

**IN THE COURT OF SH. AJAY KUMAR KUCHAR, SPECIAL JUDGE,
PC ACT, CBI-04, ROUSE AVENUE COURTS, NEW DELHI**

C.C. No. 354/2019

CBI VS. RAKESH TIWARI

25.05.2019

1. Vide this order, I shall dispose of the application dated 30.10.2018 under Section 362 of Cr. P. C. filed on behalf of applicant /A-2 Neeraj Raja Kochhar, seeking correction in the order dated 22.10.2018.
2. A reply to this application has been filed on behalf A-1 Rakesh Tiwari. CBI has not preferred to file any reply to this application.
3. Facts relevant for the disposal of the present application are that during the investigation of FIR No. RC AC1 2018 A0014 CBI/AC1, A-2 Neeraj Raja Kochhar had moved an application before the court for grant of pardon under Section 5(2) of PC Act 1988. My learned Predecessor vide order dated 28.08.2018 had directed that statement of A-2 Neeraj Raja Kochhar be recorded under Section 164 Cr. P. C, which was recorded on 28.08.2018 itself. On the application of CBI, further statement of A-2 Neeraj Raja Kochhar under Section

164 Cr. P. C. was recorded on 17.09.2018. This application under Section 5(2) of PC Act 1988 is still pending for disposal.

4. In the meanwhile, the charge sheet in this case was filed on 06.10.2018. Cognizance, however, has not been taken yet as sanction qua one of the accused arrayed in the charge sheet is still awaited.
5. On 08.10.2018, my learned Predecessor allowed A-1 Rakesh Tiwari to file reply to the application under Section 306 Cr. P. C, of A-2 Neeraj Raja Kochhar. (It is being clarified it is an application under Section 5 (2) of PC Act 1988 though in all the order sheets it is being mentioned as application under Section 306 Cr. P. C.).
6. On the next date of hearing i.e. on 22.10.2018, learned counsel for A-3 Rohit Srivastava also made a submission to participate in the proceedings on the application under Section 306 Cr. P. C. and the matter was adjourned for 19.11.2018 for arguments on the point whether A-3 Rohit Srivastava can participate in the proceedings or not.
7. On 30.10.2018, the application under Section 362 Cr. P. C. was filed by A-2 Neeraj Raja Kochhar for making correction in the order dated 22.10.2018, which was listed for 19.11.2018.
8. In this application, it is stated that in the order dated 22.10.2018, name of A-1 Rakesh Tiwari was not reflected

along with co-accused Rohit Srivastava (A-3) to decide the locus of accused on the application under Section 306 Cr. P. C. Therefore, it being an error it needs to be corrected.

9. Reply to this application was filed by A-1 Rakesh Tiwari vehemently opposing the application primarily on the ground that Section 362 of Cr. P. C. is not attracted and the application was not maintainable. It is stated that only a clerical or arithmetic mistake can be rectified under Section 362 Cr. P. C. otherwise there is complete bar on the Court to make any change in the order, once it was signed. He placed reliance on the judgments mentioned in the reply itself i.e. ***Surendra Singh vs. State of Bihar (2005) 12 SCC 261 and State of Punjab Vs. Devindra Pal Bhullar.***
10. I have heard the submissions of the learned counsels for the parties on the application under Section 362 Cr. P. C.
11. The basic grievance of the applicant/A-2 Neeraj Raja Kochhar is that the accused has no right to participate in the proceedings under Section 306 Cr. P. C. This submission is based on the judgement in ***CBI V. Ashok Kumar Aggarwal (2013) 15 SCC 222.*** It was submitted that on 22.10.2018, the court was supposed to mention the name of A-1 Rakesh Tiwari as well to consider his locus on the application under Section 306 Cr. P. C. along with A-3 Rohit Srivastava. It was

submitted that the omission of the name of A-1 Rakesh Tiwari along with A-3 Rohit Srivastava to consider whether they can participate in the proceedings or not appears to inadvertent omission.

12. On the contrary, learned counsel for A-1 Rakesh Tiwari has submitted that vide order dated 08.10.2018, he has been allowed to file the reply to the application and reply has already been filed on 15.10.2018, therefore, his locus to participate in the proceedings under Section 306 Cr. P. C. can not be questioned now. So far as the application is concerned, the learned counsel for applicant submitted that A-1 Rakesh Tiwari was granted the liberty to file the reply by Court relying the judgement ***Ashok Kumar Aggarwal V. CBI (2007) 98 DRJ 80***, referred by Ld. Counsel for A-1 rakesh Tiwari. It was challenged by the CBI and a Judgement was passed by the Hon'ble Supreme Court of India in ***CBI V. Ashok Kumar Aggarwal (2013) 15 SCC 222***. It was submitted that as per the Doctrine of Merger the judgment passed in ***Ashok Kumar Aggarwal V. CBI (Supra)***, has merged in the judgement passed by Hon'ble Supreme Court of India, wherein the right of accused to participate in the proceedings under Section 306 Cr. P. C. was considered and decided.
13. Having considered the submissions of the learned counsels

and the judgements relied upon, I am of the view that Section 362 Cr. P. C. is not attracted in the present matter, which reads as under:-

“Court not to alter judgment:- Save as otherwise provided by this Code or by any other law for the time being in force, no Court, when it has signed its judgment or final order disposing of a case, shall alter or review the same except to correct a clerical or arithmetical error.”

14. The order dated 08.10.2018 is very clear and categorical whereby A-1 Rakesh Tiwari was given a liberty to file reply. On 22.10.2018 the issue of participation in the proceedings under Section 306 Cr. P. C. was raised by A-3 Rohit Srivastava. Though the submissions made by the learned counsel for A-1 Rakesh Tiwari is also recorded in one paragraph in the order dated 22.10.2018. The Court, in fact, was considering the submissions of A-3 Rohit Srivastava to take part in proceedings on application under Section 306 Cr. P.C. and for this purpose, the matter was adjourned for 19.11.2018, I find no clerical or inadvertent mistake in the orders dated 08.10.2018 and 22.10.2018. The learned counsel for the applicant relying on the judgment of Hon'ble Supreme Court of India in CBI v. Ashok Kumar Aggarwal

(supra) submitted that accused have no right to participate in the proceedings under Section 306 Cr. P. C. This issue will be considered when the application under Section 306 Cr. P. C. would come up for hearing. Presently for application under Section 362 Cr. P. C. Court had only to consider whether the order dated 22.10.2018 suffer from any clerical or arithmetical error, which in my view, it does not.

15. Having considered the facts of the case and submissions made, I am of the view that there is no merits in the application, hence the application is dismissed.

(AJAY KUMAR KUCHAR)
SPECIAL JUDGE, PC ACT,CBI-04,
ROUSE AVENUE COURTS,
NEW DELHI/25.05.2019.