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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Judgment Delivered on 06.03.2025

+ CRL.M.C. 9153/2024

GOPAL MISHRA & ANR.

.....Petitioners

Through: Mr. Rudra Pratap, Mr. Tushar Randhawa,
Mr. Rahul Sharma and Mr. Mohit Singh,
Advs.

versus

STATE GOVT OF NCT OF DELHI

.....Respondent

Through: Mr. Aman Usman, APP for State with
Inspr. Sanjeev Kumar, PS Special Cell

CORAM:

HON'BLE MR. JUSTICE VIKAS MAHAJAN

JUDGMENT

VIKAS MAHAJAN, J (ORAL)

CRL.M.A. 3130/2025 (exemption) & CRL.M.A. 7196/2025 (exemption)

1. Allowed, subject to all just exceptions.
2. The applications stand allowed.

CRL.M.A. 7195/2025 (early hearing)

3. This is an application seeking preponement of the date of hearing in the main petition i.e. CRL.M.C. 9153/2024.
4. During the pendency of the petition, the petitioner has filed an application being Crl.M.A. 3129/2025 seeking direction to the learned ASJ to furnish a copy of the complete hard disk, which was brought on record by PW-7 with a further direction to defer the recording of evidence of PW-7 / M



Bhaskar.

5. Mr. Rudra Pratap, learned counsel appearing on behalf of the petitioner/applicant submits that the matter is now fixed before the learned trial court on 12.03.2025 for cross-examination of PW-7 and in the absence of hard disk no effective and meaningful cross-examination of PW-7 would be possible. Hence, the urgency.

6. He prays that the main petition may though be taken up for consideration on the date already fixed, however, the CrI.M.A. 3129/2025 may be considered by this Court, in view of the urgency.

7. In view of the above, issue notice. Learned APP appearing for the State accepts notice.

8. Having regard to the urgency articulated by the learned counsel for the petitioner/applicant, the aforesaid prayer is allowed and the CrI.M.A. 3129/2025 is being taken up for consideration today itself with the consent of the parties.

9. The application is disposed of in the above terms.

CRL.M.A. 3129/2025 (direction)

10. The present application has been filed seeking following relief:

- I. *Direct the Ld. Additional Sessions Judge-02, Patiala House Courts, New Delhi District, New Delhi in Sessions Case No. 8698 of 2016 to furnish a copy of the complete Hard Disk WD Black Colour bearing Sr. No. WXGOAA9R1032 to the Petitioners/Accused Persons and defer the recording of evidence of PW-7, M. Bhaskar till further orders and allow the Defence to peruse the record/file brought and used by the PW-7, M. Bhaskar during cross-examination, dated 08.01.2025.*



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11. Mr. Rudra Pratap, the learned counsel for the petitioner/applicant submits that in the main petition the challenge is to the order dated 07.10.2024 whereby the learned ASJ allowed the application filed by the State under Section 311 Cr. P.C. and gave an opportunity to recall PW-7 / M. Bhaskar for the purpose of exhibiting the WD Black Colour hard disk bearing Sr. No. WXGOAA9R1032.

12. He submits that PW-7 was partly re-examined on 05.12.2024. However, his further examination was deferred as the hard disk could not be played for want of data cable. Further, the counsel for the petitioners/accused persons had submitted on 05.12.2024 that a copy of the hard disk has not been supplied to the accused persons till date.

13. He submits that the learned trial court *vide* its order dated 05.12.2024 relied on the orders dated 19.10.2010, 03.11.2010, 12.11.2010 as well as 10.12.2010 and returned a finding that copy of documents filed along with the chargesheet have already been supplied to the accused persons. He invites attention of the Court to the aforesaid orders to contend that though there are observations of the court that the documents have been supplied besides an endorsement made by the learned counsel for the accused persons acknowledging that '*copy of documents of chargesheet received*', but there is no specific mention that copy of the hard disk has been supplied or received by the accused persons or their counsel.

14. He further submits that since copy of the hard disk is required to be seen for conducting effective and meaningful cross-examination of PW-7, therefore, the accused persons had applied for the certified copies including copy of the above mentioned hard disk but the copying agency has returned



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the said application for certified copies with remarks “*that digital record i.e. hard disk, CD, Pen Drive cannot be given as there is no provision in CA Branch*”.

15. He submits that the prosecution is relying on certain photocopied documents which have been claimed to be taken from the aforesaid hard disk that has been exhibited as Ex. PW-7/P1 through PW-7 but there is no mention of the source folder or source file details of such documents. He submits that in these circumstances, it is necessary that the details of the contents of the hard disk and the properties of the respective digital files as to author and date be ascertained before the witness is cross-examined further.

16. He thus, prays that necessary directions be given to the learned trial court to furnish a copy of the complete hard disk to the petitioners/accused persons at their expense and the recording of evidence of PW-7 be deferred.

17. *Per contra*, learned APP for the State submits that the record shows that all documents which were part of the chargesheet including the hard disk, were supplied to the petitioners/accused persons.

18. He further submits that in case the hard disk in question was not supplied to the accused persons, they had a remedy at the stage of Section 207 Cr.P.C. He also invites attention of the Court to paras 3 and 8 of the impugned order to contend that record of hard disk was retrieved and the data was supplied to the accused persons.

19. I have heard the learned counsel for the petitioners/applicants as well as learned APP for the State.

20. A perusal of the orders dated 19.10.2010, 03.11.2010, 12.11.2010 and 10.12.2010 passed by the learned CMM/MM shows that the documents filed



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along with the chargesheet were supplied to the accused persons. On the order sheet dated 03.11.2010, there is also an acknowledgement of the learned counsel for the accused persons that copy of the documents with the chargesheet were received but intriguingly, none of the order sheets specifically mention that a cloned copy of the hard disk, which is an electronic record, has been provided to the petitioners/accused persons.

