

**IN THE COURT OF SHRI HASAN ANZAR,
SPECIAL JUDGE, PC ACT (CBI-03),
ROUSE AVENUE DISTRICT COURT, NEW DELHI**

*CBI Vs. Satish Kumar & Anr.
CC No. 56/2022
Date of Institution : 22.09.2022*

09.10.2024

Present : Ms. Rohini Anand, Ld. PP for the CBI alongwith Ct. Shri Ajeet Kumar from System Division and Ct. Gopal MHC(M) alongwith case properties.
A-1 Satish Kumar and A-2 Deepak on bail.
Shri Sachin Baisla, proxy counsel for Shri Sandeep Sharma, Ld. Counsel for A-1 Satish Kumar.
Shri Raj Kamal Arya, Ld. Counsel for A-2 Deepak.
PW6 Shri Tarsem is present.

1. This order shall dispose of an application moved under section 91 Cr.P.C. (Corresponding provision under section 94 of Bharatiya Nagarik Suraksha Sanhita), {hereinafter to be called as an **“Application”**}.

2. By virtue of the present application, the prosecution seeks to summon and production of the record from PS Mundka as well as prayer for deferring further examination of PW6/complainant Shri Tarsem.

3. Brief facts of the case are that accused persons are facing trial for the commission of offence under section 120B IPC r/w Section 7 of Prevention of Corruption Act 1988 (As amended in 2018) and Section 7 of PC Act *inter-alia* to the effect that they were found demanding and accepting the bribe from the complainant and presently, the examination of the complainant/PW6 is underway.

4. It is contended in the application that the complainant/PW6

has resiled from his previous statement recorded during investigation under the influence of the accused persons in the court. It is also contended that the complainant/PW6 was threatened by the accused persons due to which he had lodged complaints against the accused persons from 17.10.2022 to 12.12.2022 in the local police station. It is also contended that the complainant had also forwarded the complaints to HIO Shri Bhola Ram on his Mobile No. 7829072807. It is also contended that even a NCR was recorded vide NCR No. 00562022. It is also contended that in order to confront the complainant/PW6 Shri Tarsem, the originals of the documents are required to be confronted to complainant/PW6 and that the documents are very much required for the just decision of the case in order to extract the truth from the mouth of the complainant/PW6 during his examination-in-chief. It is also contended that further examination-in-chief of the complainant/PW6 be deferred till the documents are obtained from PS Mundka.

5. Per contra, Ld. Counsels for both the accused persons contended that present application moved on behalf of the prosecution is an afterthought and has been manipulated in order to deter the witness from speaking the truth. It is also contended that perusal of the application alongwith the supporting annexure would show that the complaint on the basis of which the prosecution has alleged that the witness was being threatened would indicate that it was not signed by the complainant/PW6 Shri Tarsem. It is also contended that the documents which are sought to be brought on record and whose production is ought by the prosecution and which are to be confronted to the complainant/PW6 appeared to be in the custody of the

prosecuting agency and further as to how an HIO could have accessed to the so called documents as mentioned in the application. It is also contended that in the present case, the prosecution is trying to delay the matter and the prosecution has also not disclosed on which date the documents etc. were forwarded to the HIO by the complainant as alleged. It is also contended that the prosecution has also not indicated as to how the said documents were received on the whatsapp of HIO Shri Bhola Ram and no screen shot of the whatsapp has been placed on record.

6. I have considered the submissions made on behalf of both the sides. As observed earlier, complainant/PW6 is under examination and the court would always give primacy to the effect that the witness is examined at the earliest. However, specific situation requires specific treatment. The prosecution has moved the present application on the premise that the witness is being influenced by the accused persons and in this regard, the complaints were made to PS Mundka. During the submission on the oral query of the court, Ld. PP for the CBI has submitted that the factum in respect of the complaints etc. came to the knowledge of the HIO on 06.10.2024 i.e. prior to recording of examination-in-chief of the complainant/PW6 on 07.10.2024. It is also a matter of record that the prosecuting agency in the present case is none but Central Bureau of Investigation, which pride itself to be the premier agency of the country. It has power and the competence to obtain the documents which are required to be shown/confronted to the witness i.e. complainant/PW6 that he is deposing under the influence and instead of obtaining the documents on expeditious basis from the

police station, the present application was moved on 07.10.2024 in the post lunch session when substantial part of the examination-in-chief of the complainant/PW6 had already been recorded and prayer for deferment of further examination-in-chief is made by the prosecuting agency itself.

7. Be that as it may, the criminal trial is a voyage to discover the truth and notwithstanding the fact that unusual procedure was adopted by the prosecution by trying to summon/production of the documents which it could have obtained from the local police station. However, considering the fact that the production of the documents are just and necessary for the trial of the case to consider whether complaints were given by the complainant/PW6 to the Local Police Station. In so far as the objection of the Ld. Counsels for the accused persons to the effect that the purported complaints are manipulated, false and baseless and has been tailor made with a view to extract specific testimony of the complainant/PW6 is concerned, the same can always be tested during the trial as Ld. defence counsels would get an opportunity to cross-examine the witness/PW6 in respect of the allegations/facts disclosed in the application or the allegations made by the prosecution. Therefore, it would be appropriate, if the SHO PS Mundka is directed to produce the documents, if any, as referred in the subject application since the documents are required to be put to the complainant/PW6, accordingly, the prayer of the prosecution for deferring of the evidence as well as for summoning of the documents is acceded and accordingly, the present application is allowed subject to the following directions;

Issue summon/directions to the SHO PS Mundka to produce the following original documents as well as the attested copies on the next date of hearing :

- a) NCR No. 00562022 dated 31.12.2022 and
- b) Complaints dated 17.10.2022 and 14.12.2022 filed by the complainant/PW6 Shri Tarsem in PS Mundka.

8. With these observations, the application stands disposed of.

9. Considering the fact that since the prosecution is alleging that the complainant/PW6 is under threat/influence, it is deemed appropriate to observe that the testimony of the complainant/PW6 shall be recorded on expeditious basis.

10. PW6 Shri Tarsem is present. He is discharged for today and fresh summons be issued to him for the next dates of hearings. PW6 Shri Tarsem is also apprised about the next dates of hearings.

11. Issue notice to Incharge, Malkhana and Incharge System Division to depute an official to remain present alongwith case properties and the instruments like laptop, write blocker and speakers to play the audio recordings in the Court on the next dates of hearing.

12. It is observed that neither IO nor the HIO are present in the court despite the fact that material witness is under examination.

13. Put up on **11.11.2024, 12.11.2024 and 18.11.2024** for further examination of the complainant/PW-6 Shri Tarsem.

14. As prayed, copy of the proceedings/order be given *dasti* to both the sides.

(HASAN ANZAR)
Special Judge (PC Act) CBI-03,
RADC/New Delhi/09.10.2024