



2025:DHC:8451



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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Pronounced on: 22.09.2025

+ CRL.M.C. 8909/2024 & CRL.M.A. 34100/2024 FOR DIRECTIONS, CRL.M.A. 34101/2024 EXEMPTION, CRL.M.A. 1491/2025 FOR DIRECTION TO RESP. TO PLACE ITS POSITION ON AFFIDAVIT, CRL.M.A. 10517/2025 SEEKING CLARIFICATION OR MODIFICATION OF ORDER DT. 02.12.2024

DEVANGANA KALITA

.....Petitioner

Through: Mr Adit S Pujari, Ms Vanya Chhabra, and Mr Siddharth Kaushal, Adv.

versus

STATE NCT OF DELHI

.....Respondent

Through: Mr. Anuj Handa, SPP for the State with Ms. Sanya Handa, Ms. Akansha Chandok & Mr. Shubham Pandey, Adv.
ASI Dev Raj Singh, PS Jafrabad

CORAM:**HON'BLE MR. JUSTICE RAVINDER DUDEJA****JUDGMENT****RAVINDER DUDEJA, J.**

1. The present petition is filed under Section 528 of Bharatiya Nagarik Suraksha Sanhita, 2023 (hereinafter referred to as 'BNSS') [earlier Section 482 of Code of Criminal Procedure, 1973 ('CrPC')] seeking setting aside of the order dated 06.11.2024 passed by learned



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JMFC-04, (Shahdara), Karkardooma Court, New Delhi and direction to respondent-Investigating Agency to reconstruct and preserve Booklets 9989 and 9990 made in connection with investigation of case titled 'State v. Faizan & Ors.' in FIR No. 48/2020, PS-Jafrabad.

2. That the facts in brief are as follows:

2.1. On 24.02.2020, FIR No. 48/2020 was registered under sections 186/188/353/283/341/109/147/34 IPC at PS Jafrabad based on a complaint by SI Devendra Singh about an alleged protest against CAA and NRC by crowd of about 200-400 people gathered below Jafrabad Metro Station thereby blocking the main road and causing obstruction to commuters and tension in the area.

2.2. Chargesheet was filed upon completion of investigation against 26 persons including the petitioner herein under sections 147/ 353/ 186/ 188/ 341/ 283/ 109/ 153A/34 IPC.

2.3. Subsequently the trial commenced wherein vide order dated 17.12.2020 the Ld. Magistrate took cognizance of the chargesheet and issued summons.

2.4. On 06.11.2024 petitioner raised the issue of tampering and ante dating of the statements under section 161 Cr.P.C. which were part of the case dairy and supplementary chargesheet on the premise that there was a discrepancy in the Booklet Nos. and Page Nos. of the



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respective sheets on which the statements under section 161 Cr.P.C. had been recorded and thereby requested for preservation of case diary i.e. booklet no. 9989 and 9990.

2.5. The Ld. Trial Court declined the relief sought with reason that the issue was a procedural aspect thereby truthfulness and veracity of the allegations could not be looked upon by the court at the present stage. Further the court also clarified that the statements recorded under section 161 Cr.P.C. are barred by section 162 Cr.P.C., thus, are not even considered as a substantive piece of evidence and could be used by accused persons at appropriate stage for specific purpose as provided under the said section.

3. Ld. Counsel for the petitioner submits that the order dated 06.11.2024 of the trial court be set aside and booklets 9989 and 9990 in connection with investigation of the case titled as *State v. Faizan & Ors.* in case FIR No. 48/2020 at PS Jafrabad in Cr. Case 3811/2020 be reconstructed and preserved. His submissions in support of his request are summarized as follows:

3.1. The statements recorded by the investigating agency under section 161 Cr.P.C. in the present FIR are ante-dated statements on ground that subsequent numbered pages in Volume No. 9989 and 9990 of Police dairy maintained in terms of mandate under section 172 Cr.P.C. containing statements are recorded earlier and prior



numbered pages containing the same statements have been recorded subsequently.

