

ARUN BHARDWAJ
Special Judge (PC Act) (CBI-09)
(MPs/MLAs Cases)
Court No. 502, Fifth Floor,
Rouse Avenue Court Complex
New Delhi

**IN THE COURT OF SH. ARUN BHARDWAJ, ADDITIONAL
SESSIONS JUDGE / SPECIAL JUDGE (PC ACT), CBI-09
(MPs/MLAs Cases), ROUSE AVENUE COURT COMPLEX,
NEW DELHI**

**SC No.5/19
CNR No.DLCT110005122019**

State v Dr. Shashi Tharoor

18.07.2019

ORDER

1. This order shall decide the application of the accused Dr. Shashi Tharoor filed on 07.07.2018 under Section 173 (7) and 207 of Cr.PC.
2. **Submission in the application:-** It is stated in the application that after the passing away of the wife of the applicant/accused on 17.01.2014, there was wide spread coverage of the same by various persons leading to rampant spreading of false information.
3. It is further stated in the application that it is reasonable apprehension of the applicant/accused that such misreporting and spreading of false information will subvert the legal process and interfere with the due administration of justice.
4. It is further submitted in the application that this would also be highly detrimental to the applicant's rights such as "Right to Reputation", "Right to Privacy" and "Right to receive a Fair Trial".
5. The applicant/accused has prayed that it is highly imperative that the prosecution as well as Delhi Police be directed that the Charge-Sheet as well as any document on record in the present

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matter be not shared/disclosed/supplied to any third party.

6. This application was considered by the learned ACMM before committal of the case and on the date of filing of this application, i.e. 07.07.2018 as an interim measure, the learned ACMM directed that the prosecution department as well as the investigating agency shall not supply/discard/share the Charge-Sheet and its supporting documents as filed in the court to any third person or to any stranger without the permission of the court.

7. **Submission of the State:-** State has opposed the application by filing its reply stating therein that the order dated 07.07.2018 was passed ex-parte, as an interim measure, without giving any opportunity to the State/Police and was extended from time to time till finally objected to when it was held by the learned ACMM that the court of Session will decide the same after committal of the case.

8. It is further stated in the reply that there is no provision in Cr.PC which entitles the learned ACMM to pass such an order.

9. Reliance is placed on **State vs. Mukesh**, a judgment passed by the Hon'ble Delhi High Court on 06.08.2019 in CrI. M.C. No.2246 of 2002 where it is held that MMs/ACMMs/CMMs are bound by the procedure under the law and cannot transgress the limit of the law. Cr.PC does not give inherent powers to courts below the High Court and court of MM cannot devise a procedure other than the one provided under the Code.

10. Further submission of the State is that a blanket ban as imposed, will hamper prosecution because the case is at the stage of

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framing of charge and due to various technical reports etc. which are a part of the Charge-Sheet, it will be necessary for the prosecution to discuss the findings and methodology with the concerned experts by way of sharing relevant documents to answer the probable defences that the accused will put up during the course of framing of the Charge. A blanket ban without defining who all constitute a 'third party' in so far as prosecution of the case before this court is concerned is unreasonable and therefore, bad in law. Hence, the submission of the prosecution to dismiss the application, in the interest of justice.

11. **Arguments on behalf of the accused:-** Sh. Vikas Pahwa, the learned Senior Counsel for the accused has relied on Chapter-XVII of Delhi High Court Rules titled as "Preparation and Supply of Copies". Rule 2 (c) defines the "record". As per Explanation to Rule 3 (1) (i), Complaints include Challans. He has referred to Rule 3 sub-rule (2) where a stranger to a Civil or Criminal case may, after decree or judgment, obtain copy of the plaint or complaint, written statement, affidavits and petitions filed in the case as also of the evidence recorded by the court, and may for sufficient reasons shown to the satisfaction of the court, obtain copies of any document before the final order is passed. For getting copies of exhibit put in as evidence, consent of the person by whom they were produced or orders of the court are required.

12. He has also referred to Rule 4 which provides for supply of copies free of charge to accused or convicted and to public officers.

13. The learned Senior Counsel has also referred to Section 8 (1) (b) of the RTI Act, 2005 which states that there shall be no

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obligation to give any citizen information which has been expressly forbidden to be published by any court of law or tribunal or the disclosure of which constitute contempt of court.

14. He also referred to Section 8 (1) (h) of RTI Act, 2005 which provides that there is no obligation to give any citizen information which would impede the process of investigation or apprehension or prosecution of offenders.

15. Reliance is also placed on Section 8 (1) (j) of the RTI Act, 2005 which also provides that there is no obligation to give any citizen information which relates to personal information the disclosure of which has no relationship to any public activity or interest, or which would cause unwarranted invasion of the privacy of the individual unless Central Public Information Officer is satisfied that the larger public interest justifies the disclosure of such information.

