

**IN THE COURT OF MS. SUNENA SHARMA,
SPECIAL JUDGE, PC ACT, CBI,
ROUSE AVENUE DISTRICT COURTS, NEW DELHI**

RC No. 52(A)/2007

CC No. 91/2019

CBI v. S.N.S.Sidhu and ors.

CNR No. DLCT11000428-2019

17.3.2023

Order

1. Vide this order, I shall decide two applications moved by CBI 1st application is dated 04.6.2021 under Section 311 Cr.P.C for placing on record three additional document i.e. (1) Survey List of Gautam Nagar File No. 02 (Containing no. of unit from 443 to 898) in photocopy (Original in RC No. 34(A)/2007); (2). Survey List of Gautam Nagar File No. 03 (Containing no. of unit from 899 to 1530) in photocopy (Original in RC No. 34(A)/2007); and (3). Survey List of Thokar No. 16, JJ Cluster, Shamshan Ghat, Geeta Colony in Original.

2. 2nd application is dated 25.7.2022 for placing on record additional documents i.e. (1) Production cum seizure memo dated 25.8.2007 executed between Sh. D.K. Thakur, Inspector, CBI, ACB, New Delhi and Sh. K.L. Mangoo, Research officer, Sociology Division, Vikas Kutir, Slum & JJ Department, MCD, New Delhi in Photocopy (Original in RC No. 34(A)/2007); (2) Production cum seizure memo dated 15.10.2007 executed between Sh. D.K. Thakur, Inspector, CBI, ACB, New Delhi and Sh. K.N. Kandpal, Deputy Director, Slum & JJ Department, MCD, New Delhi in photocopy; and (3) Survey List

of Gautam Nagar file no. 07 (containing no. of Unit from 2758 to 3219) in photocopy (Original in RC No. 34(A)/2007).

3. It is stated that the first two documents of the 1st application are lying in the judicial file bearing RC No. 34(A)/2007 whereas, the 3rd document (Survey List of Thokar No. 16, JJ Cluster, Shamshan Ghat, Geeta Colony) was inadvertently not placed on record and the same kept lying in Malkhana of CBI in this very case. It is further submitted that the survey list of Gautam Nagar File No. 02, survey list of Gautam Nagar File no. 03 and survey list of Gautam Nagar File no. 07 were seized vide production-cum-seizure memo dated 25.8.2007 by Inspector D.K. Thakur who is already a witness in this case. Whereas, the survey list of Thokar mentioned at serial no. 3 of the 1st application was seized vide production-cum-seizure memo dated 15.10.2007 by Inspector D.K. Thakur. In the 2nd application survey list of Gautam Nagar file no. 07 is also sought to be placed on record and same is mentioned at serial no. 3 of the said application. It is further informed by Ld. Sr. Prosecutor for CBI that only the photocopy of production-cum-seizure memo dated 15.10.2007 is available with CBI as its original is not traceable despite efforts.

4. An objection has been raised by the Ld. Defence Counsel that the survey list of Gautam Nagar file no. 02, 03 and 07 which are shown to be lying in original RC No. 34(A)/2007 are not the part of original chargesheet of RC No. 34(A)/2007, as said documents were never relied upon by CBI even in said RC No. 34(A)/2007.

5. Ld. Senior Public Prosecutor for CBI has fairly conceded to the fact that said three survey lists were not the part of original chargesheet of RC No. 34(A)/2007, however, they were filed after the file was reconstructed pursuant to the directions contained in the order dated 20.4.2015 of Hon'ble High Court in criminal Misc. Case 3763/2012. On the other hand, Ld. Defence Counsel has raised the objection that Hon'ble High Court had allowed reconstruction of only missing documents of the original file whereas, the documents which were never the part of original chargesheet cannot be relied upon by CBI in this case at this stage for said reason. It is further argued that since the CBI failed to file the supplementary chargesheet within stipulated time and also failed to file the same in consonance with the directions of Hon'ble High Court therefore, Sh. M.K. Nagpal, Ld. Special Judge, CBI vide order dated 24.9.2016 declined to consider said supplementary chargesheet and same led to dropping of proceedings/discharge against all the accused persons in said matter.

