

07.08.2020.

Present:- Sh. Brijesh Kumar Singh, Ld. Senior P.P for CBI with HIO of the case.

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

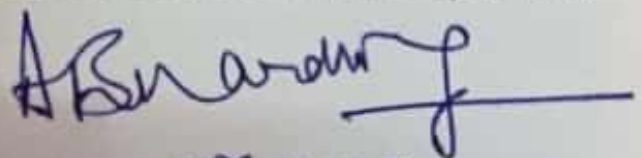
Accused No. 2 Sh. Suresh Nanda in person with Ld. Sr. Counsel Sh. Ramesh Gupta along with Sh. Sandeep Kapoor and Sh. Alok Sharma, Advocates.

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

(Through VC using Cisco Webex App.)

Shri P.K. Dubey learned counsel for Accused No. 1 Shri Ashutosh Verma continued with his final arguments today. As in the past, the thrust of the learned counsel continued to challenge the sanctity of electronic evidence in this case and reliability of the investigating officer of the case.

The learned counsel pointed out from the cross examination of PW-59, the investigating officer of this case, page 309, dated 31st January 2018 where the witness has deposed that it was not in his knowledge whether preliminary enquiry was conducted by CBI prior to registration of the present case. He had volunteered that the investigation of the present case was entrusted to him after registration of FIR i.e. on 8th March 2008. Learned counsel submitted


07.08.2020

that this shows that the investigating officer was not in the scene before 8th March 2008.

The learned counsel submitted that he has already argued that initially the stand of this witness during cross examination was that the CD was given to SP Ramnish by the source and SP Ramnish had given a copy of CD to this witness. The learned counsel submitted that SP Ramnish is not a prosecution witness. It was submitted that as the cross examination progressed, the witness went on to state that there were 2 CDs, one with SP Ramnish and another with this witness given by the source.

Next, the learned counsel referred to the evidence of this witness recorded on 31st January 2018 where the answer of the witness to the question after how much time he had sealed the CD when it was delivered to him by the source was that the CD was sealed immediately but after some time again stated that it was sealed within 1 hour. The witness stated that the CD given to him by the source was downloaded in his laptop for further investigation purposes but he had not made another CD from the laptop. Learned counsel submitted that PW 49, a scientist and expert in electronic data has already deposed that addition deletion in a CD is possible before the same is sealed. The witness PW-59 had deposed that he had made the transcript from the CD provided by the source. It has already been argued by the learned counsel that in the chargesheet there is no witness who had

AB Nandani
07.08.2020

identified the voice of the accused persons for the purposes of making the transcript.

Next, the learned counsel submitted arguments with regard to CDs provided to the learned counsels for the accused in compliance of section 207 of CrPC. It was pointed out that at page 315, the witness has deposed the CDs which were provided to the accused persons were prepared by the CFSL from the original CD provided by the source. The learned counsel submitted that there is no letter addressed to CFSL for providing CDs for the accused persons. There is no letter from CFSL to CBI for providing CDs for accused persons. It was submitted that PW-49 has not deposed that he had made any CD for accused persons. It was submitted that there is no handing over taking over of extra copies of CDs from CFSL. The learned counsel submitted that this shows that this witness is totally unbelievable. The witness has also deposed at page 319 that he had requested orally to Director CFSL for preparation of copies from the sealed CD. The learned counsel emphatically objected and submitted that this deposition of the witness showed that the investigating officer had access to the Director of CFSL. In the light of this, it was submitted that the report from CFSL loses all its sanctity. The learned counsel submitted that the properties of the CDs given to the accused persons show that they were created on 5th March 2008 at 2.09 PM which cannot be as by that time there was no source in picture.

A. S. Narayana
07.08.2020

Now, the learned counsel referred to the evidence of this witness recorded at page 323 dated 6th March 2018 where the witness has deposed that the CD was seized on 4th March 2008 and it was sent to CFSL in the year 2012 and during this period, the CD was kept in CBI Malkhana. The learned counsel, at this stage, pointed out his submissions addressed today in the very beginning, where the witness had deposed that he was given the investigation on 8th March 2008. The learned counsel submitted that this statement of the witness that he got the CD on 4th March 2008 can not be reconciled with his statement that he was given the investigation on 8th March 2008. It was submitted that there is no seizure memo or panchnama and there is no prosecution evidence to show how this CD was seized on 4th March 2008. It was submitted that the allegations in the CD pertain to the incident of 4th March 2008 to 5 March 2008 and there is no incidence of 4th March 2008 so how the source prepared the CD on 4th March 2008 and gave it to the investigating officer. It was submitted that entire story is a fabricated story. Learned counsel insisted that the prosecution has to show how and when the source gave the CD to the investigating officer. To the interjection of learned Senior PP for CBI that the date of 4th of March 2008 may be a slip of tongue/mistake on the part of the investigating officer was countered by submitting that the witness was not re-examined and no application was filed for recalling this witness for correcting the mistake. It was submitted that in fact in this case there is no source who has given the CD in question.

AB Narayana
07.08.2020

The learned counsel pointed out from the evidence of this witness at page 319 that the investigating officer had not enquired from the Hotel about occupant of room No. 817 prior to the occupation by accused Ashutosh Verma and Bipin Shah. Learned counsel submitted there is no recording of the accused Sh. Ashutosh Verma or Shri Bipin Shah in the CCTV of 4th March 2008. It was submitted that the investigating officer has not mentioned the fact that the 1st copy was provided by the source to him anywhere during investigation. Referring to the evidence of this witness at page 323 it was submitted that earlier the witness had deposed that he had received the CD from SP Ramnish. However, now the witness deposed that he did not seize the copy provided by the source to SP Ramnish.

