

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

**Reserved on 24.04.2025
Pronounced on 02.05.2025**

CRR No. 65/2013
c/w
OWP No. 216/2014

State/Central Bureau of
Investigation

.....Appellant(s)/Petitioner(s)

Through: Ms. Monika Kohli, Advocate

vs

Bhushan Lal Ogra

..... Respondent(s)

Through: Mr. P. N. Goja, Sr. Advocate with
Mr. Abhinav Jamwal, Advocate

Coram: HON'BLE MR. JUSTICE RAJNESH OSWAL, JUDGE

JUDGMENT

CRR No. 65/2013

1. This criminal revision is directed against order dated 31.10.2013 passed by the court of learned 1st Addl. Sessions Judge, Jammu (hereinafter to be referred as "the trial court") in case, titled, 'CBI vs. Bhushan Lal Ogra', whereby the application filed by the petitioner under Section 540 Cr.P.C for recalling the prosecution witness namely-Sh. B. Lal, has been rejected by the learned trial court.
2. It is stated that the prosecution witness figuring at Sr. No. 29, namely, Shri Shubhashis Dey in the list of witnesses, Assistant Government Examiner of Questioned Document (GEQD) could not be examined as he had expired, and in order to prove opinion of GEQD, the learned trial court had permitted Sh. B. Lal, GEQD to prove the document in place of

Shubhashis Dey. Sh. B. Lal was summoned by the trial court on 02.01.2013, who accordingly appeared before the trial court on the same day, but the GEQD opinion dated 21.07.1988 could not be located, as such, his statement was not recorded. Later, the evidence of the petitioner was closed on 31.01.2013 but the witness, B. Lal, who was the material witness to prove the opinion dated 21.07.1988, could not be examined.

3. An application under section 540 Cr.PC was filed by the petitioner on 28.10.2013 before the learned trial court for recalling the said witness, but the learned trial court vide order dated 31.10.2013, impugned in this revision petition, dismissed the said application. The petitioner has assailed the said order on the ground that the learned trial court has wrongly observed that the prosecution is trying to cover-up the lapses and fill the lacunas under the garb of the provisions of Section 540 Cr.P.C and that it was the fault of the staff of the court that the said document could not be traced on 02.01.2013 and 03.01.2013 due to which the statement of the expert witness could not be recorded.
4. Ms. Monika Kohli, learned counsel for the petitioner has argued that it was not the fault of the petitioner that the witness could not be examined, who was present on 02.01.2023 and 03.01.2023, as such, the learned trial court ought to have recalled the witness, more particularly when he was the material witness to prove the allegations of forgery.
5. Mr. P. N. Goja, learned Senior counsel appearing for the respondent has raised the preliminary objection in respect of maintainability of the

petition that the revision petition is not maintainable, as the order impugned is interlocutory and not revisable. In support of his submissions, Mr. Goja has placed reliance upon the judgment passed by the Coordinate Bench of this Court in the case of “**Hem Raj vs. State of J&K, 2006 (1) JKJ 68**”.

6. Heard learned counsel for the parties and perused the record.
7. A perusal of the record reveals that Mr. B. Lal appeared as a witness on 02.01.2013 before the court, but the keys of the trunk containing the record, could not be located and the concerned clerk was directed to file detailed report by 03.01.2013. The clerk was also directed to break the lock. On 03.01.2013, witness Sh. B Lal was present, but as the report could not be traced, he could not be examined. It appears that the learned trial court was swayed by the fact that this Court had directed the trial court to conclude the trial within a period of three months vide order dated 22.11.2012. The learned trial court, while dismissing the application also observed that the case is oldest one and the prosecution intends to fill up lacuna under the grab of provisions contained under section 540 Cr.P.C. The proceedings in the charge-sheet have been stayed vide order dated 10.03.2014. It is not gainsaid that PW Mr. B Lal, is an important and material witness to prove the GEQD opinion after the demise of Shri Shubhashis Dey and also, there is no element of surprise, if the witness is summoned because he had already appeared twice before the court, but because of certain reasons, he could not be examined. The learned trial court has rejected the application taking into

consideration the long pendency of the case and that the prosecution cannot fill the lacuna. In this context, it is apt to take note of the principles laid down by the Hon'ble Supreme Court in **Rajaram Prasad Yadav vs. State of Bihar, (2013)14 SCC 461**, which are as under:

“From a conspectus consideration of the above decisions, while dealing with an application under [Section 311](#) Cr.P.C. read along with [Section 138](#) of the Evidence Act, we feel the following principles will have to be borne in mind by the Courts:

