

CBI Vs. Ramesh Kumar & Ors.

CC No. 383/2019

30.06.2020

Present: Sh. A. K. Kushwaha, Ld. PP for CBI.

None for A-1

None for A-2 & A-5.

Sh. Kulbhushan Mehta, Ld. Counsel for A-3 & A-4.

The matter has been taken up through video conferencing using CISCO WEBEX hosted by Sh. Mukesh Kant Sharma, Reader of this Court.

The case is fixed for clarification, if any/order on applications under Section 311 Cr.P.C. moved by CBI.

Further clarifications given by Ld. PP for CBI on the applications under Sections 311 Cr.P.C.

Put up for orders at 2.00 PM.

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30/6/2020

(Anil Kumar Sisodia)

Special Judge (PC Act), (CBI)-07,
Rouse Avenue Courts, New Delhi
30.06.2020.

2.00 PM

Present: None.

Vide separate order announced today, application under Section 311 Cr.P.C. bearing IA No. 1/2020 is partly allowed and application under Section 311 Cr.P.C. bearing IA No. 2/2020 stands allowed. Both the applications stand disposed of accordingly.

Now matter is to be listed for prosecution evidence.

Put up for prosecution evidence on 19.08.2020.

A copy of the order be sent to Ld. PP for CBI as well as Ld. counsels for accused persons on their whatsApp/e-mail ID for information.

A copy of this order be also sent to the Computer Branch for uploading on the official website.

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30/6/2020

(Anil Kumar Sisodia)

Special Judge (PC Act), (CBI)-07,
Rouse Avenue Courts, New Delhi
30.06.2020.

**IN THE COURT OF SH. ANIL KUMAR SISODIA,
SPECIAL JUDGE (PC ACT) (CBI)-07 ROUSE AVENUE COURT:
NEW DELHI.**

CC No.: 383/2019

IA No. 1/2020 & 2/2020

CBI Vs. Ramesh Kumar & Ors.

ORDER

1. Vide this order, I shall dispose of two applications filed by CBI under Section 311 Cr.P.C, by proceedings held through Video Conferencing.

2. Notices of the applications were given to the accused persons. Ld. Counsels for the accused persons did not prefer to file replies to the applications. Arguments on the applications were heard before the lockdown but before the applications could be decided, the functioning of the courts were suspended in view of COVID 19 pandemic.

3. Thereafter, case was taken up through video conferencing on 18.06.2020 in view of orders of Hon'ble High Court of Delhi bearing No. R-235/RG/DHC/2020 dated 16.05.2020 and 16/DHC/2020 dated 13.06.2020 and notices were issued to the counsels for the parties for 24.06.2020 through e-mails and WhatsApp. Ld. Counsels for the parties appeared through VC and consented for conducting the proceeding through video conferencing. Arguments

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~~on~~ the applications were re-heard on 24.06.2020 itself.

4. Sh. Sandeep Sharma Adv., Ld. Counsel for A-1 submits that he has no objection to the applications being allowed as the applications do not concern A-1.
5. Sh. Suresh Tomar & Ms. Anita Saini Advs., Ld. Counsels for A-2 & A-5 have also submitted that they have no objection to the applications and court may decide the application as required in the interest of justice.
6. Sh. Kulbhushan Mehta Adv., Ld. Counsel for A-3 & A-4 has argued that these applications have been filed to fill up the lacunas in this case by the prosecution as these facts were already in the knowledge of the CBI since the very beginning and no new fact has emerged during the course of trial warranting the filing of the present two applications under Section 311 Cr.P.C. by CBI and has prayed for dismissal of the applications.
7. Sh. A.K. Kushwaha Ld. PP for CBI has argued that on the line of the applications and has submitted that the case is still at the stage of evidence and no prejudice will be caused to the accused persons if the application is allowed. He also argued that there are some typographical/clerical mistakes in the applications regarding the names of the accused persons against whom the witnesses are required to be summoned for giving their deposition and has prayed that those mistakes may be rectified on his oral request as the

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rectification is not going to change the nature of applications or the deposition of the witnesses. He further pointed out the mistakes as under:-

In I.A. No. 1/2020

- (i) In para 3 and 4, the name of the accused may be read as Ish Kumar Manchanda (A-4) in place of Rajender Singh (A-2) and Rajender Kumar (A-3) respectively.
- (ii) In para 5, the name of the accused may be read as Lakhwinder Singh (A-5) in place of Ish Kumar Manchanda (A-4).

In I.A. No. 2/2020

- (i) In para 2, the name of the accused may be read Rajender Singh (A-2) in place of ~~Lakhwinder Singh~~ Lakhwinder Singh.

8. Ld. Counsel for A-3 & A-4 has submitted that he has no objection to the rectifications/corrections in the applications as sought by Ld. PP for CBI.
9. I have perused the applications as well as the record i.e., E-chargesheet and testimony of the witnesses carefully. Perusal of the applications would show that prosecution has sought to summon some new witnesses and recall some witnesses already examined to prove the specimen handwriting/signatures/thumb impressions of some accused/witnesses which were left out inadvertently. D-48

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available with chargesheet contains the specimen handwriting/signatures/thumb impressions of the accused/witnesses. Similarly additional documents S-170 to S-173 filed vide application dated 2/4/2019 contains the specimen thumb impressions of Champa Devi. Perusal of D-48 shows that Dev Raj Marmu is witness to S-28 to S-52 pertaining to A-4 Ish Kumar Manchanda and Nitesh Kumar Attri is witness to S-53 to S-60, also pertaining to A-4 Ish Kumar Manchanda. Similarly, Man Singh is witness to S-61 to S-71 pertaining to A-2 Rajender Singh and also S-72 to S-90 pertaining to Rajender Kumar(A-3) whereas Arun Kumar is witness to S-133 to S-150 pertaining to A-5 Lakhwinder Singh. The prosecution wants to prove these documents through the witnesses, in whose presence, these documents were prepared. Hence, in my considered opinion the request made by Ld. PP for CBI for correction/rectification of names of accused persons in the two applications amounts to correction of clerical/typographical mistakes and the same do not cause any prejudice to the accused persons. Hence, the oral request made by Ld. PP for CBI for correction / rectification in the names of accused persons in the applications, as noted above, is allowed.

