

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

Date of Decision: 20th April, 2015

+ **CRL.M.C.3763/2012**

RAVI GAMBHIR ADDL. SP CBI ACB NEW DELHI ...Petitioner
Through: Ms. Sonia Mathur, Standing
Counsel for CBI with Inspector
R.C. Sharma

versus

NCT OF DELHIRespondent
Through: Mr. Vinod Diwakar, Additional
Public Prosecutor for Respondent-
State
Mr. Anindya Malhotra, Advocate
for respondent No.2
Mr. Harsh K. Sharma, Advocate
for respondent No.8
Mr. V.K. Ranga, Advocate for
respondents No.2, 5, 12 with
respondent No.6 in person
Mr. Hitender Kapur, Advocate for
respondents No.8 to 11

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

% **ORDER**
(O R A L)

1. Trial in RC 34 (A)/2007-DLI is held up due to want of statement of witnesses recorded under Section 161 of Cr.P.C.. The Investigating Officer is required to file the statements recorded under Section 161 of Cr.P.C. alongwith the charge-sheet, but he has failed to do so despite

several opportunities given, thereby resulting in the delay of trial. In the aforesaid RC, contesting respondents are the officials of Slum & Urban Rehabilitation Department, MCD, who are accused of making dishonest allotments of 20 plots without any application and without referring it to the *Disputed Cases Eligibility Determination Committee* and without holding any draw of lots. Infact, the allegations are that respondent *Nanakchand* and *Sher Singh* had dishonestly issued possession slip for 160 plots to co-accused-*Ashok Malhotra and Associates* and number of plots were purportedly sold by respondents-accused persons to co-accused Ashok Jain in open market for ₹2 lac to ₹2.4 lac per plot.

2. After filing of the charge-sheet, petitioner had filed application before trial court for further proceeding with the trial on the basis of available documents and the said application has been disposed of by trial court while noting as under:-

"In the aforesaid circumstances, the court cannot be a mute spectator and a mere umpire to await endlessly. The case clearly reflects malafide exercise whereby the crucial documents/statement of witnesses has been lost and not placed on record by the prosecution. The non-interference by the court has to be that the proceedings are commencing in accordance with law, as every trial is voyage of discovery in which truth is a quest and proceedings are required to be taken to a logical conclusion. Reliance may be placed upon AIR 2012 SC 1727, Maria Margarida Sequeria Fernandes and Ors. V. Erasmo Jack de Sequeria (Dead) through L.R.s."

3. Noting that cognizance of the offence has been taken and though further investigation under Section 173 (8) of Cr.P.C. is not precluded,

but direction for fresh investigation for the purpose of recording of statement of witnesses under Section 161 of Cr.P.C. afresh and for reconstruction of missing documents is not granted by trial court by observing that such a direction can be issued by this Court under Section 482 of Cr.P.C. This is why the present petition has been filed.

4. At the hearing, learned standing counsel for petitioner-CBI had placed reliance upon Apex Court's decision in *Ram Bihari Yadav v. State of Bihar and Others* (1998) 4 SCC 517, *Amar Singh v. Balwinder Singh and Others* (2003) 2 SCC 518 and *State of Punjab v. Central Bureau of Investigation and Others* (2011) 9 SCC 182 SCC to submit that directions for fresh investigation are necessary to prevent abuse of process of court as the Investigating Officer has been departmentally held guilty for the loss of statement of witnesses under Section 161 of Cr.P.C. and the documents and so he has been dismissed from service.

5. This petition is opposed by learned counsel for contesting respondents by submitting that Code of Criminal Procedure does not permit fresh investigation for recording of statement of witnesses under Section 161 of Cr.P.C. afresh and there is no justification to permit petitioner to get the statements of witnesses under Section 161 of Cr.P.C. recorded as such statements would be tailor-made and would cause grave prejudice to the respondents-accused.

6. The submissions advanced by both the sides have been considered in the light of the legal position as noticed in the cited decisions and thereupon, this Court finds that the probative value of such statements is not required to be prejudged. Any act or omission on the part of the investigating agency, whether designedly or otherwise, cannot be

permitted to perpetuate injustice as it would shake the confidence of the people in the administration of justice. It has been reiterated by the Apex Court in *State of Punjab v. CBI and Others (supra)* that High Court can direct fresh/re-investigation if found to be necessary to prevent abuse of the process of the court or otherwise, to secure ends of justice. Any failure or omission by the Investigating Officer cannot render the criminal prosecution futile. The apprehension of respondent-accused of their being prejudiced is misplaced because they will have full opportunity to cross-examine the prosecution witnesses in relation to the fresh statements of the witnesses recorded under Section 161 of CPC. If petitioner is not permitted to record the statement of witnesses under Section 161 of Cr.P.C. and to reconstruct the missing documents, then it would amount to rendering the instant criminal prosecution otiose.

7. To secure the ends of justice, petitioner's application for recording of statement of witnesses under Section 161 of Cr.P.C. and for reconstruction of missing documents is hereby allowed. Petitioner is permitted to conduct and conclude this exercise within a period of twelve weeks.

8. With aforesaid directions, this petition is disposed of while refraining to comment upon merits of this case.

(SUNIL GAUR)
JUDGE

APRIL 20, 2015

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