CBI vs. Sh. Ashutosh Verma & Ors.

CC No. 192/19

23.06.2020

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 Webex App.)

Shri P.K. Dubey, learned counsel for accused no. 1 Shri Ashutosh Verma, resumed his final arguments.

The learned counsel referred to the cross examination of the Investigating Officer Additional SP, CBI Ram Singh recorded on 30/01/2018 to show that the Investigating Officer was well-versed with CBI manual and he had conducted investigation in about more than 15 cases. In response to maintenance of case diary, the witness responded that as per CBI manual, whenever proceedings are carried out regarding investigation, they have to be mentioned in daily diary. The extract of statement of witnesses recorded during investigation is also required to be mentioned in the case diary. In answer to specific questions whether it is mandatory to mention in the case diary if part investigation is handed over to a particular officer for particular purpose on particular date and whether it is mandatory to mention in the case very if investigation is assigned to other officer in a particular case or investigation is done by more than one officers, the answer of the witness was in affirmative.

The learned counsel submitted that on the directions of the court, the case diary was brought in the court and the response of the witness, to the question after seeing the case diary, whether he had met Shri M.C. Kashyap prior to 30/05/2008 in respect of the investigation of the present case, was that he had not met Shri M.C. Kashyap before 30/05/2008. The categorical answer of the witness was he had not received any CD of the intercepted calls from Shri Kashyap before 30/05/2008. The

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witness further responded that the transcripts of the intercepted calls were got prepared on dictation after 30/05/2008.

The learned counsel submitted that now he would be addressing his arguments with regard to electronic evidence of "intercepted calls". He submitted that the electronic evidence involved in the case is (i) a set of 134 calls and 32 calls, (ii) bugging at Erose Hotel and (iii) CCTV footage of Erose Intercontinental Hotel.

The learned counsel submitted that the importance of CBI manual has come for discussions before the Hon'ble Supreme Court and the Hon'ble Delhi High Court in numerous cases. The learned counsel referred to the case of **Vineet Narain versus Union of India**, 1998 (1) SCC 226 and read from para-58 (12) of the said judgement. The learned counsel submitted that under Article 142 of the Constitution of India, the judgement is binding and applicable to all. Learned counsel referred to the case of **CBI versus Ashok Aggarwal**, 2014 (14) SCC 295 and read para-21, 22 and 24 from the said judgement. The learned counsel submitted that the prosecution may question what prejudice the accused has suffered if prosecution has not followed the manual scrupulously?. The learned counsel submitted that the test is as per Article 21 of the Constitution of India. CBI manual is a procedure established as per law and any deviation from the manual is sufficient to show the prejudice to the accused. The learned counsel referred to **Ripun Bora versus State**, ILR (2012)I Delhi 412 which was a case of investigation against a Minister without consent of Director of CBI. The learned counsel referred to para 39, 40 (8.6), (8.7) and Para 41 of the judgement.

The learned counsel submitted if the sanctity of recovery memo goes, the sanctity of all the material recovered shall also go away and in case there is no recovery memo, the recovery does not have any legal sanctity and is not a piece of evidence. Learned counsel referred to para 13.20, 13.23, 13.24 and 13.27 from the CBI manual and submitted that malkhana moharar was not examined and Malkhana moharar register was also not produced during the trial. There is no evidence when the call records were deposited and taken from malkhana. Learned counsel submitted there is no recovery of CD regarding bugging at hotel Erose in the night of 04/03/2008 and the CD was deposited in malkhana in 2012. There is no recovery memo thereof.

The learned counsel referred to D-21 which is the seizure memo dated 30/05/2008 for seizure of call details CD in a sealed packet. Learned counsel referred to D-67 which is Refusal Memo dated 13/03/2008. The learned counsel submitted that both these memos i.e. the seizure memo and refusal memo are forged and fabricated documents. The learned counsel submitted that the attesting witnesses of the refusal memo are Shri Naresh Tomar and Shri Yoginder Kumar. Referring to the evidence of PW 28, Shri Yogender Kumar, the learned counsel submitted that during cross examination, the witnesses clearly stated that the signatures of Shri Ashutosh Verma on document Exhibit PW 28/2 were not appended in his presence. The learned counsel referred to the cross examination of the witness where the witness has stated that he had noted on a piece of paper the full names of Shri Ashutosh Verma and Shri Suresh Nanda as the matter was of 2008 and he was examined in 2017 and he was knowing the name of the accused only as Verma and Nanda.

It was further argued that the name of any expert from CFSL is not mentioned in the refusal memo and the other CBI officials who were present at the time have also not signed the said memo. The learned counsel submitted that it shows that there was no expert present for taking the voice simple at that time. The learned counsel submitted that the evidence of PW 28 has shown that his

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signatures were taken on the refusal memo at a later stage as accused no 1 had never refused voice sample

The learned counsel submitted that although the other attesting witness Shri Naresh Tomar was shown as one of the witnesses in the chargesheet but for reasons best known to the prosecution, the said witness was not examined. There is no explanation for dropping him and adverse inference be drawn against CBI. The learned counsel submitted that the memo prepared in the presence of Investigating Officer is hit by section 162 of CrPC.

The learned counsel submitted that for taking sample of voice, intercepted call record should be with the investigating officer. He should have the transcript of intercepted call records readily available with him. The keywords must be taken from the incriminating material. Transcript of sample of voice should also be ready with the investigating officer. The sample of voice should have keywords mixed with other general words. The reading material should have been ready with the investigating officer that was to be given to accused no 1 Shri Ashutosh Verma for voice recording. The learned counsel submitted that no witness of CFSL has been examined to prove readiness of the witness to take voice sample. There is no evidence that the investigating officer had arranged a blank CD. There is no requisition from CBI malkhana in this regard. The learned counsel referred to **Sudhir Chaudhary versus State**, 2016 (8) SCC 307 and read para 10, 11,12 and 13 from the said judgement. The learned counsel submitted that as per evidence of the Investigating Officer referred above, he got the intercepted call record on 30/05/2008 and he had no transcript of the recorded conversation available with him on 13/03/2008. And in case the Investigating Officer had with him the intercepted call record on 13/03/2008, it was not legally obtained and tempering cannot be ruled out. Learned counsel referred to **Ashok Kumar Dubey versus the State**, ILR (2014)III Delhi 2331 and read para 38, 39, 40, 41, 42 and 43 of the said judgement. The learned counsel referred to the case of "**Nilesh**"2011 (4) SCC 143 and read from para 41 for mixing of the incriminating keywords with general words for taking voice sample. The learned counsel submitted that the memo dated 30/05/2008 is a forged document and it is a case of consistent forgery at the end of prosecution.

(The learned counsel also submitted that there were 15 Inspectors in the department at the relevant time and not 50 as recorded in the ordersheet of 18.06.2020.)

At this stage, arguments on application filed by Accused No. 2 Shri Suresh Nanda seeking permission to travel abroad heard. The learned Senior PP for CBI submitted that no further reply is to be filed on behalf of CBI and objected to the relief claimed as per submissions made in the reply of CBI.

List on 25th June 2020 at 3:30 PM for orders on this application and on 26th June 2020 at 2.15 PM for further arguments by Shri PK Dubey, learned counsel for Accused No.1 Shri Ashutosh Verma.

(ARUN BHARDWAJ)
Special Judge (P.C. Act)(CBI-05)
Rouse Avenue District Court,
New Delhi/23.06.2020