

CASE DETAILS

CENTRAL BUREAU OF INVESTIGATION

v.

NAROTTAM DHAKAD & ANR.

(Criminal Appeal No.2592 of 2023)

AUGUST 25, 2023

[ABHAY S. OKA AND RAJESH BINDAL, JJ.]

HEADNOTES

Issue for consideration: In cases relating to offences arising out of the Vyapam Scam, respondents-accused filed applications seeking direction to supply a Hindi translation of the charge sheet filed by the appellant in English language. Rejected by Magistrate and Sessions Court. High Court whether justified in interfering and inter alia holding that Hindi was the only language of the Criminal Courts in the State of MP and therefore, the respondents were entitled to seek translation of the charge sheet into the language of the Court.

Code of Criminal Procedure, 1973 – s.173 – Language of the final report/charge sheet, if to be in the language of the Court determined in accordance with s.272, CrPC:

Held: There is no specific provision in CrPC which requires the investigating agency/officer to file it in the language of the Court determined in accordance with s.272 – Even if such a requirement is read into s.173, per se, the proceedings will not be vitiated if the report is not in the language of the Court – The test of failure of justice will have to be applied in such a case as laid down in s.465, CrPC – When a copy of the report and the documents are supplied to the accused u/s.207 and/or s.208, an opportunity is available for the accused to contend that he does not understand the language in which the final report or the statements or documents are written – But he must raise this objection at the earliest – In such a case, if the accused is appearing in person and wants to defend himself without opting for legal aid, there may be a requirement of supplying a translated version of the charge sheet and documents or the relevant part thereof concerning the said accused to

him – It is, however, subject to the accused satisfying the Court that he is unable to understand the language in which the charge sheet is submitted – On facts, it cannot be said that non-supply of translation of the charge sheet and other documents to the accused in both appeals will occasion failure of justice – Impugned orders set aside. [Paras 18, 19 and 22]

Code of Criminal Procedure, 1973 – Charge sheet filed in a language other than the language of the Court or the language which the accused does not understand, if illegal:

Held: No – A charge sheet filed within the period provided either u/s.167, CrPC or any other relevant statute in a language other than the language of the Court or the language which the accused does not understand, is not illegal and no one can claim a default bail on that ground. [Para 19]

Code of Criminal Procedure, 1973 – s.272 – Power under:

Held: s.272 deals with only the language of the Courts under CrPC – The power of the State Government is to determine for the purposes of CrPC what shall be the language of the Courts within the State other than the High Court – Power u/s.272 is not a power to decide which language shall be used by the investigating agencies or the police for the purposes of maintaining the record of the investigation – Wherever the legislature intended, there is a specific provision incorporated requiring the Court to mandatorily use the language of the Court in the proceedings – There is no such requirement laid down in respect of the report/charge sheet u/s.173. [Paras 12 and 15]

Code of Criminal Procedure, 1973 – s.465 – Test of the failure of justice – Error, omission, or irregularity in the trial:

Held: s.465 incorporates the same test of the failure of justice as s.464 while dealing with any error, omission, or irregularity in the proceedings – While deciding whether there is a failure of justice occasioned due to error, omission, or irregularity in the trial, the Court is required to consider the fact whether the objection could and should have been raised at an earlier stage in the proceedings – There is a specific provision to that effect under sub-section (2) of s.465 – Thus, in a given case, if something which CrPC specifically requires to be done in the language of the Court is done in any other language, per se, the proceedings will not be vitiated unless it is established that the omission has resulted in failure of justice – While

deciding the issue of whether there is a failure of justice, the Court will have to consider whether the objection was raised at the earliest available opportunity. [Paras 16 and 17]

Code of Criminal Procedure, 1973 – ss.211(6), 215, 228(2), 240, 272, 265, 277(b), 279, 281, 354, 353 – Language of the Court – Relevant provisions of CrPC having bearing on the issue of – Summarised. [Para 14]

OTHER CASE DETAILS INCLUDING IMPUGNED ORDER AND APPEARANCES

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 2592 of 2023.

From the Judgment and Order dated 20.11.2017 of the High Court of Madhya Pradesh, Bench at Gwalior in MCRC No.20941 of 2017.

With

Criminal Appeal No. 2593 of 2023

Appearances:

Vikramjeet Banerjee, ASG, Rajan Kumar Chourasia, Padmesh Mishra, Navanjay Mahapatra, Kartik Dey, Suraj Mishra, Abhishek Singh, Arvind Kumar Sharma, Advs. for the Appellant.

