

CBI vs. Shri Devendra Kumar Goel & Anr.
RCDAl2010A0015
CC No. 168/19
CNR No. DLCT11-0007782019

24.07.2020

Present: Sh. B.K. Singh, Ld. Sr. PP for CBI.

Convict No. 1 Sh. Devendra Kumar Goel in person along with Ld.
Counsel Sh. Jaspreet Singh Rai.

(Through VC using Cisco WebEx app)

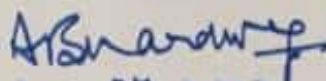
Today, the case is taken up on the application of Convict Sh. D.K. Goel for correction of clerical mistake in order on sentence dated 22.07.2020 vide which the convicts Sh. Devendra Kumar Goel and Smt. Susheela Goel were awarded sentence wrt imprisonment and fine. Besides that, Plot No. 138-F, Saraswati Kunj House Building Society, Wazirabad, Gurgaon, Haryana was directed to be confiscated in favour of State.

However, on the same day, the accused filed an application stating that in the order, instead of Plot No. 138-F, Plot number has been mentioned as 138-S and same be corrected.

Submissions of Convict Sh. Devendra Kumar Goel, his Ld. Counsel Sh. Jaspreet Singh Rai and Ld. Sr. PP for CBI Sh. B.K. Singh heard.

During hearing, the convict informed that there is some dispute with regard to those members of society who were enrolled as members after the year 1995. However, so far as the members who got the membership before 1995, there is no dispute. He informed that he had become member of this society in the year 1992. His plot has no dispute. The same has boundary wall on all the four sides. He has a registered sale deed in his favour. He further informed that those members who became members of the society after 1995, have filed a Writ Petition before the Hon'ble High Court of Punjab & Haryana, but that Writ Petition does not effect the plot of the Convict as he became member in 1992 and dispute is for members who got membership after 1995.

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He submitted that Board of Administrators have been appointed by the State of Haryana who have taken over the Management of the Society. He submitted that wherever there are unauthorized constructions/encroachments, the municipality demolishes the same. He submitted that the title of the plot is clear and there is no cloud over the same, as per law.

In view of these new facts which have come on record now, the Ld Sr PP for CBI submitted that the IO be directed to verify the status of this property. It is directed that the IO of the case is at liberty to verify the status of this property confiscated in favour of state and may file application on or before NDOH i.e. 25.09.2020 for substitution of property with other immovable property of the Convicts which were subject matter of this case, if deemed necessary. In case, till then, if the Convicts have to part with any such asset, they shall seek permission of the court.

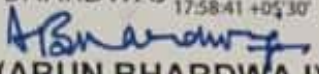
So far as this application is concerned, it is clarified that the details of property sought to be confiscated shall be 138-F and not 138-S. With these directions, the application is disposed of.

Copy of this order be sent by whatsapp to Ld. Sr. PP for CBI, Ld. Counsel for the convicts and the convicts.

Be taken up again on date fixed for compliance of deposit of fine/ awaiting order in Appeal to be filed before the Hon'ble High court i.e. 25.09.2020.

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(ARUN BHARDWAJ)

Special Judge (PC Act) (CBI-5),
Rouse Avenue District Court,
New Delhi/24.07.2020

CBI vs. Ramesh Nambiar
CC No. 303/2019

24.07.2020

Present: Sh. B.K. Singh, Ld. Sr. PP for CBI.

Sh. Hemant Shah, Ld. Counsel for accused Sh. Ramesh Nambiar.

(Through VC using Cisco WebEx app)

On the oral request of Ld. Counsel for the accused, he is exempted from appearance through video conferencing as the accused is stated to be facing some technical glitches.

Ld. Sr. PP for CBI has filed reply to the fresh calculations filed by the accused after the decision of Hon'ble Delhi High Court discharging two other co-accused of this case. Soft copy supplied to Ld. Counsel for the accused.

Ld. Sr. PP for CBI as well as Ld. Counsel for the accused requested four weeks time to address arguments on charge as Ld. Sr. PP for CBI has to seek some clarifications from the IO/HIO and the accused has to consider the response of CBI filed today.

The Ld. District & Sessions Judge, cum- Special Judge, CBI, PC Act, Rouse Avenue District Court, New Delhi has adjourned this case en-block for 27.08.2020.

Be listed on 27.08.2020 at 11:00 am for arguments on charge. In the meanwhile, Ld. Sr. PP for CBI is at liberty to file additional response to the calculations of the accused, if so desired.

Copy of this order be sent by WhatsApp to Ld. Sr. PP, for CBI, Ld. Counsel for the accused and the accused.

ARUN BHARDWAJ
Special Judge (PC Act) (CBI-5)
Rouse Avenue District Court
New Delhi/24.07.2020

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Special Judge (PC Act) (CBI-5)
Rouse Avenue District Court
New Delhi/24.07.2020

24.07.2020

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

24.07.2020

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. Gaganjyot 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 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.)

Learned counsel for the accused No. 1 Shri Ashutosh Verma submitted that the response PW-21 in his cross examination recorded on 6th March 2017 has been only presumptive in nature. The witness has deposed that as a practice, the CDRs of the intercepted numbers are also called and therefore in this case also these must have been called. He further deposed that he does not remember whether he had matched the CDRs and the intercepted calls. IO never asked him about the CDRs and therefore IO did not sit with him to match the CDRs with intercepted calls. It was submitted that the CDRs called by the special unit from the service provider are not on record.

