

CBI v. Radhey Shyam Gaur & ors.
CC No. 39/2019

19.08.2020

Present: Sh. Lalit Mohan, learned PP for CBI.

Sh. Vishwa Bhushan Arya, learned counsel for accused no. 2
with accused no. 2.

Sh. Gagan Minocha, learned counsel for accused no. 3 and 4.

This matter is listed today and is being taken up by video conference as per the notification no. 26/DHC/2020 dated 30.07.2020 of Hon'ble High Court of Delhi.

An application has been moved on behalf of accused no. 3 seeking exemption of appearance of A3 on medical grounds. Application is annexed with medical certificate. Application allowed and accused no. 3 is exempted for his appearance today.

Matter is listed for reply and arguments on application moved by the prosecution u/s 311 Cr.P.C. for recalling certain witnesses. Reply to this application has been filed by learned counsel for accused no. 2 as well as by learned counsel for accused no. 3 and 4. Copy supplied to learned PP for CBI.

I have heard the arguments on the application.

CBI has moved the present application u/s 311 Cr.P.C. in March 2020 when actual court proceedings were going on in the court.

Since in the meantime due to spread of pandemic lockdown was called upon by the Government. This application was left to be decided. Now proceedings are being taken up through video conferencing.

In this application it is stated that certain documents are left to be exhibited during the course of trial and therefore, PW25 Anup Lama, PW9 S.K. Malhotra, PW55 Naveen Dhamicha, PW44 Rajeev Jain, PW16 Naresh Chander Gupta, PW43 Sampath Lal Jain, PW49 D.K. Mittal and PW8 Sanjay Arora are required to be recalled for proving certain documents as mentioned against the names of these witnesses in tabulation form in para 3 of the application. There is necessity to mention certain details of these documents which are D-41 to D-49, D-53, D-57, D-62, D-64 to D-68, D-70, D-71, D-75, D-76, D-79, D-82, D-100, D-102, D-106, D-107, D-109, D-111, D-112, D-116, D-123, D-124, D-133, D-134, D-136, D-137, D-139, D-150 to D-155, D-166, D-175, D-232 to D-241 etc. It is stated that above mentioned witnesses may be recalled for proving the documents as mentioned in the application.

Before I discuss the reply filed on behalf of accused persons important here is to note that present matter pertains to year 1999 in which charge was framed on 28.04.2005 and till date prosecution evidence has not been completed despite passage of 15 long years. Till date prosecution has examined 52 witnesses. It is one of the oldest matter pending in this court. The present application has been moved at the stage when the evidence of investigating officer is being recorded by this court.

In the reply filed on behalf of accused no. 2 it is stated that the present application for recalling the witnesses is nothing but an abuse

of process of law and an attempt to fill up the gap or removing the lacuna in the present case. While referring to the judgment of Hon'ble Apex Court in **Mohanlal Shamji Soni v. Union of India AIR 1991 SC 1346**, it is stated that settled law is that the prosecution cannot be allowed to fill up the lacuna of prosecution case precipitated out of cross examination of the witnesses on behalf of the accused. It is also stated that in the present case charge sheet was filed in the year 1999 and the matter is very old and pending for recording PE. It is stated that application moved by the prosecution is devoid of any details for giving any justifications for recalling the witnesses or for explaining the necessity of exhibition of numerous documents as mentioned in the application. It is stated that prosecution had got sufficient opportunity to prove the relied upon documents when the relevant witnesses were being examined.

In the reply filed on behalf of accused no. 3 and 4 also more or less similar pleas have been taken and it is stated that prosecution has already availed numerous opportunities to conclude PE. It is specifically mentioned that in the order sheets dated 13.02.2020 and 19.02.2020 of this court it is clearly mentioned that prosecution submitted that they do not want to examine any other witness before starting recording of evidence of IO. Learned counsel for accused no. 3 and 4 has also relied upon judgment of Delhi High Court in **Rajan Dwivedi's case 2007 (1) JCC 279** as well as judgment in case of **Harbhajan Lal Nayyar v. State 1988-91 CC Cases 715 (supp.)**.

I have heard learned PP for CBI as well as Sh. Vishwa Bhushan Arya learned counsel for accused no. 2 as well as Sh. Gagan Minocha learned counsel for accused no. 3 and 4.