Saurabh Mishra, AAG, Piyush Lakanpal, Avinash Kr. Lakanpal, Yashraj Singh Bundela, Pawan, Advs. for the Respondents.

JUDGMENT / ORDER OF THE SUPREME COURT

JUDGMENT

ABHAY S. OKA, J.

1. Leave granted.

FACTUAL ASPECTS

2. Under Section 272 of the Code of Criminal Procedure, 1973 (for short ‘CrPC’), the State Government has the power to determine what shall be, for the purposes of CrPC, the language of each Court within a particular State other than the High Court. As provided in Section 6 of CrPC, there

CENTRAL BUREAU OF INVESTIGATION v. NAROTTAM 309
DHAKAD & ANR. [ABHAY S. OKA, J.]

are various Courts in a State. The said Courts are the Courts of the Session, Judicial Magistrates of the First Class, Metropolitan Magistrates, Judicial Magistrates of the Second Class, and Executive Magistrates.

3. In these two appeals, we are dealing with charge sheets filed by the appellant - Central Bureau of Investigation, in relation to offences arising out of the VYAPAM Scam in the State of Madhya Pradesh. Charge sheets have been filed for various offences under Sections 419, 420, 468, 467 and 471 of IPC and under Sections 3 and 4 of the Madhya Pradesh Examinations Act, 1937. The first respondent in Criminal Appeal arising out of SLP (Crl.) No. 5525 of 2018 filed an application before the learned Judicial Magistrate seeking a direction to supply a Hindi translation of the charge sheet filed by the appellant in English language. The contention of the first respondent accused was that he was unable to understand the charge sheet filed in English language. The learned Judicial Magistrate held that the first respondent was an educated person, having knowledge of English. Learned Judge pointed out that the offence related to fraud in the examination. The allegation is that after the first respondent received admit card, some other person took the examination by impersonating him. The learned Magistrate observed that the vakalatnama filed by the first respondent was in English and the first respondent has also signed in English. It was further held that the Advocate representing the first respondent had sound knowledge of the English language. Therefore, the learned Magistrate proceeded to reject the prayer made by the first respondent. The order of the learned Magistrate has been confirmed by the Sessions Court in revision. However, the High Court interfered by holding that Hindi was the only language of the Criminal Courts in the State and therefore, the first respondent was entitled to seek a translation of the charge sheet into the language of the Court.

4. The first respondent in Criminal Appeal, arising out of SLP (Crl.) No. 10680 of 2022, is also an accused in the same case. He also made a similar application before the learned Magistrate which was rejected. The first respondent challenged the said order before the High Court. A Division Bench of the High Court by the impugned judgment held that when a charge sheet was filed in the language unknown to the accused, he was entitled to translation of the charge sheet in the language which he understands.

5. The appellant - the Central Bureau of Investigation has challenged both the impugned orders.

SUBMISSIONS

6. The submission of the appellant in both cases is that the accused were highly educated and had knowledge of the English language. Therefore, there is no prejudice to the accused if the charge sheet was in English language. It was also pointed out by the learned counsel appearing for the appellant that the charge sheets in VYAPAM Scam cases are very bulky and translation of the charge sheets into Hindi is a very time-consuming and costly process.

7. The submission of the learned counsel appearing for the accused is that in the exercise of powers under Section 272 of CrPC, the State Government has declared Hindi as the only language of the Criminal Courts in the State. Their submission is that the language Hindi is for the purposes of the Code and therefore, charge sheets filed under Section 173 of CrPC ought to be filed in the language of the Court. Therefore, both the accused supported the view taken by the High Court. The learned counsel appearing for the accused also submitted that in a given case if the accused is not conversant with the language in which the charge sheet has been filed, he will not be able to defend himself properly as he will not be in a position to understand the statements recorded by the police and other documents collected during investigation.

OUR VIEW

8. The Government of Madhya Pradesh in exercise of power under Section 272 of CrPC issued a notification dated 28th March 1974, declared Hindi to be the language of each Court in the State except the High Court. If we consider the scheme of CrPC, it regulates not only the procedure before the Criminal Courts but also the procedure to be followed by the police and other investigating agencies. Chapter V deals with the arrest of persons. Chapter VI deals with processes to be issued for compelling the appearance of the accused before the Court. Chapter VII deals with processes to be issued to compel the production of things before the Court. Chapter VIII contains provisions regarding security for keeping the peace and for good behaviour. The powers under the said Chapter are to be exercised by the Courts under the CrPC or an Executive Magistrate, as the case may be.