10. Now I shall deal with the two applications separately as under:-

I.A. No. 1/2020.

11. By way of this application prosecution wants to summon and examine PWs Dev Raj Marmu, Nitesh Kumar Attri, Arun Kumar

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and Rajender Singh to prove the specimen handwriting/signature/thumb impression of Ish Kumar Manchanda (A-4), Lakhwinder Singh (A-5) and PW Manjeet Kaur respectively.

12. It has been submitted by Ld. PP for CBI that although the relevant documents (D-48) were filed alongwith chargesheet but due to inadvertence/oversight, the names of these witnesses were left out in the list of witnesses filed alongwith chargesheet. It has been submitted that no prejudice would be caused if the application is allowed and witnesses are summoned and examined as the case is still at the stage of PE.
13. Per Contra, Ld. Counsel for A-3 and A-4 has submitted that these facts were well within the knowledge of the prosecution but no steps were taken in time to file this application. It has been submitted that this application is highly belated and has been filed to fill up the lacuna in the case and no reason has been given as to why this application was not filed at the earliest. Hence, the application is liable to be dismissed.
14. As already noted above, D-48 was filed alongwith the chargesheet but the names of these witnesses were not mentioned in the list of witnesses by the IO for the reasons best known to him. No doubt, the application could have been filed at an earlier stage, had prosecution been a little diligent, but nevertheless, the case is still at the stage of prosecution evidence and it cannot be said that the

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application has been filed at such a belated stage as to cause serious prejudice to the accused persons. In my considered opinion no prejudice would be caused to the accused persons if the prosecution is given opportunity to examine the witnesses for proving the documents in question as accused persons will have full opportunity to cross-examine the witnesses once they have been examined by the prosecution. However, the request of CBI to summon and examine the witness Rajender Singh for proving the specimen handwriting/signature/thumb impression of PW Smt. Manjeet Kaur S-6 to S-9 cannot be allowed as perusal of these documents shows that the witness is none other than A-2 Rajender Singh himself. This fact is further fortified from the address mentioned below the name of the witness which is the same as that of accused no.2 Rajender Singh.

15. Hence, in view of the above discussion, the application filed by CBI is partly allowed and PWs Dev Raj Marmu, Nitesh Kumar Attri and Arun Kumar are allowed to be summoned and examined by CBI. The application stands dismissed qua PW Rajender Singh.

I.A. No.2/2020

16. By way of this application CBI has sought to recall PW-17 Man Singh, PW-7 Champa Devi and PW-23 V.K. Maggo to prove specimen handwriting/signature/thumb impression of A-2 Rajender Singh and PW Champa Devi.

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17. Ld. PP for CBI has argued that these witnesses were examined but due to inadvertence/oversight they could not be examined on the documents pertaining to specimen handwriting/signature/thumb impression of A-2 Rajender Singh (S-61 to S-71) and PW Champa Devi (S-170 to S-173). It has been submitted that examination of these witnesses is crucial to the case of the prosecution and no prejudice will be caused to the accused persons if these witnesses are recalled and examined on the above mentioned documents as the case is still at the stage of PE.
18. Per Contra, Ld Counsel for A-3 and A-4 has submitted that these facts were well within the knowledge of the prosecution but no steps were taken in time to file this application. It has been submitted that this application is highly belated and has been filed to fill up the lacuna in the case and no reason has been given as to why this application was not filed at the earliest. Hence, the application is liable to be dismissed.
19. Perusal of the record would show that when PW-7 Champa Devi was examined as a witness and documents S-170 to S-173 were not available on the court record as these documents were filed later on vide an application dated 2.4.2019 and no additional list of documents was even filed along with the said application. Hence, there was no occasion for prosecution to examine Champa Devi on these documents. But so far as PW-17 and PW-23 are concerned, these documents were very much available on the court record at

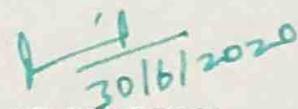
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the time of their examination. Ld. PP has submitted that these documents could not be put to the witnesses due to inadvertence/oversight and these documents are crucial for the case of prosecution.

20. Taking in to consideration, the rival submissions made Ld. Counsels for the parties and the fact proving of these documents is crucial to arrive at just and fair decision in the case, I am of the considered opinion that recalling of these witnesses is essential in the larger interest of justice. No prejudice would be caused to the accused persons by examination of these witnesses as the case is still at the stage of PE accused persons will have the opportunity to test the veracity of these witnesses during cross examination. Hence, the application filed by CBI is allowed PW-7 Champa Devi, PW-17 Man Singh and PW-23 V.K. Maggo are allowed to be recalled for their further examination and cross examination.

21. In view of the above discussion, both the I.A.s stand disposed of accordingly.

**Announced Today
Through VC**


(ANIL KUMAR SISODIA)
Special Judge (PC Act) (CBI)-07
Rouse Avenue Courts: New Delhi
30.06.2019