

CBI vs. Sh. Ashutosh Verma & Ors.

CC No. 192/19

16.06.2020

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 Ramchandran and Sh. Shiv Chopra.

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.

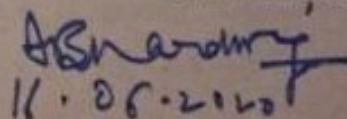
Accused No. 3 Sh. Bipin Shah in person with Ld. Counsel Sh. Anindya Malhotra.

(Through VC using Cisco Webex App.)

Sh. P.K. Dubey, Ld. Counsel for A-1 Ashutosh Verma submitted that on 08.03.2008 all the four accused namely Sh. Ashutosh Verma, Sh. Sanjiv Nanda, Sh. Bipin Shah and Sh. Suresh Nanda were arrested at J.M. Marriet Hotel, Mumbai. (Ld. Counsel further submitted that out of these four accused, one accused Sh. Sanjiv Nanda was discharged.) He further submitted that all the four accused who were arrested from Room No.161 of the said Hotel were interrogated by the officials of ACB, Delhi namely Inspector Surender Malik and Inspector V.M. Mittal. However, it has not come on record in what capacity both of them had gone to Mumbai or whether on reaching Mumbai, they had reported to CBI office at Mumbai or not? Whether they had constituted any team for the purposes of raid and arrest at hotel J.M. Marriet or not?

Ld. Counsel further submitted that Sh. Suresh Nanda was also an accused in Barak Missile case where the Investigating Officer was the then Inspector V.M. Mittal. He submitted that all the accused were produced before the Ld. Magistrate at Mumbai on 09.03.2008 who granted Transit Remand for producing the accused before the concerned Court at Delhi and on 11.03.2008 all the accused were produced before the Ld. Special Judge CBI who accepted the request of CBI and granted three days police custody till 14.03.2008. The stand of the CBI before the Ld. Special Judge, Patiala House Court at that time was that they have to confront all the accused with the intercepted calls and for that reason they need police custody. According to the prosecution, out of four accused, accused Sh. Bipin Shah agreed to give his voice sample and other three accused refused.

On 14.03.2008, the extension of police custody was declined and all the accused were sent to judicial custody. The bail applications of all the accused were dismissed by the Ld. Trial Court on 05.04.2008 and ultimately, all the accused


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were granted bail by the Hon'ble High Court on 29.04.2008. In the meanwhile, CBI examined Sh.Satish Verma to hear the intercepted calls. Ld. Counsel for the accused submitted that CBI submitted chargesheet in 2012. The statements of witnesses recorded in 2008, 2009 and 2010 were not given to the accused and were concealed in the chargesheet. However, the Hon'ble High Court directed supply of those statements under Section 207 Cr.P.C in famous judgment titled as Sh.Ashutosh Verma Vs CBI.

Ld. Counsel for the accused further submitted that according to prosecution, Sh. Bipin Shah and Sh.Ashutosh Verma are alleged to have three meetings, one at Golf Link Guest house, second at Ashoka Hotel and third at Eroz Hotel, Nehru Place. However, there is no evidence to prove the alleged three meetings. He further submitted that prosecution case is that Sh. Ashutosh Verma took his laptop with him which he showed to Sh. Bipin Shah on 03.03.2008 to satisfy Sh. Bipin Shah that he has diluted the Appraisal Report with regard to Sh. Suresh Nanda. He further submitted that the said laptop was seized and was sent for the expert's opinion in CFSL, but the report of CFSL was concealed in the chargesheet as the expert had opined that no deletion, alteration or manipulation in the Appraisal Report is shown from the laptop.

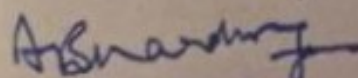
Ld. Counsel for the accused submitted that the allegation of prosecution is that Sh. Ashutosh Verma conspired with other accused to dilute the Appraisal Report, but the Appraisal Report was not filed by CBI and on the application of the defence under Section 91 Cr.P.C, this Appraisal Report and report of CFSL were brought on record.

He further submitted that in this case the electronic evidence is in two parts. First part comprises of 134 calls which were recorded by Special Unit without the knowledge of ACB from 08.02.2008 to 08.03.2008 and were handed over on 30.05.2008. The second electronic evidence comprised of 34 calls which were handed over to ACB on 24.08.2012 i.e. after four years.

