

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

27.01.2025

**ORDER :**

1 Vide this order, I shall dispose off the application filed by Ld. PP for permitting him to re-examine PW-45. It is stated in the application that during extensive cross examination of PW-45, some new documents were put to the witness by defence counsel and prosecution require to re-examine the witness on point of said documents. The re-examination of witness is also sought on the ground that during cross examination, the witness had stated that he offered various documents to the IO but the said documents were returned by IO stating that he was mainly concerned with the accounts of Devender Gupta and his family. It is further stated that PW-45 was also put certain unrelieved documents during his cross examination and these unrelieved documents are also new facts, therefore, the prosecution require re-examination on point of unrelieved documents.

2 A reply has been filed by A-1 opposing the application stating that the application is devoid of any merit as it does not in any manner, disclose as to for what purpose the re-examination of the witness is required as provided U/s 138 of the Evidence Act. It is stated that scope under cross-examination is much

wider than examination in chief though it has to be in relation to the factual matrix of the case. It is stated that this case relates to disproportionate assets and certain income of the accused persons were not taken into consideration by the IO. It is stated that it is for the accused to prove his income which have not been considered. It is further stated that cross examination of a witness is to discredit the version of the prosecution which include concealment by the prosecution. Any truth elicited during course of cross examination of a witness which discredits the case of the prosecution does not entitle the prosecution to recall the witness. It is stated that cross examination of said witness was with respect to the factual matrix of the case and no new fact has been brought on record. It is further stated that the documents put to the witness from unrelied list were the documents collected by the prosecution which discloses the income of the accused persons. It is stated that to bring such material evidence on record is right of the accused during cross examination to disprove case of prosecution. It is therefore prayed that application moved on behalf of prosecution be dismissed.

3 Separate reply has been filed on behalf of A-2 & A-3, wherein it is submitted that prosecution has assigned superficial reasons for seeking re-examination of PW-45. It is stated that vide order dated 29.04.2024, Ld. Predecessor of this court had rejected the plea of Ld. PP to re-examine PW-45 on the ground that Ld. PP has failed to explain any discrepancy between the statements made in the examination in chief and cross examination. It is stated that prosecution was granted permission to file application stating discrepancy/inconsistency in statements

of PW-45 recorded during examination in chief and cross examination but Ld. PP could not point out any single discrepancy or inconsistency, therefore, the application is liable to be dismissed. It is further stated that prosecution cannot take stand that it was surprised in any manner when the unrelieved documents were put to PW-45 during his cross examination. It is stated that unrelieved documents cannot be called new documents as these documents were already in custody of CBI.

4 Ld. Counsel for A-4 to A-6 opposed the application by addressing oral arguments, wherein it was stated that in the application, Ld. PP has failed to specify a single document which could be called a new document. He further stated that earlier order passed by Ld. Predecessor rejecting the oral plea of Ld. PP to allow him to re-examine witness has attained finality as said order was not challenged and now the Ld. PP only could have moved application for re-examination of PW-45 by pointing out inconsistency or discrepancy in statements of PW-45 and since Ld. PP has failed to point out a single inconsistency, the application is liable to be dismissed.

5 Ld. Counsel for A-7 has submitted that he has no objection if the application moved on behalf of CBI is allowed.

6 I have heard arguments advanced on behalf of both the sides and perused the record.

7 The language of Section 138 of The Indian Evidence Act states that party calling the witness may re-examine said witness if it so desires after cross examination. Section 138 does not put any prior condition for party calling the witness to re-examine

the said witness. However, in the present case, admittedly on 29.04.2024 Ld. PP had made oral request for re-examination of PW-45 and Ld. Predecessor had declined oral request of Ld. PP to re-examine PW-45 on the ground that he was failed to explain any discrepancy between the statements made in examination in chief and cross examination. Ld. Predecessor had held that if there is any discrepancy between the statement made in examination in chief and cross examination or there is any inconsistency between statements made in the course of cross examination, then there can be re-examination of witness for purpose of explaining the meaning of statement which he made during cross examination. On this point, ld. PP took time from the court to move an application for re-examination after going through the statement of PW-45 and accordingly Ld. PP has filed the present application. The perusal of application further shows that ld. PP has vaguely stated in application that during cross examination, certain new documents were put to PW-45 but he failed to specify any document in the application and also the impact of such document. However, during oral arguments he pointed out that witness PW-45 had proved one gift deed Ex. PW-45/DX38 and an affidavit supporting the same favouring Shri Sumer Chand Gupta i.e. father of accused Devender Gupta.

8 The gift deed Ex. PW-45/DX38 was produced by Ld. Counsel for A-1 i.e. Devender Gupta and shown to PW-45, who identified the same. Admittedly, this document was not part of charge sheet and has been produced for the first time during cross examination of PW-45. This document being a new document has taken the prosecution as surprise and therefore, prosecution is

well within its right to re-examine PW-45 on the aspect of these documents i.e. Ex. PW-45/DX38 and affidavit supporting the gift deed. Apart from these two documents, neither in application, nor during arguments Ld. PP has pointed out towards any other document being new document.

9 His plea of unrelied document being the new document is liable to be rejected as unrelied documents by no stretch of imagination can be called a new document as not only existence of same were always in knowledge of prosecution but their possession was also with the prosecution. Ld. PP has mentioned in application that PW-45 had stated during his evidence that during investigation he had offered various documents to IO, but the IO returned those documents by stating that he is concerned only with the documents of accused Devender Gupta and his family. It is stated that the said fact is a new fact and same require re-examination. Admittedly, the scope of cross-examination is much wider than the scope of examination-in-chief. During cross examination, the question which may discredit the version of prosecution, which include concealment by prosecution can also be asked. Any such fact bring forth by defence by way of cross examination may or may not be inconsistent with the examination-in-chief or cross-examination. The statement of PW-45 that he had offered certain documents to IO during investigation who declined to take on record by no means is inconsistent with his various statements made during his evidence in the court. Therefore, on this aspect prosecution cannot be allowed to re-examine PW-45.

10 In view of above finding, the application of prosecution is allowed to the extent that it is allowed to re-examine PW-45 on aspect of gift deed Ex. PW-45/DX38 and affidavit supporting the same.

11 Application stands disposed off accordingly.

**(ANKIT SINGLA)**  
**Special Judge (PC Act)(CBI)-02**  
**Rouse Avenue District Court**  
**New Delhi/27.01.2025**