3.2. In the present case, despite the mandate of Section 172 Cr.P.C., the chargesheet filed contains extracts from police diary Volumes No. 9989 and 9990 which have demonstrable ante dated statements recorded under section 161 Cr.P.C as illustrated below:

3.2.1. In Case Diary booklet no. 9990, statement dated 09.03.2020 is recorded at page 8, whereas the statement dated 26.02.2020 are recorded subsequently at pages 31-43.

3.2.2. In Case Diary booklet no. 9989, statements purporting to have been recorded on 09.06.2020 are at page nos. 7-15, whereas statements purportedly recorded on 10.04.2020 are at page nos. 20-27.

3.3. Reliance is placed on the judgment passed by the Apex court in ***Bhagwant Singh v. Commissioner of Police, Delhi (1983) 3 SCC 344*** wherein the court observed that Section 172 Cr.P.C. is a mandatory provision and requires the proper maintenance of case diaries by police officers, which are volumed and are duly paginated. Only proper chronological maintenance of case diaries ensures sanctity/purity of the investigation process and allows the



court to ascertain whether the investigation has been conducted in fair manner.

3.4. This court in light of such facts granted interim protection of preservation of the case diary booklets vide order dated 02.12.2024.

3.5. Respondent has regularly shifted its stance, firstly it stated that procuring the case diaries would be a logistical challenge, whereas in its 2nd status report (Para 7) claimed that that the other pages of booklet no. 9989 and 9990 relate to other cases and therefore fall outside the ambit of the impugned order dated 02.12.2024.

3.6. Further, Respondent in his reply dated 05.07.2025 again changed their stance by submitting that the petitioner never sought the preservation of records beyond those relating to the pages recording the investigation in FIR 48/2020 whereas petitioner throughout their petition have consistently pressed their prayer for reconstruction and preservation of the entire records of the case diaries booklet no. 9989 and 9990.

3.7. Lastly, The Ld. Trial Court failed to appreciate that section 172 read with section 91 Cr.P.C. empowers the court to summon case diaries at any stage whenever it considers desirable for the purpose of aiding it in a case under inquiry or trial or other proceedings under the Cr.P.C. before the



court and such right is of significance when there exists a suspicion against the version of the police authorities.

4. Per Contra, Mr. Anuj Handa Ld. SPP for the state, opposes the petition and submits the following:

4.1. The allegation of ante dating of the statements was raised after 3 years from date of commencement of the trial only as a pretext to delay the adjudication of the criminal case and if petitioner intended to secure the booklets, she would have raised the issue at the very first instance as a safeguard against the possibility of the booklets being destroyed.

4.2. Section 172 Cr.P.C. does not provide for summoning, preserving or re-constructing any document not forming a part of the case diary, instead provides that any Criminal Court may send for the police diaries of a case under inquiry or trial in such court to aid it in such enquiry or trial. Further, while the court may at its discretion summon the case diary, the accused/ or his/her agents have no right either to call for the same or to see the same. Thus, the relief sought in the present petition does not fall within the ambit of Section 172 Cr.P.C.

4.3. The case is currently pending at the stage of arguments on charge and in view of the law laid down by the Hon'ble Apex court in *State of Rajasthan v. Swarn Singh*



@ *Baba – Criminal Appeal No. 856/2024 (Para 25)*, the documents sought to be called for/introduced by the petitioner vide the present petitioner cannot be summoned under section 91 Cr.P.C.

4.4. There is no ante-dating of the statements of witnesses recorded under section 161 Cr.P.C. and misplaced reliance has been placed by the petitioner on the Booklet Nos. and Leaf Nos. of the proformas used by police. Even, the veracity of the documents filed along the chargesheet cannot be tested and the court has to proceed on assumption that such material are true.

4.5. Case Diaries are booklets given to Investigating Officer to record Section 161 Cr.P.C. statements and at times it is used as continuation sheet in the police file since it is difficult to accommodate all the statements. That out of booklet containing 50 pages around 45-46 pages are part of police file which has been preserved, it might have been that 2-3 pages could have got misplaced during course of investigation but in so far as the majority of it is concerned it is already part of police file.

