

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

12 CRIMINAL WRIT PETITION NO.1242 OF 2022

VASANT SEVA JADHAV AND ANOTHER
VERSUS
THE STATE OF MAHARASHTRA

Advocate for Petitioner : Mr Vaibhav B. Kulkarni
APP for Respondent/State : Mr R.D. Sanap

CORAM : SHRIKANT D. KULKARNI, J.

DATE : 19th SEPTEMBER, 2022

PER COURT :

1. Heard finally with consent of both the sides.
2. The legal question raised in the instant petition is whether the petitioner is entitled to get cloned copy of memory card.
3. Heard Mr Vaibhav Kulkarni, learned counsel for the petitioner and Mr R.D. Sanap, learned APP for the State.
4. Mr Kulkarni, learned counsel for the petitioner invited my attention to the impugned order passed by the learned Assistant Sessions Judge, Bhokar, Dist. Nanded in Special Case (A.C.B.) No. 02/2017 and observations made therein while rejecting the application moved by the petitioner whereby the petitioner has prayed to provide cloned copy of SIM card. He submitted that the present petitioner is facing criminal prosecution for the offences punishable under sections 7, 13(1) (d) r/w 13(2) of the Prevention of Corruption Act, 1988. The prosecution has produced memory card along with the charge sheet but cloned copy of the

memory card is not provided that is why petitioner has applied to the trial court to provide cloned copy of the memory card by moving application Exh. 43 but the same was turned down. Mr Kulkarni, learned counsel for the petitioner has placed his reliance in case of ***P. Gopalkrishnan alias Dileep Vs. State of Kerala reported in AIR 2020 SC 1***. He submitted that in view of the decision of the Hon'ble Supreme Court (supra), the petitioner is entitled to get cloned copy of memory card in order to put forth his defence in a proper way. He submitted that the petitioner wants to know about the conversation between him, complainant and the panchas and Investigating Officer, which is recorded in the memory card at the time of trap. The memory card being document as defined under the Technology Act, the petitioner is entitled to get cloned copy of the memory card.

5. Mr Sanap, learned APP for the State strongly opposed to allow this petition. He also invited my attention to the copy of impugned order para No. 8. He submitted that the learned Assistant Sessions Judge has considered this aspect and gave option to the petitioner to play voluminous contents of the SIM card in the court which would take care of his defence. He, therefore, submitted that there is no need to have a cloned copy of the SIM card.

6. Having regard to the submissions of both the sides, I have gone through the citation relied upon by the learned counsel for the petitioner in case of ***P. Gopalkrishnan alias Dileep Vs. State of Kerala*** (supra). In the said citation, identical question was raised before the Hon'ble

Supreme Court. Whether the contents of memory card/pen drive being electronic record, as predicted in section 2(1)(t) of the Information Technology Act, 2000 would, thereby qualify as a “document” within the meaning of section 3 of the Indian Evidence Act, 1872 and section 29 of the Indian Penal Code, 1860. If so, whether it is obligatory to furnish a cloned copy of the contents of such memory card/pendrive to the accused facing prosecution for an alleged offence of rape and related offences since the same is appended to the police report submitted to the Magistrate and the prosecution proposes to rely upon it against the accused, in terms of Section 207 of the Code of criminal Procedure, 1973. The next question is: whether it is open to the Court to decline the request of the accused to furnish a cloned copy of the contents of the subject memory card/pendrive in the form of video footage/clipping concerning the alleged incident/occurrence of rape on the ground that it would impinge upon the privacy, dignity and identity of the victim involved in the stated offence(s) and moreso because of the possibility of misuse of such cloned copy by the accused (which may attract other independent offences under the 2000 Act and the 1860 Code)?. The Hon'ble Supreme Court in concluding para No. 44 has held as under :-

44. In conclusion, we hold that the contents of the memory card/pendrive 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/witnesses 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.

7. It is undisputed position that prosecution has produced memory card along with the charge sheet and intends to rely upon the same. In view of the legal position made clear by the Hon'ble Supreme Court, the contents of the memory card 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. Herein in this case, the petitioner/accused is not facing any criminal charge relating to sexual offences. The petitioner is facing charges under the Prevention of Corruption Act, 1988. As such, there is no difficulty for the prosecution to provide cloned copy of the memory card in view of the above decision of the Hon'ble Supreme Court.

8. It is for the accused to put up his defence. It is the right of the accused to have a fair trial as guaranteed under Article 21 of the Constitution of India. There are no extraordinary circumstances to refuse the prayer for cloned copy of the memory card in view of the facts and circumstances of the case in hand. The observations made by the learned Assistant Sessions Judge while rejecting the application are improper and incorrect having regard to the decision of the Hon'ble Supreme Court in case of ***P. Gopalkrishnan alias Dileep Vs. State of Kerala.***

ORDER

(I) The Criminal Writ Petition is hereby allowed.

- (II) The impugned order passed below Exh. 43 in Special Case (A.C.B.) No. 02/2017 by the learned Assistant Sessions Judge, Bhokar, Dist. Nanded dated 26th July, 2022 is hereby quashed and set aside.
- (III) The prosecution is directed to provide cloned copy of memory card to the petitioner/accused by following due procedure. If the memory card is in sealed envelope/packet, the same to be opened in presence of accused, his advocate and learned APP looking after the case, and thereafter, further formalities be completed for providing cloned copy of the memory card.
- (IV) In view of the above directions, the criminal writ petition stands disposed of.

[SHRIKANT D. KULKARNI, J.]

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