16. He further submitted that as per Section 207 & 208 of Cr.PC, copy of the police report and also documents are to be furnished to the accused only.

17. The learned counsel has relied on **M. P. Lohia vs. State of West Bengal & Anr.**, 2005 (2) SCC 686 where the Hon'ble Supreme Court in Para-10 has held as under:-

“Having gone through the records, we find one disturbing factor which we feel is necessary to comment upon in the interest of justice. The death of Chandni took place on 28th February, 2002 and the complaint in this regard was registered and the investigation was in progress. The application for grant of anticipatory bail was disposed of by the High

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Court of Calcutta on 13.2.2004 and special leave petition was pending before this Court. Even then an article has appeared in a magazine called 'Saga' titled "Doomed by Dowry" written by one Kakoli Poddar based on her interview of the family of the deceased giving version of the tragedy and extensively quoting the father of the deceased as to his version of the case. The facts narrated therein are all materials that may be used in the forthcoming trial in this case and we have no hesitation that this type of articles appearing in the media would certainly interfere with the administration of justice. We deprecate this practice and caution the publisher, editor and the journalist who was responsible for the said article against indulging in such trial by media when the issue is subjudice. However, to prevent any further issue being raised in this regard, we treat this matter as closed and hope that the other concerned in journalism would take note of this displeasure expressed by us for interfering with the administration of justice."

18. The learned Senior Counsel further submitted that so far as the submission of prosecution that the prosecution has to discuss the findings and methodology with the concerned experts by way of sharing relevant documents to answer the probable defences that accused will put up during the course of framing of charge is concerned, the prosecution may seek prior permission of the court and thereafter, seek the help of experts. As such, there is no blanket ban on prosecution from sharing the Charge-Sheet and relevant documents with other experts.

19. He further submitted that the concerned experts with whom the prosecution may wish to share relevant documents will not



come in the category of strangers/third party.

20. Reference is made to Section 477 of Cr.PC which provides for powers of the Hon'ble High Court to make rules with the previous approval of the State Government.

21. He submitted that even prior to the filing of the Charge-Sheet, the investigation conducted by the Investigating Agency is confidential and further referred to provisions of Section 207 of Cr.PC which deal with voluminous documents and provides that in case of voluminous documents, the accused is not given the copy thereof but he may inspect it either personally or through pleader in the court.

22. He further submitted that proviso has been added to Section 372 of Cr.PC in the year 2009 providing for right of the victim to file an appeal.

23. He submitted that as per Section 2 (w) (a) of Cr.PC, inserted in the year 2009, "victim" means a person who has suffered any loss or injury caused by reason of the act or omission for which the accused person has been charged and the expression "victim" includes his or her guardian or legal heir.

24. He further referred to proviso of Section 24 (8) of Cr.PC which was also added in the year 2009 which provides that the court shall permit the victim to engage an advocate of his choice to assist the prosecution.

25. He submitted that only a victim shall be entitled to get a copy of the Charge-Sheet and the documents as only he has been given the right to engage an advocate of his choice to assist the prosecution or to assail the order of acquittal or conviction for a lesser



offence or imposing inadequate compensation.

26. He submitted that in this case, there is no victim or aggrieved party and the two parties are only prosecution, and the accused. He submitted that a stranger is not recognized in criminal prosecutions and therefore, has no right to demand any document.

27. Next, he referred to Section 327 of Cr.PC which provides that the place in which any criminal court is held for the purpose of inquiring into or trying any offence shall be deemed to be an open Court to which the public generally may have access, so far as same can conveniently contain them.

28. He also referred to Sub-section 3 of 327 which provides that in the event of in-camera proceedings it shall not be lawful for any person to print or publish any matter in relation to any such proceedings, except with the previous permission of the court.

29. Reliance is also placed on "**Rao Harnarain Singh Sheoji Singh vs Gumani Ram Arya**, AIR 1958 Punjab & Haryana 273 where the publication in the respondent's newspaper 'Mewat' was found to be contemptuous as they tended to prejudice the public as to the merits of the criminal trial about to commence and they were also calculated to obstruct the administration of justice by attempting to interfere in the fair trial to the detriment to the accused and all the persons alongwith him. Resultantly, the respondent was ordered to pay a fine of Rs.200/-.

30. Reliance is also placed on "**Naresh Shridhar Mirajkar And Ors vs State Of Maharashtra And Anr.**", 1966 (3) SCR 744. In this case, the Hon'ble Single Judge had orally directed that the

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evidence of a particular witness should not be published. The Hon'ble Supreme Court held that the impugned order was passed by the learned Judge in the course of the trial of a suit before him after hearing the parties; and having regard to the circumstances under which the said order was passed, and the reasons on which it is presumably based and held that the order purports to do is to prohibit the publication of evidence of the witness in the press during the progress of the trial of the suit and not a permanent ban on the publication of the said evidence. It was held that the impugned order was directly concerned with giving such protection to the witness as was thought to be necessary in order to obtain true evidence in the case with a view to do justice between the parties. If incidentally, after as a result of this order, the petitioners were not able to report what they heard in court, that cannot be said to make the impugned order invalid under Article 19 (1) (a). The order was passed with the sole purpose of helping the administration of justice. Any incidental consequence which may flow from the order will not introduce any constitutional infirmity in it.