6. The applications have been vehemently opposed by the accused persons on the ground that the application being filed at a highly belated stage is liable to be dismissed outrightly. It is further contended that the applications have been moved just to fill up the lacunas in the prosecution case and further to prolong the trial. Further, the prosecution has failed to furnish any plausible reason for non filing of said documents at the appropriate stage nor said documents have even been relied upon by the prosecution as the same do not find any mention in the list

of documents filed alongwith chargesheet. Further, the documents remained all along in the custody of CBI and cannot be allowed to be placed on record at this stage when most of the material witnesses cited by the prosecution have already been examined in the matter. It is vehemently argued that for lack of said documents on record, the witnesses who are already examined in the matter, could not be cross-examined on these documents.

7. It is contended that as per Section 173(5) Cr.P.C, all the documents which the prosecution proposes to rely, have to be filed alongwith chargesheet and in case some more documents are required to be filed, the recourse to sub section (8) of Section 173 Cr.P.C may be taken for seeking permission to further investigate the matter and to file supplementary chargesheet in respect of such further investigation, if any carried out in the matter. The Defence Counsels say that in this case, the trial had commenced way back in the year 2009 and most of the witnesses have already been examined by the prosecution therefore, no such permission as sought in the instant application can be accorded to the Prosecution.

8. Per contra, Ld. Sr. Public Prosecutor argued that it is no more *res integra* that use of the word 'shall' in Section 173(5) Cr.P.C, is only directory in nature and there is no bar for the Prosecution to file additional documents even at the subsequent stage of trial provided the court finds it necessary for just decision of the matter. He argued that the said six documents are vital documents. It is argued that though the additional

documents sought to be filed were inadvertently not mentioned in the list of documents filed alongwith the chargesheet but the names of the witnesses who are none else but the Field Investigators of Slum and JJ Department, who conducted the survey of aforementioned areas and prepared/signed said survey lists sought to be placed on record are duly mentioned in the list of witnesses filed with the chargesheet and said witnesses are yet to be examined in the matter and as such, no prejudice would be caused to the accused persons.

9. Ld. Sr. Public Prosecutor submits that all the said documents are relevant and essential for the just decision of the matter. As per record, out of total 66 witnesses, 49 witnesses have been examined, 05 witnesses have expired and only 12 witnesses including the above 05 Field Investigators are left to be examined. It is submitted by Ld. Senior Public Prosecutor that witnesses Smt. Kamlesh Kumari, has signed the survey list of Gautam Nagar Area File no. 2, Smt. Raj Bala Sharma, signed survey list of Gautam Nagar Area File no. 2 and 3, Sh. Deepak Bhutala signed survey list of Gautam Nagar Area file no. 3, Sh. Rajiv Syali signed survey list of Gautam Nagar Area file no. 7 and Sh. Pradeep Kumar Sharma signed survey list of Thokar no. 16, JJ Cluster, Shamshan Ghat, Geeta Colony and all said persons are cited as prosecution witnesses and are yet to be examined to prove their signatures and documents pertain to them. Whereas, Inspector D.K. Thakur, who had seized the aforementioned survey lists, is required to be recalled for his re-examination only with regard to said freshly filed additional documents. Hence, a verbal prayer was also made during arguments to recall Inspector

D.K. Thakur under Section 311 Cr.P.C.

10. The short question which falls for consideration for this Court is whether any additional document not forming part of the chargesheet could be allowed to be introduced by the prosecution after the commencement of trial. The fact giving rise to the above question is the instant chargesheet of RC no. 52(A)/2007 filed against accused persons alleging offences punishable under Section 120-B IPC, r/w 420, 467, 468, 471 IPC and u/s 13(1)(d) r/w 13(2) of PC Act. During the course of trial, after examining 49 witnesses, the prosecution moved the present application to place on record the aforementioned 06 documents enumerated in the abovementioned two applications. In the applications, it is stated that at the time of filing of chargesheet, the said documents were though in possession of CBI but could not be inadvertently filed on record.

