

IN THE HIGH COURT OF DELHI AT NEW DELHI

CRL.M.C. 2904/2004

Reserved on: 6th February, 2008

Date of decision: 23rd May, 2008

TUNCAY ALANKUS

..... Petitioner

Through Mr. Bahar U. Barqi, Advocate.

versus

CENTRAL BUREAU OF INVESTIGATION & ANR.

.... Respondents

Through Mr. Sanjay Jain, Senior Advocate with
Ms. Ruchi Jain, Mr. Arjun and
Mr. Sarfaraz Ahmad, Advocates.

CORAM:

HON'BLE DR. JUSTICE S. MURALIDHAR

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| 1. | Whether Reporters of local papers may be allowed to see the judgment? | Yes |
| 2. | To be referred to the Reporter or not? | Yes |
| 3. | Whether the judgment should be reported in Digest? | Yes |

JUDGMENT

Dr. S. MURALIDHAR, J.

1. The challenge in this petition under Section 482 of the Code of Criminal Procedure, 1973 (CrPC) is to an order dated 19th January 2004 passed by the learned Special Judge, CBI, Delhi in CBI Case No. 3(A) of ACU (1)/New Delhi titled “*CBI v. C.K. Ramakrishnan & Others*”.

2. The petitioner who is a Turkish national is facing trial for the offences under Sections 120-B read with 409 IPC and alternatively Sections 120-B read with 420 IPC. By the impugned order the learned Special Judge rejected the petitioner’s plea for replacing the interpreter provided to him in the aforementioned case with a more competent one and for a direction to restart

the trial thereafter in compliance with Sections 228, 278, 279 and 282 CrPC.

3. The facts leading to the filing of the present petition are that the Central Bureau of Investigation (CBI) filed a charge sheet on 26th December 1997 alleging that 9 accused persons, including the Petitioner, had entered into a criminal conspiracy to defraud National Fertilizers Limited (NFL) and misappropriate its funds to the tune of US\$ 3,80,00,000 (equivalent to Rs. 133 crores at the then rate of exchange). According to the CBI, NFL was the canalizing agency for import of urea on behalf of the Department of Fertilizers, Government of India, New Delhi. There was well-defined procedure laid down by the Board of NFL for importing urea by floating global tenders and for making payment to the suppliers by way of letters of credit. According to the prosecution, accused C.K. Ramakrishnan, the then Managing Director, NFL and D.S. Kanwar, the then Executive Director (Marketing) NFL entered into a contract in November 1995 on behalf of the NFL with Karsans Ltd. based in Turkey, for the supply of 2 lakh metric tons of urea at US\$ 190 per metric ton. It was alleged that this contract was entered into without following the norms laid down by the Board of NFL. Further contrary to the guidelines, the contract stipulated 100% cash prepayment against a first class Lloyds Insurance Policy. One per cent of the total contract payment was to be paid in advance to the seller to enable him to procure the Lloyds Insurance Policy. An amount of US\$ 3,80,000 was remitted to the account of Karsans Ltd., on 12th November 1995. The remittance was made by the State Bank of India, N.D.S.E. Part-I Branch in contravention of the provisions of Exchange Control Manual, 1993. It is stated that the insurance cover note dated 6th November 1995 submitted by Karsans Ltd. was a spurious document and did not protect the interests of the buyer.

Nevertheless, the accused prevailed on the officers of the State Bank of India to make the remittance of the total amount. The role of the Karsans Ltd. was that they procured the insurance cover note dated 6th November 1995 which ultimately facilitated in the making of the remittance and thereby causing loss to NFL. The petitioner was the Chairman and Cihan Karanci was the Vice President of Karsans Ltd.

4. The Petitioner was arrested in Geneva on 16th November 1996 on the basis of an Interpol alert. Pursuant to the request made by the CBI, an order dated 9th May 1997 was passed by the Swiss authorities granting extradition of the petitioner to India to face trial subject to certain conditions. One of these was an undertaking by the Government of India that the Petitioner would be granted the procedural guarantees contained in the “Convention of 4.11.1950 on human rights and fundamental liberties.” The petitioner was produced before the learned Special Judge on 4th October 1997, and was remanded to judicial custody. The learned Special Judge, CBI framed charges against the accused including the Petitioner in December 1998 for the offences mentioned earlier.

