

CC No. 91/2019
CNR No. DLCT11-000428-2019
CBI Vs. S.N.S Sidhu & Ors.

08.02.2024

Present : Sh. Surendra Singh, Ld. PP for CBI.

Accused S.N.S Sidhu is on bail present today along with Ld. Counsel Sh. Kartik Wadhwa.

Accused Philip Toppo, Sumer Chand Garg, Ashok Malhotra and Ashok Jain have expired and proceedings against them have already been abated.

Accused Atul Vashisht is on bail present today.

Accused Mohan Lal is on bail present today along with Ld. LAC Sh. Naveen Kumar.

Accused Lal Mani, Vijay Kumar and R.S. Sandhu are on bail present today.

Ld. Counsel Sh. Hitender Kapur for accused Lal Mani, Ram Chander Arora and Vijay Kumar through video conferencing.

Accused Ram Chander Arora is permanently exempted through his counsel by the Ld. Predecessor of this court vide order dated 05.08.2019.

Accused Surjeet Singh is absent, however, exemption application has been moved on his behalf by his wife Mrs. Jasvinder Kaur. Heard. For the reasons assigned in the application, accused Surjeet Singh is exempted from his personal appearance for today only.

Today no PW is present. Request of PW Sh. Shyam Prakash received. He stands exempted from his personal appearance for today only. He be summoned afresh for next date of hearing.

Arguments heard on the pending application as was moved by the CBI on 23.12.2023 for filing additional documents. Considered the application as well as replies filed by the opposite side. I have also gone through the record.

It is submitted on behalf of CBI that Sh. A.D. Shah, Forensic Expert, CFSL has been cited as a prosecution witness to prove the CFSL report prepared by him upon examination of finger prints of accused Lal Mani and Ram Chander Arora. It is further submitted that inadvertently original finger prints along with CFSL report pertaining to the above finger prints could not be filed along with the charge sheet and the same are lying in file of RC-25(A)/2007 (CC No. 72/19) which is pending trial before this court and documents pertaining to finger prints of accused Lal Mani have been cited as D-26 (S-398 to S-400) of the main charge sheet and documents pertaining to fingerprints of accused Ram Chander Arora have been cited as D-10 in the additional list of charge sheet no. 1 in the said RC. It is submitted that said documents are essential for just decision of the present case and that no prejudice will be caused to the accused persons if the above documents are taken on record and rather prejudice shall be caused to the CBI if the application is not allowed.

Per contra, application has been vehemently opposed by the Ld. Counsels for the accused persons submitting that same

is devoid of any merit and is liable to be dismissed with cost as no cogent, reasonable explanation or justification has been given by the CBI in the instant application for placing on record additional documents. It is pleaded that FIR in the present matter was registered in the year 2007, charge sheet was filed in the year 2009 and the present application has been moved in 2023 only i.e. after lapse of more than 14 years. It is pleaded that CBI has already examined 57 witnesses in the present matter and by moving the present application at such a belated stage, CBI is only trying to fill up the lacuna in its case as most of the defence of accused persons has already been disclosed and as such if the present application is allowed grave prejudice would be caused to the accused persons. It is further pleaded that the documents in question have always been in the possession of CBI, as admitted in the application and no cogent reason has been given in the application for not filing the same earlier. It is pleaded that present application is nothing but another attempt to delay the trial.

After hearing the rival contentions raised at bar and on careful consideration of record, I am of the considered opinion that the application at hand ought to be allowed to meet the ends of justice.

At the outset it is to be seen that the documents which the prosecution wants to bring on record though admittedly not part of the present charge sheet, however, the same are already on record, tendered in evidence in RC-25(A)/2007 (CC No. 72/19). In fact they have also been tendered

in evidence in RC No. 45(A)/2007, RC No. 47(A)/2007, RC No. 50(A)/2007 etc., all pending trial before this court. The said RCs and the present RC No. 52(A)/2007 were registered with allegations of fraudulent allotment of alternative plots to slum dwellers by DDA and MCD. It is also to be seen that the documents/original finger prints/report pertain to two accused namely Lal Mani and Ram Chander Arora who are already accused in RC No. 45(A)/2007, RC No. 47(A)/2007 etc. Accused Lal Mani is also accused in RC No. 25(A)/2007. In fact most of the accused are common in these RCs e.g. RC No. 45(A)/2007, RC No. 47(A)/2007, RC No. 50(A)/2007 etc. The prosecution witness who had tendered the said document/report i.e. Sh. A.D. Shah has already been cross examined in detail by the Ld. Counsels representing the said accused persons in those RCs. He is the same witness i.e. PW58 that the prosecution is examining in the present matter to prove the said document/report. So no question arises of accused Lal Mani and Ram Chander Arora being taken by surprise or any prejudice being caused to them if the documents are taken on record. Though some of the accused persons are different in the present RC and the said RCs, however, the documents do not specifically pertain to those accused persons. No doubt the said documents being not part of the charge sheet were not supplied to them, however, once the documents are taken on record they shall be duly supplied to these accused persons who shall be given ample opportunity to cross examine the prosecution witness qua the said documents and rebut the prosecution case, if any, based upon them against

these accused persons. In fact having been provided with the documents/report in question in other RCs and having cross examined the prosecution witnesses qua those documents/reports even no question arises of these accused persons being prejudiced or being taken by surprise.

Undoubtedly, prosecution/CBI should have much more diligent and present situation should not have arisen at all, however, if the prosecution now seeks to rectify the said error there is no reason to deny the said opportunity to the prosecution. Fair trial is the main object of criminal procedure and such fairness should not be hampered or threatened in any manner. A trial primarily aimed at ascertaining truth has to be fair to all concerned and includes the accused, the victims and society at large. It is cardinal rule in the law of evidence that the best available evidence should be brought before the court to prove a fact and points on issue.