11. The accused herein have raised serious objection to the filing of aforementioned documents contending that investigation agency ought to have filed said documents by way of supplementary report under Section 173 (8) Cr.P.C. It is contended that in the facts and circumstances of the case it appears that said documents were never seized by CBI during investigation and for said reason, said documents do not find mention in the list of documents annexed with the chargesheet of the instant case or of the original chargesheet of RC No. 34(A)/2007 nor even the chargesheet mentions anything about the seizure of said documents. Therefore, it is not open for the Prosecution to produce the proposed documents at this belated

stage of trial. It is contended that once the final report is submitted before the Court, the only course open for the prosecution to introduce additional material by way of additional documents is to obtain permission of the court for further investigation under Section 173(8) Cr.P.C and thereafter, further evidence either oral or documentary should be placed before Court by way of supplementary chargesheet. The prosecution having not done so, cannot be allowed to directly file any additional document at the stage of trial. It is vehemently argued that if prosecution is allowed to file said additional documents, defence of accused would get materially prejudiced for it would take away the legal right accused in challenging said documents as 49 witnesses have already been examined in the matter.

12. As per chargesheet, it is all along the prosecution case that employees of Slum and J.J. Deptt. of MCD namely, accused SNS Sidhu, Philip Toppo (since deceased), Sumer Chand Garg, Atul Vashishth, Ashok Kumar Chikkara had entered into a criminal conspiracy with one Ashok Malhotra (since deceased). Fake and forged documents like ration card, identity cards etc. were prepared and used in the name of fake /fictitious persons for allotment of plots under resettlement scheme. The said officials of MCD by misusing/ abusing their official position and in conspiracy with Sh. Ashok Malhotra and Ashok Jain (since deceased) cheated MCD and dishonestly allotted plots in the names of fake/fictitious persons under resettlement scheme. On 16.03.2007 and 19.03.2007, the said officials of MCD by abusing their official position and in conspiracy with Sh. Ashok Malhotra and Ashok Jain cheated MCD and dishonestly allotted plots in the

names of fake/fictitious persons on the basis of forged/fabricated documents. Further the provisional identification slips which were used as proof of allotment and other official records of such plots were knowingly passed on by the said MCD officials to Sh. Ashok Malhotra and Sh. Ashok Jain, which were recovered at the instance of Sh. Ashok Jain during the course of investigation of RC DAI 2007 A 0034. Further the officials records of SUR, Slum and J J Department i.e. the draw list and draw parchies dated 16.03.2007 and 19.03.2007 were recovered from the house no. B 62, Nehru Vihar, Delhi where they had been kept on the directions of Sh. Ashok Malhotra. Sh. Ashok Malhotra and Sh. Ashok Jain in furtherance to said conspiracy prepared fake and forged documents, with the intention to illegally sale the said plots in the open market at exorbitant price in order to cause wrongful gain to themselves and wrongful loss to the Government.

13. Hence, it is apparent from chargesheet that there is mention of joint survey reports conducted by sociological department in different areas of Jhuggi Jopri cluster of Gautam Nagar Area and Thokar no.16 and rather the prosecution case is heavily based on said survey reports because the allotment of plot is alleged to have been made in violation of said survey reports as out of 28 allotments, names of only 15 dwellers were reflected in the respective survey list. Out of said 15 JJ Dwellers, only 12 were eligible for resettlement plot and they were also given alternative plot in Gautam Puri Molarbandh Resettlement Scheme in the year 1999.

14. Out of total six documents sought to be placed on record vide this application, four documents are original and same are lying in the judicial file of RC No. 34(A)/2007 and said documents are Survey List of Gautam Nagar File No. 02 (Containing no. of unit from 443 to 898); Survey List of Gautam Nagar File No. 03 (Containing no. of unit from 899 to 1530); Production cum seizure memo dated 25.8.2007 and Survey List of Gautam Nagar file no. 07 (containing no. of Unit from 2758 to 3219).

