

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

CNR No. DLCT11-001463-2019

CC No. 371/2019

RC No. 15(A)/2014-DLI

CBI/ACB/ND

U/s 13 (2) r/w 13 (1) (e) of PC Act & 109 IPC

CBI Vs. Dr. Laxmi Chand Gupta & Smt. Manju Gupta

09.01.2024

ORDER

1. This order shall dispose off the application under Section 311 Cr.P.C moved on behalf of accused persons for recalling PW-33 DSP Kailash Sahu.

2. Reply to the aforesaid application is already filed by the CBI.

3. Arguments heard also heard.

3.1 It is inter alia, stated on behalf of applicants/accused persons that they have been falsely implicated in the present case. On 06.12.2023, PW-33 DSP Kailash Sahu was examined in the present matter and he was cross-examined on that day on behalf of accused persons and was discharged. A suggestion was put on behalf of accused persons to the said witness that after taking illegal gratification from Anil Sangwan and Sunil Sangwan had intentionally chosen not to take any action against them or against Promila Sangwan despite knowing the fact that the said individual have invested more than five crores in purchase of property bearing No. 43, Mall Road, Agra U.P which was beyond their sources of income. However, on procuring the uncertified copy of the testimony of the witness, it revealed that the said suggestion has been incorrectly recorded as under:

“It is wrong to suggest that I after taking illegal gratification from Anil Sangwan and Sunil Sangwan did not initiate any action against them or against Promila Sangwan despite knowing the fact that they did not had money regarding their

claim that they had invested more than Rs.5 crores in purchasing the property bearing no. 43, Mall Road, Agra, U.P.”

3.2 The said suggestion does not reflect the defence of the accused persons. Therefore, it has come imperative on their part to clarify the defence version. A prejudice will be caused if the said opportunity is not given and hence, the present application has been moved without any delay and at the first opportunity.

4. Per contra, CBI in their reply has vehemently opposed the said application stating that the present application is only a ploy to get the evidence corrected. The suggestion which was given has been rightly recorded. Thus, the present application is liable to be dismissed.

4.1 It is further argued on behalf of CBI that the present application is beyond the scope of the power under Section 311 Cr.P.C.

5 Heard and considered.

6. The accused persons herein are facing the trial for the offence punishable under Section U/s 13 (2) r/w 13 (1) (e) of PC Act & 109 IPC. That while the prosecution evidence was being recorded, PW-33 DSP Kailash Sahu was examined. His examination in chief was recorded on 16.03.2023, thereafter on 02.08.2023, 11.10.2023, 08.11.2023 and lastly on 06.12.2023 when he was extensively cross-examined. The cross-examination conducted though reflects that it has travelled way beyond the role deposed by him in his cross-examination-in-chief. Even the suggestion which have been put are way beyond the role played by him in the investigation. Admittedly, he is not the Investigating Officer. Despite that the suggestions have been given including the suggestion which is sought to be corrected that he had let out

certain individual from prosecution in the present case despite the fact their names cropped up during the investigation.

6.1 As far as the factual error in the suggestion is concerned, if the suggestion in the entirety are seen, it appears to be a factual error. Even the suggestion was given which is the defence of the accused persons that the property bearing no. 43, Mall Road, Agra, U.P was purchased by Promila Sangwan wife of Anil Sangwan through her own money. But, the said issue of wrong suggestion being given cannot be the ground for recall of the witness being beyond the scope of the powers envisaged under Section 311 Cr.P.C.

6.2 As far as the issue of prejudice is concerned, it is already observed that the said suggestion cannot be read in isolation and the same is to be read by reading the entire evidence of PW-33 Kailash Sahu as well as defence of accused persons. Even otherwise, the Investigating Officer PW-35 Alok Kumar Singh is still to be examined to whom the accused persons would have all the opportunity to cross-examine on the aspect concerning the ownership of property bearing no.43, Mall Road, Agra, U.P. Rather he is the right witness who should be cross-examined on the said aspect rather than PW-33 Kailash Sahu.

7. In view of the above said reasons, I am of the considered view that no ground is made for recalling PW-33 Kailash Sahu for correcting the said suggestion and the application under Section 311 Cr.P.C moved on behalf of accused persons stands dismissed.

(GAGANDEEP SINGH)
Special Judge, PC Act, CBI-04
Rouse Avenue Courts, New Delhi
09.01.2024