

IN THE HIGH COURT OF JHARKHAND AT RANCHI
Cr. M.P. No.403 of 2019

Bangur Singh Soy S/o Late Rega Soy age 50 years, R/o Vill- Begadih,
PO- Galudih, PS- Kuchai, Dist- Saraikela Kharsawan-833216, Jharkhand
... Petitioner
Versus

1. The Union of India through the C.B.I.
2. Dy. Inspector- General of Police, CBI, ACB, Ranchi, Ranchi College
Road, Morabadi, P.O. Ranchi University, P.S. Morabadi, Dist- Ranchi
3. S. K. Khare, S/o Not Known, Superintendent of Police/ HOB, CBI,
ACB Ranchi, Ranchi College Road, Morabadi, P.O. Ranchi University, P.S.
Morabadi, Dist- Ranchi ... Opposite Parties

CORAM: HON'BLE MR. JUSTICE ANIL KUMAR CHOUDHARY

For the Petitioner : Mr. Shubhashis Rasik Soren, Advocate
For the C.B.I. : Mr. Rohit Sinha, Advocate

Order No.07 Dated- 08.07.2020

Heard the parties through video conferencing.

2. This Cr.M.P. has been filed invoking the jurisdiction of this Court under Section 482 of the Code of Criminal Procedure with a prayer to quash the order dated 07.01.2019 passed by the Special Judge, C.B.I., Ranchi whereby and where under the learned trial court dismissed the application under Section 207 Cr.P.C. and Section 172(1), 172(1A) read with Section 91 of the Cr.P.C.

3. Learned counsel for the petitioner submits that the petitioner has filed the petition with a prayer for quashing the order dated 07.01.2019 passed by the Special Judge, C.B.I., Ranchi under Section 207 Cr.P.C. and Section 172(1), 172(1A) read with Section 91 of the Cr.P.C seeking summoning of original record of the statement under Section 161 of the Cr.P.C. of the witnesses of the case during the investigation of the case. It is next submitted that during the hearing of the said application, C.B.I. intimated the said trial court that there is no bar in recording the statement of the witnesses under Section 161 Cr.P.C. through computer and that the statement of the witnesses recorded under 161 Cr.P.C. which were supplied to the petitioner under Section 207 of the Cr.P.C. are the original statements which were recorded by the investigating officer during the investigation and no other mode of recording the same has been

adopted and available in the case diary of the case. Learned counsel for the petitioner draws the attention of this Court towards para-14.8 of the Chapter 11 of the C.B.I. manual which has been quoted by the learned trial court in the impugned order which reads as under:-

“As far as possible the First Information Report should be recorded in the language in which the complaint is made by the complainant. The statements of witnesses as per the provisions of Section 161 Cr.P.C., should also be recorded in the language in which they are made. It should be ensured that the statements so recorded do not contradict any evidence on record either in the form of documents or the statement of any other witness. Whenever a statement is recorded by an Investigating Officer through and interpreter, the statement may be recorded in English, and an endorsement may be made at the end of the statement regarding the manner in which it was recorded. In such cases, the statement of the interpreter should also be recorded. However, as per the provisions of Section 162 Cr.P.C., no signature of the individual as witness or accused should be obtained on the statements so recorded. During the preliminary inquiry, however, the signatures of individuals whose statements are recorded may be obtained. In such case individual is not willing to append his/her signature to the statement so recorded, the fact may be recorded at the end of such statement.”

4. Learned counsel for the petitioner next submits that though the witnesses are not English knowing witnesses still their statements have been recorded in English. Learned counsel for the petitioner relied upon the judgment of Hon'ble Supreme Court of India in the case of **Vineet Narain & Others Vs. Union of India** reported in (1998) 1 SCC 226 whose para-58 reads as under:-

58.Xxxxxxxxxxxxxx

*12. “The CBI Manual based on statutory provisions of the Cr.P.C. provides essential guidelines for the CBI's functioning. It is imperative that the CBI adheres scrupulously to the provisions in the Manual in relation to its investigative functions, like raids, seizure and arrests. Any deviation from the established procedure should be viewed seriously and severe disciplinary action taken against the officials concerned.”*Xxxxxxxxxxxx