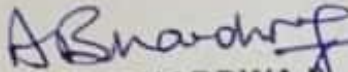
Next, the learned counsel referred to the journey of CD from 4th March 2008 to CBI Malkhana in the year 2012. The witness has deposed at page 323 that the CD was seized on 4th March 2008 and it was sent to CFSL in the year 2012 and during this period the CD was kept in CBI Malkhana. When the attention of the witness was drawn to MR 647/2012, the witness volunteered that he now recollected that CD after sealing was kept in his Almirah and deposited later on in the malkhana in the year 2012. The learned counsel wondered whether the defence has to address arguments in these circumstances to the sanctity of CD? The learned counsel submitted that the accused Shri Ashutosh Verma and Shri Bipin Shah were not got identified by the staff of hotel who must have interacted with them during their stay in the

ABhardwaj
07-08-2020

hotel but were sought to be identified through official witnesses. The learned counsel submitted that the hard disk of CCTV was not seized and got examined therefore its authenticity was not checked by experts and is therefore not a reliable evidence.

Now, further arguments would be heard on **11th August 2020 at 02.15 PM.**

Let a copy of this order be sent by WhatsApp the learned Senior PP for CBI, all the accused persons and their learned counsels.


(ARUN BHARDWAJ)
Special Judge (P.C. Act)(CBI-05)
Rouse Avenue District Court,
New Delhi/07.08.2020

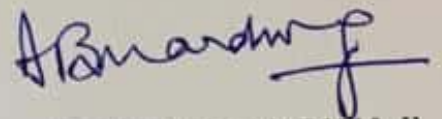
ED vs. Shri Ashutosh Verma & Ors.
Ct. Case No. 53/19

07.08.2020

Present: None.

This case is at the stage of evidence and therefore cannot be taken up through video conferencing.

Be taken up now on 20.08.2020.



(ARUN BHARDWAJ)
Special Judge (P.C. Act)(CBI-05)
Rouse Avenue District Court,
New Delhi/07.08.2020

CBI vs. Shri Anil Kumar Garg & Ors.
SC No.21/19

07.08.2020

At 11:00 AM

Present: None for CBI.
None for Applicant (Public Servant).
Sh. Mudit Jain, Ld. Counsel for Accused Nos. 1 to 4.
None for Accused No. 5 Sh. Vivek Gautam.

(Through VC using Cisco WebEx app)

It is informed by the Reader of the Court that due to some miscommunication, he could not convey the Ld. Sr. PP for CBI about the hearing of this case today and the Ld. Sr. PP for CBI will join video conferencing after half an hour.

In the meanwhile, Sh. Mudit Jain, Ld. Counsel for Accused Nos. 1 to 4 has shown a receipt dated 13.03.2020 as per which a sum of Rs.3,80,00,000/- towards principal amount and Rs.8,25,000/- towards interest totaling Rs.3,88,25,000/- has been paid towards one time settlement by M/s PAS Enterprises which is partnership of Accused No. 1 Sh. Anil Kumar Garg and Accused No. 2 Sh. Sunil Kumar Garg.

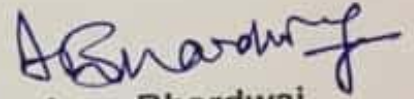
Ld. Counsel for Accused Nos. 1 to 4 submits that since the matter was only pertaining to cheating, now he will file application along with the complainant bank for compounding of the offence of cheating. With regard to the offence under Section 13(2) read with Section 13(1)(d) of P.C. Act, 1988 Ld. Counsel submitted that the three page note which he had to submit as per last date 29.02.2020, could not be filed due to lockdown. He requested for 10 days time to file the final written arguments note on behalf of the accused persons.

Let the written note be filed within 10 days.



Let the receipt of payment made to the bank be also sent to email ID of the Reader of the court who shall send it to CBI for verification.

As requested by Ld. Counsel for Accused Nos. 1 to 4, list on 19.08.2020 at 11:00 AM, through video conferencing.



Arun Bhardwaj
Special Judge (PC Act) (CBI-5)
Rouse Avenue District Court
New Delhi/07.08.2020

At 11:20 AM

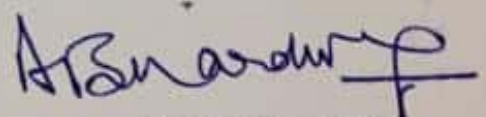
At this stage, Sh. Brijesh Kumar Singh, Ld. Sr. PP for CBI has also joined the hearing through video conferencing.

Accused No. 3 Sh. Vikas Singhla is also present in person.

The Ld. Sr. PP for CBI and the accused no. 3 have been apprised of the order passed at the first call.

Issue court notice to IO/HIO for the next date i.e. 19.08.2020 at 11:00 AM through video conferencing to inform the status of open NBWs issued in the name of Accused No. 5 Sh. Vivek Gautam.

Let a copy of this order be sent by whatsapp to Ld. Sr. PP for CBI, all the accused persons as well as their learned counsels.



Arun Bhardwaj
Special Judge (PC Act) (CBI-5)
Rouse Avenue District Court
New Delhi/07.08.2020