- a) Whether the Court is right in thinking that the new evidence is needed by it? Whether the evidence sought to be led in under Section 311 is noted by the Court for a just decision of a case?
- b) **The exercise of the widest discretionary power under [Section 311](#) Cr.P.C. should ensure that the judgment should not be rendered on inchoate, inconclusive speculative presentation of facts, as thereby the ends of justice would be defeated.**
- c) **If evidence of any witness appears to the Court to be essential to the just decision of the case, it is the power of the Court to summon and examine or recall and re-examine any such person.**
- d) **The exercise of power under [Section 311](#) Cr.P.C. should be resorted to only with the object of finding out the truth or obtaining proper proof for such facts, which will lead to a just and correct decision of the case.**
- e) **The exercise of the said power cannot be dubbed as filling in a lacuna in a prosecution case, unless the facts and circumstances of the case make it apparent that the exercise of power by the Court would result in causing serious prejudice to the accused, resulting in miscarriage of justice.**
- f) **The wide discretionary power should be exercised judiciously and not arbitrarily.**
- g) **The Court must satisfy itself that it was in every respect essential to examine such a witness or to recall him for further examination in order to arrive at a just decision of the case.**
- h) **The object of [Section 311](#) Cr.P.C. simultaneously imposes a duty on the Court to determine the truth and to render a just decision.**
- i) **The Court arrives at 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.

j) Exigency of the situation, fair play and good sense should be the safe guard, while exercising the discretion. The Court should bear in mind that no party in a trial can be foreclosed from correcting errors and that if proper evidence was not adduced or a relevant material was not brought on record due to any inadvertence, the Court should be magnanimous in permitting such mistakes to be rectified.

k) The Court should be conscious of the position that after all the trial is basically for the prisoners and the Court should afford an opportunity to them in the fairest manner possible. In that parity of reasoning, it would be safe to err in favour of the accused getting an opportunity rather than protecting the prosecution against possible prejudice at the cost of the accused. The Court should bear in mind that improper or capricious exercise of such a discretionary power, may lead to undesirable results.

l) The additional evidence must not be received as a disguise or to change the nature of the case against any of the party.

m) The power must be exercised keeping in mind that the evidence that is likely to be tendered, would be germane to the issue involved and also ensure that an opportunity of rebuttal is given to the other party.

n) The power under [Section 311](#) Cr.P.C. must therefore, be invoked by the Court only in order to meet the ends of justice for strong and valid reasons and the same must be exercised with care, caution and circumspection. The Court should bear in mind that fair trial entails the interest of the accused, the victim and the society and, therefore, the grant of fair and proper opportunities to the persons concerned, must be ensured being a constitutional goal, as well as a human right.”

(emphasis added)

8. Though the order impugned in this revision petition is interlocutory in nature and the revision is not maintainable, but this is a fit case where this Court can exercise its inherent power to permit the petitioner to examine the witness, Mr. B. Lal, order to prove the GEQD opinion dated 21.07.1988, as he is an important witness to prove the allegations of forgery allegedly levelled by the petitioner.

9. In view of the above, by invoking inherent powers vested in this Court, this Court deems it proper to quash order dated 31.01.2013, the same is quashed. The learned trial court is directed to fix some date mutually acceptable to both the parties for examination of PW-Sh. B. Lal and after the said witness is examined, the learned trial court shall dispose of the challan within a period of three months. In the event the petitioner does not produce the said witness on the date so fixed, the learned trial court shall be at liberty to proceed ahead in accordance with law.

OWP No. 216/2014

10. This writ petition has been preferred by the petitioner, Bhushan Lal Ogra for quashing resolution No. 4/31/61-T dated 01.04.1963 by respondent No. 2 as well as for quashing the criminal proceedings, arising out of FIR No. RC10/E/86-DL-1 dated 30.09.1986 for offences under sections 420, 467, 468 & 471 RPC pending before the court of 1st Addl. Sessions Judge, Jammu (for short, "the trial court").
11. The relief of quashing of the proceedings is being sought on the ground that CBI had no jurisdiction to investigate the offences within the erstwhile State of the Jammu and Kashmir.
12. The respondents have filed the response stating therein that the FIR was registered on 30.09.1986 and after investigation, the charge sheet came to be filed before the Chief Judicial Magistrate, Srinagar on 12.10.1988. Thereafter, the case was committed to the court of learned Sessions Judge, Srinagar. The accused did not cause appearance and ultimately

the case was transferred by this court on 13.03.1997 to the learned trial court from the court of 3rd Addl. Sessions Judge, Srinagar. It is stated that the CBI had jurisdiction to investigate the matter in the erstwhile State of J&K.

13. Mr. P. N. Goja, learned Senior counsel for the petitioner has argued that the petitioner is facing trial ever since 1988, as such, his fundamental right to speedy trial has been violated, therefore, the proceedings are required to be quashed.
14. Ms. Monika Kohli, Sr. AAG representing respondent/State has submitted that the Coordinate Bench of this Court in the case of **Kumar Avinav vs. Union of India and ors, 2023 SCC Online J&K 35** has held that the CBI had jurisdiction to investigate offences committed within the erstwhile State of J&K. She has further stated that the petitioner himself is responsible for the delay caused in conclusion of the trial, as such, the proceedings cannot be quashed at this stage.
15. Heard and perused the record.
16. So far as the contention of the petitioner in respect of challenge thrown to the power of CBI to investigate the offences committed within erstwhile State of J&K is concerned, a Coordinate Bench of this Court in **Kumar Avinav (supra)** has held that the CBI had jurisdiction to investigate the offence committed within the erstwhile State of J&K, as such, this contention of the petitioner is rejected.
17. The other contention of Mr. P.N. Goja, learned Senior Counsel is that fundamental right of the petitioner to speedy trial has been violated, as

the petitioner has been facing trial since 1988, so the proceedings are required to be terminated.