He submitted that prosecution is relying on CDs from unknown sources given to IO when Sh. Ashutosh Verma met Sh.Bipin Shah at Eroz Hotel. He submitted that according to evidence of IO, these CDs were with him on 04.03.2008 and FIR was registered on 08.03.2008 and there is no preliminary inquiry in between with regard to materials available with CBI. He submitted that the SP also had parallel CD, but there is no evidence who gave the CD. There is no recovery memo or document to support it. Moreover, as per expert, this CD was created 05.03.2008 on at 2.09 P.M and could not have been available with the IO on 04.03.2008.

Ld. Counsel submitted that he will be dealing with the electronic evidence of CCTV of Hotel Eroz. Ld. Counsel submitted that he will be challenging the sanction on the ground of competency, availability of the material before the Sanctioning Authority, on the sanction to prosecute private person and requirement of sanction under Section 197 Cr.P.C for the offence under Section 120-B IPC.

He submitted that his next argument would be with regard to departmental officials examined by CBI. These officials are in two parts.


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The first part deals with procedure of Appraisal Report and movement of files and second part deals with identification of voice of accused persons.

He submitted that no witness has deposed that there is any alteration, manipulation or deletion in Appraisal Report by abuse of power by Sh. Ashutosh Verma to help Sh. Suresh Nanda.

Ld. Counsel submitted that with regard to property at Goa, the other three accused are not involved in the transaction. No one has proved that the Goa property is a benami property of Sh. Ashutosh Verma. The evidence of 2010 was concealed in the chargesheet. He submitted that in this case order on charge was passed on 05.11.2015 whereby Sh. Sanjiv Nanda was discharged and other accused were charged under Section 7, 11, 12, 13(1)(d) and 15 of Prevention of Corruption Act and 120-B IPC. He submitted that since there was no sanction to prosecute under Section 13(1)(d) and 15 of Prevention of Corruption Act, order was challenged in the Hon'ble High Court and the matter was remanded to the Ld. Trial Court for passing fresh order on charge after hearing CBI.

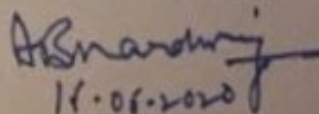
Ld. Counsel submitted that second time order on charge was passed whereby Section 13(1)(d) and 15 of Prevention of Corruption Act were dropped. However, the entire order on charge deals only with Section 13(1)(d) and 15 of PC Act and there is no discussion for the other offences and there is no discussion for demand and acceptance, thereby there is absence of primefacie ingredients of the offences. He submitted that there is no evidence that any amount was demanded on any given date and was given by Sh. Suresh Nanda to Sh. Ashutosh Verma. Further, he submitted that there is no commonality viz-a-viz Goa property and the alleged conspiracy. The moment accused were arrested, the conspiracy ended and after the release there would be second conspiracy as Section 10 of the Evidence Act speaks about an offence and same conspiracy cannot go on after arrest of the accused.

He submitted that the case of CBI is only based upon intercepted calls and whether calls can be considered or are inadmissible in evidence.

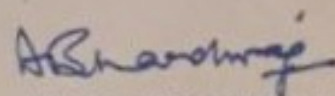
He submitted that Ld. Sr. PP for CBI should have pointed out while addressing arguments that all these calls were objected to and first he should have satisfied the admissibility of electronic evidence and then should have read those calls. He submitted that he will also address arguments on forging of documents such as log book, refusal memo, handing over and taking over memos by CBI. He submitted that whereas prosecution has to prove this case beyond reasonable doubt but defence has to show preponderance of possibility of his defence to prove his innocence. He submitted that the case of prosecution is full of doubts what to say of beyond reasonable doubts.

At this stage, the Ld. Counsel requested to defer the hearing for the next date.

The Ld. Counsel for the accused no.2 in support of the application seeking permission to travel abroad relied on SOP issued by Ministry of Civil Aviation for private aircraft and charter operations on international sectors in view of COVID 19 pandemic. Let a copy be supplied to Ld. Sr. P P for CBI also.


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List the matter on 18.06.2020 at 3:00 pm for further arguments by the Ld. Counsel for A-1 and on application of A-2 seeking permission to visit abroad.



(ARUN BHARDWAJ)
Special Judge (P.C. Act)(CBI-05)
Rouse Avenue District Court,
New Delhi/16.06.2020