

CBI vs. Sh. Ashutosh Verma & Ors.  
CC No. 192/19

11.08.2020

Present:- Sh. Brijesh Kumar Singh, Ld. Senior P.P for CBI with HIO Inspector Vijay Kumar AC-1..

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, Mr. Gaganjyot Singh, Ms. Smriti Ramchandran, Sh. Prince Kumar and Ms. Pinky Dubey.

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.)**

On the last date of hearing, at un-numbered page 4 of the order sheet, it was noted that the investigating officer had stated that he had seized the CD given by the source on 4<sup>th</sup> March 2008. At that time the learned Senior PP for CBI had interjected to submit that mentioning the date as 4<sup>th</sup> March 2008 may be a slip of tongue/mistake on the part of the investigating officer. The same was countered by learned counsel for the accused by submitting that if it is so neither the witness was re-examined nor any application was filed for recalling this witness for correcting the mistake.

It appears, the learned counsel was not satisfied and wanted to emphatically argue further to oppose the submission of learned Senior PP for CBI.

Ld. Counsel for Accused No. 1 Sh. Ashutosh Verma referred to Section 275 and 278 of Cr.P.C. dealing with recording of evidence to submit that

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after the evidence is recorded, the same is to be read-over to the witness and if necessary, corrected.

Ld. Counsel submitted that the IO appeared in the court a number of times after deposing that he had got the CD of conversation of Sh. Ashutosh Verma and Sh. Bipin Shah on 04.03.2008, but never pointed out that there is a mistake in the deposition and never took any steps for correcting the date, in case the same was a mistake.

It was submitted that the case diary was always available during the evidence of the IO of the case, but the IO never referred to the same to refresh his memory in case there was any confusion about this date of 04.03.2008. He submitted no application under Section 311 of Cr.P.C. was ever moved for correcting this mistake.

Thus, the learned counsel submitted that at this stage it is no more open for the prosecution to take the cover of slip in tongue/mistake in mentioning the date.

On the last date of hearing, the learned counsel for the accused had read the evidence of the investigating officer of the case where he had deposed that he had got the Shri Ashutosh Verma and Shri Bipin Shah identified in CCTV from the official witnesses.

The learned counsel sought to rebut this evidence of the investigating officer today.

Reference was made to the evidence of this witness, internal page 7 recorded on 06.03.2018, where the witness had deposed that he had recorded statements of Shri Somnath Gabha, Shri G.K. Ravi, Shri S. Rehman, Shri Shailender Handa, Shri Bhuvnesh Kulshreshtha and Shri Raj Gopal Sharma, all income tax officials, but none of them had identified the accused in CCTV footage in their statement u/s 161 Cr.P.C. He deposed he does not remember having recorded the statement of any other income tax official except those

mentioned above. Therefore, the Ld. Counsel submitted that the IO could not substantiate his statement that the CCTV footage was shown to income tax officials for identification of accused persons. The Ld. Counsel submitted that there is no identification memo on record in this regard.

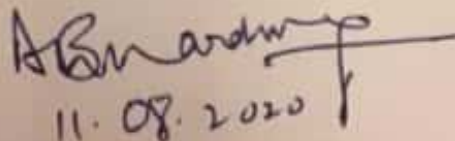
Next, Ld. Counsel referred to the evidence of this witness at internal Page 14 recorded on 24.05.2018 where he deposed that he had not sent the specimen voice sample of Sh. Bipin Shah to CFSL for expert opinion. The Ld. Counsel submitted that the same was not sent as the IO knew that the same would not match with the alleged conversation as the said conversation was tampered.

It was further pointed out that the witness has deposed he had not seen the device on which the alleged conversation pertaining to EROS Hotel was recorded.

Ld. Counsel submitted that so far as recorded conversation of 134 calls, 32 calls and conversation at EROS Hotel are concerned, since there is no examination of sample voice of Sh. Bipin Shah by CFSL, all these recorded conversations cannot be looked into by the prosecution to prove its case.

Next, Ld. Counsel addressed arguments against the proposition that the IO could not have taken certificate under Section 65-B of I.E. Act from the source as his identity would have got disclosed.

