

HIGH COURT AT CALCUTTA  
IN THE CIRCUIT BENCH AT JALPAIGURI  
Criminal Revisional Jurisdiction

Before:

The Hon'ble Mr. Justice Jay Sengupta

C.R.R. 1340 of 2022

Sri Anish Loharuka

Vs.

The State of West Bengal

For the Petitioner	:	Mr. Sekhar Kr. Basu, Sr. Adv. Mr. Sandipan Ganguly, Sr. Adv. Mr. Krishnendu Bhattacharyya Mr. Rajib Mallick Mr. Priyankar Ganguly Ms. Shalini Bairagi Mr. Deep Baigagi Mr. Sonja Mukherjee
For the State	:	Mr. Madhusudan Sur, Ld. APP Mr. Dipankar Paramanick
Heard on	:	10.05.2022
Judgement on	:	10.05.2022

**Jay Sengupta, J. :**

This is an application challenging an order dated 11.04.2022 passed by the learned Additional Sessions Judge, Bench – II, Bichar Bhawan, Calcutta in Special Case No. 7 of 2020 arising out of G.R. POCSO Case No. 1465 of 2019 in connection with the Cyber Police Station Case No. 111 dated 05.11.2019 under Sections 66E, 67, 67A, 67B, 84B of the Information Technology Act and Sections 120B, 354D, 385 and 506 of the Indian Penal

Code and Sections 4 and 8 of the POCSO Act, thereby denying supply of documents including electronic records in terms of Section 207 of the Code.

Learned senior counsel appearing on behalf of the petitioner submits as follows. The petitioner is an accused in this case. It was alleged in the F.I.R. that certain offences were committed as alleged in respect of several women including a victim who was minor at the time of offence. The petitioner filed two applications praying for supply of copies of some documents afresh because the same were not legible and also the contents of a hard disk that was seized in connection with the case. The hard disk contained screen shots taken from mobile phone, WhatsApp, chat history and the like. By an impugned order, the learned Trial Court refused to give a copy of hard disk drive seized in connection with the case on the ground that cloning it may be damage the drive. Although it was directed that other documents of legible copies which have not been supplied to the petitioner, would be supplied to them, subsequently, the learned Trial Court did not comply with the previous direction and went ahead to fix a date for framing of charge. An accused has an inalienable right of being supplied all the documents which could be relied against him in a criminal trial. Reliance is placed on the decision in P. Gopalkrishnan alias Dileep vs. State of Kerala and Another reported in (2020) 9 SCC 161 and it is submitted that not only the documents are to be supplied to the accused, additionally if the accused or his lawyer intends to inspect the contents of the memory card, he can request Court to provide him inspection even more than once. The accused has also a right to send such document for examination by an expert. A proper interpretation of the ratio laid down in P. Gopalkrishnan (supra) would imply that documents relied upon against an accused have to be supplied to the accused regardless of any issue of privacy of the complainant or witness that may be there.

Furthermore, the learned Trial Court without any basis whatsoever held that if the document is cloned, the same would damage the hard drive.

Learned counsel appearing on behalf of the State relies on the case diary and submits as follows. Relying on P. Gopalkrishnan (*supra*), it is submitted that although ordinarily all documents relied upon by the prosecution ought to be supplied to an accused. However, when the issue of privacy of a complainant or witness or disclosure of identity of a minor becomes an issue, then the documents cannot be supplied to the accused. At best, an inspection can be given to the accused or his lawyer. The investigating agency would not have any issue if legible copies of documents which are pending supply are supplied. However, only inspection can be taken from the hard drive of the contents or the materials that can disclose the identity of a minor victim.

I have heard the submissions of the learned counsels appearing on behalf of the petitioner and the State and have perused the revision petitioner and the case diary.

At the outset, it should be clarified that the inference drawn by the learned Trial Court that copying the hard drive would damage is not based on opinion of an expert. Therefore, the learned Trial Court needs to look at the issue afresh. If the learned Trial Court has a doubt in this regard, it can fairly record reasons thereof and even have the material tested by an expert.

It is a trite law that documents relied upon by the prosecution against an accused in a criminal trial ought to be supplied to the accused in Section 207 of the Code. However, there are exceptions to it.

In the case of P. Gopalkrishnan (*supra*) it was held as follows:-

*"50. In conclusion, we hold that the contents of the memory card / pen-drive being electronic record must be regarded as a document. If the prosecution is relying on the same, ordinarily, the accused must be given a cloned copy thereof to enable him / her to present an effective defence during the trial. However, in cases involving issues such as of privacy of the complainant / witness or his / her identity, the Court may be justified in providing only inspection thereof to the accused and his / her lawyer or expert for presenting effective defence during the trial. The court may issue suitable directions to balance the interests of both sides."*

Therefore, it is abundantly clear that when there is a possibility of disclosure of identity of a minor victim, albeit minor at the time of commission of offence then instead of supplying, copying such documents to the accused, it would be expedient to allow the accused or his lawyer to inspect the said documents. Afterall, once a document is supplied to the accused, there is no means to ensure that the identity of the victim would not be disclosed by misusing of such document. However, it has also been provided that the accused would have a right to have such a document inspected by an expert of Information Technology. The Hon'ble Apex Court has held that the accused would have a right to inspect such an electronic document along with his lawyer and I.T. expert.

In view of the above, I partly set aside the impugned order and pass the following directions.

- a) Legible copies of documents shall be supplied to the accused which were directed to be supplied on 11.04.2022 and did not have any scope of disclosing the identity of the minor victim.

- b) Copies of documents, if any, available in the electronic medium, which do not have any scope to disclose the identity of the minor victim would also be supplied to the accused, if the learned Court find that copying the drive would not damage the original.
- c) The accused would be permitted to inspect the electronic evidence along with his learned advocate and I.T. expert, if he chooses to engage such an expert for such purpose.
- d) After supply of such copies and/or inspection of documents as referred to above, the learned Trial Court shall fix a date for consideration of charge and proceed thereafter.

With these observations, the revisional application is disposed of.

Urgent photostat certified copy of this order may be supplied to the parties expeditiously, if applied for.

The petitioner shall be at liberty to communicate a gist of this order before the learned Trial Court.

(Jay Sengupta, J.)