5. The revision petition filed by the petitioner against the order framing charges was dismissed by this Court on 26th May 2000. The special leave petition filed in the Supreme Court was also dismissed. In the meanwhile, the examination of prosecution witnesses (PWs) commenced on 27th January 1999.

6. According to the Petitioner some time in 1998 he had sent to the trial court an application from the jail stating that he only knew Turkish and no English at

all, and therefore, did not understand the court proceedings. He requested for being provided with an interpreter. According to the petitioner, no order was passed in this application.

7. Significantly, however, when the petitioner filed a revision petition in this Court being CrI.M (M) No.109 of 1999 assailing the order framing charges, he did not make a grievance about not being able to understand the charges framed and not being provided with an interpreter. On 23rd July 2002, after about 31 PWs had been examined, the petitioner submitted a petition stating that he was unable to understand the court proceedings; that he was unable to defend himself since he did not speak or understand English or Hindi and that he did not understand any language other than Turkish.

8. On the application submitted by the petitioner on 23rd July 2002, the learned Special Judge court passed an order dated 31st August 2002 in which, after noticing the provisions of Sections 278 and 279 CrPC, the trial judge concluded as under:

“The language of S. 278 leaves no doubt about what the Legislature meant by using the words ‘appears by pleaders’. This phrase contemplates a situation in which the accused is not in attendance and is represented by the pleader. Where the accused himself is present in the court, the presence of the pleader does not matter for the purpose of Section 278 or 279. In the present case, accused Tuncay Alankus is not appearing by a pleader for the purpose of S. 279 Cr.P.C. and therefore, if he does not understand language of the court, he is entitled to the benefit of having an interpreter. He may have signed the contract in English but that does not necessarily mean that he is conversant with the

language. Here are innumerable persons in our country who sign in English but do not understand English. In this context, it may also be noted that services of an interpreter were availed when accused Tuncay Alankus was interrogated during the course of investigation. Justice should not only be done but it should appear to have been done. Therefore, when the accused says that he does not understand the language of the Court and there is no reliable evidence to disprove this claim of the accused, it would be just and fair to make the services of an interpreter available to the accused so that he could properly understand the proceedings and defend himself. Therefore, I direct the C.B.I. to arrange the services of a person who understands and knows Turkish and English both. The application is accordingly disposed of.”

9. The learned Special Judge also wrote letters on 3rd and 13th September 2002 to the Ministry of External Affairs, Government of India requesting that the Turkish Embassy should be contacted for providing the petitioner with the services of an interpreter during the proceedings in court. On its part, the CBI inserted an advertisement in the newspapers seeking to engage a Turkish interpreter to assist the petitioner during trial. On 16th October 2002 an interpreter who was a graduate in English and Turkish from the Aligarh Muslim University appeared before the learned Special Judge. The relevant portion of the order passed on that date reads as under:

“Shri Mohd. Ali Baig is present. He states that he is a Graduate in English and Turkish from Aligarh Muslim University. He has also taken a diploma in Turkish from Istanbul University (Turkey). He affirms on oath that he will make a true translation of evidence and statements for the benefits of accused Tuncay Alankus.

Accused Tuncay Alankus makes an application saying that he

needs to examine the interpreter for the accuracy of his translation. He also prays that the interpreter be asked to translate the charge sheet and documents into Turkish for him. I find no merit in the application. As I have noted above, Shri Mohd. Ali Baig is well qualified to act as interpreter. His appointment as (sic) interpreter must depend on his qualification and not on the subject (sic) satisfaction of the accused. The copies of charge sheet and documents have already been furnished to the accused. On the basis of those documents the counsel for accused Tuncay Alankus and Cihan Karanci made submissions on the charges for quite a length of time. Thereafter, the charge was framed by my Ld. Predecessor and the revision preferred by the accused was dismissed by the Hon'ble High Court. It may also be noted at this stage that co-accused Cihan Karanci who belongs to the same company as Tuncay Alankus, knows English very well and he has been helping the accused. Even the application which has been submitted by Tuncay Alankus today, has been written by Cihan Karanchi. In these circumstances, I am not prepared to believe that the accused does not understand the charge or accusation against him. It will be a travesty of procedure to nullify the proceedings which have taken place so far.”

