

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Criminal Misc. No. M-27063 of 2014

Date of decision : August 12, 2015

Central Bureau of Investigation

....Petitioner

versus

Kartar Singh Badana and others

....Respondents

Coram: Hon'ble Mr. Justice Fateh Deep Singh

Present : Mr. Sumeet Goel, Standing Counsel for CBI-petitioner
Mr. Gautam Dutt, Advocate, for respondent no. 2
Mr. Karan Pathak, Advocate, for respondent no. 4
None for other respondents

Fateh Deep Singh, J. (Oral)

In criminal case bearing RC No. CHG2001A0035 dated 12.9.2001, titled Central Bureau of Investigation vs Kartar Singh Badana and others under sections 379, 120-B IPC read with section 13(2) read with section 13(1) (d) of Prevention of Corruption Act, 1988, the learned Special Judge, CBI, Panchkula passed impugned orders dated 11.3.2013 on the application of CBI under section 311 Cr.P.C. disallowing summoning of prosecution witnesses. The same is subject matter of challenge before this

Court.

Heard Mr. Sumeet Goel, Standing Counsel for CBI-petitioner, Mr. Gautam Dutt, Advocate, for respondent no. 2 and Mr. Karan Pathak, Advocate, for respondent no. 4 whereas none has appeared for other respondents and perused the record.

From the arguments of the two sides, it is crystalized that during the course of trial of the case before the learned Special Judge, witnesses V.T.Kuriakose Inspector and Ajit Singh Inspector who both partly investigated the case have left India after retirement and P.K.Gupta who has retired and was residing at Chandigarh as Financial Commissioner, Mines and Minerals, Haryana could not be examined inspite of figuring in the list of witnesses and the learned Court had closed the evidence of the petitioner by order dated 12.2.2013. The applicant-CBI then moved application under section 311 Cr.P.C. which stood declined. Thus, the main grouse of Sh. Goel on behalf of the petitioner is that there has been circumvention of law and denial of justice by such an order which is sought to be refuted tooth and nail on behalf of the respondents side arguing that they have been given effective dates of hearing spanning over many years by way of 18 opportunities but they failed to complete the evidence. As is highlighted during the arguments of the two sides, the learned Special Judge has certainly failed to effectively exercise its powers in terms of section 87 and

90 Cr.P.C. and did not issue any meaningful coercive process to summon the witnesses either by way of bailable warrants of arrest warrants or such suitable action keeping in view that such matters are of vital importance and it is not the duty only of the prosecution to ensure presence of witnesses and rather it is also the duty of the court to ensure that in the process of dispensation of justice, it exercises its judicial powers and which to the mind of this Court, the court below had failed to resort to and had all of a sudden closed the evidence and thus denying the petitioner of its legitimate right to reasonable opportunity. Moreover allowing the reasonable opportunity to the petitioner to complete its evidence rather would advance the cause of justice and no prejudice is likely to be caused to the either side. Thus, it would subserve the ends of justice, if petitioner is allowed two more opportunities to complete its evidence before the trial court. Having regard to the inclement weather as has been brought to the notice of this Court in the State of Kerala where one of the witness is residing, it would be appropriate to direct the parties to appear before the learned trial court within 15 days from today and the learned trial court would give not less than 15 days to the petitioner to arrange for its witnesses and the relevant record if any they want to examine through them and to give them adequate time to reach the court and thus after one month of the putting in appearance shall record the evidence and there would be an interval of at least two

weeks in between the two dates. The right of the defence to lead evidence shall not be prejudiced by this order.

The present petition stands allowed.

August 12, 2015
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(Fateh Deep Singh)
Judge