



2025:UHC:11512

HIGH COURT OF UTTARAKHAND AT NAINITAL

Criminal Misc. Application (C-482) No. 213 of 2016

O.P. Saklani

-----Applicant

Versus

C.B.I. through S.P.CBI-SPE and another

-----Respondents

Presence:-

Mr. M.C.Pant, learned counsel for the applicant through V.C.

Mr. Piyush Garg and Ms. Arushi Batra, learned counsel for the C.B.I.

None for the respondent no.2.

Hon'ble Mr. Subhash Upadhyay, J.

The instant C-482 Petition has been filed with the prayer to quash the orders dated 04.12.2015 and 11.02.2016, passed by learned Special Judge (Anti Corruption) CBI/Ind Additional District and Sessions Judge, Dehradun, in Sessions Trial No. 36 of 2014, CBI vs. Basant Soni and others, R.C. No. 0072013S005, u/s 302, 34, 323, 201,120-B IPC, by which, the learned Court allowed the counsel of respondent no.2. for inspection of spot/house of the applicant.

2. Learned counsel for the applicant submits that the wife of the applicant late Smt. Pushpa Saklani was brutally murdered on 16.10.2012 at his residence and the respondent no.2 is one of the accused in the said case. He further submits that the investigation was initiated by the Dehradun Police but the same was transferred to C.B.I. in pursuance to the order passed by this High Court in Writ Petition No. 1215 of 2012. He



submits that on 19.10.2015, the learned counsel for the accused Shri Sunny Joshi (respondent no.2) filed an application before the Trial Court for allowing the inspection of the scene of crime, i.e., residence of the applicant without disclosing any special reason for the spot inspection.

3. He submits that there is no provision for such inspection by the accused and the only provision under Section 310 of the Cr.P.C. empowers any Judge or Magistrate after issuing notice to the parties to visit and inspect any place, in which, an offence alleged to have been committed. Learned counsel for the applicant submits that the applicant as well as the C.B.I. has filed objections against the application dated 19.10.2015 filed by the counsel for the respondent no.2. The C.B.I. in its application had clearly stated, that the spot of the crime was duly inspected by the Police as well as the C.B.I. and the inspection report/site plan was duly placed on record and the copy of the entire documents were provided to the accused and it was a delaying tactics adopted by the respondent no.2 to delay the process of trial.

4. The applicant had submitted in its objection that the applicant is 77 years old citizen and at the said time her widow sister, who is also a cancer patient, was residing at his residence and the said application was, as such, objected on the ground that the spot inspection would cause acute mental ruins and would further endanger their physical security /life. The Special Judge (Anti Corruption) C.B.I./IInd Additional District & Sessions Judge, Dehradun however, on 04.12.2015



allowed the said application and provided 15 days time to the counsel for the accused to visit the site.

5. Learned counsel for the applicant submits that after the lapse of 15 days time granted by the Court, applicant filed an application on 05.01.2016 and made a prayer for reconsidering and withdrawing the earlier order dated 04.12.2015 as the counsel for the respondent no.2 had failed to take necessary steps and his application had become infructuous. Moreover, no objection was filed by the counsel for the respondent no.2 against the said application filed by the applicant on 05.01.2016, however, the learned Trial Court rejected the said application on 11.02.2016. Thus, feeling aggrieved by the said Orders dated 04.12.2015 and 11.02.2016, present C-482 Application has been filed.

6. Learned counsel for the C.B.I., submitted that the C.B.I. had also filed an objection to the said application filed by the respondent no.2 and there is no provision under the Cr.P.C., under which, the accused can be given a liberty to inspect the place of offence and the power of local inspection lies with the Magistrate or any Judge who can inspect the site where an offence is alleged to have been committed as provided under Section 310 Cr.P.C.

7. Having heard learned counsel for the parties and perusal of record, it is evident that the learned Judge has committed an error in allowing the application filed by the respondent no.2. In para 5 of the order dated



04.12.2015, though it has been observed that under Section 310 Cr.P.C., there is no mention that an accused or his Advocate can inspect the spot in question, however, placing reliance on Section 303 and 304 Cr.P.C., the said application was allowed.

8. Section 303, 304 and 310 of the Cr.P.C. reads as under:-

“303. Right of person against whom proceedings are instituted to be defended.—Any person accused of an offence before a Criminal Court, or against whom proceedings are instituted under this Code, may of right be defended by a pleader of his choice.

304. Legal aid to accused at State expense in certain cases.—

(1) Where, in a trial before the Court of Session, the accused is not represented by a pleader, and where it appears to the Court that the accused has not sufficient means to engage a pleader, the Court shall assign a pleader for his defence at the expense of the State.

(2) The High Court may, with the previous approval of the State Government, make rules providing for—

(a) the mode of selecting pleaders for defence under sub-section (1); (b) the facilities to be allowed to such pleaders by the Courts; (c) the fees payable to such pleaders by the Government, and generally, for carrying out the purposes of sub-section (1).

(3) The State Government may, by notification, direct that, as from such date as may be specified in the notification, the provisions of sub-sections (1) and (2) shall apply in relation to any class of trials before other Courts in the State as they apply in relation to trials before Courts of Session.

310. Local inspection.—

(1) Any Judge or Magistrate may, at any stage of any inquiry, trial or other proceeding, after due notice to



the parties, visit and inspect any place in which an offence is alleged to have been committed, or any other place in which it is in his opinion necessary to view for the purpose of properly appreciating the evidence given at such inquiry or trial, and shall without unnecessary delay record a memorandum of any relevant facts observed at such inspection.

(2) Such memorandum shall form part of the record of the case and if the prosecutor, complainant or accused or any other party to the case, so desires, a copy of the memorandum shall be furnished to him free of cost.”

9. In the considered opinion of the Court Sections 303 and 304 of Cr.P.C. only provide that any person accused of an offence before the Criminal Court or against whom proceedings are instituted under the Cr.P.C., has a right to appoint an advocate or a pleader of his choice. It is further provided that if accused is not represented by a pleader then where it appears to the Court that the accused has not sufficient means to engage a pleader then the Court can assign a pleader for his defence on the expense of the State. The said provision of Section 303 and 304 Cr.P.C. nowhere provides that the accused or his pleader can be given a right to inspect the site where offence is alleged to have been committed and the only provision which provides for local inspection is Section 310 of the Cr.P.C. which in clear terms provides that the said power vests with any Judge or Magistrate. The learned Trial Court erred in applying the provision of local inspection as provided under Section 310 Cr.P.C. on the provision of Sections 303 and 304 of the Cr.P.C. The orders impugned, as such, cannot be sustained and the same are liable to be set aside.



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10. The C-482 Application is allowed. Accordingly, the orders dated 04.12.2015 and 11.02.2016, passed by learned Special Judge (Anti Corruption) CBI/IIInd Additional District and Sessions Judge, Dehradun, in Sessions Trial No. 36 of 2014, CBI vs. Basant Soni and others, u/s 302, 34, 323, 201,120-B IPC, are hereby set aside.

(SUBHASH UPADHYAY, J.)

Dated: 22.12.2025
Kaushal