

CBI V. Ashok Chawla & Anr.

SC No. 03/2019

06.12.2023

Present: Sh. Praneet Sharma, Ld. Sr. PP for CBI.

Accused Vijaya Rajgopal on bail with Ld. Counsel

Sh. Kunal Malhotra.

The applicant /accused Vijaya Rajgopal has moved an application seeking to summon defence witnesses and defence documents. As per the list, record clerks pertaining to the documents Ex.PW10/DX, Ex.PW7/DX, Ex.PW16/DA2 and Ex.PW16/DA1 are sought to be summoned.

Ld. Senior Prosecutor for CBI submitted that all these documents were put to the relevant witnesses at the time of their examination. The defence now seeks to repeat the same evidence by way of summoning the record clerks that too after a lapse of more than eight years. The request of the defence should not be allowed since trial has already been delayed to a great extent.

On the other hand, Ld. defence Counsel submitted that the documents were put to the witnesses at the relevant time but Ld. Prosecutor for CBI objected to the mode of proof and therefore the original documents are now sought to be summoned through record clerks. Ld. Defence Counsel has relied upon the judgment of Supreme Court, Gajendra Singh & Ors. vs. State of Rajasthan dated 09.02.1996.

I have perused the relevant record of the case.

PW-10 Ravi Kumar was examined on 18.11.2015 and during his cross examination document Ex.PW10/DX was shown to the witness which was a photocopy of Punchnama. The objection was raised on behalf of prosecution. However, the document was shown to the witness who identified the impression of his signature on the document at point A. Several other questions were allowed to be put to the witness relating to Ex.PW10/DX. Now after the lapse of eight years, defence seeks to summon Ex.PW10/DX through the record clerk. In my opinion, at the relevant time defence should have moved the application seeking original of the said document as cross examination of the relevant witness was in continuation. After the lapse of more than eight years, the said document cannot be allowed to be produced as it would amount to the repetition of the evidence already recorded and would further delay the trial.

The document Ex.PW7/DX was shown to PW-7 Alok Rawat (examined on 31.07.2015) and he was questioned about the same. PW7/DX was the medical sheet of accused Ashok Chawla and same was produced in original by defence Counsel. The said document is already proved in evidence. Even the prosecution did not raise any objection with regard to the said document. The said document cannot be permitted to be summoned again through record clerk as it would be the repetition of the evidence already recorded and would further delay the trial.

The documents Ex.PW16/DA1 and Ex.PW16/DA2 are the form 32 of M/s Mals Deoghar Pvt. Ltd. and M/s United India Airways Pvt. Ltd. These documents were photocopies and put to the witness i.e. PW-16 Rakesh Gupta during his cross examination. In my opinion, at the relevant time defence should have moved the application seeking original of the said documents as cross examination of the relevant witness was in continuation. Now, the said documents cannot be allowed to be summoned as it would amount to the repetition of the evidence already recorded and would further delay the trial.

For the above reasons, I find no justification to summon the record clerks as witnesses. The case is pending since the year 2000 and one of the oldest case. The application is moved by the defence only to delay the conclusion of the trial.

Further, the defence also seeks to summon the record clerk from India Today Magazine to prove the article dated 31.07.1994 published on website written by Sunil Dass Gupta and Sudeep Chakraborty along with certificate under Section 65B Indian Evidence Act. The copy of the article is annexed with the application.

As stated, the article is available online and therefore the accused herself is permitted to exhibit the article with her own certificate under Section 65B Indian Evidence Act either under Section 313 (5) Cr.P.C by way of filing written statement or by examining herself under Section 315 Cr.P.C.

On examining the judgment relied upon by defence, I find that same is not applicable to the present fact situation.

In view of the above, application is disposed off wherein liberty is granted to the accused to take recourse either to Section 313 (5) Cr.P.C or to Section 315 Cr.P.C in order to place on record the online article of India Today.

The matter be listed now on 23.12.2023.

(Anju Bajaj Chandna)
Principal District & Sessions Judge-
cum-Special Judge (PC Act) (CBI),
Rouse Avenue District Court
New Delhi/06.12.2023