

CBI vs. Sh. Ashutosh Verma & Ors.

CC No. 192/19

26.06.2020

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. Gagajyot 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 Kumar, Advocates.

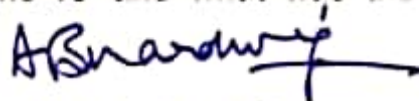
Accused No. 3 Sh. Bipin Shah in person with Ld. Counsel Sh. Anindya Malhotra.

( THROUGH VC USING CISCO APP )

Shri P.K. Dubey, learned counsel for Accused No. 1 Shri Ashutosh Verma resumed addressing final arguments.

The learned counsel pointed out that the investigating agency took just 10 minutes each for recording the refusal memo D-67 and D-66. However, he submitted that besides Shri Ashutosh Verma and Shri Sanjeev Nanda, there were 2 other accused also namely Shri Suresh Nanda and Shri Bipin Shah. The learned counsel submitted that if the prosecution did not attempt to take voice samples of these 2 accused persons, then it has to explain why their voice samples were not found necessary by the investigation agency and if their voice samples were sought to be taken, then what was the outcome? Whether they had refused to give voice sample? Whether they had given voice sample, and if yes, whether any report of the expert was obtained with regard to those voice samples and the result thereof. The learned counsel submitted that the investigating agency is guilty of concealing these facts from the court and therefore adverse inference ought to be drawn against it.

The learned counsel again reverted to the evidence of PW 28 Shri Yoginder Kumar to point out that the said witness is silent about Shri Bipin Shah and Shri Suresh Nanda. The learned counsel pointed out to the evidence of this witness where he has stated that "Some documents were handed over to the IO and a memo in this regard was prepared which was signed by me." The learned counsel submitted who had handed over the documents to the IO and what was the

  
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nature of these documents has not come on record. Learned counsel again submitted that this witness had noted the names of Shri Ashutosh Verma and Shri Sanjiv Nanda on a piece of paper before starting of his evidence and was therefore a tutored witness. The learned counsel submitted that this witness had not even identified Sh. Ashutosh Verma when his evidence was recorded in the court. The learned counsel submitted that considering the evidence of this witness where he stated that Shri Ashutosh Verma had not signed on refusal memo in his presence, noting the names of Sh. Ashutosh Verma and Shri Sanjiv Nanda by him on a piece of paper before starting of his evidence and non-identification of Shri Ashutosh Verma by the witness in the court shows that the refusal memo is not proved as per law.

Learned counsel raised a question whether the investigating officer of the case can prove this refusal memo? Learned counsel referred to the case of Tori Singh decided by the Hon'ble Supreme Court in the year 1992 and read para 7 of the said judgement in support of his submissions. Relying on the judgement, the learned counsel submitted that when the witness has not proved the document, the same cannot be proved by the investigating officer who has seized the same. The learned counsel referred to the cross examination of PW 59/IO of the case recorded on 29/01/2018 to point out that when the IO had deposed about memo Exhibit PW 28/2 (D-67) the same was objected to then and there. The learned counsel therefore submitted that he had raised objection at the 1<sup>st</sup> opportunity and it cannot be said that the accused is raising this objection at the time of final arguments. The learned counsel submitted that the accused had given the suggestion to the IO of the case that since the CD was tempered therefore he deliberately did not obtain the voice sample of Shri Ashutosh Verma and created false documents Exhibit PW-28/2 and obtained signatures of Shri Ashutosh Verma under pressure and duress while he was in custody.

Next, the learned counsel referred to the statement of the accused recorded under section 313 of CrPC and referred to question no. 266, 267 and 268 where the response of the accused to the questions was that the refusal memo is fabricated document and he was forced to sign on the same while in custody of CBI.

To recapitulate, the learned counsel submitted that he had confronted the IO of the case with the defence of the accused and had given the explanation at the 1<sup>st</sup> opportunity at the stage of statement under section 313 CrPC. The learned counsel

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submitted that when an accused refuses to give his voice sample, the IO is not remedy less and can move an application before the concerned court for directions under section 311 A of CrPC. In case the accused still does not give voice sample even after orders of the court, only then adverse inference can be drawn against him. The Id Counsel submitted that the accused was produced before the learned Special Judge on 14/03/2008 but no application was moved by the IO of the case for seeking directions for voice sample.

Learned counsel referred to the judgement in the case of Tomasso Bruno (2015 (7) SCC 178) and read para 24, 26, 27 and 28 from the judgement to submit that this judgement clearly covers the case of the accused. The learned counsel submitted that the requirement of law in this regard is that 1<sup>st</sup> there has to be matching of voice of the accused and then ruling out tempering as also held in the case of Ram Singh.