Chapter X contains the steps to be taken for the maintenance of public order and tranquillity. Chapter IX contains Section 125 which confers powers on the Courts of the Judicial Magistrate, First Class to order payment of maintenance to wives, children and parents. Chapter XI deals with the preventive action of the police. Chapter XII contains elaborate provisions regarding the registration of First Information Reports, and the investigation of offences in cognizable or non-cognizable cases.

9. Section 173 forms part of Chapter XII which contains provisions regarding a police report which is popularly known as a charge sheet. We are, therefore, reproducing Section 173 of CrPC which reads thus:

“173. Report of police officer on completion of investigation.—

(1) Every investigation under this Chapter shall be completed without unnecessary delay.

(1A) The investigation in relation to an offence under sections 376, 376A, 376AB, 376B, 376C, 376D, 376DA, 376DB or 376E of the Indian Penal Code (45 of 1860) shall be completed within two months from the date on which the information was recorded by the officer in charge of the police station.

(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.

(h) whether the report of medical examination of the woman has been attached where investigation relates to an offence under sections 376, 376A, 376AB, 376B, 376C, 376D, 376DA, 376DB] or section 376E of the Indian Penal Code (45 of 1860).

(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) Where a superior officer of police has been appointed under section 158, the report shall, in any case in which the State Government by general or special order so directs, be submitted through that officer, and he may, pending the orders of the Magistrate, direct the officer in charge of the police station to make further investigation.

(4) Whenever it appears from a report forwarded under this section that the accused has been released on his bond, the Magistrate shall make such order for the discharge of such bond or otherwise as he thinks fit.

(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) If the police officer is of opinion that any part of any such statement is not relevant to the subject-matter of the proceedings or that its disclosure to the accused is not essential in the interests of justice and is inexpedient in the public interest, he shall indicate that part of the statement and append a note requesting the Magistrate to exclude that part from the copies to be granted to the accused and stating his reasons for making such request.

(7) Where the police officer investigating the case finds it convenient so to do, he may furnish to the accused copies of all or any of the documents referred to in sub-section (5).

(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)."

(emphasis supplied)

10. As can be seen from sub-section (2) of Section 173, after completion of the investigation, the officer in charge of the police station is under an obligation to submit a report to the learned Magistrate in the form prescribed by the State Government, giving particulars as mentioned in sub-section (2). Sub-section (5) is applicable in a case governing Section 170. It applies when it appears to the officer in charge of the police station that there is sufficient evidence or reasonable ground justifying the forwarding of the accused to the learned Magistrate. In such a case, along with the report, the officer in charge of the police station is bound to forward copies of the statements recorded under Section 161 of all the persons whom the prosecution proposes to examine as its witnesses. It also enjoins the officer in charge of the police station to forward all the documents or relevant extracts thereof on which the prosecution proposes to rely upon other than those already sent to the Magistrate during the investigation. Sub-section (6) of Section 173 confers power on the learned Magistrate to exclude certain parts of the material produced along with the charge sheet while supplying copies thereof to the accused.

11. Section 173 will have to be read with Section 207 which mandates that after cognizance is taken of the offence by the learned Magistrate on a case instituted on a police report, it is the obligation of the learned Magistrate to furnish free of cost, without any delay, copies of the police report, first

information report, statements recorded under sub-section (3) of Section 161 of CrPC except the portion in respect of which there is an order passed by the learned Magistrate by invoking powers under sub-section (6) of Section 173, confessions and statements recorded under Section 164 and copies of the documents or relevant extracts forwarded along with the police report in accordance with sub-section (5) of Section 173. When the statements of the witnesses or documents covered by sub-section (5) of Section 173 are very bulky, the learned Magistrate has the discretion to allow the accused and his advocate to inspect the said documents instead of providing copies thereof. It is pertinent to note that there is no provision either in Chapter XII or Chapter XVI of CrPC which makes it obligatory to file charge sheets/reports in the language of the Court.

12. Interestingly, the provision regarding the language of Courts in the form of Section 272 finds a place in Chapter XXIII having the heading “Evidence in inquiries and Trials”. The provision is incorporated under the sub-heading “A.—Mode of taking and recording evidence”. Section 272 reads thus:

“272. Language of Courts.—The State Government may determine what shall be, for purposes of this Code, the language of each Court within the State other than the High Court.”