4.6. Further, these booklets pertain to the year 2020 and 2021 and same were used in other cases as well, thus, calling for these booklets would delay the matter further.



4.7. Substantively, the case records are already preserved as the trial court vide order dated 29.11.2024 directed the Police File (including case diaries) be kept/preserved in chambers of the Id. Trial court.

4.8. Lastly, with regards to the contention of restoration of the case diary booklets, the same is a procedural aspect which would be dealt during the later stage of the trial if the court is of the opinion that any infirmity exists in the said documents/booklets. Further, as regards the issue of antedating, petitioner does not require the copy of the case diary as the same is a part of record for the investigating agency and for reference to the court during trial. He places reliance on the judgment of *State of Orissa v. Debendra Nath Padhi* 2005 SCC (Cri) 415.

5. Having heard the rival contentions of learned Counsel for the petitioner as well as the respondent, the question to be decided is whether the Ld. trial court was right in dismissing the application for restoration of the case diary booklets no. 9998 and 9990.

6. Section 172 of the Cr. P.C. reads as under:

(1) Every police officer making an investigation under this Chapter shall day by day enter his proceeding in the investigation in a diary, setting forth the time at which the information reached him, the time at which he began and closed his investigation, the place or places visited by Mm, and a statement of the circumstances ascertained through his investigation.

1A. The statements of witnesses recorded during the course of investigation under section 161 shall be inserted in the case diary.



1B. *The diary referred to in sub-section (1) shall be a volume and duly paginated.*

(2) Any Criminal Court may send for the police diaries of a case under inquiry or trial in such Court, and may use such diaries, not as evidence in the case, but to aid it in such inquiry or trial.

(3) Neither the accused nor his agents shall be entitled to call for such diaries, nor shall he or they be entitled to see them merely because they are referred to by the Court; but, if they are used by the police officer who made them to refresh his memory, or if the Court uses them for the purpose of contradicting such police officer, the provisions of section 161 or section 145, as the case may be, of the Indian Evidence Act, 1872 (1 of 1872), shall apply.

7. It is evident from sub-section (2) of Section 172 Cr.P.C., that the Trial Court has unfettered power to call for and examine the entries in the police diaries maintained by the Investigating Officer. This is a very important safeguard. The legislature has reposed complete trust in the Court conducting the inquiry or the trial. If there is any inconsistency or contradiction arising in the evidence, the Court can use the entries made in the diaries for the purposes of contradicting the police officer as provided in sub-section (3) of Section 172 of Cr.P.C. It cannot be denied that Court trying the case is the best guardian of interest of justice. Under sub-section (2) the criminal court may send for diaries and may use them not as evidence, but to aid it in an inquiry or trial. The information which the Court may get from the entries in such diaries usually will be utilized as foundation for questions to be put to the police witness and the court may, if necessary in its discretion use the entries to contradict the police officer, who made them. But the entries in the police diary are neither substantive nor corroborative evidence, and that they cannot be



used against any other witness than against the police officer that too for the limited extent indicated above.

8. Coming to the use of police diary by the accused, sub-section (3) of Section 172 clearly lays down that neither the accused nor his agents shall be entitled to call for such diaries nor he or they may be entitled to see them merely because they are referred to by the Court.

9. The Hon'ble Supreme Court in the case of ***Mukund Lal vs. Union of India and Anr.***, AIR 1989 SC 144 while considering the question relating to inspection of the entries made in the case diary by the accused has observed thus:-