18. After having gone through the record, this Court finds that the charge sheet was presented before the Court of learned Chief Judicial Magistrate, Srinagar on 12.10.1988. Since the offence under Section 467 RPC was exclusively triable by the court of Sessions, therefore, the learned Chief Judicial Magistrate, Srinagar committed the case to the court of learned Sessions Judge, Srinagar vide order dated 26.05.1989. The case file was received, and summon was issued by the learned Sessions Judge, Srinagar on 11.07.1989. The petitioner after causing appearance for 2/3 dates of hearing before learned Sessions Judge, absented himself and remained as such till the year 1997. A criminal Transfer Application No. 4/1995 was filed by the petitioner before this Court and this Court vide order dated 13.03.1997, transferred the case to the learned trial court. After the matter was received by the learned trial court on 29.05.1997, the petitioner again absented himself and appeared only on 22.07.1997. On that date, the learned Public Prosecutor submitted before the Court that documents and record of the case have not been received and it was only on 22.09.2001, Special Public Prosecutor produced some photocopies of the record. Thereafter, the arguments were heard on charge/discharge and vide order dated 29.01.2003, the petitioner was charged for commission of offences under Sections 420, 467, 468 & 471 RPC.

19. Thereafter, the petitioner filed a petition under Section 561-A Cr.P.C. bearing No. 85/2003 for quashing of the chargesheet. Vide order dated 09.10.2003, the aforesaid petition was disposed of with a direction to the learned trial court to conclude the trial expeditiously within a period of six months. Yet another petition was filed by the petitioner bearing OWP No. 604/2004 for quashing the chargesheet and the said petition was dismissed by this Court vide order dated 30.05.2007 and the parties were directed to appear before the trial court on 02.07.2007 and the trial court was directed to conclude the trial within a period of six months from the date of receipt of file from this Court. Thereafter, three months extension in period was granted to conclude the trial pursuant to the motion filed by the respondent-CBI. The record further depicts that as the trial court could not conclude the trial within the stipulated time, the trial court made a reference to this Court for extension of time to conclude trial of the case, titled, 'CBI vs. Bhushan Lal Ogra' and vide order dated 22.11.2012, this Court granted further time of three months to conclude the trial with an observation that absence of the petitioner or the period of adjournment sought by him or his lawyer shall be excluded while concluding the period of three months. Order dated 22.11.2012 was assailed by the petitioner through SLP, but the same was dismissed by the Supreme Court vide order dated 11.01.2013. Thereafter, the order dated 31.10.2013 came to be passed by the learned trial court, which is the subject matter of adjudication in connected CRR No. 65/2013, and a Coordinate Bench of this Court vide order dated 10.03.2014, directed

the maintenance of status quo with regard to order dated 31.10.2013, meaning thereby that no further proceedings would be conducted.

20. The petitioner in fact is complaining the violation of his fundamental right to speedy trial. The petitioner had earlier raised this issue in OWP No. 604/2004, but he could not succeed, and the said writ petition was dismissed by the Coordinate Bench of this Court vide order dated 30.05.2007 with the following observations.

In the case in hand, the case was registered against the petitioner about two decades back but till date trial has not been concluded. So at the very first instance, it gives an impression that the petitioner has been unnecessarily harassed but when I examined the facts and circumstances of the case, as indicated above, it has come to my notice that the petitioner himself is responsible for causing the delay. Firstly, he has not cooperated with the investigation and when investigation was completed and charge sheet was submitted in the court, the petitioner adopted delaying tactics by absenting himself as and when the witnesses were present in the court so that the court may not pass a judgment against him. The petitioner seems to be a clever man and has tried to take the benefits of intricacies of the law. It is also to be noted that the investigation agency in the present case is CBI. After the lapse of time that two within twenty years, the officials might have been transferred and some may have been retired or died. Therefore, it becomes difficult to secure their presence. As it has been noticed above, the petitioner himself is responsible for causing the delay in the present case, therefore, it would not be just, fair and reasonable to quash the proceedings pending against the petitioner before the trial court without recording the evidence.

The allegations against the petitioner are of very serious nature and therefore, as indicated above, the criminal proceedings pending against the petitioner cannot be directed to be quashed on the ground of delay.

(emphasis added)

21. The afore-quoted observations made by the Coordinate Bench of this Court while dismissing the writ petition preferred by the petitioner are self- explanatory in respect of the conduct of the petitioner. Therefore, it

CRR No. 65/2013 &

OWP No. 216/2014

can easily be said that the delay caused in conclusion of the trial is attributable to the petitioner.

22. In view of what has been said and discussed hereinabove, the present writ petition is found to be without any merit. The same is, accordingly, **dismissed.**

(RAJNESH OSWAL)
JUDGE

Jammu:

02.05.2025

Karam Chand/Secy.

Whether the order is speaking:

Yes/No

Whether the order is reportable:

Yes/No