Thus, the power of the State Government is to determine for the purposes of CrPC what shall be the language of the Courts within the State other than the High Court. The power under Section 272 is not a power to decide which language shall be used by the investigating agencies or the police for the purposes of maintaining the record of the investigation. At the highest, for that purpose, the provisions regarding the law governing the Official Language of the State may apply subject to the provisions contained in such enactment. In a given case, while prescribing a form as required by Sub-section (2) of Section 173, the State Government may provide that the charge sheet must be filed in the official language of the State. Therefore, Section 272 deals with only the language of the Courts under CrPC.

13. It is interesting to note that wherever legislature intended, specific provisions have been made incorporating the requirement using the language of the Court. Some of these provisions also deal with situations when the accused is unable to understand the language of the Court

14. We are giving a summary of the relevant provisions of CrPC which have some bearing on the issue of the language of the Court:

- a. Sub-section (6) of Section 211 provides that the charge shall be written in the language of the Court. However, Section 215 provides that no error in the charge shall be regarded at any stage of the case as material unless the accused was in fact misled due to error or omission and it has occasioned a failure of justice. Therefore, in a given case, even if the charge is not framed in the language of the Court, the omission to frame the charge in the language of the Court shall not be material unless it is shown that the accused was misled and it resulted in failure of justice.
- b. Section 228 forms part of Chapter XVIII, which deals with trial before a Court of Sessions. Sub-section (2) of Section 228 mandates that the Court must read over and explain the charge to the accused. It follows that if the accused does not understand the language in which the charge is framed, the Court will have to explain the charge to him in the language which he understands.
- c. Section 240 which forms part of Chapter XVIII dealing with the trial of warrant cases by Magistrates provides that the charge shall be framed in writing and the learned Magistrate shall read over and explain the charge to the accused. Though the Section does not make it mandatory, normally, the charge will be framed in the language of the Court determined in accordance with Section 272 of CrPC. Therefore, if the accused is not conversant with the language in which the charge is framed, it is the duty of the Magistrate to explain the charge to the accused in a language which he understands.
- d. If we compare provisions of Chapters XVIII, XIX, XX, and XXI which deal with sessions triable cases, warrant triable cases, summons triable cases, and summary trials, either there is a requirement of explaining the charge to the accused, or there is a requirement of stating the particulars of the offence to the accused. These requirements can be fulfilled only by explaining to the accused in the language which he understands.

- e. Only in the case of summary trials under Chapter XXI, there is a specific provision under Section 265 that the record of the case shall be in the language of the Court.
- f. Section 277 (b) permits a witness to give evidence in any other language which is not the language of the Court. It lays down the procedure for recording such evidence.
- g. There is a salutatory provision in the form of Section 279 under Chapter XXIII dealing with evidence in inquiries and trials. Section 279 reads thus:

“279. Interpretation of evidence to accused or his pleader.—(1) Whenever any evidence is given in a language not understood by the accused, and he is present in Court in person, it shall be interpreted to him in open Court in a language understood by him.

(2) If he appears by pleader and the evidence is given in a language other than the language of the Court, and not understood by the pleader, it shall be interpreted to such pleader in that language.

(3) When documents are put for the purpose of formal proof, it shall be in the discretion of the Court to interpret as much thereof as appears necessary.”

Thus, where evidence is recorded in the language of the Court which is not understood by the accused or his pleader, there is an obligation on the part of the Court to explain the evidence to the accused or his lawyer, as the case may be.

- h. Section 281 provides that if the examination of the accused made by the Court is reduced into writing in a language which the accused does not understand, the statement is required to be interpreted to him in a language which he understands and after such interpretation is made, the accused has the liberty to explain and add to his answers.
- i. Under Section 354, it is provided that judgment in every trial of a Criminal Court must be written in the language of the Court.

Either in Section 353 or 354, there is no provision which requires the Court to interpret the judgment to the accused even if the accused does not understand the language of the Court.

15. The conclusion which can be drawn from the provisions of CrPC and in particular the provisions referred to above is that wherever the legislature intended, there is a specific provision incorporated requiring the Court to mandatorily use the language of the Court in the proceedings. There is no such requirement laid down in respect of the report/charge sheet under Section 173 of CrPC.

