

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

*CBI Vs. Binod Kumar Giri & Ors.
CC No. 321/2019
Date of Institution : 31.08.2016
IA No. 02/2025*

14.07.2025

ORDER

1. This Order shall decide an application U/s 348 of BNSS, filed on behalf of A-1 for recall of PW-50 Shri G.K. Verma for the purposes of cross-examination.

2. It is contended by the Ld. Counsel for A-1 that PW50 is the Sanctioning Authority who could not be cross-examined due to the non-availability of main counsel. It is contended that testimony of PW50 is of paramount importance as PW50 would indicate about the application of mind by which he granted prosecution sanction against accused no. 1 Binod Kumar Giri and for the purposes of the effective defence, he may be permitted to cross-examine the witness/PW-50. It is also contended that trial is at fag end and no prejudice would be caused to the prosecution whereas grave prejudice would be caused to A-1 if the application is not allowed.

3. Reply to the application was filed on behalf of the CBI and it is contended that both sufficient time and opportunity

was accorded to the accused and despite opportunity, A-1 failed to cross-examine PW-50. It is also contended that precious judicial time shall be wasted and the present witness is a public officer engaged in discharge of official duties and therefore, the application is liable to be dismissed and the application is a dilatory tactics adopted by the defence to prolong the trial.

4. I have considered the submissions made by both the sides which was argued by the respective sides as per the stand taken in the application as well as reply to the application.

5. Perusal of the record reveals that on 09.01.2025, PW50 Shri G.K. Verma was present and his examination-in-chief was recorded and despite opportunity, the witness/PW50 was not cross-examined by the Ld. Defence counsel. It was reasoned in the application that the main counsel was unable to appear at the time of cross-examination due to pressing requirement. Inability of a counsel to cross-examine the witness in attendance is not in itself sufficient to permit a recall of the witness already examined. However, if one peruse the nature of the testimony of PW50, it would reveal that PW50 is a necessary and material witness as he granted prosecution sanction against A-1 and therefore, his testimony is necessary for the just decision of the case. Cross-

examination is one of the tool by which accused would be able to bring such material/facts which would have just bearing for the purpose of the presently case. Fair trial demands that one opportunity can be given to the accused to cross-examine the witness as there was hardly any cross-examination in respect of the allegations against the accused. It would be appropriate to refer to **P. Sanjeeva Rao Vs. State of A.P. decided on 2nd July 2012 in Criminal Appeal Nos. 874-875 of 2012** where scope of Section 311 was highlighted and in Para no. 13 and 16, an earlier decision of the Hon'ble Supreme Court was quoted.

13. Grant of fairest opportunity to the accused to prove his innocence was the object of every fair trial, observed this Court in Hoffman Andreas Vs. Inspector of Customs, Amritsar (2000) 10 SCC 430. The following passage is in this regard apposite:

“In such circumstances, if the new Counsel thought to have the material witnesses further examined, the Court could adopt latitude and a liberal view in the interest of justice, particularly when the Court has unbridled powers in the matter as enshrined in Section 311 of the Code. After all the trial is basically for the prisoners and courts should afford the opportunity to them in the fairest manner possible.”

16. We are conscious of the fact that recall of the witnesses is being directed nearly four years after they were examined in chief about an incident that is nearly seven years old. Delay takes a heavy toll on the human memory apart from breeding cynicism about the efficacy of the judicial system to decide cases within a reasonably foreseeable time period. To that extent the apprehension expressed by Mr. Rawal, that the prosecution may suffer prejudice on account of a belated recall, may not be wholly without any basis. Having

said that, we are of the opinion that on a parity of reasoning and looking to the consequences of denial of opportunity to cross-examine the witnesses, we would prefer to err in favour of the appellant getting an opportunity rather than protecting the prosecution against a possible prejudice at his cost. Fairness of the trial is a virtue that is sacrosanct in our judicial system and no price is too heavy to protect that virtue. A possible prejudice to prosecution is not even a price, leave alone one that would justify denial of a fair opportunity to the accused to defend himself.

6. Considering the totality of the facts and circumstances and in view of the above mentioned discussion, the application under section 348 of BNSS filed on behalf of A-1 Binod Kumar Giri is allowed and PW50 Shri G.K. Verma is recalled for the purposes of cross-examination subject to the availability of the witness on the following terms and conditions:-

i) Not more than one opportunity shall be provided to the accused to cross-examine the witness/PW-50 Shri G.K. Verma subject to a cost of Rs.10,000/- at the start of the cross-examination. It is made clear that if cost is not paid to the witness, the opportunity shall stand closed.

ii) Ld. Counsel/Accused shall appear on the first call and shall not seek any adjournment/pass over on the date fixed for the examination of the witness/PW-50 Shri G.K. Verma.

iii) The accused shall file an undertaking indicating his acceptance to the aforementioned condition within a period of one week and after filing of the undertaking/affidavit, the summons shall be issued to PW50 Shri G.K. Verma.

9. With these observations, the application (IA No. 02/2025) stands disposed of.

(Announced in the open court today i.e. 14.07.2025)

(HASAN ANZAR)
Special Judge (PC Act) CBI-03,
RADC/New Delhi/14.07.2025