10. On the next day, i.e., 17th October 2002, a grievance was made by the petitioner that he was not happy with the interpreter provided. The order made on 17th October 2002 by the learned Special Judge reads as under:

“Accused Tuncay Alankus makes an application to express dissatisfaction with the official interpreter provided to him. He complains that Shri Baig is not up to the mark and he can only set as Tourist guide and nothing more. I find no merit in the application. As I noted yesterday Shri Baig is a Graduate in Turkish and English from Aligarh University. He has also taken a diploma in Turkish from Instambul University (Turkey). Thus, he

is eminently qualified to act as an interpreter.

Accused Cihan Karanci has made another application praying that an interpreter be appointed to translate the utterances (sic *utterances*) of the prosecutor into English. His grievance is that Shri V.N. Ojha, Special P.P. is not fluent in English and he often speaks in Hindi. I feel that this application has been made more out of prejudice than a genuine grievance. At the moment evidence of witnesses is being recorded. Shri Ojha puts question to witnesses in English. He may not be fluent in English as most of us are not, but there should be no difficulty in understanding the questions put by him. Moreover, the Karanci can have no reasonable difficulty in understanding the proceedings. The application is devoid of merit and is therefore, rejected.

Statements of PW2 Ramesh Kumar, PW4 OB Lal and PW6 S.K. Sehgal concluded. PW2 Vijay Bharat, V.S. Gosai and Surinder Kumar also present and examined.

Put up tomorrow for further P.E.

Sd/- Special Judge, Delhi 17.10.02”

11. On the same day a sworn statement of the interpreter was recorded where he undertook to “make true translation of evidence and statements from English to Turkish and Turkish to English.” It is significant that after an interpreter was provided to the petitioner on 16th October 2002, 23 of the 31 PWs who had been examined till then were recalled, re-examined and then cross-examined. Of the remaining eight, the Special Judge ruled that PWs-11, 13, 15, 16, 19, 20 need not be re-examined as their evidence was not relevant. PW 23 expired during this period and PW 18 could not appear for re-examination due to his serious illness. Till 19th February 2004, 95 PWs were examined and cross-examined and throughout the services of the interpreter appointed were available to the petitioner.

12. According to the Petitioner, he sent the transcripts of the depositions supplied to him in the trial court to a government recognized translation office at Ankara in Turkey. Their examination revealed that there were numerous inaccuracies in the translations of the depositions as done by the interpreter provided to him during the trial. Accordingly, a further application was made by the Petitioner in 2004 before the learned Special Judge for change of the interpreter. By the impugned order dated 19th January 2004 the learned Special Judge rejected this application. The relevant portion of the order passed on 19th January 2004 by the learned Special Judge reads as under:

“An application has been made by accused Tuncay Alankus for change of Interpreter. It is stated in the application that Mr.M.A. Baig is not very efficient. It is alleged that he has not prepared correct translations of the evidence recorded in English. Similar objection regarding the competence of Mr. Baig had been made earlier and I had rejected the same because I found that Mr. Baig was possessed of appropriate academic qualification. It is also to be noted that Mr. Cihan Karanci co-accused of applicant Tuncay Alankus is very well conversant with English and he can help Tuncay Alankus. As a matter of fact, Mr. Karanci has been helping him at the trial and he has been translating questions framed by him in Turkish into English. I am of the considered opinion that any change of translator will only delay the progress of the trial and is not desirable at all. The prayer of Mr.Tuncay Alankus is therefore, declined.”