21. Even assuming that copy of the hard disk in question was supplied to the accused persons at the stage of Section 207 Cr. P.C. proceedings, still the right of the petitioner to ask for the certified copy of documents which form part of the chargesheet cannot be negated. It may so happen that the documents which are part of the chargesheet even after they have been supplied to the accused persons might get lost, the accused person can still ask for the certified copy/attested copy of the same at his own expense. Non-supply of a copy of such documents will deprive the accused persons of a meaningful opportunity to put forth his defence which includes cross-examination as well. Such a denial would thus, mean a negation of the principle of natural justice. However, while considering the request for certified/attested copy of documents forming part of chargesheet, after the commencement of trial, the court has to guard against the frivolous requests which are only aimed to delay the trial.

22. The present does not appear to be a case where the petitioners/accused persons have delayed the trial, rather the statement of PW-7 was recorded and his cross-examination was also carried out on 14.01.2015. Thereafter, the matter was fixed for final arguments on 29.05.2019. However, the State first filed an application under Section 311 Cr.P.C. for recalling the witness



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pertaining to the sanction to prove the second sanction order as the first sanction was held to be vitiated. The said application was allowed, the recalled witness was examined and the matter was again extensively argued finally from May, 2022 till November, 2023. Subsequently, the application under Section 311 Cr.P.C. for recalling PW-7, who had already been examined on 14.01.2015, was filed which was allowed *vide* impugned order dated 07.10.2024. Clearly, this protraction of trial cannot be attributed to the petitioners/accused persons.

23. At this stage, apt would it be to refer to the decision of the Hon'ble Supreme Court in *P. Gopal Krishnan @ Dileep Vs. State of Kerala &Anr. (2020) 9 SCC 161* wherein it was held that the contents of the memory card/pen-drive, being electronic record, must be regarded as a document. It was further held that if the prosecution is relying on the electronic record, 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 of such electronic record to the accused and his/her lawyer. It was further observed that in case of voluminous record, instead of furnishing the accused with a copy of the document, the Magistrate shall allow the inspection of such document, but such ground predicated in the second proviso to Section 207 Cr. P.C. cannot be invoked in case of electronic record. The relevant part of the said decision reads as under:

“47. We are conscious of the fact that Section 207 of the 1973 Code permits withholding of document(s) by the Magistrate



only if it is voluminous and for no other reason. If it is an “electronic record”, certainly the ground predicated in the second proviso in Section 207, of being voluminous, ordinarily, cannot be invoked and will be unavailable. We are also conscious of the dictum in Supt. & Remembrancer of Legal Affairs v. Satyen Bhowmick [Supt. & Remembrancer of Legal Affairs v. Satyen Bhowmick, (1981) 2 SCC 109 : 1981 SCC (Cri) 342] , wherein this Court has restated the cardinal principle that the accused is entitled to have copies of the statements and documents accompanying the police report, which the prosecution may use against him during the trial.

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49. If the accused or his lawyer himself, additionally, intends to inspect the contents of the memory card/pen-drive in question, he can request the Magistrate to provide him inspection in court, if necessary, even for more than once along with his lawyer and IT expert to enable him to effectively defend himself during the trial. If such an application is filed, the Magistrate must consider the same appropriately and exercise judicious discretion with objectivity while ensuring that it is not an attempt by the accused to protract the trial. While allowing the accused and his lawyer or authorised IT expert, all care must be taken that they do not carry any devices much less electronic devices, including mobile phone which may have the capability of copying or transferring the electronic record thereof or mutating the contents of the memory card/pen-drive in any manner. Such multipronged approach may subserve the ends of justice and also effectuate the right of accused to a fair trial guaranteed under Article 21 of the Constitution.

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.”

(emphasis supplied)

24. It is not the case of the prosecution that in providing cloned copy of the hard disk there could be an issue as to the privacy of complainant/witness involved in the present case or his/her identify, nor the document in question is a voluminous ‘non-electronic record’, in which situation permission of inspection of such document would have sufficed. As held in ***P. Gopal Krishnan*** (supra) the hard disk is an ‘electronic record’, a cloned copy of which can be provided to the petitioners/accused persons.

25. The basic principle of natural justice is that the material sought to be used against the accused must be provided to him by the prosecution in order to enable him to effectively defend himself in the proceedings.

26. As noted above, the order sheets of the trial court though record that documents filed along with the chargesheet were supplied to the petitioners/accused persons but there is no specific mention of ‘electronic record’ in the form of a ‘hard disk’ having been supplied to the petitioners/accused persons. Needless to say that hard disk is not an ordinary document in a paper form but is an electronic record. Had a cloned copy of the hard disk been supplied to the accused, ordinarily it would have been specifically mentioned in the order sheets.

27. Be that as it may, without entering into the controversy as to whether a cloned copy of the hard disk was supplied or not to the accused persons at the stage of Section 207 Cr.P.C., this Court is of the view that to put a quietus to



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the dispute and avoid the trial from getting further protracted, a cloned copy of the hard disk may be made available to the petitioners/accused persons at their expense, so that there is no denial of right of fair trial to the petitioners/accused persons and they could effectively cross-examine the prosecution witness i.e. PW-7.

28. Accordingly, the application is allowed. The learned trial court is directed to provide a cloned copy of the hard disk to the petitioners/accused persons at their expense. If necessary, learned trial court may authorize IT experts from the IT branch or any other concerned branch of the Court to undertake properly supervised exercise of cloning the hard disk.

29. In the meanwhile, the learned trial court may defer the recording of cross-examination of PW-7 M. Bhaskar.

30. The application is disposed of in the above terms.

VIKAS MAHAJAN, J

MARCH 6, 2025/‘rs’