Though Ld. Counsels for the accused persons vehemently argued that the prosecution has not even bothered to mention the provision of Cr.P.C. which has been invoked to move the present application and that nothing in Cr.P.C. empowers the court to take additional documents at the stage of trial, once the charge sheet has been filed, however, I do not find any merit in the said argument. To begin with the law is well settled that the procedure is hand maids of justice and that the nomenclature under which the application has been moved or its absence is merely a technicality which cannot come in the way of imparting justice. Secondly, in my considered opinion Section 311 Cr.P.C.

empowers the court to take the said additional documents on record. The scope of power is not limited to examining additional witnesses only but the court has ample power to even take additional documents on record at any stage provided same is essential for just decision of the case. Vast discretionary powers are provided u/s 311 Cr.P.C. which can be invoked to meet the ends of justice. The object underlying Section 311 of the Code is that there may not be failure of justice on account of mistake of either party in bringing the valuable evidence on record or leaving ambiguity in the statements of the witnesses examined from either side. The determinative factor is whether it is essential to the just decision of the case. In *Natasha Singh vs. CBI 2013 AIR SCW 3554* it was held that the object of this Section is to do justice not only from the point of view of the accused and the prosecution but also from the point of view of an orderly society. The court examines evidence under this Section neither to help the accused nor to help the prosecution. The fundamental thing to be seen is whether the court thinks it necessary in facts and circumstances of the particular case before it.

The scope and object of section 311 Cr.P.C. is to enable the court to determine the truth and to render a just decision after discovering all relevant facts and obtaining proper proof of such facts. In case *Iddar & Ors. vs. Aabbida & Anr. 2007 (11) SCC 211* Hon'ble Supreme Court has held that, the object underlying Section 311 of the Code is that there may not be failure of justice on account of mistake of either party in

bringing the valuable evidence on record or leaving ambiguity in the statements of the witnesses examined from either side. The determinative factor is whether it is essential to the just decision of the case. In case of *V.N. Patil vs. K. Niranjan Kumar and Ors., (2021) 3 SCC 661*, the aim of every court is to discover the truth. Section 311 Cr.P.C. is one of many such provisions which strengthen the arms of a court in its effort to unearth the truth by procedure sanctioned by law. At the same time, the discretionary power vested under section 311 Cr.P.C. has to be exercised judiciously for strong and valid reasons and with caution and circumspection to meet the ends of justice. This is a power given to the Court not to be merely exercised at the bidding of any one party/person but the powers conferred and discretion vested are to prevent any irretrievable or immeasurable damage to the cause of society, public interest and miscarriage of justice.

It is the prosecution case in brief that co-accused S.N.S. Sidhu, Philip Toppo, Sumer Chand Garg and Atul Vashisht used their official positions and allotted 28 plots in the name of bogus & fictitious persons and handed over the plot papers to accused Ashok Malhotra in lieu of monetary consideration. It is the prosecution case that the said allotment was made on the basis of forged and fabricated identity documents etc. It is further the prosecution case that accused Ashok Malhotra in order to sell these plots in open market connived with co-accused Ram Chander Arora, Lal Mani etc. and got prepared legal documents i.e. receipt, GPA, agreement to sell & purchase, affidavit, Deed of Will etc. Vide the documents and reports in

question prosecution wants to prove that it was accused Lal Mani and Ram Chander Arora who had affixed their thumb impressions on the legal documents which were prepared pursuant to criminal conspiracy hatched by all the accused persons.

As regards the arguments that the application is merely an effort by the prosecution to fill in the lacuna appearing in its case, the law is well settled that lacuna in the prosecution must be understood as the inherent weakness or a latent wedge in the matrix of the prosecution case. The advantage of it should normally go to the accused in the trial of the case, but an oversight in the management of the prosecution cannot be treated as irreparable lacuna. No party in a trial can be foreclosed from correcting errors. If proper evidence was not adduced or a relevant material was not brought on record due to any inadvertence, the Court should be magnanimous in permitting such mistakes to be rectified. After all, function of the criminal court is administration of criminal justice and not to count errors committed by the parties or to find out and declare who among the parties performed better. (**Rajendra Prasad vs Narcotic Cell through Its Officer AIR 1999 SC 2292**). A lacuna in prosecution is not to be equated with the fallout of an oversight committed by a public prosecutor during trial, either in producing relevant materials or in eliciting relevant answers from witnesses. The adage 'to err is human' is the recognition-of the possibility of making mistakes to which humans are proved. A corollary of any such latches or mistakes during the conducting of a case cannot

be understood as the lacuna which a court cannot fill up (*Mohanlal Shamji Sani v. Union of India, AIR (1991) SC 1346*).

In *Mannan Shaikh and others v. State of West Bengal and another (2014) 13 SCC 59* it was held:-

“22.We must, however, clarify that oversight of the prosecution is not appreciated by us. But the cause of justice must not be allowed to suffer because of the oversight of the prosecution.....”

Accordingly, in view of the above discussion, the application stands allowed. Prosecution is at liberty to bring the additional documents on record as detailed in the application. The documents may be summoned as per rules and procedure or their certified copies be placed on record as per the rules of evidence. Copies of the documents be supplied to the accused persons in advance so that they have ample opportunity to prepare their defence viz-a-viz the said documents. The application stands disposed of.

In view of the request of PW Shyam Prakash and as no other witness has been called by the CBI for 09.02.2024, date of 09.02.2024 stands cancelled.

Relist the matter for PE now on 12.03.2024. At request date stands changed to **14.03.2024**.

(GAURAV RAO)
SPECIAL JUDGE (PC ACT) (CBI)
ROUSE AVENUE DISTRICT COURTS
NEW DELHI/08.02.2024