5. Learned counsel for the petitioner further submits that the investigating agency has not complied with the C.B.I. (Criminal Manual, 2005) in toto and the investigation in this case is malafide. It is next submitted that no certificate to the effect has been furnished in terms of the provisions of Section 65(B) of the

Evidence Act. Learned counsel for the petitioner next relied upon the judgment of Hon'ble Division Bench of this Court in the case of **Barun Pandit Vs. State of Jharkhand** reported in **2014 SCC OnLine Jhar 2803** also reported in **(2014) 3 AIR Jhar R 309** wherein the Hon'ble Division Bench of this Court has held as under:-

"We have also come across the cases, in which the police in the State of Jharkhand is not recording the statement under Section 161 of the Cr PC separately. In the Jharkhand Police Manual, there is a reference that the Investigating agency should record the statement of the witnesses under Section 161 of the Cr PC separately and the gist or the summary thereof should be mentioned in the case diary. Here in the State, not in a single case, out of 100, we have come across separately about the recording of the statement by the police under Section 161 of the Cr PC. This should also be taught properly by the head of the institution at the Police Training Centre by the State. The police in the State is saving their labour because the statement under Section 161 of the Cr PC is to be recorded separately and in the case diary only the summary will be mentioned datewise and at regular intervals this case diary should be sent to the Superintendent of Police or such other high ranking officers as per the rules/administrative orders of the State. Here, we have seen that the Jharkhand State Police Manual is more observed in breach than the compliance especially in recording this type of statements: forthwith this procedure should be stopped. We are not here to reiterate the Police Manual again and again. There are already provisions in the Jharkhand State Police Manual. If anybody is committing breach, departmental inquiry should be started by the high ranking officers. Too much brotherhood should have been avoided by the high ranking police officers."

6. Learned counsel for the petitioner further submits that the investigating officer has not complied with the provisions of Criminal Manual in the investigation of the case. Therefore, disciplinary action be initiated against the investigating officer. Hence, it is submitted by Mr. Soren that the impugned order dated 07.01.2019 passed by the Special Judge, C.B.I., Ranchi be quashed.

7. Mr. Rohit Sinha - learned counsel for C.B.I. defends the impugned order and opposes the prayer for quashing the impugned order and submits that the trial court has categorically stated that C.B.I. has in no certain manner intimated the trial court that the statement of the witnesses have been directly recorded in computer and the copy of the same has been supplied to the petitioner. Mr. Sinha next submits that Section 65 B is a rule of evidence and that requirement of the certificate therein relates to the admissibility of the electronic records in evidence and supply of police papers certainly does not amount to be expected to meet the requirement of the document being made available in evidence as the statement under Section 161 Cr.P.C. can neither be read in evidence nor be proved as evidence in court. It is next submitted that any higher officer of the

C.B.I. is a public authority and any citizen can make any complaint to them as per law. So, if the petitioner makes any complaint against the investigating officer to any authority of the C.B.I. , if as per law, he is entitled to do so, then he cannot be restrained from it. But certainly there should not be any direction from this Court in this respect as this Court at this stage cannot give any finding that the investigating officer has committed any wrong or not. Hence, it is submitted that this petition being without any merit be dismissed.

8. Having heard the submissions made at the Bar and after carefully going through the materials in the record, it is crystal clear that the C.B.I. in categorical terms has intimated the trial court that the statement under Section 161 Cr.P.C. were directly recorded through computer and there is no other mode of recording of such statement adopted by the investigating officer, in this case. Under such circumstances, I do not find any illegality in the impugned order warranting interference of this Court in quashing the same.

9. However, the petitioner is at liberty to approach appropriate authorities of the C.B.I. for proceeding departmentally against the investigating officer for violating the observation of the Hon'ble Supreme Court of India in the case of **Vineet Narain & Others Vs. Union of India (supra)** or /and violation of the judgment of Division Bench of this Court in the case of **Barun Pandit Vs. State of Jharkhand (supra)**.

10. If such application is submitted to the concerned authority of the C.B.I., the concerned authority of C.B.I. will consider the same without being prejudiced by this order.

11. This petition is disposed of accordingly.

(Anil Kumar Choudhary, J.)