16. There are two provisions in CrPC which deal with the effect of error, omission, or irregularity in the proceedings of the trial of a criminal case. The first is Section 464 which deals with the effect of omission to frame, or absence of, or error in, charge. It lays down that only on the ground of such omission, absence, or error, the ultimate finding, sentence or order will not be invalid unless a failure of justice has in fact been occasioned thereby. Section 465 incorporates the same test of the failure of justice while dealing with any error, omission, or irregularity in the proceedings. While deciding whether there is a failure of justice occasioned due to error, omission, or irregularity in the trial, the Court is required to consider the fact whether the objection could and should have been raised at an earlier stage in the proceedings. There is a specific provision to that effect under sub-section (2) of Section 465.

17. Therefore, in a given case, if something which CrPC specifically requires to be done in the language of the Court is done in any other language, *per se*, the proceedings will not be vitiated unless it is established that the omission has resulted in failure of justice. While deciding the issue of whether there is a failure of justice, the Court will have to consider whether the objection was raised at the earliest available opportunity.

18. Now, coming to the issue of the language of the final report/charge sheet under Section 173, there is no specific provision in CrPC which requires the investigating agency/officer to file it in the language of the Court determined in accordance with Section 272 of CrPC. Even if such a requirement is read into Section 173, *per se*, the proceedings will not be

vitiated if the report is not in the language of the Court. The test of failure of justice will have to be applied in such a case as laid down in Section 465 of CrPC.

19. Under Section 207, it is the obligation of the learned Judicial Magistrate to supply a copy of the report and other documents as provided in Section 207 to the accused. In a case triable by the Court of Sessions, Section 208 provides for the learned Magistrate to provide copies of the statements and documents to the accused including the statements and confessions recorded under Section 164 of CrPC. When a copy of the report and the documents are supplied to the accused under Section 207 and/or Section 208, an opportunity is available for the accused to contend that he does not understand the language in which the final report or the statements or documents are written. But he must raise this objection at the earliest. In such a case, if the accused is appearing in person and wants to defend himself without opting for legal aid, perhaps there may be a requirement of supplying a translated version of the charge sheet and documents or the relevant part thereof concerning the said accused to him. It is, however, subject to the accused satisfying the Court that he is unable to understand the language in which the charge sheet is submitted. When the accused is represented by an advocate who fully understands the language of the final report or charge sheet, there will not be any requirement of furnishing translations to the accused as the advocate can explain the contents of the charge sheet to the accused. If both the accused and his advocate are not conversant with the language in which the charge sheet has been filed, then the question of providing translation may arise. The reason is that the accused must get a fair opportunity to defend himself. He must know and understand the material against him in the charge sheet. That is the essence of Article 21 of the Constitution of India. With the availability of various software and Artificial Intelligence tools for making translations, providing translations will not be that difficult now. In the cases mentioned aforesaid, the Courts can always direct the prosecution to provide a translated version of the charge sheet. But we must hasten to add that a charge sheet filed within the period provided either under Section 167 of CrPC or any other relevant statute in a language other than the language of the Court or the language which the accused does not understand, is not illegal and no one can claim a default bail on that ground.

CENTRAL BUREAU OF INVESTIGATION v. NAROTTAM 319
DHAKAD & ANR. [ABHAY S. OKA, J.]

20. There is one more aspect of the matter. There are central agencies like the National Investigation Agency, Central Bureau of Investigation, etc. These agencies investigate serious offences or offences having wide ramifications. Obviously, such central agencies, in every case will not be in a position to file the final report in the language of the concerned Court as determined by Section 272 of CrPC.

21. Now, coming to the facts of the case, in Criminal Appeal arising out of SLP (Crl.) 5525 of 2018, a finding of fact was recorded by the trial court that the respondent is an educated person. The offence relates to an examination for which one of the eligibility conditions was having a knowledge of the English language. Moreover, it was found that the advocate engaged by him also knows the English language. Coming to the Criminal Appeal arising out of SLP (Crl.) 10680 of 2022, the trial court has recorded a finding that the first respondent-accused was a science graduate having knowledge of the English language. Moreover, his advocate was conversant with the English language.

22. Hence, in the facts of the cases in hand, it cannot be said that a non-supply of translation of the charge sheet and other documents to the accused in both appeals will occasion a failure of justice.

23. Hence, the appeals succeed and subject to what is held in the earlier part of the judgment, the impugned orders are set aside. There will be no order as to costs. The Trial Court shall expeditiously proceed with the trial.

Headnotes prepared by:
Divya Pandey

Appeals allowed.