It was argued that the IO nowhere deposed in his evidence that to conceal identity of source, certificate under Section 65-B of the Evidence Act was not taken. He submitted that the submission made by Ld. Sr. PP for CBI is not part of prosecution case. He next referred to Section 173(6) of Cr.P.C. and submitted that no note requesting the court to exclude the certificate under Section 65-B from the copies to be granted to the accused was made by the IO stating his reasons for making such request.

  
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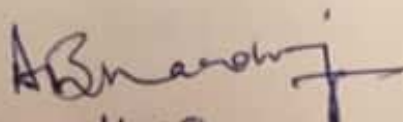


The Ld. Sr. PP for CBI, at this stage submitted that D-45 is the case diary which may be seen in this regard. However, the Ld. Counsel submitted that there is no judgment that the case diary can be exhibited.

The Ld. Counsel referred to evidence of PW-12 where the playing of CD pertaining to conversation at EROS Hotel between Sh. Ashutosh Verma and Sh. Bipin Shah, Mark PW-12/B was opposed by the Ld. Defence Counsels for the reason that there is no certificate under Section 65-B of the Evidence Act. Ld. Counsel submitted at that stage, the IO never made a submission that it is a privileged document. Similarly again, no privilege was claimed whenever there was a reference to this CD during trial. He submitted that in case this certificate was with the IO it could have been shown at least to the Court. There is no order of the court that the accused has no right to know this certificate as it will reveal the identity of the source. He submitted that the certificate was not even filed by blackening the portion to conceal identity of the source.

Ld. Counsel referred to Section 123, 124 and 125 of the Evidence Act and submitted that the privilege is only to say when the police or the magistrate got any information as to the commission of any offence and there is no privilege over source. In this regard, Ld. Counsel referred to Public Prosecutor vs. M.N. Govindaraja, AIR 1954 Madras 1023, where the objection taken by the Public Prosecutor on the ground of privilege from disclosing the name of person from whom account books were seized was rejected by the Hon'ble High Court.

Ld. Counsel submitted that in this case, there is not even an objection by the Id PP that they are claiming privilege with regard to certificate under Section 65B of the Evidence Act. Reference was also made to Devesh Kumar vs. State, ILR (2010) II Delhi 798 and read para 31 to 35 to submit that the prosecution could not have taken the plea of privilege about the source who handed over the CD.

  
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It was submitted that at least S.P. Ramnish who gave the CD received from source to IO could have given the certificate under Section 65-B of the Evidence Act. He submitted that the evidence of the drivers to show the presence of both the accused at Hotel EROS has been found to be forged. The hard-disk of CCTV was not seized and got examined. So far as source is concerned, it has two components, human being and hardware where the recording was made but the IO even did not make site visit to the Hotel for investigations vis a vis source.

He submitted that the recording before the accused came into picture and recording after they had left the scene is not there. No witness part of room service of the hotel was examined. There is no evidence whether the hotel room key was compromised. The receptionist was not examined. The timings of the exit of the accused are not matching in the CCTV footage and in the hotel records. So, therefore, when the prosecution has not proved even the presence of the accused persons in the Hotel at the alleged time, the CD cannot be considered against the accused. It was submitted that even the chain of CD was not established.

The Ld. Counsel again referred to the earlier submissions where the IO had initially deposed that he had sent the CD to Malkhana immediately. However, later on he deposed that it was deposited after one hour after copying the CD on the laptop and again said it was kept in his almirah for years before it was given to the Malkhana.

Ld. Counsel submitted that it all shows tampering in the electronic record. Ld. Counsel submitted that in this case, there is no source and the electronic record is self created electronic record which was created on 04.03.2008.

Ld. Counsel also submitted that no question was put to the accused under Section 313 of Cr.P.C. in this regard. The Ld. Counsel submitted that as



per the ratio of S.P. Gupta and Raj Narain case, it is the HoD of the department who should have filed the affidavit and sought privilege.

Ld. Counsel submitted when there is no certificate under Section 65B of Evidence Act, the CCTV cannot be looked into. Reference was made to Section 22A of the Evidence Act to submit that oral admissions as to the contents of electronic records are not relevant, unless the genuineness of the electronic record produced is in question.

Ld. Counsel submitted that on the next date he will be referring to the judgment of Hon'ble Delhi High Court in the case of Mukesh Kumar Singh.