13. The grievance of the petitioner is that by denial of the services of a competent interpreter in the proceedings before the trial court, his right to a fair trial has been violated. He further urges that under Section 228 CrPC the accused has to be explained the charge framed against him and asked whether

he pleads guilty or not. Therefore, this has to be in the language understood by the accused. It is submitted that Sections 278 to 282 CrPC underscore the importance of ensuring that the interpreter dutifully translates the proceedings in the trial court to the accused in the language understood by the accused. Reference is made to the Article 6 of the European Convention for Protection of Human Rights and Fundamental Freedom, 1950(‘European Convention’) which guarantees an accused procedural rights to a fair trial. Article 6 (e) includes the right of the accused “to have the free assistance of an interpreter if he cannot understand or speak the language used in court.” It is submitted that inasmuch as one of the conditions on which extradition of the petitioner was granted by the Swiss authorities was an undertaking that the Convention provisions would be complied with, the denial of a competent interpreter would vitiate the right of the petitioner to a fair trial.

14. There can be no manner of doubt that the CrPC recognises the right of the accused who does not understand the proceedings in the court to an interpreter. This is part of the bundle of rights that constitute the fundamental right to a fair trial which is guaranteed under Article 21 of the Constitution. The procedural fair trial standard incorporated under Article 6(2) of the European Convention is more or less the same as is guaranteed under Sections 278, 279 and 282 CrPC. For ready reference, these provisions sections are reproduced:

“278 - Procedure in regard to such evidence when completed.

(1) As the evidence of each witness taken under section 275 or section 276 is completed, it shall be read over to him in the presence of the accused, if in attendance, or of his pleader, if he appears by pleader, and shall, if necessary, be corrected.

(2) If the witness denies the correctness of any part of the evidence when the same is read over to him, the magistrate or presiding Judge may, instead of correcting the evidence, make a memorandum thereon of the objection made to it by the witness and shall add such remarks as he thinks necessary.

(3) If the record of the evidence is in a language different from that in which it has been given and the witness does not understand that language, the record shall be interpreted to him in the language in which it was given, or in a language which he understands.

279 - Interpretation of evidence to accused or his pleader. (1)

Whenever any evidence is given in a language not understood by the accused, and he is present in Court in person, it shall be interpreted to him in open Court in a language understood by him.

(2) If he appears by pleader and the evidence is given in a language other than the language of the Court and not understood by the pleader, it shall be interpreted to such pleader in that language.

(3) When documents are put for the purpose of formal proof, it shall be in the discretion of the Court to interpret as much thereof as appears necessary.

282 - Interpreter to be bound to interpret truthfully. When the services of an interpreter are, required by any Criminal Court for the interpretation of any evidence or statement, he shall be bound to state the true interpretation of such evidence or statement.”

15. The aforementioned provisions of the CrPC postulate that where the accused in a criminal trial does not understand the language in which the evidence is recorded, it should be interpreted to him in the language in which he understands. Under Section 282 CrPC a duty is cast on the interpreter “to

state the true interpretation of such evidence or statement.” The mandatory nature of these provisions was acknowledged in the order dated 31st August 2002 passed by the learned Special Judge and it was ensured that the petitioner was provided with an interpreter who was proficient and academically qualified to undertake the task of interpreting to the petitioner the proceedings of the trial court in Turkish. Also, notwithstanding that 31 PWs had already been examined, the entire exercise of re-calling and re-examining the PWs commenced thereafter. Therefore it is plain that the provisions of Sections 279 or 282 CrPC were complied with.

16. The issue here is not about the failure of the trial court to provide an interpreter. It is about the legality of the order of the trial court rejecting the petitioner’s request for a change of interpreter. The record shows that the request for change of interpreter was rejected way back on 17th October 2002. Although, as will be noticed hereafter, the petitioner filed numerous petitions in the court seeking various reliefs, he did not challenge that order of the trial court. He waited till January 2004 to renew his plea for a change of interpreter by which time 94 PWs had been examined. The question therefore is whether the trial judge erred at that stage in not providing a more competent interpreter and whether the provisions contemplate such a requirement.

