

CASE NO.:
Appeal (crl.) 1045 of 2000

PETITIONER:
CENTRAL BUREAU OF INVESTIGATION

Vs.

RESPONDENT:
R.S. PAI AND ANOTHER

DATE OF JUDGMENT: 03/04/2002

BENCH:
M.B. Shah, Brijesh Kumar & D.M. Dharmadhikari

JUDGMENT:

Shah, J.

Short question is whether prosecution can produce additional documents which are gathered during investigation, after submitting charge-sheet under Section 173 of the Code of Criminal Procedure, 1973?

The Special Court (Trial of Offences Relating to Transactions in Securities) at Bombay by judgment and order dated 26th July, 2000, rejected Miscellaneous Application No.338 of 2000 in Special Case No.3 of 1997 filed by the Central Bureau of Investigation (CBI) for production of additional documents in a case where application for discharging the respondents was filed. Aggrieved by the said judgment, the CBI has preferred this appeal.

The prosecution story in brief is that during the period 2.4.1992 to 20.5.1992, the FIM Division, Mumbai of Syndicate Bank received funds aggregating to Rs.132.23 crores for Portfolio Management from Oil Industries Development Board, New Delhi. It was alleged that R. Sundaresan, the then Divisional Manager of the Bank and other bank officials conspired during the above said period at Mumbai along with Directors and office bearers of M/s Fair Growth Investments Ltd. and M/s Fair Growth Financial Services Ltd and by dishonestly and fraudulently abusing their position as a public servant caused wrongful gain to private parties and corresponding loss to the Syndicate Bank. It is also alleged that an amount of Rs.90.58 crores was invested for the purpose of shares/debentures from M/s Fair Growth Financial Services Ltd. and others without specific authorization from the Head Office of the Bank and without adhering to the guidelines of Reserve Bank of India (RBI) and the SEBI. On 2.6.1993, on the written complaint of the Chief Vigilance Officer of the Bank, case No. RC 1(BSC)/93-Mum. was registered under Section 120-B read with Section 420 IPC and Section 13(2) read with Section 13(1)(d) of Prevention of Corruption Act, 1988 against R. Sundaresan Divisional Manager of Syndicate Bank and K.R.N. Shenoy, Managing Director of M/s Fair Growth Investments Ltd. After investigation, charge-sheet was filed by the CBI in the Special Court in Special Case No.3/97 at Bombay against respondent nos.1 and 2. On 27.1.2000, respondent nos.1 and 2 filed discharge application bearing Misc. Application No.51 of 2000 and Misc. Application No.168 of 2000 before the Special Court. Pending hearing those applications,

appellant sought production of additional documents, which were gathered during investigation but were not produced before the Court. That application was rejected. Hence, this appeal.

Mr. P.P. Malhotra, learned senior counsel for the appellant submitted that the order passed by the Special Judge is on the face of it illegal and contrary to the provisions of Section 173 (5) of the Code of Criminal Procedure. It is his contention that normally the Investigating Officer is required to produce all the relevant documents at the time of submitting report, but the Investigating Officer committed mistake in not producing certain documents as in his opinion those documents were not relevant. Thereafter, it was found that those documents were relevant so as to connect the accused with the crime. It is submitted that arguments for framing of the charge were not finally heard and, therefore, there was no justifiable reason to reject the application for production of additional documents.

As against this, Mr. P. V. Adhyaru, learned senior counsel for respondent no.2 submitted that under Section 173 (5) Cr.P.C., the Investigating Officer has to produce all the documents at the time of submitting the report. Therefore, the order passed by the Special Court cannot be said, in any way, to be illegal or erroneous.

For appreciating the rival contentions, we would first refer to the relevant part of Section 173 of the Cr.P.C., 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)."

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.

...J.
(M.B. SHAH)

J.
(BRIJESH KUMAR)

J.
(D.M. DHARMADHIKARI)

April 3, 2002

JUDIS