“We are of the opinion that the provision embodied in sub-section (3) of Section 172 of the CrPC cannot be characterised as unreasonable or arbitrary. Under sub-section (2) of Section 172 CrPC the court itself has the unfettered power to examine the entries in the diaries. This is a very important safeguard. The legislature has reposed complete trust in the court which is conducting the inquiry or the trial. It has empowered the court to call for any such relevant case diary; if there is any inconsistency or contradiction arising in the context of the case diary the court can use the entries for the purpose of contradicting the police officer as provided in sub-section (3) of Section 172 of the CrPC. Ultimately there can be no better custodian or guardian of the interest of justice than the court trying the case. No court will deny to itself the power to make use of the entries in the diary to the advantage of the accused by contradicting the police officer with reference to the contents of the diaries. In view of this safeguard, the charge of unreasonableness or arbitrariness cannot stand scrutiny. The petitioners claim an unfettered right to make roving inspection of the entries in the case diary regardless of whether these entries are used by the police officer concerned to refresh his memory or regardless of the fact whether the court has used these entries for the purpose of contradicting such police officer. It cannot be said that unless such unfettered right is conferred and recognised, the embargo engrafted in sub-section (3) of Section 172 of the CrPC would fail to meet the test of reasonableness. For instance in the case diary there might be a note as regards the identity of the informant



who gave some information which resulted in investigation into a particular aspect. Public interest demands that such an entry is not made available to the accused for it might endanger the safety of the informants and it might deter the informants from giving any information to assist the investigating agency, as observed in Mohinder Singh v. Emperor:

“The accused has no right to insist upon a police witness referring to his diary in order to elicit information which is privileged. The contents of the diary are not at the disposal of the defence and cannot be used except strictly in accordance with the provisions of Sections 162 and 172. Section 172 shows that witness may refresh his memory by reference to them but such use is at the discretion of the witness and the judge, whose duty it is to ensure that the privilege attaching to them by statute is strictly enforced.” The public interest requirement from the standpoint of the need to ensure a fair trial for an accused is more than sufficiently met by the power conferred on the court, which is the ultimate custodian of the interest of justice and can always be trusted to be vigilant to ensure that the interest of accused persons standing the trial, is fully safeguarded.”

10. From the afore-mentioned, it is clear that the denial of right to the accused to inspect the case diary cannot be characterized as unreasonable or arbitrary. The confidentiality is always kept in the investigation and it is not desirable to make available the police diary to the accused on his demand.

11. Coming back to the present case, petitioner has made two-fold prayer, i.e. preservation of the case diary booklets and reconstruction of the same.

12. Dealing with the first limb of the prayer of preservation of the case diary booklets, this Court vide interim order dated 02.12.2024



granted interim protection towards preservation of case diary booklet and directed as under:

“The case dairies involved in the present case be preserved by the respondent and more particularly Volume No. 9989 and Volume No. 9990. Any decision of the MM shall be subject to the outcome of the petition.”

13. The case diary is not the evidence but its absence may affect the fairness of trial and therefore directions may be given to preserve it. The power of giving such directions flows from the court duty to ensure compliance with Article 21 and its inherent powers and under Section 482 Cr.P.C. In view of the same, the interim order dated 02.12.2024 issuing directions for the preservation of the case diaries particularly volume nos. 9989 and 9990 is made absolute.

14. However the other pages of booklet nos. 9990 and 9989 which do not form part of case diary in the present case and which would have been used by the investigating officers for recording statements in various other FIRs being investigated by them at the relevant time cannot be reconstructed as the same is being beyond the scope of Section 172 and 91 Cr. P.C and also because petitioner is not entitled to have the copy of the same. The Court is within its competence to read the police diary only for aid and for satisfying its conscience in appreciating the legal evidence available on record but not beyond. The entries in the case diaries are not evidence nor they can be used by the accused in the court unless the case comes within the scope of Section 172(3) Cr.P.C.



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15. Hence petition for reconstruction of booklet nos. 9990 and 9989 in connection with the investigation of the case FIR No. 48/2020, P.S.Jafrabad is dismissed. However it is clarified that petitioner shall have a right to demonstrate antedating before the trial court during trial.

16. The petition is accordingly dismissed. It is clarified that any observation made in this order are only for the purpose of adjudication of the present application and shall not be treated as an expression on the merits of the case.

17. The pending applications, if any, also stand disposed of.

RAVINDER DUDEJA, J.

September 22, 2025
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