

CC No. 38/2019
CNR No. DLCT11-000229-2019
RC No. 47(A)/1999/CBI/ACB/ND
CBI vs. Devender Gupta and Ors.

10.02.2025

Present: Sh. Raj Kamal, Ld. PP for CBI.

A-1 Devender Gupta is present on bail with Ld. Counsel Sh. Gagan Minocha.

Sh. Mohd. Shahrukh, Ld. Proxy Counsel for Sh. Bhavook Chauhan, Ld. Counsel for **A-2 & A-3**.

A-6 Anil Goel is present on bail.

Sh. Sushil Bajaj and Sh. Mohd. Shahrukh, Ld. Counsels for **A-4, A-5 & A-6**.

A-7 Govind Ram is absent.

Sh. H.R. Dhamija, Ld. Counsel for **A-7**.

Personal appearance of accused nos.2 and 4 is stated to be already exempted vide order dated 25.05.2011 through their Ld. Counsel.

Personal appearance of accused nos.3 and 5 is stated to be already exempted vide order dated 30.04.2012 through their Ld. Counsel.

PW-45 Sh. Vikas Goel is present.

An Application for exemption from personal appearance has been moved on behalf of **A-7 Govind Ram**. In view of the reasons stated in the application, **A-7** is exempted from personal appearance for today subject to the condition that he will not dispute the identity of the accused during course of examination of the witnesses.

PW-45 Sh. Vikas Goel is re-examined and cross examined. After re-examination of witness, Ld. PP for CBI submits that he wants to declare the witness hostile as he is not deposing truth on the aspect of Gift Deed. Ld. PP has been

directed to explain the basis to support his claim that witness is not telling the truth on aspect of gift deed.

Ld. PP submits that State can declare witness hostile at any stage, if the witness is not supporting the prosecution case. To support his claim, he has read the observation of Hon'ble Supreme Court given in Judgment titled as ***Dahyabhai Chhaganbahi Thakker v State of Gujarat*** wherein it was stated that *“a clever witness in his examination-in-chief may support the prosecution case but in cross-examination, he may in a subtle way introduce statements contradicting in effect what he had stated in examination-in-chief. If his design is obvious, we don't see why the court cannot, during the course of his cross-examination, permit the person calling him as a witness to put questions to him which might be put during cross-examination.”*

In the order dated 29.04.2024, Ld. Predecessor had rejected the oral request of Ld. PP for re-examination of PW-45 on the ground that Ld. PP has failed to explain any discrepancy between statements made in examination-in-chief and cross-examination however, Ld. Predecessor had allowed Ld. PP to move separate application pointing out such contradictions. Ld. PP had moved one application and vide order dated 27.01.2025, the said application was decided. In the said application, Ld. PP had failed to point out any contradiction or inconsistency in testimony of PW-45. The application was however partly allowed for re-examination only for limited purpose i.e. for re-examining the witness on the aspect of new document i.e. Gift Deed Ex.PW45/DX38.

Admittedly, the witness has fully supported his statement given to IO under section 161 Cr.P.C. There was no statement of witness to IO on aspect of Gift Deed of Rs. 6 lakhs. This fact came into light for the first time during cross-examination only. There is no contradiction in examination-in-chief or cross-examination regarding aspect of Gift Deed therefore, on this aspect Ld. PP cannot be allowed to be heard by saying that witness has contradicted himself on aspect of gift deed from his examination- in-chief and has not supported the case of prosecution. The scope of cross-examination is bigger than examination-in-chief. Every new fact which came into light during cross-examination cannot be called as contradiction or omission merely because it goes against the prosecution. **Accordingly the request of prosecution is declined.**

PW-45 Sh. Vikas Goel is discharged. No other witness is available today.

Request for exemption has been received from witness Sh. P.Balachandran stating that he has been diagnosed with end stage kidney failure and presently is on hemodialysis. Medical Certificate is also attached. Ld. PP submits that he wants to drop the said witness. **Accordingly, the name of witness Sh. P. Balachandran is struck off from the list of witnesses.**

Ld. PP submits that he wants to summon one witness i.e. *Alok Kumar* whose name inadvertently mentioned as *Ashok Kumar* in the list of witnesses. Ld. Counsel for accused persons seek time to check the same. Allowed. **Let the same be apprised to Court on NDOH.**

Arguments on application dated 27.01.2025 u/s 311 Cr. P.C. have been heard, whereby Ld. PP for CBI seeks to summon Sh. K.S. Gaur, the then Asstt. Technical Examiner and Sh. Vivek Agarwal, the then Junior Technical Examiner.

It is submitted in the application that the witness Sh. K.G. Dua related to the document D-45 has expired and said document is material and essential for just decision of the case. It is submitted that these two witnesses remained associated with Sh. K.G. Dua at the time of valuation and had given combined valuation reports and their testimonies can prove the same facts which otherwise Sh. K.G. Dua would have proved. Therefore, it is prayed that these two witnesses i.e. Sh. K.S. Gaur, the then Asstt. Technical Examiner and Sh. Vivek Agarwal, the then Junior Technical examiner may be allowed to summon.

Copy of this application was given to the Ld. Defence Counsels for the accused persons, but none, except A-1 Devender Gupta chose to file reply.

Reply has been filed on behalf of A-1 Devender Gupta opposing the aforesaid application. All other accused persons adopted the reply of A-1.

Ld. PP has submitted that earlier application u/s 311 Cr. P.C. for summoning Sh. K.G. Dua was allowed by this Court vide detailed order for just decision of the case for proving document D-45 but the said objective could not be achieved as the witness Sh.K.G. Dua has expired. It is submitted that now D-45 can be proved by testimonies of these two above-said

witnesses. On the other hand, accused persons have mainly opposed the application on ground of delay.

Sh. K.G. Dua was allowed to be summoned u/s 311 Cr.P.C. by holding that proving of valuation report regarding the properties in question is essential for just decision of this case, as the case pertains to disproportionate assets allegedly acquired by the accused no.1 in connivance with other accused persons. However, unfortunately it has come on record that the said witness has expired. Now, the prosecution intends to prove valuation report D-45 through testimonies of Sh. K.S. Gaur and Sh. Vivek Agarwal who had given joint report along-with Sh. K.G. Dua. Merely, because Sh. K.G. Dua had expired, the prosecution cannot be faulted and deprived of opportunity to prove the said valuation report which has immense importance for reaching the fair conclusion regarding the culpability of the accused. The plea of the accused persons regarding the delay does not hold water as the application has been instantly filed by the prosecution on information being received of death of Sh. K.G.Dua. **Accordingly, considering the aforesaid facts and circumstances, the application dated 27.01.2025 u/s 311 Cr. PC is allowed. Both the witnesses be summoned for NDOH.**

Matter be put up for remaining PE on 27.02.2025.

(Ankit Singla)
Special Judge (PC Act) CBI-02
RADC/New Delhi/10.02.2025