15. As already noted above, the documents which are sought to be filed are very vital and important documents for the CBI to prove charge against the accused persons. The original survey list of Gautam Nagar file no. 2,3 and file no. 7 and Production-cum-seizure memo dated 25.08.2007 are stated to be lying in the judicial file in RC no 34(A)/2007. Furthermore, the entire case of the CBI is based on the survey lists. Without the survey lists, illegality in the allotment of alternative plots cannot be established. In the instant case 49 witnesses have already been examined but the witnesses pertaining to the aforementioned documents are yet not summoned and accused persons would get opportunity to cross examine said witnesses.

16. The production-cum-seizure memo dated 15.10.2007 is although only a photocopy as it's original is stated to be not traceable, but there is no legal bar to lead secondary evidence in respect of a photocopy of a document provided the party concerned is able to lay down the foundational facts of requisite conditions during the course of evidence. Therefore, I

find no reason to decline request even to place on record said documents. Inspector D.K. Thakur had prepared said memo, has though been already examined in the matter, but he can be recalled by the CBI for the purpose of his examination on said document and in that eventuality, the accused would get opportunity to cross-examine him in order to challenge the genuineness of said document. Further more, merely because the supplementary chargesheet filed in RC No. 34(A)/2007 vide which aforementioned survey lists were filed by CBI in said case, were not taken into consideration in said case, cannot be a ground to discard said documents especially when the same are original survey reports prepared by Sociologist Division of Slum and JJ Department and the name of the surveyor who prepared said reports are already in the list of witnesses filed with the chargesheet.

17. As far as the contention of defence that the provisions of Cr.P.C do not provide for filing of the additional documents after commencement of trial is concerned, the same is not at all convincing. We can not lose sight of the fact that the rules of procedure are designed as means of fair and just trial because the real purpose of criminal trial is to unravel the truth and ascertainment of real facts. In my considered view, Section 311 Cr.P.C which is analogous to section 540 of old Code of Criminal Procedure empowers the court to allow not only the additional evidence at any stage of trial but to also allow any additional document in evidence at any stage of proceedings provided the same is considered essential for just decision of case and does to lead to any prejudice to the accused. Reliance in this

regard is placed on case titled “**Chandu Veeraiah And Ors. vs State Of Andhra Pradesh, (DOD 16 November, 1959) AIR 1960 AP 329, 1960 Cri LJ 791**, wherein similar contention was raised by the defence that prosecution is bound to decide before commencement of trial what witnesses it proposes to examine or what documents it proposes to rely upon in support of its case and to mention their names in the chargesheet and also to furnish all the accused copies of the statement of witnesses as well as the documents relied upon otherwise, the prosecution would lose its right to call any witness that it likes or to file any document that it pleases subsequently. But said contention was rejected by Hon'ble High Court.

18. Though the Prosecution has committed mistake by not filing the aforementioned documents at the appropriate stage but, Section 311 CrPC gives wide powers to court to act as the exigency of the case would require provided no prejudice is caused to the accused. Since the prosecution evidence is yet not concluded, no prejudice would be caused to the accused persons if the documents are allowed to be placed on record. Though the documents already existed and were in possession of CBI but on account of bonafide mistake, the same could not be filed alongwith the chargesheet. The documents are undoubtedly, very vital and crucial for prosecution to prove the charges against the accused.

19. In the light of aforementioned facts and circumstances of the case, I do not find any legal impediment in allowing the application. Both the applications are hence,

allowed. The prayed of CBI for recalling of witness–Inspector D.K. Thakur already examined in the matter as PW-42 is also allowed subject to availability of said witness.

20. Applications are disposed of accordingly.

(SUNENA SHARMA)
SPECIAL JUDGE (PC ACT) (CBI)
ROUSE AVENUE DISTRICT COURTS
NEW DELHI/17.3.2023