

**IN THE COURT OF MS. ANJU BAJAJ CHANDNA
PRINCIPAL DISTRICT & SESSIONS JUDGE-CUM-SPECIAL
JUDGE (PC ACT) CBI ROUSE AVENUE DISTRICT COURTS, NEW
DELHI**

**Case No.24/2021
CBI vs Dr. Vikas Gupta & Anr.
CNR No.DLCT11-000169-2021
RC DAI-2019-A-0015-CBI-ACB**

15.10.2024

Appearances:

Sh. A. K. Kushwaha, Ld. Sr. PP for CBI.

Accused Dr. Vikas Gupta on bail with Ld. Counsel
Ms.Meenakshi Mohan.

Accused Dr.Kajal Goldar on bail with Ld. Counsel
Sh.Manikant Singhal.

ORDER

1. The prosecution has moved an application under Section 311
Cr.P.C seeking to summon the following witnesses.

(i) Sh.Anup Purohit. The said witness has issued the certificate under Section 2A Bankers Book Evidence Act along with account opening form and account statement of account number 012783900000040 in the name of Ms. Geeta Gera at Yes Bank, Vaibhav Khand, Indirapuram, Ghaziabad, UP. (D-21)

(ii) Sh. Akshay Marwah. The said witness has issued the certificate under Section 2A Bankers Book Evidence Act along with account opening form and statement of account number

135551000001 in the name of M/s Goyal Medicos at ICICI Bank Ltd, Durga Puri Chowk, Shahdara, Delhi (D-22).

(iii) Sh.A. K. Singh, Assistant Company Registrar, NCT of Delhi and Haryana. The documents related to M/s Sparshmart Pharmaceutical Pvt. Ltd was collected from the said witness. (D-29).

(iv) Sh.Vinay, Tax Assistant Central Board of Indirect Taxes and Customs, CGST, Delhi West. During the investigation specimen voices of accused Dr. Kajal Goldar and Dr.Vikas Gupta were taken in the presence of the said witness.

(v) Sh.P. Baruah, Additional Commissioner (Vigilance), ESIC, Panchdeep Bhawan, New Delhi submitted a complaint dated 26.02.2019 to the CBI on which present case was registered.

2. The prosecution also seeks to recall PW-18 Dr. Sangeeta Kakkar for proving her statement recorded under Section 164 Cr.P.C.

3. On behalf of defence, reply has been filed by both the accused questioning the necessity of examining the above witnesses and asserting that it would further delay the trial.

4. During the course of arguments, the prosecution has relied upon the following judgments in support of their submissions:-

(i) **Mannan S K & Ors. vs. State of West Bengal & Anr, 2014 Cri.L.J.4072.**

(ii) **Rajendra Prasad vs. Narcotic Cell, Delhi, 1999 Cri.L.J. 3529.**

Whereas on behalf of defence, it is submitted by the counsels that even if application of the prosecution is allowed, the defence should be given an opportunity to cross examine the witnesses as well as to produce witnesses in defence.

5. **Section 311 Cr.P.C** is defined as under:-

311. Power to summon material witness, or examine person present. Any Court may, at any stage of any inquiry, trial or other proceeding under this Code, summon any person in attendance, though not summoned as a witness, or recall and re-examine any person already examined; and the Court shall summon and examine or recall and re-examine any such person if his evidence appears to it to be essential to the just decision of the case.

6. On consideration of the basic provision of Section 311 Cr.P.C and judgments on the aspect, I am of the opinion that prosecution should be given an opportunity to produce and examine the witnesses as stated in the application. The related documents have already been part of the record and only by inadvertence the witnesses could not be cited in the list of witnesses. Since the purpose of trial is to search for the truth of the matter and evidence is still in progress, opportunity is granted to the prosecution to examine the said witnesses. The defence would invariably get the opportunity to cross examine the witnesses as well as to produce their witnesses in defence.

7. In view of the above observation, application under Section 311 Cr.P.C is allowed. Let the witnesses be summoned / recalled for the next date.

8. Application under Section 311 Cr.P.C is disposed off.

9. On behalf of accused Dr.Kajal Goldar, an application is moved seeking discharge on the issue of sanction stating that sanction for prosecution is not valid. It is stated that the request for sanction of prosecution has not been channelled by CBI through Central Vigilance Commission (CVC) and the authority of ESI Corporation also did not seek the advice of CVC. The vigilance inquiry held by ESI Corporation did not find any incriminating evidence against Dr.Kajal Goldar and CBI also could not substantiate by bringing on record any material to prove that any demand was made by accused no.2 or any cash transaction was witnessed by anyone in the list of witnesses or there was any misconduct in discharge of public duty.

10. The issue of sanction is of great importance and needs to be decided as per legal objections as well as on the basis of appreciation of evidence. Since the matter is nearing the final stage, it would be appropriate, if the issue of sanction is left open and is decided at the time of judgment. Accordingly, I conclude that issue of sanction may be raised during final arguments.

11. Put up for PE on 11.11.2024.

(Anju Bajaj Chandna)
Principal District & Sessions Judge-
cum-Special Judge (PC Act) (CBI),
Rouse Avenue District Court
New Delhi/15.10.2024