With this, the Ld. Counsel concluded the arguments for the day. However, the Ld. Counsel Sh. P.K. Dubey submitted that there is a correction in the previous ordersheet, in as much as, the submissions at the end of Page 3 would be that the properties of the CDs given to the accused persons show that they were created on 05.03.2008 at 2:09 PM, which is not possible in as much as these copies, according to prosecution, were prepared for giving to the accused persons by CFSL much later. He further submitted that it is not the case of the IO that he had taken 5 CDs from the source and those CDs were given to the accused persons. The correction is noted.

The case shall now be taken up on **Friday i.e. 14.08.2020 at 2:15 pm.**

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

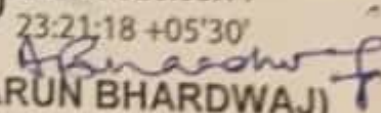
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(ARUN BHARDWAJ)

Special Judge (P.C. Act)(CBI-05)

Rouse Avenue District Court,

New Delhi/11.08.2020

11.08.2020

At 11:00 AM

Present: Sh. Nitesh Rana, Ld. Sr. PP for ED.

Learned Counsel Sh. Shantanu Tyagi representing Insolvency  
Professional appointed for the Accused No. 1 Company.

Accused No. 2 Sh. Sanjay Singhal, Accused No. 3 Sh. Ravi Prakash  
Goel, Accused No. 4 Sh. R.K. Gupta, Accused No. 5 Sh. Arun  
Kumar Aggarwal and Accused No. 6 Sh. Alkesh Sharma with Ld.  
Counsel Sh. Vijay Aggarwal.

Accused No. 7 Sh. Ritesh Kapoor with Ld. Counsel Sh. Vaibhav  
Sethi.

Accused No. 8 Sh. Preet Singh Chauhan, Accused No. 9 Sh. Nitin  
Aggarwal, Accused No.10 Sh. Rajesh Bansal and Accused No. 11  
Sh. Himanshu Prafull Chandra with Ld. Counsel Dr. Anurag Kumar  
Aggarwal.

Accused No. 12 Sh. Jatinder Pal Singh Chadha with Ld. Counsel  
Sh. K.P. Jairam.

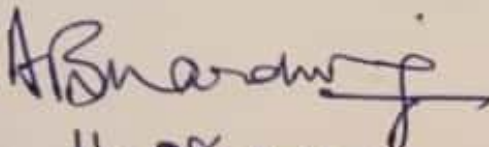
Accused No. 13 Sh. R.K. Kedia with Ld. Counsel Sh. Vikas  
Aggarwal.

Accused No. 14 Sh. Shirish Chandra Kant Shah, Accused No. 18  
Sh. Parveen Kumar Jain, Accused No. 24 Sh. Jagdish Prashad  
Purohit and Accused No. 25 Sh. Krishan Khadaria with Ld. Counsel  
Sh. Hemant Shah.

Accused No. 15 Sh. Vikash Chowdhary and Accused No. 19 Sh. Anil  
Kumar Khekma with Ld. Counsel Sh. A.K. Upadhyay.

Accused No. 16 Sh. Himansu Verma with Ld. Counsel Sh. Vijay  
Kumar Sharma.

Accused No. 17 Sh. Praveen Kumar with Ld. Counsel Sh. Ajit Singh.



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Accused No. 20 Sh. Abhay Chand Bardia with Ld. Counsel Sh. Kamal Kumar Baid.  
Accused No. 21 Sh. Suresh Gupta with Ld. Counsel Sh. A.K. Patra.  
Accused No. 22 Sh. B.D. Aggarwal with Ld. Counsel Sh. G.S. Singh.  
Accused No. 23 Sh. Parveen Kumar Aggarwal with Ld. Counsel Ms. Nidhi Mehrotra.

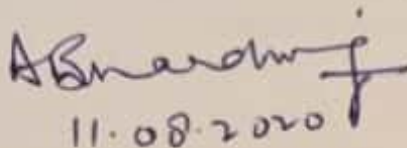
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The Ld. Counsel representing Insolvency Professional appointed for Accused No. 1 submits that the matter is listed before the Hon'ble Supreme Court on 08.09.2020 wrt Section 32 A of the I and B Code, 2016.

