

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

IA-8/2025 & IA-9/2025

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 & Anr.

ORDER

10.03.2025

1. This common order will dispose off two applications preferred by accused no.1/applicant (Laxmi Chand Gupta) under Section 311/ 348 BNSS 2023 Cr.PC seeking recall of **PW-7 Pradeep Singh Arora (vide IA-8/2025)** and **PW-6 V.K. Ghai (IA-9/2025)** for their further cross-examination.

2. It is, inter alia, pleaded in the applications (IA-8/2025 & IA-9/2025) that PW-7 Pradeep Singh Arora was examined and cross-examined on 28.03.2019, 23.09.2019 and 10.12.2019 and discharged, while PW-6 V.K. Ghai has been examined, cross-examined and discharged on 16.11.2018. During their cross-examination, PW-6 and PW-7 were confronted with various court documents pertaining to property no. 43, Mall Road, Agra and

the said witnesses made various false statements. It is further pleaded that another witness PW-38 Hasan Mohd too has been examined and cross-examined in the present present case whereby applicant herein came to know about a complaint lodged by PW-38, PW-7 Pradeep Singh Arora and one Ms. Promila Sangwan against PW-6 V.K. Ghai and other accused persons (Kapil Deo Ghai, Bharat Bhushan Ghai, Avtar Kishan Handa and Sandeep Handa and Sanjay Handa and other unknown persons) vide complaint dated 23.05.202 made to EOW, Mandir Marg vide diary no. D-1290 dated 01.06.2023 for duping them for a sum of Rs. 6,16,10,000/- with respect to property at Mall Road, Agra.

It is further pleaded that the allegations of duping of aforesaid amount with respect to property at Mall Road, Agra was confronted to PW-38 Hasan Mohd. The file was summoned from the office of DCP-EOW and it transpired that PW-6 Vijay Kumar Ghai and PW-7 Pradeep Singh Arora, PW-39 Deepak Khanna and other persons gave a different story which is contradictory to the version of prosecution in the present case and their statements recorded by I.O under Section 161 Cr.P.C. Their version is also in contradiction to the statement given by them under affidavit before Civil Court in CS No.196/2013 titled Kapil Deo Ghai & Ors. V. Dr. L.C Gupta 7 Ors (Exhibit PW-7/DD) and in Regular Civil Appeal No.18/2023 titled Kapil Deo Ghai & Ors. V. L.C Gupta & Ors Ex. PW-7/DE.

2.1 Therefore, in view of the above, the present applications have been moved without any delay. If the applicant herein is not provided an opportunity to further cross-examine PW-6

Vijay Kumar Ghai and PW-7 Pradeep Singh Arora, he will suffer irreparable loss. It is further pleaded that recalling of PW-6 V.K. Ghai will prove his deal with A-1/applicant herein for his property situated at Mall Road, Agra. Hence, prayer is made for allowing the applications.

3. Ld. Counsel for the accused/applicant in support of the grounds taken in the application argued that the factum of complaint dated 23.05.202 came to their knowledge during the cross-examination of PW-38 Hasan Mohd. The said complaint Ex.PW38/DX-1 has already come on record which is purportedly also signed by PW-7 Pradeep Singh Arora. Similarly, the said complaint concerns PW-6 V.K. Ghai who also needs to be recalled as his statement has been recorded by EOW in the above referred complaint. Therefore, both the said witnesses are required to be cross-examined on the said material development. Mere placing of the said complaint will not help this Court in adjudicating the truthfulness of their version.

4. In the separate reply filed by CBI to the aforesaid applications, it is pleaded that the matter is at the stage of prosecution evidence and that PW-7 Pradeep Singh Arora and V.K. Ghai have been cross-examined and discharged on 10.12.2019 and 16.11.2018 respectively. The applicant herein wants to examine the said PWs on the purported complaint of Hasan Mohd, Pradeep Singh Arora and Promila Sangwan filed in the office of DCP, EOW, Mandir Marg, New Delhi. The said applications are not maintainable being hit by Section 162 Cr.P.C r/w Section 145 & 155 of Indian Evidence Act. In this regard,

reliance is placed upon case titled **Rajendra @ Vijai V. State 1983 (1) Crimes 547.**

4.1 It is further pleaded that the record enclosed with the complaint submitted with Delhi Police was already in existence at the time of cross-examination of witnesses. No new record has been introduced. The applications have been moved to fill up the lacuna left in the case. No ground is made out for recalling the said witnesses. Hence, prayer is made to dismiss the applications.

