

**IN THE COURT OF SPECIAL JUDGE:
PC ACT (CBI) - 04, ROUSE AVENUE DISTRICT COURTS,
NEW DELHI.**

IA No.04/2024

**CBI No. 354/2019(CNR No. DLCT11-001429-2019)
RC No.ACI-2018-A-0014, CBI AC-I New Delhi
U/s 7 of & 8 of PC Act and 120-B IPC**

CBI Vs. Rakesh Tiwari (Applicant Rohit Srivastava (A-3)

13.01.2025

ORDER

1. This order shall dispose off an application **(IA-4/2024)** moved on behalf of A-3 Rohit Srivastava seeking deletion of LW-7 Deepak Sakkarwal from the list of prosecution witnesses
2. Reply to the aforesaid application is already filed by the CBI.
3. Arguments are also heard.
4. It is inter alia, pleaded in the application on behalf of applicant/A-3 that LW-7 Deepak Sakkarwal is named as one of the accused in the present and has been named in column No.12 in the chargesheet. This Court vide order dated 04.12.2020 took cognizance of the offence and summoned all the accused persons. The Court never accepted the closure report with respect to the

said accused Deepak Sakkarwal. Therefore, it is pleaded that he continues to be an accused and cannot be allowed to become prosecution witness in view of the bar under Section 21 of the Prevention of Corruption Act 1988.

4.1 Lastly, it is pleaded that the name of Deepak Sakkarwal may be deleted from the list of prosecution witnesses.

5. Per contra, the CBI has vehemently opposed the present application. It is pleaded that RC No.7A/2017 was registered against Vivek Batra, Neeraj Raja Kochhar and others which was being investigated by A-3 /applicant Rohit Srivastava, the then Addl. S.P. CBI AC-III, Delhi. On receipt of source information regarding transaction of illegal gratifications from the accused persons to save them from above-noted case, the present case was registered against the accused persons including Deepak Sakkarwal.

5.1 It is further pleaded that after the investigation, the chargesheet has been filed only against Rakesh Tiwari (A-1), Neeraj Raja Kochhar (A-2), Rohit Srivastava (A-3) and Rabindra Pradhan (A-4). A-2 filed the application under Section 306 Cr.P.C which was allowed and thus, now he has become approver in the present case.

5.2 As far as LW-7 Deepak Sakkarwal is concerned, as he had not played any active role in the conspiracy, prayer was made to discharge the accused. The Hon'ble Court never summoned him as accused while passing the summoning order and hence, the plea made by the applicant seeking deletion or dropping of his name from the list of prosecution witnesses is without any basis.

6. Heard and considered.

7. The dispute raised on behalf of accused-3/applicant concerns prosecution witness LW-7 Deepak Sakkarwal. As per the list of prosecution witnesses, he is an employee of M/s Viraj Profiles Pvt Ltd owned by approver Neeraj Raja Kochhar. He was named as one of the conspirator in the FIR, but after investigation as per the chargesheet, no active role of Deepak Sakkarwal came on record. Page No. 34-35 of the chargesheet narrates the conclusion qua the said Deepak Sakkarwal. It is pleaded on behalf of the CBI that the investigation disclosed that being the employee of Neeraj Raja Kochhar, he was working as per the directions of his employer. He was not in a position to take any decision of giving or receiving any illegal gratifications and has, thus, not played in any active role in entering into criminal conspiracy with Rakesh Tiwari (A-1) or the public servants. Therefore, in the end it is pleaded that he may be discharged under Section 169 of Cr.P.C and at the same time, may be taken as prosecution witness in the present case.

8. However, as per the accused/applicant, Deepak Sakkarwal continues to be an accused in present case as the summoning order dated 04.12.2020 is silent qua accepting the plea of discharge qua the said accused. The relevant part of the summoning order dated 04.12.2020 is reproduced hereunder:

“Heard on the point of taking cognizance. There is sufficient material on record which discloses commission of offence punishable under Section 120-B IPC read with Section 7,7A,8 of PC Act and under Section 11, 13 (2) read with Section 13 (1) (d) of PC Act and Section 201 of IPC. I take cognizance of these offences. Let all the accused persons as per amended memo of parties be summoned through I.O for 12.01.2021.”

9. It is apparent from the said summoning order that the Ld. Predecessor after going through the entire material found it appropriate to only summon the accused named in the amended memo of parties dated 28.10.2020. Thus, only three accused persons namely Rakesh Tiwari (A-1), Rohit Srivastava (A-3) and Rabindra Pradhan (A-4) were summoned to face the trial in the present case. The implied conclusion from the said summoning order is apparent that not sufficient material was found at the time of passing of the said summoning order to summon the suspect named in Column No.12 i.e Deepak Sakkarwal who was not chargesheeted. Therefore, averment advanced on behalf of accused/applicant that Deepak Sakkarwal continues to be an accused is against the record. He, from the day of filing of chargesheet, was not chargesheeted and hence, not named as an accused by CBI. Though the Court had the discretion to summon him as an accused in case Court disagreed with the findings of the CBI as narrated above in Page-34 and 35 of the Chargesheet under Section 190 (1) (b) of Cr.P.C. But, no such order was passed and the implied conclusion from the summoning order is apparent that the conclusion reached by the CBI qua not naming Deepak Sakkarwal as an accused was found to be probable. The status of Deepak Sakkarwal as reflected in the said summoning order cannot, by any stretch of imagination, be said to accused as is pleaded by accused/applicant. The trial in the matter has started and now the stage of summoning is over.

10. In the said backdrop, when Deepak Sakkarwal is neither summoned as an accused till date nor chargesheeted, the bar relied

upon under Section 21 of PC Act 1988 has no application qua him as has been argued on behalf of the applicant/A-3.

11. In the light of the above, the application moved on behalf of A-3 Rohit Srivastava seeking deletion of LW-7 Deepak Sakkarwal from the list of witnesses is hereby dismissed.

Announced in the open Court
on 13.1.2025

(GAGANDEEP SINGH)
Special Judge, PC Act, CBI-04
Rouse Avenue Courts, New Delhi