Perusal of section 311 Cr.P.C. would show that a wide power has been conferred to the court to summon or recall any witness during the course of trial if it appears to be essential to the court for just decision of the matter. The provision empowers the criminal court to recall any witness at any stage of trial if it is shown to be essential for proper decision of the matter. The ultimate quest of the criminal court is to reach to the truth of the matter and therefore, provisions of section 311 Cr.P.C gives a wide power to the court to examine or re-examine any witness during the course of trial. However, having been conferred such powers, court is also required to ensure that such power must not be exercised to allow either prosecution or the accused to fill up the lacunae left in their case or to cause unnecessary prejudice to either side. There are numerous judgments by the Apex Court as well as by Hon'ble High Court of Delhi reiterating the established legal proposition that the ultimate object of the provision is to empower the court to recall any witness at any stage of the trial if there are legal reasons for the same. But at the same time there should be judicious exercise of such power.

Keeping such legal proposition in mind if I examine the application moved by the prosecution, first of all it is noted that the application is completely silent as to why the recalling of these witnesses is essential. There is not even a single word mentioned in the application as to why the documents stated to be left to be exhibited were not proved as per law during earlier stage of trial since 28.4.2005 when the charge in this case was framed. Moreover, numerous documents have been mentioned against the names of different witnesses sought to be recalled in the application, without explaining how those documents relate to the

witnesses sought to be recalled. In this regard, perusal of the record would show that many of the documents are un-relied upon by the prosecution and certain documents are only photocopies. There is no explanation at all from the prosecution as to why these documents if at all were required to be proved, were not duly proved as per law in earlier stages. There is also ambiguity as to whether witnesses sought to be recalled can lawfully prove these documents or not.

I have already noted above that present matter pertains to year 1999 and is one of the oldest matter pending in this court. No doubt delay in moving the application in all situation may not be a reason for declining the application, but in this case application is completely devoid of any details of necessity of recalling the witnesses as well as any connection of the witnesses for proving the documents mentioned against their names. In the absence of the same court cannot at the dictation of the prosecution recall the witnesses at belated stage when no justification is given for the same. The court also cannot at this belated stage of trial make an experience to recall these witnesses which would certainly cause prejudice to the accused persons. Learned counsels for accused persons have rightly relied upon the judgment of Apex Court in case of **Mohanlal Shamji Soni** (supra) and judgments in case of **Rajan Dwivedi** (supra) and **Harbhan Lal Nayyar** (supra). Important in this context is to refer the judgment in **Harbhajan Lal Nayyar's** case (supra) wherein it was held that if the application for recalling the witnesses is bereft of any detail and does not indicate as to how and in what manner recording of certain witness is necessary for just decision of the case, such application is bound to be declined. In this case also application moved by the

prosecution is completely devoid of any details of necessity to recall the witnesses. Even otherwise merely certain documents were not exhibited by the prosecution at the time of recording of the witness cannot be a reason to the court to recall other witnesses at this belated stage of trial.

For the reasons stated above application stands dismissed.

Matter is not to be fixed for recording remaining evidence of IO. Since recording of evidence cannot be conducted through video conference, therefore, put up this matter on 04.09.2020 for recording PE in actual physical court.

(Shailender Malik)
Special Judge (PC Act) CBI
Rouse Avenue Courts, New Delhi
19.08.2020

CBI v. K.M. Sathianathan & ors.
CC No. 41/2019

19.08.2020

Present: Sh. Lalit Mohan, learned PP for the CBI.

Sh. Anuj Kapoor, learned counsel for accused no. 1.

None for other accused persons.

Matter has been taken up through video conference. This matter is listed for recording of P.E. As per the notification no. 26/DHC/2020 dated 30.07.2020 of Hon'ble High Court of Delhi proceedings in the present case for recording evidence cannot be carried out through video conference.

Accordingly, matter is being adjourned to 08.09.2020 for P.E. Notice be issued in e-form to other accused persons as well as their counsels for their appearance on next date of hearing in physical court or through video conference as the case may be.

(Shailender Malik)
Special Judge (PC Act) CBI
Rouse Avenue Courts, New Delhi
19.08.2020

CBI v. Sanjeev Sharma & ors.
CC No. 10/2020

19.08.2020

Present: Sh. Lalit Mohan, learned PP for the CBI.

IO Inspector H.B. Attari.

Ahlmad Sh. Onkar.

Proceedings in this case have been taken up through VC upon moving an application by learned PP for CBI submitting that DVDs to be supplied to accused persons in terms of previous order of this court dated 18.8.2020 with duly sealed parcels. He has moved the application seeking permission to open the seal and to hand over the copy of DVD to accused/their representatives.

Heard.

In the interest of justice permission granted for opening the seal of the parcel containing the DVDs and DVDs may be provided to accused persons/their representatives as per order of this court.

(Shailender Malik)
Special Judge (PC Act) CBI
Rouse Avenue Courts, New Delhi
19.08.2020