words "Where any document is filed before any Court by the prosecution or the accused", thereby demonstrating that the said provision is applicable only when a document is sought to be produced either by the prosecution or the accused and not any third party like a witness. In fact, in the judgment in the case of Shamsheer Singh Verma Vs. State of Haryana (2016) 15 SCC 485, the Hon'ble Supreme Court has referred to the object of Section 294 of Cr.P.C. and it has been held that same is for accelerating the pace of trial, by avoiding waste of time in recording unnecessary evidence. The judgment of this Court in the case of Niwas Keshav Raut Vs. The State of Maharashtra (supra) lays down that Section 294 of Cr.P.C. does not



place any embargo upon the prosecution or the accused to file a document at a stage subsequent to filing of the charge-sheet. There can be no quarrel with the said proposition. Yet, it cannot come to the aid of the witness in the present case, who has sought permission of the Sessions Court to directly produce documents during the course of trial and at the time of recording his evidence.

20. A perusal of the impugned order shows that there is a reference made to Section 242 of the Cr.P.C. A perusal of the said provision would show that it pertains to the power of the Magistrate to issue summons to any witness on the application of the prosecution, directing such witness to produce any documents or thing. In this provision also, the words "on the application of the prosecution", have been used. Even otherwise, Section 242 of the Cr.P.C. is found in Chapter XIX pertaining to trial of warrant cases by the Magistrate. But, in the present case, the Court below is concerned with a sessions trial under Chapter XVIII of the Cr.P.C. Therefore, reference to Section 242 of the Cr.P.C. by the Court below is also misplaced.

21. A perusal of the provisions of the Cr.P.C. and the entire scheme contemplated therein demonstrates that there is no provision available for a witness to directly seek production of additional documents during the course of sessions trial and at the time of recording of his / her evidence. The Sessions Court in the present case failed to appreciate this aspect of the matter. While passing the impugned order, the Sessions Court also failed to appreciate that permitting such production of additional documents by the witnesses directly would prejudice the accused persons by depriving them of a fair opportunity to prepare their defence. The whole purpose of filing of charge-sheet, upon completion of investigation along with documents upon which the prosecution desires to place reliance, would be defeated if witnesses are permitted to directly produce additional documents in such a manner.

22. The additional documents could be produced by following the procedure of further investigation as contemplated under Section 173(8) of Cr. P.C. and the Prosecutor taking a call as to whether such documents need to be produced in order to prove the charge against the accused.

23. In view of the above, it is found that the impugned order is unsustainable. Accordingly, the Writ Petition is allowed and the impugned order is quashed and set aside.

24. Needless to say, the additional documents sought to be relied upon could be produced before the Sessions Court in the trial, only in accordance with procedure known to law and not otherwise.”

(Emphasis supplied)





**12]** So far as the decision rendered by this Court in the case of **Smt. Sarla Shrivastava (supra)** is concerned, it is found that in the aforesaid case, the application was filed by the prosecution itself, and not by the witness, and this Court, while relying upon the decision rendered by the Supreme Court in the case of **Central Bureau of Investigation Vs. R.S. Pai and another** reported as **(2002) 5 SCC 82**, held in **Smt. Sarla Shrivastava (supra)** as under:-

**“8]** So far as the power of the prosecution to bring additional documents taken on record is concerned, it has been considered by the Supreme Court in the case of **Central Bureau of Investigation v. R.S. Pai**, reported as **(2002) 5 SCC 82**. The relevant paras of the same read as under:-

“6. For appreciating the rival contentions, we would first refer to the relevant part of Section 173 CrPC, which read as under:

“173. Report of police officer on completion of investigation. —(1) Every investigation under this Chapter shall be completed without unnecessary delay.

(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.



(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)-(4) \*\*\*

(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)-(7) \*\*\*

(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).”

(emphasis supplied)

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 SCR283 : 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.

9] A perusal of the aforesaid order leaves no manner of doubt that the additional documents can be produced by the prosecution even after the charge sheet is filed, as the analogy which the Supreme Court has drawn is that when even the further investigation is not precluded under the Cr.P.C., then there is no question of not permitting to the prosecution to produce additional documents which were gathered prior to or subsequent to the investigation. In such circumstances, this Court is not inclined to accept the contentions raised by the counsel for the petitioner and is of the considered opinion that no illegality or jurisdictional error has been committed by the learned Judge of the trial court in allowing the prosecution to bring additional documents on record which are nothing but, the documents obtained under the Right to Information Act.”

**(Emphasis Supplied)**

13] Thus, in the aforesaid case this court categorically opined that an application to produce additional documents can be filed by the prosecution. Additionally, reference may also be had to Section 226 of Cr.P.C., which reads as under:-

“226. Opening case for prosecution.- When the accused appears or is brought before the Court in pursuance of a



commitment of the case under Section 209, the prosecutor shall open his case by describing the charge brought against the accused and stating by what evidence he proposes to prove the guilt of the accused.”

**(Emphasis supplied)**

**14]** It is also apparent from the aforesaid provision that it is for the prosecutor only to state by what evidence he/she proposes to prove the guilt of the accused. In such circumstances also, a witness cannot be allowed to bring any new document on record during his testimony.

**15]** Thus, this Court is of the considered opinion that it is only the prosecution, who can file an application to produce additional documents, which were gathered prior to or subsequent to the investigation, but such a practice, where a witness produces the document and the prosecution supports such application, cannot be allowed as the same would compromise the sanctity of the trial as envisages under Code of Criminal Procedure, 1973. In such circumstances, while relying upon the decisions rendered by the Supreme Court in the case of **R.S.Pai** (supra), in case of **Sarla Shrivastava** (supra) by this court, as also the Bombay High Court in the case of **Bhagyashree Prashant Wasankar** (supra), the present application is hereby allowed as the application under Section 242 of Cr.P.C. was filed by the witness, which is not envisaged under law.

**16]** So far as the decisions relied upon by the counsel for the respondent/prosecutrix in the case of **Smt. Papiya Das** (supra) and in the case of **B. L. Udaykumar and Others** (supra) are concerned, with



due respect, the same are distinguishable as in the aforesaid cases the provisions of Section 226 of Cr.P.C., which throws an insight as to how the various provisions of Cr.P.C. are to be interpreted, has not been considered.

**17]** Accordingly, the petition stands **allowed** and the **impugned order dated 14.08.2023 is hereby set aside.**

**18]** Needless to say, the additional documents could be produced by following the procedure of further investigation as contemplated under Section 173(8) of Cr.P.C., and they could be produced before the Sessions Court during the trial, only in accordance with law.

**19]** Since the original record was also requisitioned in the present case, the same may be remitted back to the trial Court without any delay, and the learned Judge of the trial Court is requested to proceed with the case, in accordance with law.

**20]** Petition stands **allowed** and **disposed of.**

**(SUBODH ABHYANKAR)**  
**JUDGE**

Pankaj