17. The trial court is in the best position to ascertain if in fact the translations were correctly made and the accused understood what was being stated. It is not possible to interpret the provisions to mean that every time the accused asks for a change in interpreter, the trial court has to accede to such request. In

Shivnarayan v. State of Madras AIR 1967 SC 986 it was held that the failure
CRL.M.C. No. 2904/2004 ***Page 11 of 14***

to provide an interpreter would be at the highest an irregularity that would not affect the validity of the trial in terms of Section 537 of the Code of Criminal Procedure 18998 (equivalent to Section 465 CrPC). By that analogy, the denial of a request for a change in the interpreter cannot stand on a higher footing. The trial court will have to make an assessment if in fact the change in interpreter is warranted. The proceedings in the trial court is a sure indication of what transpired therein to justify such a request. The petitioner was represented by lawyers throughout. If the petitioner is right that he understands no English at all, it is inconceivable that without the benefit of any translation he was able to interact with his lawyers. It is unlikely that without understanding what was being stated in the court, the petitioner was able to instruct his lawyers as to the facts that would have been necessary for conducting the cross-examination of so many PWs. It is obvious that if the translation was incorrect and the petitioner did not understand what was being stated, he would have made a complaint in that regard to his lawyers during the course of the examination of the PWs. Between 16th October 2002 when the petitioner was provided with an interpreter and 9th January 2004, when the petitioner made an application for a change of the interpreter, 94 PWs had been examined by the prosecution. The trial court record should have reflected if at any stage the counsel for the petitioner protested about the difficulty in getting instructions from the petitioner on the statements made by the PWs leading in turn to their being unable to cross-examine the witness. Counsel for the petitioner here was unable to say if the trial court record reflected such a protest having been made at any stage. In the circumstances, the assessment of the request by the trial court in the instant case and its conclusion in the impugned order that no change in the interpreter was required cannot be held

to be unreasonable or erroneous.

18. The Petitioner has been filing numerous petitions in the trial court and this court. Even before 23rd July 2002 when he first made an application to the trial court for being provided with interpreter, the petitioner had filed in this Court Crl.M (M) No. 6 of 1996 in connection with the grant of bail (which was dismissed on 9th January 1998); Crl.M. (M) No. 538/98 regarding transfer of the case from the court of the Special Judge (which was disposed of on 23rd March 1998); Crl.M. (M) No. 109 of 1999 against framing of charges (which was dismissed on 26th May 2000); Crl.M.(M) No. 1458 of 1999 for grant of bail (which was dismissed on 18th September 2001) and Crl.M. (M) No. 4920 of 2000 against the order of trial court directing clubbing of the trial of all the accused persons (which was dismissed on 30th May 2002). Even thereafter nearly 15 petitions were been filed in this Court by the petitioner either by himself or with this co-accused Cihan Caranci. All these petitions were in English and prepared on the petitioner's instructions to his lawyers. Clearly the petitioner was not precluded from pursuing legal remedies on account of the alleged inability to understand what was being said in the court. The petitioner has not been able to demonstrate a failure of justice occasioned by the denial of his request for a change in the interpreter.

19. Therefore, it is not possible to accept the contention of the learned counsel for the petitioner that the rejection of the prayer of the petitioner for change of interpreter after the conclusion of the examination of 94 PWs (31 of whom were recalled after providing the petitioner with an interpreter), constitutes a violation of his right to a fair trial. This Court is satisfied that the requirement

of Sections 278, 279 and 282 CrPC, which is similar to the right guaranteed under Article 6 (e) of the European Convention, has been satisfied in the present case. The opinion formed by the trial court regarding the competence of the interpreter cannot be questioned. It appears that the petitioner was also assisted by the co-accused who knew the English language. Considering the progress of the trial thus far, and the number of years that have already been elapsed, it will not be in the interests of justice to accede at this stage to the request of the petitioner for change of the interpreter provided to him. This Court is unable to find any infirmity vitiating the impugned order of the learned Special Judge.

20. The petition is accordingly dismissed.

(S. Muralidhar)
Judge

May 23, 2008
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