

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

SC No. 03/2019

CBI vs Ashok Chawla & Anr.

**Appearances: Sh. Praneet Sharma, Ld. Sr. PP for CBI.
Accused no.2 MS. Vijaya Rajgopala on bail
with Ld. Counsel Sh. Kunal Malhotra.**

ORDER

11.10.2023

1. On behalf of applicant /accused Vijaya Rajagopala, an application under Section 311 Cr.P.C has been moved seeking to recall and re-examine PW-15 Y. K. Batra. Witness has already been examined and cross examined on 22.07.2016 and 19.12.2016 during the course of trial.

2. The trial under Official Secrets Act has been continuing against the accused for having been found in conscious possession of classified documents. The prosecution evidence is now closed.

3. The issue relates to the Satisfaction Note allegedly prepared by D. Roy Choudhary, which was sent to P. K. Kashyap

the then Director (Investigation) for obtaining sanction to conduct the raids at the properties of accused Ashok Chawla and Vijaya Rajgopala. The Satisfaction note as per the prosecution was routed through witness Y. K. Batra, the then Deputy Director. According to the applicant/ accused, the case of the prosecution is based on Satisfaction Note on the basis of which Authorisation Warrant to conduct the searches was issued. In the testimony of D. Roy Choudhary (PW-3) it has been stated that Satisfaction Note was prepared by him and Authorisation Warrant was issued by P. K. Kashyap the then Director (Investigation). It is further stated that an application under Section 91 Cr.P.C was filed before the court and vide order dated 18.02.2020, it was observed that document sought to be produced by defence were material documents and vide the order dated 25.02.2020, the application was allowed. The witness D. Roy Chaudhary (PW-3) was again recalled for cross examination but the information came that the witness has expired.

4. It is further stated that according to the testimony of PW-3, he conducted preliminary enquiry along with PW-15 Y. K. Batra and the Satisfaction Note was prepared on the basis of which Authorisation Warrant was issued by P. K. Kashyap to carry out searches at the alleged premises of the accused persons. It has also been revealed that the Satisfaction Note was forwarded by PW-3 to P. K. Kashyap through Y. K. Batra (PW-15). At the time of examination of PW-15 Y. K. Batra, the crucial and important

fact that the Satisfaction Note was routed through him was not in the knowledge of the accused persons. These facts must be put across to the witness and therefore PW-15 Y. K. Batra is to be recalled for the purposes of confrontation of these documents in order to bring out the defence of the accused.

5. It is specifically mentioned in the application that Satisfactory Note summoned by the court vide its order dated 25.02.2020 needs to be put across to PW-15 and therefore witness must be recalled for cross examination.

6. I have heard Sh. Praneet Sharma, Ld. Sr. PP for CBI and Sh. Kunal Malhotra, Ld. Counsel for applicant (accused).

7. Ld. defence Counsel argued on behalf of applicant that PW-15 Y. K. Batra needs to be re-examined on the point of Satisfactory Note on the basis of which Authorisation Warrants were issued. According to the testimony of PW-3 D. Roy Choudhary, Satisfaction Note was forwarded by him through PW-15 Y. K. Batra for approval. The contents of said Satisfaction Note have been in the knowledge of PW-15 Y. K. Batra and therefore witness needs to be questioned on this point. Ld. Counsel has relied upon the following judgments in support of his arguments:-

(i) Godrej Pacific Tech. Ltd vs. Computer Joint India Ltd., 2008 (3) ACR 2503 (SC)

**(ii) Satbir Singh vs. State of Haryana & Ors., SLP (Crl.)
No.1258/2022 dated 29.08.2023.**

8. On the other hand, Ld. Public Prosecutor argued that application is abuse of the process of law and has been moved only to delay the trial. The charge was framed on 12.10.2012 and the witness Y. K. Batra was examined on 22.07.2016 and 19.12.2016. At this belated stage, the witness must not be recalled particularly when the alleged Satisfaction Note is not the part of the record nor the witness Y. K. Batra has deposed about this in his examination in chief. The discretion under Section 311 Cr.P.C cannot be exercised so as to cause prejudice to the prosecution and to delay the trial.