The learned counsel again submitted that D-67 is a false document which was got signed from the accused under duress and not in the presence of PW 28. There is no explanation for dropping the other attesting witness of the refusal memo namely Shri Naresh Tomar. There is no averment in the chargesheet whether voice sample of Shri Bipin Shah and Shri Suresh Nanda was taken or not. At the cost of repetition, the learned counsel again argued that court was not moved by the CBI for seeking directions for the accused to give his voice sample. The accused was not identified by PW 28. The witness had a written slip noting the names of the accused before he entered the witness box which shows that he is a tutored witness. Since the IO of the case got CD on 30/05/2008, he could not be said to be ready with proposed sample keywords on 13/03/2008 when the so-called refusal memo was recorded. The prosecution has not produced the blank CD on which voice sample was sought to be recorded. The CBI has not produced any hardware/equipment for recording the sample voice. There is no document as per the judgement in the case of 'Nilesh' produced on record to show proposed voice sample with mixture of incriminating keywords and standard words. Expert from CFSL was not examined who was ready for recording the question. Other CBI officials present in the office as per the deposition of PW 28 did not sign on the refusal memo. There is no evidence that the accused was taken to any special room/lab for the recording of his voice sample. The learned counsel submitted that all these submissions show that the evidence of PW 28 is liable to be discarded. The learned counsel

A. B. Shrivastava  
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submitted that IO of the case PW 59 has fabricated D-67 which is liable to be discarded.

The learned counsel submitted that while opening the case of prosecution, the learned Senior PP only read call details. Whether intercepted calls are substantive evidence or corroborative evidence? Learned counsel referred to the decision of Hon'ble Delhi High Court in the case of Anurag Vardan, Criminal Miscellaneous Main 2570/2003 to submit that intercepted calls are only corroborative evidence and not substantive evidence. The learned counsel therefore submitted that there should be some substantive evidence which should be supported by corroborative evidence. Tainted evidence cannot corroborate other tainted evidence (1979 (4) SCC 312, Para 4). The learned counsel submitted that if the intercepted calls are discarded, CBI has no substantive evidence to prove its case.

The learned counsel also referred to Seizure Memo D-21. Learned counsel submitted that the sealed packet contained Recorded Calls Information Report along with 1 compact disc, containing voice content of 114 calls and 20 SMS in 134 files, having words "RCAC12008A0001,CBI,ACU1 New Delhi". The learned counsel submitted that as per evidence of Shri Kashyap, he was never given a copy of FIR. The learned counsel submitted it is beyond comprehension how the RC number of the case came to be recorded on the compact disc in the absence of any information of RC number with Shri Kashyap. The learned counsel submitted that the recorded calls were never sent to CFSL to rule out tempering and therefore the 3<sup>rd</sup> test laid down in the case of from Singh failed in this case.

Now the learned counsel referred to the evidence of PW 1 Shri Bhuvnesh Kulshreshtha. While recording the evidence of this witness, there is court observation that "At this stage an envelop duly sealed with the seal of CFSL Delhi and cross signature of a person which have been affixed on 30/05/2008 is produced". Learned counsel submitted that if the CD was sent to CFSL, then where is the report of CFSL. The learned counsel submitted that there is no requisition letter addressed to CFSL in this regard.

The learned counsel referred to the cross examination of IO of the case/PW 59 recorded on 24/05/2018 where he denied the suggestion that CD exhibit PW 21/5 was sent to CFSL and denied that CD was tempered with the connivance of CFSL officials. Learned counsel submitted that the CD should have been sent to CFSL to rule out tempering. The learned counsel

A. B. Narayan  
28.01.2020

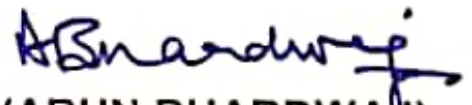
submitted that he is addressing arguments to the sanctity of document and not legality of the document. The learned counsel referred to the cross examination of PW 21 Shri MC Kashyap dated 06/03/2017 where the witness has deposed that he does not remember whether the memos Exhibit PW 21/1 and 7 were typed by the IO in his office or whether he had already typed the contents of the memos in his own office. Learned counsel submitted that D-21 does not speak about any certificate under section 65B of Indian Evidence Act. Learned counsel submitted that the Special Unit has segregated 134 calls which cannot be possible if they were not having the RC. The learned counsel further submitted that the evidence of PW-21 is that prior to 30/05/2008 the IO of this case had not contacted him with regard to its investigation. The learned counsel submitted that if the IO had not met this witness before 30/05/2008, no call records were with the IO on 13/03/2008. Learned counsel submitted that the information was already compromised or was being intercepted illegally.

At this stage, the learned counsel requested that he will continue his arguments on the next date.

The learned counsel for Accused No.2 also submitted that he be given 10 days time to satisfy the queries of this court regarding application of the accused seeking permission to travel abroad.

List now on 30<sup>th</sup> June 2020 at 2.15 PM for further final arguments.

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



(ARUN BHARDWAJ)  
Special Judge (P.C. Act)(CBI-05)  
Rouse Avenue District Court,  
New Delhi/26.06.2020