5. It is further argued by Ld. Sr. PP for the CBI that the said complaint Ex.PW-38/DX-1 is already on record. Even otherwise, the witnesses cannot be recalled for confronting them with their subsequent statements. Reliance is placed in this regard on **Rajendra @ Vijai V. State (supra) case.**

6. **Heard and considered.**

7. The accused-1/applicant herein is facing trial for the offence under Section 109 IPC & Section 13 (2) r/w 13 (1) (e) of PC Act 1988. One of the allegations levelled against him concerns the benami acquisition of property no. 43, Mall Road, Agra Cantt. U.P. As per the chargesheet, the investment was made in above-referred property in the year 2009 and agreement to sell was made in benami names of Ms. Promila, Hasan Mohd (PW-38) and Pradeep Singh Arora (PW-7) by A-1. The accused is alleged to have paid Rs.84,11,000/- concerning the said agr**Rajendra @ Vijai V. State (supra) case.**reement to sell dated 22.10.2009. PW-6 V.K. Ghai is one of seller and the signatory to

the said agreement to sell and PW-7 Pradeep Singh Arora being one of the Benamidar Purchaser. Both the said witnesses who are now sought to be recalled for further examination have already been examined around five years back. Both the said witnesses were extensively cross-examined on behalf of the accused/applicant and one of the crucial defence raised in the cross-examination concerns the purchase of the said property in the year 2009 and the real purchaser thereof.

8. Therefore, in the said backdrop, the issue to be seen is as to whether the said two witnesses are required to be recalled for further cross-examination in view of the said subsequent development of lodging of complaint by PW-7 Pradeep Singh Arora and two others with DCP, EOW, Mandir Marg, New Delhi.

9. The legal position while deciding the present application under Section 348 BNSS 2023 (which is pari materia to the corresponding provision under Section 311 Cr.P.C) is well settled by the Hon'ble Supreme Court in case titled in **Natasha Singh V. CBI (State) 2013 AIR SCW 3554**. . The relevant portion of the said judgment reproduced hereunder for the sake of convenience:

“9. In Mohanlal Shamji Soni v. Union of India & Anr., AIR 1991 SC 1346, this Court examined the scope of Section 311 Cr.P.C., and held that it is a cardinal rule of the law of evidence, that the best available evidence must be brought before the court to prove a fact, or a point in issue. However, the court is under an obligation to discharge its statutory functions, whether discretionary or obligatory, according to law and hence ensure that justice is done. The court has a duty to determine the truth, and to render a just decision. The same is also the object of Section

311 Cr.P.C., wherein the court may exercise its discretionary authority at any stage of the enquiry, trial or other proceedings, to summon any person as a witness though not yet summoned as a witness, or to recall or re-examine any person, though not yet summoned as a witness, who are expected to be able to throw light upon the matter in dispute, because if the judgments happen to be rendered on an inchoate, inconclusive and speculative presentation of facts, the ends of justice would be defeated.

10. In *Rajeswar Prasad Misra v. The State of West Bengal & Anr.*, AIR 1965 SC 1887, this Court dealt with the ample power and jurisdiction vested in the court, with respect to taking additional evidence, and observed, that it may not be possible for the legislature to foresee all situations and possibilities and therefore, the court must examine the facts and circumstances of each case before it, and if it comes to the conclusion that additional evidence is necessary, not because it would be impossible to pronounce the judgment without it, but because there would be a failure of justice without such evidence being considered, and if such an action on its part is justified, then the court must exercise such power”

10. It is apparent from the said legal proposition that the aid of the said section is to be invoked with the object of discovering relevant facts so as to help the Court in leading to just decision in the case. The said provision of law gives discretionary power to the Court to summon any witness and the object behind the said summoning the witness should only lead the Court towards just and proper decision. Though the rider has been put to ensure that it is not used by either of the party to fill up the lacunae of their case.

11. In the present case in hand, as enumerated above that both the witnesses sought to be recalled i.e PW-7 Pradeep Singh Arora and PW-6 V.K. Ghai are the most crucial witnesses concerning the expenditure of Rs.84,11,000/- against accused/applicant herein. The complaint Ex.PW-38/DX-1 filed by said PW-7 Pradeep Singh Arora with one Ms. Promila and Hasan Mohd (PW-38) has the averments which are going to have crucial bearing on the very said issue of expenditure and ownership of the above-referred asset at Mall Road , Agra , UP .

11.1 It is also a fact reflected from the record that at the time of cross-examination of both PW-6 and PW-7, the said complaint Ex.PW-38/DX-1 was not in existence and there was no question of they being cross-examined with respect to the contents of the said complaint. Therefore it is not the effort made to fill up the lacunae by the defence . The objection taken by the prosecution with respect to the said complaint being not covered under Section 145 of Indian Evidence Act is the issue to be seen as and when the said complaint is to be confronted to the witnesses PW-6 and PW-7. The judgment **Rajendra @ Vijai V. State (supra) case** is distinguishable on facts as in that case trial was already over when the application was moved. At this stage, the limited issue is as to whether the further cross-examination of the witnesses regarding lodging of the said complaint and contents thereof is relevant for appreciating the version of said two prosecution or not. The answer to the same lies in affirmative as the averments made by them in the Court requires to be tested vis-a-vis the contents the complaint or statement recorded before

the EOW Cell. The said appreciation of the evidence is only going to decipher their trust-worthiness and lead the Court towards the just decision in the case qua ownership or expenditure of above-referred asset.

12. In the light of the above-said reasons, **the application in hand is allowed subject to the availability of the witnesses i.e PW-6 V.K. Ghai and PW-7 Pradeep Singh Arora for their further cross-examination which shall be confined to the above-referred complaint Ex.PW-38/DX-1. The said witnesses shall be summoned on the next date.**

Announced in the open Court
on 10.03.2025

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