9. On giving due consideration to the facts and circumstances and the contentions of both the sides, I find no justification to allow the application under Section 311 Cr.P.C. According to well settled legal position, the discretion under Section 311 Cr.P.C must be exercised on strong and valid reasons as object of the provision is to ensure justice and to reach to a just decision.

10. In State **(NCT of Delhi) v. Shiv Kumar Yadav (2016) 2 SCC 402**, it was held as under:-

27.“...Certainly, recall could be permitted if essential for the just decision, but not on such consideration as

has been adopted in the present case. Mere observation that recall was necessary "for ensuring fair trial" is not enough unless there are tangible reasons to show how the fair trial suffered without recall. Recall is not a matter of course and the discretion given to the court has to be exercised judiciously to prevent failure of justice and not arbitrarily. While the party is even permitted to correct its bona fide error and may be entitled to further opportunity even when such opportunity may be sought without any fault on the part of the opposite party, plea for recall for advancing justice has to be bona fide and has to be balanced carefully with the other relevant considerations including uncalled for hardship to the witnesses and uncalled for delay in the trial. Having regard to these considerations, there is no ground to justify the recall of witnesses already examined”.

11. The basic purpose for which application under Section 311 Cr.P.C has been moved on behalf of accused is to put across Satisfactory Note to PW-15 Y. K. Batra. The witness was examined on 22.07.2016 and he has not deposed anything about Satisfaction Note in this testimony. The said Satisfactory Note is not the part of record or documents of this case. The defence Counsel although moved an application under Section 91 Cr.P.C to get Satisfaction Note summoned and the same was allowed

vide order dated 25.02.2020 but thereafter vide its order dated 07.09.2022, the court passed the detailed order declining the request of the defence for production of Satisfactory Note. The relevant part of the order dated 07.09.2022 is reproduced herein:-

The application u/s 91 Cr.P.C. when heard, this judgment of High court of Delhi was not in the notice of this court and accordingly the court ordered for production of Satisfaction note, Authorization warrant and the Panchnama.

The Ld. Counsel for the accused states that the Judgment of the High Court does not have any bearing on the order of production of documents ordered on his application u/s 91 Cr. P.C.

Further this order allowing the production of these documents has not been challenged by the CBI and this court has no power to review the same.

There is no quarrel in preposition of law that the criminal court does not have the power the review its own order.

However, the order can be modified which has been passed in the absence of certain material brought to the notice of the court.

Since in the judgment dated 11.04.2017, the validity of the search operations has been upheld and through the production of Satisfaction Note, Authorization Warrant and Panchnama again efforts

has been made to reopen the issue which has been settled by the High Court which is not permissible.

In view of the same, I do not feel that there is any need for production of Satisfaction Note, Authorization Warrant and Panchnama or any other document reflecting on the validity of the search operations carried out by the Income Tax Department and to that extent the order dated 02.03.2020 stands modified.

12. The above mentioned order has become final and has not been challenged by either side. Now this court under the garb of exercise of discretion under Section 311 Cr.P.C cannot review its previous order.

13. Even otherwise, when no such satisfaction note is there on record, the confrontation of the same with the witness is not possible. Also, if the witness is recalled or re-examined for confrontation on the basis of testimony of other witnesses, then there would be no end to the trial and the very purpose of Section 311 Cr.P.C would be defeated.

14. In my opinion, the application has been moved to prolong the trial of the case. The prosecution evidence has been concluded and the witnesses produced by the prosecution were duly cross examined on behalf of defence.

15. In view of the above said observations, no ground to recall the witness Y. K. Batra (PW-15) is made out. Hence, application under Section 311 Cr.P.C is dismissed.

(Anju Bajaj Chandna)
Principal District & Sessions Judge-
cum-Special Judge (PC Act) (CBI),
Rouse Avenue District Court
New Delhi/11.10.2023