Sh. Vijay Aggarwal submits that he has received the replies to the bail applications of all the accused represented by him i.e. Accused Nos. 2, 3, 4, 5 and 6. However, he submitted that IP is PW No. 9 and cannot represent Accused No. 1 Company here.

Dr. Anurag Kumar Aggarwal submits that Accused No. 8 Sh. Preet Singh Chauhan was given permission to visit abroad from 06.03.2020 to 25.03.2020, but he returned on 11.03.2020 and will submit the passport on opening of court. He submitted that he shall send by E-mail Affidavit dated 20.03.2020 showing compliance of all the directions of this court by him. He further submits that he will file bail application for Accused No. 11 Sh. Himanshu Prafull Chandra within three days. If filed, the same shall also be supplied to Ld. Sr. PP for ED, who will file reply two days before the next date.

Sh. K.P. Jairam, Ld. Counsel submitted that the copy of reply filed by ED be also given to him. Same is the request by Sh. Vikas Aggarwal representing Accused No. 13, Sh. A.K. Upadhyay, representing Accused No. 15

  
11.08.2020



and 19, Sh. Ajit Singh representing Accused No. 17 and Ms. Nidhi Mehrotra representing Accused No. 23.

Sh. Nitesh Rana, Ld. Spl PP for ED submits that the same would be sent to the Reader of the Court through soft copy and the Reader of the Court shall provide same to the accused persons/the reply shall be provided straightway to the accused persons by ED.

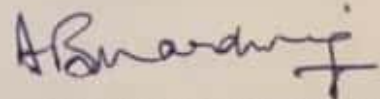
Sh. Ajeet Singh, Ld. Counsel representing Accused No. 17 Sh. Praveen Kumar has sent his vakalatnama electronically. He is directed to file the vakalatnama in physical form on the reopening of courts.

Sh. Ajit Singh, Ld. Counsel for Accused No. 17 and Ms. Nidhi Mehrotra, Ld. Counsel for Accused No. 23 request for documents. Sh. Nitish Rana submits that the documents can be taken by those accused who have not received the same so far from the office of ED, maintaining social distancing norms in consideration.

List for arguments on applications for bail now on **31.08.2020** at **11:00 AM**.

It is pointed out by the Ahlmad of this court that the reply of ED to the bail application of Accused No. 4, 6, 13, 15 and 17 is not received by him. Let the same be also filed in the court by Ld. Spl. PP for ED through electronic means and shall file hard copy when courts resume hearing.

Copy of this order be sent by whatsapp to Ld. Sr. PP for ED, all the accused and their Ld. Counsels.



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

At 12:20 PM

After the hearing of the case was over, an application is filed by Ld. Spl. PP for ED requesting for current mobile number, e-mail ID and address of Accused No. 2 Sh. Sanjay Singhal.

On the directions of the court, Sh. Vijay Aggarwal again appeared through video conferencing when the following orders were passed:-

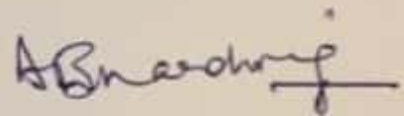
Present: Sh. Nitish Rana, Ld. Spl. PP for ED.

Sh. Vijay Aggarwal, Ld. Counsel for Accused No. 2 Sh. Sanjay Singhal.

This application of ED seeks directions to Accused No. 2 Sh. Sanjay Singhal to provide current address, current mobile number and E-mail ID to IO of the case.

Sh. Vijay Aggarwal submits that in this case, chargesheet has been filed and in case the ED has to seek any information, then he be contacted as he is representing the accused in the case. However, he submits that during the course of the day, he shall provide the E-mail ID, present residential address and mobile number of Accused No. 2 Sh. Sanjay Singhal to IO of this case.

In view of this, the application is disposed off.

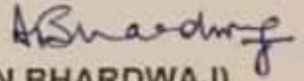


(ARUN BHARDWAJ)  
Special Judge (P.C. Act)(CBI-05)  
Rouse Avenue District Court,  
New Delhi/11.08.2020

After the hearing in the case was over, Shri Vijay aggarwal , the Id Counsel for Accused No. 2 Shri Sanjay singhal has sent reply to the application of ED providing the required details of Accused No.2 with a further request that in case the need arises, Shri Sanjay Singhal be contacted through his counsel. The mobile number of the counsel is also mentioned in the reply. Let this reply be sent to the Ld SPP for ED.

