

CC No. 38/2019
CBI Vs. Devender Gupta & Ors.
RC no. 47(A)/99/CBI/ACB/ND
CNR no. DLCT1-000229-2019

13.11.2024

ORDER:

1 This is an application moved by CBI U/s 311 Cr. P.C for summoning 30 additional witnesses. Alongwith the application, a list of witnesses who are sought to be summoned by way of this application, and the name of documents which prosecution intends to prove through these witnesses has been annexed. It is stated in the application that during scrutiny of documents, it was found that some of important documents are yet neither exhibited nor proved by the prosecution. It is further stated that inadvertently, no witness to prove these documents is cited in the original list of witness.

2 Ld. Counsel for A-7 has submitted that he has no objection if the present application is allowed. On the other hand, Ld. Counsel for A-1 has opposed the present application on the ground that application has been filed at much belated stage and that too almost about 22 years of filing of charge sheet. It is submitted that prosecution had sufficient opportunity to file such application at an earlier stage and there is absolutely no explanation for the inordinate delay in the filing of the present application. It is further submitted that prosecution cannot be expected to be under slumber for all these years. It is further

submitted that application has been filed without application of mind as two witnesses mentioned at Sl No.7 & 11 in the application are the witnesses, whose names were also mentioned in the original list of witnesses and qua these witnesses efforts were made by the court to ensure their presence, but despite efforts, these witnesses could not be served and examined and thereafter, court dropped the name of these witnesses. It is submitted that despite that prosecution has mentioned their names in fresh list, which shows malafide on the part of prosecution. It is also contended that application has been filed by prosecution by concealing material facts. It is further submitted in the application that certain documents were seized during investigation and these documents could not be exhibited whereas documents D-6 & D-7 which are sought to be exhibited by calling witnesses at Sl. No.1 & 3 are already exhibited.

3 During course of arguments Ld. PP admitted that witness at Sl. No.7 & 11 were also mentioned in the original list and by mistake, name of these witnesses were included in additional list of witnesses. He has submitted that now he withdraw his prayer qua witnesses at Sl. No.7 & 11. In view of submission of Ld. PP, the request to summon witness at Sl. No. 7 & 11 is declined. However, he has pressed for witnesses mentioned at Sl. No.1 & 3 on the ground that documents sought to be proved through these witnesses were exhibited by CBI officials and witnesses at Sl. No.1 & 3 are independent witnesses and therefore, the seizure of documents mentioned against witnesses at Sl. No.1 & 3 should be allowed to be proved by such witnesses.

4 Accused No. 2 & 3 and Accused No. 4 to 6 have opposed the application by filing separate replies taking almost similar grounds, therefore the contents of reply are not repeated for sake of brevity.

5 Section 311 Cr. P.C gives power to court to summon any material witness whose evidence may be required by party to prove his case. However, an earnest duty has been casted upon the court to summon and examine any person whose evidence appears to be essential to the just decision of its case. The court is expected to decide the case on merits after giving sufficient opportunities to the parties to prove their respective case and the court is not expected to punish the parties for their inadvertent mistake.

6 The powers given U/s 311 Cr. P.C should be invoked with object of discovery of relevant facts or obtaining proper proof of such facts for a just decision of the case with the rider that court should be watchful and it should not be allowed to be used for filling up the lacunae left by the prosecution or by the defence or the cause serious prejudice to the defence of accused. In the present case, the perusal of list of witnesses; the documents sought to be proved through the witnesses mentioned in the list of witnesses annexed with the application reveals that these witnesses sought to be summoned through the instant application were the persons who had participated during course of investigation. Most of these persons were witnesses of seizures and collection of articles; statements of accounts of accused persons and their firms; pay particulars of accused persons and other documents by the investigating officer. Through these

witnesses, the prosecution intend to exhibit/prove the documents which were seized by the investigating officer during investigation. Similarly, witness mentioned at Sl. No.10 Shri K.G. Dua had taken the valuation of the buildings of accused persons. Copy of all these documents which were seized and which are sought to be proved were already provided to the defence counsels. No plausible explanation has been given as to how the defence would be prejudiced if these documents are allowed to be proved by calling these additional witnesses. On the other hand, the case of prosecution would be seriously prejudiced if prosecution is not allowed to summon these witnesses. The present case is a case of disproportionate assets and in order to prove that accused persons had disproportionate assets, it is essential for prosecution to prove income, expenditure and assets of the accused persons during check period. The documents which prosecution intends to prove by summoning the witnesses through this application are essential for the prosecution to prove income, expenditure and assets of the accused persons during check period. Although, there is delay of 22 years however, mere a fact there is a delay of 22 years cannot be a ground to reject the application of the prosecution particularly when prosecution evidence is going on and prosecution itself has dropped 50 witnesses from its original list of witnesses which shows bonafide on the part of prosecution and further shows that prosecution has no intention to delay the matter. Accordingly, considering over all facts and circumstances of the case and nature of documents sought to be proved by prosecution, this court is of the opinion that application is ought to be allowed. As far as witnesses mentioned at Serial No. 1 & 3

are concerned, the documents, which are sought to be proved through these witnesses have already been exhibited. No plausible explanation is given as to why prosecution wants to examine more witnesses qua those documents and why at first instance independent witnesses were not summoned to prove these documents. Accordingly, request to summon witnesses mentioned at Sl. No.1 & 3 of the additional list of witnesses is declined.

7 Considering the fact that present case is a 22 years old case and there are directions of Hon'ble Delhi High Court to dispose of the matter at the earliest, prosecution is granted only 10 working days to examine all the witnesses mentioned in additional list of witnesses except witnesses mentioned at Sl. No.1, 3, 7 & 11. Prosecution is directed to take appropriate steps for summoning all these witnesses.

8 Application stands disposed off accordingly.

(ANKIT SINGLA)
Special Judge (PC Act)(CBI)-02
Rouse Avenue District Court
New Delhi/13.11.2024