31. Reliance is also placed on "**Swatanter Kumar vs. The Indian Express Limited & Ors.**", (2014) SCC Online Del 210, "**P.C. Sen**", In re, (1969) 2 SCR 649, "**Shamim Rehmaney vs. Zinat Kausar Dehalvi & Ors.**", 1971 CriLJ 1586, Criminal Original No.10 of 1943, Full Bench, "**Naresh Shridhar Mirajkar And Ors vs State Of Maharashtra And Anr.**", 1966 (3) SCR 744 and "**Naveen Jindal vs. Zee Media Corporation Ltd.**", 2015 SCC Online Del 7810.

32. **Arguments on behalf of the State:-** On the other hand,

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Sh. Atul Srivastava the learned Additional PP for the State argued that the interim order was passed behind the back of the IO/Public Prosecutor. The trial court has no such power to pass the order of the nature of the impugned order and only constitutional courts have such powers. He submitted that the reliance by the learned senior counsel for the accused on Chapter-XVII of Delhi High Court Rules is misplaced as the rules deal only with Copying Agency. He submitted that the Charge-Sheet is the own document of the prosecution and he cannot be restrained from consulting Scientists, CFSL experts and legal consultants. He submitted that so far as the prosecution is concerned, he will not give copy of any document or Charge-Sheet to anyone but he objected to the interim order submitting that on the complaint of the accused, FIR has been registered against a journalist for having access to the case documents.

33. The learned Additional PP for the State also relied on **"Swapanil Tripathi vs. Supreme Court of India"**, WP(C) No.1232 of 2017, where directions have been given for audio-video recording and live streaming of court proceedings to submit that the Hon'ble Supreme Court also favours that everything should be in public domain and transparent.

34. **Arguments in rebuttal:-** In rebuttal, the learned Senior Counsel submitted that as per the provisions of Cr.PC, documents to the accused can be supplied under Section 207 & 208 of Cr.PC. Others have to go to the Copying Agency and the rules of the Delhi High Court prohibit supply of documents to a stranger without leave of the court. He therefore submitted that when a stranger cannot get copies



without orders of the Court, such a third party/stranger will not be entitled to get them from prosecution or police. He submitted that the prosecution is reading the impugned order in a narrow manner. The expression "stranger" and "third party" have been taken from Delhi High Court Rules. He submitted that any medical expert, forensic expert or legal expert from whom prosecution may like to take advice is not covered by the impugned order. But when the court is not providing documents of a case to a third party, the prosecution and the police can also be restrained from providing the documents to a third party, strangers to the case. With regard to Swapanil (supra), he submitted that the said order permits the watching of the proceedings but not having access to the documents.

35. **Discussion of the arguments addressed:-** This court has considered the arguments addressed by the learned Senior Counsel for the accused as well as the learned Additional PP for the State.

36. The submissions of the learned Senior Counsel as well as the learned Additional PP for the State are that a stranger/third party to a criminal proceeding cannot have access to the records including charge-sheet and relied on documents without the leave of the court.

37. As per the rules of Delhi High Court, referred by the learned Senior Counsel for the accused, so long as a case is pending, a stranger/third party cannot get any document without permission of the court. Even after the case is disposed off, for taking a copy of the exhibited documents, the permission of the court or the party whose documents were exhibited is required without which such a document cannot be given even after the case is disposed off.

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38. The various proceedings of RTI Act also show that no one has a right to seek information which would impede the process of investigation or apprehension or prosecution of offenders. Further, no personal information the disclosure of which has no relationship to any public activity or interest, or which would cause unwarranted invasion of the privacy of the individual can be given unless the CPIO or SPIO or Appellate Authority, as the case may be, is satisfied that the larger public interest justifies the disclosure of such information.

39. The scheme of Cr.PC after amendments brought in the year 2009 also shows that only a victim can have the copies of charge-sheet and relied on documents as he has been given the opportunity to engage a counsel of his choice to assist the prosecution or to challenge the order of acquittal or conviction under lesser offence or quantum of sentence.

40. Therefore, neither it is the case of the prosecution that it will share the documents with any third party nor prosecution can share the copy of charge-sheet and relied on documents with a third party.

41. The objection of the prosecution to the impugned order is that no such order can be passed by the learned Trial Court and it is necessary for the prosecution to discuss the findings and methodology of various technical reports with the concerned experts by way of sharing relevant documents to answer the probable defences that accused will put up during the course of framing of charge.