The learned counsel pointed out that the system at Special Unit had 8 hard drives and the total capacity was around hundred GB. The witness PW-21 could not state which call was recorded on which hard drive. The learned counsel pointed out that this answer of the witness makes the certificate under section 65B of the Evidence Act useless as it does not meet the test of the said section. It was submitted that there is no justifiable reason for retaining the data of 32 recorded calls from 2008 till 2012.

Next, learned counsel referred to D-62 and D-63 which are the certificates under section 65B of the Evidence Act given by PW-21. Learned counsel submitted that the wording of the 2 certificates is verbatim same except 1 or 2 minor changes and there is no seizure memo with regard to these certificates. The learned counsel submitted that the witness could not have deposed that the call record of the year 2008 was in his custody till 2012. The learned counsel pointed to the evidence of this witness where he

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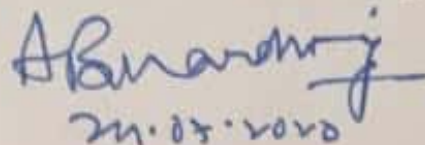
deposed that the reviewing authority to decide destroying the recorded calls data is the Director CBI.

It was submitted that the data of recorded calls was copied by this witness from the original source/logger on pen drive/CD and what has been given in the court is copy of copy and not copy from the original.

Learned counsel referred to Section 58 of the Evidence Act to submit that it has come on record that the voice refusal memo was not signed by the accused Shri Ashutosh Verma in the presence of the witness relied on by the prosecution. It was submitted that in view of this the accused was not required to lead any evidence to rebut the voice refusal memo.

Learned counsel submitted that PW 21 and the investigating officer of this case are totally unreliable witnesses and their entire testimony is required to be discarded. Learned counsel referred to section 60 and 65 B(2) and (4) of the Evidence Act. It was submitted there is no material to corroborate the statement of PW 21 and IO of the case.

It was submitted that the conditions of certificate required for electronic evidence are not proved in this case. Reference was made to PUCL versus Union of India, AIR 1997SC568, para 35, to show that the rules under Telegraph Act were framed pursuant to directions passed in this case. Reference was also made to KLD Nagasree versus Union of India, AIR 2007 AP 102, para-28, 30 and 31 to submit that the provisions of section 419A of the Act are mandatory. It was submitted that in the referred case, there was order of MHA whereas in this case there is no such order on record. It was submitted that the order of MHA can be passed in public emergency and for public safety interest which is not the case in case in hand. It was submitted that this judgement is fully applicable to the facts of the case in hand. It was submitted that the interception was totally unauthorised. If there is no order of MHA, then the recorded calls or their transcript cannot be looked into. It was submitted that the intercepted calls are corroborative in nature and there is no substantive evidence. Learned counsel again referred to the query of this court on earlier occasion about parallel recording by source and submitted that the prosecution cannot change its case during trial and relied on Bhagirath versus State of Himachal Pradesh, para 14, 1976 (1) SCC 20. Learned counsel also referred to the judgement of learned ASJ for in admissibility of recorded calls in the absence of examination of hard disk by the forensic experts to rule out compromise. The learned counsel summarised that the CDs were not examined by forensic experts to rule out tempering, the 2 seizure memos are forged as the material mentioned therein was already available with the investigating agency, important material was concealed from the court and was brought on record only on the insistence of accused, the recorded calls are inadmissible and the transcript can also not be taken into consideration, PW 21 and the investigating officer are unreliable witnesses, voice recording memo is forged document, there is tempering in CDRs, RCIR is not on record, Annexure A in isolation will not link with the case, there is no certificate in accordance with law under Section 65B of the Evidence Act for recorded calls CDs, there is no certificate under section 65B


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of Evidence Act for CDRs which are therefore inadmissible, except for one mobile phone of Shri Bipin Shah there is no customer application form, the mobile phones of the accused were not seized, the screenshots of the SMSs were not taken, mobiles were not subjected to forensic examination, transcripts are not proved in the absence of signatures of witnesses, there are inherent contradictions in the evidence of PW 21 and there is no substantive evidence and the prosecution is only relying on corroborative evidence. Learned counsel referred to the judgement of Arjun Pandit, para 7 to 10 to submit that admissibility of electronic evidence is to be looked first. It was submitted that the prosecution is alleging gratification in 2007 and conspiracy in the year 2008.

Further argument shall now be heard on 28th July 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/24.07.2020

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24.07.2020

ED vs. Ramesh Nambiar
ECIR No. ECIR/02/DZ1/2012
Ct. Case No. 51/19

24.07.2020

Present: Sh. Atul Tripathi, Ld. Special PP for ED.

Sh. Hemant Shah, Ld. Counsel for accused Sh. Ramesh Nambiar.

(Through VC using Cisco WebEx app)

On the oral request of Ld. Counsel for the accused, he is exempted from appearance through video conferencing as the accused is stated to be facing some technical glitches.

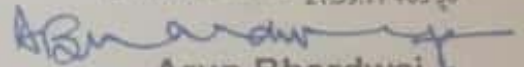
The predicate offence case is now listed on 27.08.2020 for arguments on charge. This complaint shall also be taken up on 27.08.2020 at 11:00 am.

Let a copy of this order be sent by WhatsApp to Ld. Special PP for ED, Ld. Counsel for the accused and the accused.

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Arun Bhardwaj

Special Judge (PC Act) (CBI-5)
Rouse Avenue District Court
New Delhi/ 24.07.2020