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(ARUN BHARDWAJ)  
Special Judge (P.C. Act)(CBI-05)  
Rouse Avenue District Court,  
New Delhi/11.08.2020



11.08.2020

Present: None for CBI.

Accused No.1 Sh. Daya Nand Gupta is stated to have died on 29.07.2020.

Accused No.2 Sh. Ashok Kumar Rastogi with Ld. Counsel Sh. D.N. Grover.

None for Accused No.3 Sh. Rajesh Kumar Bansal.

Accused No. 4 Sh. Pradeep Kumar Bansal has already died.

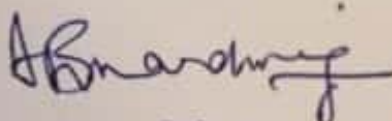
None for Accused No.6 Sh. Gopal Dass and Accused No.7 Sh. Madan Singh.

**(Through VC using Cisco Webex App.)**

The Ld. Sr. PP for CBI is present at Rouse Avenue District Court, Video Conferencing Room, but unable to join the VC proceedings.

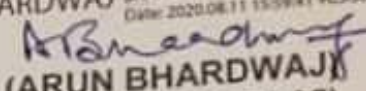
The Ld. Counsel for Accused No. 1 Sh. Daya Nand Gupta informed that the said accused has died on 29.07.2020 and he will be sending the death certificate of the said accused by E-mail to the Reader of the court for verification. On receiving the death certificate, the same shall be sent to Ld. Sr. PP for CBI for verification.

The case is at the stage of Prosecution Evidence and cannot be taken up through video conferencing.

  
11.08.2020

Be listed again on **03.09.2020**.

Let a copy of this order be sent by whatsapp to Ld. Sr. PP for CBI,  
all the accused and their Ld. Counsels.

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(ARUN BHARDWAJ)  
Special Judge (P.C. Act)(CBI-05)  
Rouse Avenue District Court,  
New Delhi/11.08.2020

CBI vs. Sh. Vishal Mehan & Ors.  
CC No. 177/19

11.08.2020

Present:- None for CBI.

None for Accused No. 1 Sh. Vishal Mehan.

Accused No. 2 Sh. Alok Lakhanpal with Ld. Counsel  
Sh. Vikas Arora

Accused No. 3 Ms. Rachna Tiwari Lakhanpal along with  
Ld. Counsel Sh. Varun Bhati.

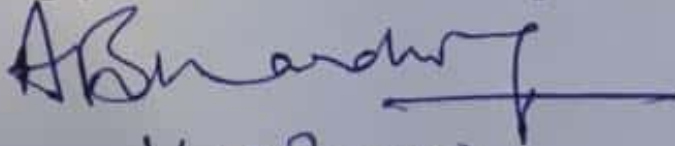
(Through VC using Cisco Webex App.)

The learned Sr PP for CBI is present at RADC VC room  
but unable to join the VC.

In this case, arguments on charge were being  
addressed by Ld. Counsel for Accused No. 3 Ms. Rachna Tiwari  
Lakhanpal before lockdown.

Vide order dated 09.07.2020, it has already been  
accepted that further arguments on charge will be heard on re-  
opening of the courts.

The Ld. Counsel for Accused No. 3 submitted that  
considering the personal difficulties being faced by Accused No. 3  
and considering the prevailing pandemic condition, the matter be

  
11.08.2020



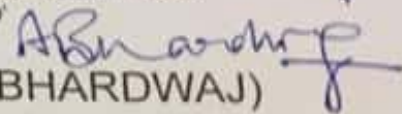
taken up in October, 2020 so that by then, there is normalcy and arguments can be addressed in Court.

As requested, list on 29.10.2020 for arguments on charge by Ld. Counsel for Accused No. 3.

Let a copy of this order be sent by whatsapp to Ld. Sr. PP for CBI, all the accused and their Ld. Counsels.

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(ARUN BHARDWAJ)  
Special Judge (P.C. Act)(CBI-05)  
Rouse Avenue District Court,  
New Delhi/11.08.2020