

CBI vs. Sh. Ashutosh Verma & Ors.  
CC No. 192/19

07.07.2020

Present:- Sh. Brijesh Kumar Singh, Ld. Senior P.P for CBI.

Accused No. 1 Sh. Ashutosh Verma in person with Ld. Counsels Sh. P.K. Dubey, Ms. Smriti Sinha, Mr. Shri Singh, Mr. Gautam Khazanchi, Mr. Shiv Chopra, Mr. Anurag Andley, Ms. Harpreet Kalsi, Mr. Gaganjyot Singh, Ms. Smriti Ramchandran, Mr. Nirvikar Singh and Sh. Prince Kumar.


Accused No. 2 Sh. Suresh Nanda in person with Ld. Sr. Counsel Sh. Ramesh Gupta along with Sh. Sandeep Kapoor and Sh. Alok Sharma, Advocates.

Accused No. 3 Sh. Bipin Shah in person with Ld. Counsel Sh. Anindya Malhotra and Sh. Shaurya Lamba.

(Through VC using Cisco Webex App.)

On the last date of hearing, the learned counsel for Accused No.1 was addressing arguments about proving deposit of CD containing 134 calls with the malkhana. At that time, it was contended by the learned Senior PP for CBI that the accused should have put such questions to the IO of the case in cross examination. The learned Senior PP for CBI would get opportunity for rebuttal arguments after the learned counsels for the accused have addressed their arguments. However, learned counsel for Accused No.1 addressed arguments on the remarks/comments of the learned Senior PP for CBI noted above. The learned counsel submitted that the list of articles at Serial No. 8 mentions "MR 452/2008, one sealed packet containing recorded call information report along with one compact disc containing 114 calls and 20 SMS received from special unit, CBI, New Delhi."

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The learned counsel referred to the case of **Amarjit Singh versus State (Delhi Administration), 1995 (32) DRJ (DB) 110** to submit that it was for the prosecution to prove that the case property was deposited in malkhana unhampered. The learned counsel submitted that none of the 60 prosecution witnesses have deposed with regard to MR 452/2008. The same was not proved by producing the malkhana register in the court. With reference to para 9 of the judgment in the case of **Amarjit Singh (supra)**, it was submitted that neither PW 21 nor the Investigating Officer of the case have deposed about status of seal.


The learned counsel referred to another judgment titled as **Prempal Singh versus State, 2000 (55) DRJ 759** to submit that if the seal after use was kept by the police officials themselves, the possibility of tempering with the contents of the sealed parcel cannot be ruled out. In this case the seal was not handed over to any independent witness.

The learned counsel submitted that in the present case no prosecution witness deposed that the seal was not tempered with. Reference was made to the judgment in the case of **Rajan Ali vs. State (Delhi Administration), 1 (1999) DLT 194** to submit that the Investigating Officer ought to have deposed in his evidence that the sample was not tampered with so long as it remained in his custody.

The learned counsel next referred to the observations of the court which were recorded in the evidence of PW1 Shri Bhuvnesh Kulshreshtha that when an envelope duly sealed with the seal of CFSL, Delhi and cross signature of a person affixed on 30/05/2008 was opened, it was found to contain four pages titled as recorded calls information report and one Sony CD packet.

The learned counsel referred to the evidence of PW-21 where Annexure "A" in respect of 134 calls was exhibited as Exhibit PW 21/3 (D-62). The learned counsel showed that Annexure "A" is of 5 pages and not 4 pages.

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The learned counsel referred to the cross examination of PW-21 recorded on 06.03.2017, internal page 7, where the witness deposed that the call information report mentioned in Exhibit PW 21/1 and PW 21/7 is different from Annexure "A" to the certificate under section 65-B of Evidence Act. The witness further deposed that recorded call information report of 134 calls which had been mentioned in Exhibit PW 21/1 had not been shown to him in the court.

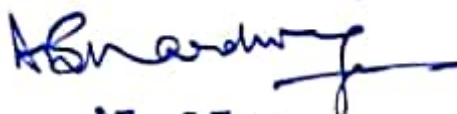
The learned counsel submitted that the four page document noted during evidence of PW1 was neither marked nor exhibited.

The learned counsel submitted that when the recorded call information was not shown to PW-21, the accused were denied with the opportunity to cross examine this witness with regard to recorded call information report (RCIR). The learned counsel submitted that there is no RCIR on record of the court.

The learned counsel referred to the evidence of PW-21, internal page 7, where the witness has deposed that he had met the Investigating Officer of this case two times. Learned counsel submitted that these two dates are 30/05/2008 when the 134 recorded calls and 20/08/2012 when other recorded calls were handed over the investigating officer.

At internal page 9, the witness has deposed that the investigating officer of this case had not contacted him with regard to its investigation prior to 30/05/2008. The witness deposed that the investigating officer provides the reference point to the special unit and it is for the special unit to decide what is relevant material. The learned counsel submitted that if the investigating officer had not met this witness before 30/05/2008, then how the special unit decided relevancy of the recorded conversation. The witness verified that investigating officer is not allowed to access and only this witness, his team and his SP were authorized to access the logger through their ID and password.

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The learned counsel referred to the cross examination of investigating officer of this case PW-59 Shri Ram Singh who also deposed that he had not met PW-21 before 30/05/2008. Ld. Counsel read from internal page 6 to internal page 9 of the cross examination of this witness to show that the position of the witness has been that he got the recorded calls on 30<sup>th</sup> May 2008.

The learned counsel referred to para 17 of the application of CBI filed for demand of the accused on 14/03/2008. It was mentioned in the application **"That, the legally intercepted conversation amongst the accused persons revealed that ..."**. The learned counsel submitted that this shows prosecution had the recorded conversation as on 14/03/2008 itself contrary to their evidence that they got the CD for the first time on 30/05/2008. The learned counsel submitted that PW 21 is not a credible witness and is abettor along with investigating officer Shri Ram Singh for forgeries in this case.

Now, put up the matter for further arguments on **10.07.2020 at 2:30 PM.**

Let a copy of this order be sent by WhatsApp for information to all the accused and their learned counsels.



**(ARUN BHARDWAJ)**  
Special Judge (P.C. Act)(CBI-05)  
Rouse Avenue District Court,  
New Delhi/07.07.2020