

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Reserve: 18th November, 2010
Date of Order: 22nd November, 2010

+ Crl.M.C.No. 1251/2010

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22.11.2010

Mahaveer Prasad Sharma

... Petitioner

Through: Mr. Vikram Singh Panwar, Advocate
With Mr. Vishwajeet Singh & Mr. Ritesh, Advs.

Versus

CBI

... Respondent

Through: Mr. Harish Gulati, Advocate

JUSTICE SHIV NARAYAN DHINGRA

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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 judgment should be reported in Digest? | Yes. |

JUDGMENT

By this petition, the petitioner has assailed an order dated 18th March, 2010 whereby application made by the petitioner for summoning PW-1 Naveen Kaushik and PW-49 Deepak Raj as additional accused persons was dismissed by the trial Court with. The learned trial Court observed that there was not enough incriminating evidence on file for summoning these two witnesses as accused persons and dismissed the application.

2. The petitioner is facing trial in FIR registered under Section 120B read with Section 420, 468, 471 IPC and Section 13(2) read with 13(1)(d) of Prevention of Corruption Act. After completion of investigation charge-sheet was filed and the petitioner made this application for summoning witnesses cited by the prosecution as accused persons. The statement on the basis, of which the petitioner had sought framing of charges against the witnesses are the

statements under Section 162 Cr.P.C. and it is settled law that any statement made to the Investigating Officer while conducting enquiry cannot be utilized for any other purpose except as provided under this Section. The statement can be utilized for contradicting such witness in the manner provided under Section 145 of the Indian Evidence Act and for no other purpose. Thus, the statement cannot be treated as a material against the maker of the statement for the purpose of framing charges against him. If the statement given is treated as confessional statement made to police even then a confessional statement made to the police official is not admissible under law and cannot be ground for framing charges against the person. The statement recorded by police official during investigation of a witness cannot be used against the witness himself except as provided under Section 162 Cr.P.C. and cannot be considered as an incriminating material against the witness to frame charges against the witness in the same case in which he has given evidence. A witness may make statement to the police that accused had come and sold property to him, the police may even seize the property sold by the accused, but that would not allow Court to frame charges against the witness as a receiver of the stolen property or of similar other offence. The Court can frame charges against those persons against whom evidence has been collected by the prosecution and against whom Court finds there was sufficient evidence to proceed against. The witnesses cannot be proceeded against on the basis of statement made under Section 161/162 Cr.P.C. to the police as such statements cannot be treated as material for framing charges against the witness in the same case. I find no force in this petition. The petition is hereby dismissed.

November 22, 2010
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SHIV NARAYAN DHINGRA, J.