

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL WRIT PETITION NO. 4210 OF 2015

Babaji Vithal Thube & Anr. ... Petitioners
V/s.
The Central Bureau of Investigation & Anr. ... Respondents

Mr. Prafullakumar Bhimsingh Patil for the Petitioner.
Mr. Y.M. Nakhwa for Respondent No.1-C.B.I.
Ms. Anamika Malhotra, A.P.P. for the State.

CORAM : A. V. NIRGUDE, J.

DATE : 19th NOVEMBER, 2015.

P.C. :

1. This Petition challenges the order passed by the learned Additional Chief Metropolitan Magistrate, 19th Court, Esplanade, Mumbai, on Exhs.103 and 105 B.

2. The petitioner is one of the accused in this case of cheating, forgery and conspiracy. It is the allegation of the prosecution that the petitioner purchased an Insurance Policy and, thereafter, made a claim based on such policy. He even obtained compensation. Subsequently it was found that the petitioner's claim was false one. The amount which he received from the Insurance Company was deposited in a bank account. It is alleged that the petitioner opened a new account for depositing the cheque received from the Insurance Company.

The prosecution is now trying to prove as to how the new accounts was opened by the petitioner. In order to prove that the petitioner opened the account, the Investigating Officer initially ought to have recorded statements of Manager of the Bank who could have stated that it was petitioner who came for opening of the account etc. Such statement was not recorded initially.

3. The prosecution sought permission of the Court for recording statements of the new witnesses. Such permission was granted to them under Section 173 (a) of Cr.P.C. Copies of such newly recorded statements were supplied to the petitioner-accused. It is thereafter the prosecution sought permission to record depositions of new witnesses. They made an application under Section 311 of Cr.P.C.

4. The learned Judge of trial Court opined that this evidence would be material and essential.

5. The petitioner challenged this order in this petition. He asserts that the prosecution is filling up for lacuna in their case

6. Indeed not recording statements of relevant witnesses at appropriate time amounted to lacuna in the investigation. However, it cannot be said that if such witnesses

are produced before the Court and their depositions are recorded, it would mean to disadvantage the accused or to serious prejudice. What is important in this case is, petitioner-accused making fraudulent false scheme for insurance amount. That aspect of the case has nothing to do with the additional evidence. It is likely to be adduced. The learned counsel placed reliance on Supreme Court judgment in case of **Natasha Singh v. CBI**¹. In this judgment, Supreme Court held that the application under Section 311 should not be allowed only to fill up a lacuna in the case of the prosecution, etc. and caused disadvantage of the accused, etc. As said above, the additional evidence is not likely to cause serious prejudice to the defence of the accused. Therefore, there is nothing to interfere in the impugned order.

3. The Petition is dismissed.

(A.V.NIRGUDE, J.)

¹ 2013 Cri.L.J. 3346 (Supreme Court).