42. Rule 11 of CCS (Conduct) Rules dealing with **Communication of Official Information** is as under:-

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"11. Communication of official information

Every Government servant shall, in performance of his duties in good faith, communicate information to a person in accordance with the Right to Information Act, 2005 (22 of 2005) and the rules made thereunder:

Provided that no Government servant shall, except in accordance with any general or special order of the Government or in performance in good faith of the duties assigned to him, communicate, directly or indirectly, any official document or any part thereof or classified information to any Government servant or any other person to whom he is not authorized to communicate such document or classified information."

43. Further, Para-110 of the Manual of Office Procedure also provides as under:-

"110. Unauthorized communication of official information-Unless authorized by general or special orders, no official will communicate to another official or a non-official, any information or document which has come into his possession in the course of his official duties."

44. G.I., issued by the Ministry of W&H.A.V., 316 dated the 19th July, 1967 mentioned below Rule 11 of the CCS (Conduct) Rules is as under:-

"5. Unauthorized communication of information- A case has come to notice where an office communication was produced as an exhibit in a Court of Law by a private individual who was not supposed or authorized to have access to the said document and into whose possession it had evidently come unauthorizedly. Official documents fall into unauthorized hands due to the negligence or possible connivance of the official(s) in charge of their custody. Such unauthorized communication of information not only causes avoidable embarrassment to Government but can also sometimes result in more serious consequences. To avoid

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such situations, therefore, it is necessary that stricter control should be exercised by all concerned, especially by those who are responsible for the safe custody of official documents/records, to ensure that no such document/record falls into unauthorized hands.

Any infringement of Rule 11, it should be noted will attract adverse notice by Government and the Government servant(s) concerned will render himself/themselves liable to disciplinary action."

45. The officers and officials of prosecution department as well as Delhi Police discharge onerous duties with full responsibility and are also governed by the Conduct Rules referred above. It is part of their Conduct Rules that they have to exercise stricter control for the safe custody of official documents/records, to ensure that no such documents/record falls into unauthorized hands. Any infringement of Rule 11 can attract adverse notice by the Government and the Government Servant(s) concerned will render himself/themselves liable to disciplinary action. Besides that, for misuse of any document pertaining to a criminal case, in an extreme case effecting administration of justice, contempt jurisdiction is also available for meeting ends of justice.

46. Therefore, so far as prosecution department and the Delhi Police are concerned, the court has full confidence that they follow the Conduct Rules and there will be no occasion when the charge-sheet of this case or any other case or the documents relied on by the prosecution may be communicated, directly or indirectly to any other person who is not authorized to have access to the same.

47. Therefore, in the considered opinion of this court, further



orders, over and above the Conduct Rules applicable for prosecution department as well as Delhi Police, are not required to protect the confidentiality of the charge-sheet and relied on documents.

48. However, the prosecution may like to seek advise from Scientific Experts, Forensic Experts or Legal Experts to rebut the arguments of the accused on Charge. For this, the prosecution is always free to seek such advise. At this stage, it is not known whose advise the prosecution would like to take for arguments on charge. At least such experts are required to be directed not to further share the documents pertaining to this case shown to them by prosecution for seeking their advise to any third party/stranger. Therefore, in the facts and circumstances of this case, a direction is required to be passed to the prosecution that before showing any document pertaining to this case to any such expert, a copy of this order would also be served upon him for his information and compliance.

49. **Conclusion:-** i) Considering the provisions of CCS (Conduct) Rules referred above which are applicable to Prosecution Department as well as Delhi Police and which restrain Prosecution Department and Delhi Police from sharing official documents with any other person to whom he is not authorized to communicate such document or classified information, no further direction is required to be passed restraining them from sharing the charge-sheet and documents of this case with any third party/stranger.

ii) The prosecution is at liberty to seek advise of any expert to equip itself to address arguments on charge.

iii) The experts consulted by the prosecution shall not share the

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documents of this charge-sheet with any other third party/stranger and the prosecution shall serve a copy of this order on such expert consulted by it for information and compliance by the said expert.

iv) The prosecution shall maintain a record of experts consulted by it with whom it would be sharing the documents of this case and produce before the court, if so directed.

50. With these directions, the application stands disposed off.
51. A copy of this order be given dasti to Sh. Atul Srivastava, the learned Additional PP for the State and learned counsel for the accused, if so requested.

—sd/—

**Announced in the open court
on 18.07.2019**

(ARUN BHARDWAJ)
**Additional Sessions Judge/
Special Judge (PC Act):
CBI-09 (MPs/MLAs Cases)**
RACC, New Delhi : 18.07.2019 (SR)
Special Judge (PC Act) (CBI-09)
(MPs/MLAs Cases)
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