

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

Date of Decision: 12th May, 2015

+ **CRL.MC.No.4739/2014 & CrI.M.A.No.16223/2014**

SAMEER SANDHIR

.... Petitioner

Through: Mr. Sudhir Nandrajog, Senior
Advocate with MS. Kanika Singh
& Ms. Heena Khan, Advocates

Versus

CENTRAL BUREAU OF INVESTIGATION

...Respondent

Through: Mr.Narender Mann, Special Public
Prosecutor for respondent – CBI
with Mr. Manoj Pant &
Ms.Utkarsha Kohli, Advocates and
Inspector Lalit Phulara

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT

1. Petitioner along with his co-accused is facing trial in CC No. 03/2013, *CBI Vs. Mahesh Kumar & Ors.* for the offences under Sections 120-B of IPC r/w Section 7, 8 & 10 of the *Prevention of Corruption Act, 1988*. Vide order of 27th September, 2014 respondent-CBI's application / request for sending two sealed compaq discs (M-137/13 & M-170/13) to Central Forensic Science Laboratory (*henceforth referred to as the 'CFSL'*) for preparing ten copies of each of these two compaq disc

(hereinafter referred to as the 'CDs') for supplying to the accused persons stands allowed.

2. It is noted in the aforesaid order of 27th September, 2014 that in the Seizure Memos of 4th May & 10th May, 2013 it is clearly stated that these two CDs in sealed conditions were seized and the unsealed CDs (M-138/13 & M-171/13) of these two sealed CDs, contained the same material and the two unsealed CDs were handed over to the Investigating Officer for investigation. It is also noted in the impugned order that copies of these two unsealed CDs containing the same material, as in the two sealed CDs mentioned in the above said Seizure Memos have been already supplied to the accused persons. While allowing the application, trial court has directed the Investigating Officer to produce these two sealed CDs along with the requisite certificate before the Court.

3. The challenge to the impugned order by learned senior counsel for petitioner is on the ground that these two sealed CDs were neither filed with the main charge-sheet nor with the supplementary charge-sheet and so, these two sealed CDs cannot be permitted to be brought on record, as they do not figure in the relied upon documents or in the list of documents.

4. It was vehemently asserted by learned senior counsel for petitioner that though the impugned order notices the aforesaid stand of petitioner, but fails to deal with it and so, on this short ground alone impugned order deserves to be quashed. The admissibility and reliability of these two sealed CDs is questioned by learned senior counsel for petitioner, who

asserted that there is serious doubt about these CDs being tampered and these CDs ought not to be routinely brought on record.

5. During the course of hearing, a grievance was made by learned senior counsel for petitioner that the application in question was listed for hearing at 2:00 p.m. but the said application was heard and disposed of by the trial court before lunch without hearing petitioner and so, violation of principles of natural justice was urged. On the merits of the application, it was urged on behalf of petitioner that trial court has erroneously observed in the impugned order that the material contained in the sealed CDs and the unsealed ones is the same. It was asserted by learned senior counsel for petitioner that the material in the sealed CDs is much more than in the unsealed CDs whose copies have been given to the petitioner. According to learned senior counsel for petitioner, a serious prejudice is caused to the accused persons by permitting the two sealed CDs to be brought on record, as the authenticity of these two sealed CDs is indeed questionable. Thus, quashing of the impugned order is sought in this petition.

6. With equal vehemence, Mr. Narender Mann, Special Public Prosecutor for the CBI, supports the impugned order and submits that only the two sealed CDs but even the unsealed CDs whose copies have been already given to the accused persons are duly supported by the requisite certificate under Section 65-B of *The Evidence Act* and so, there is no question of the sealed CDs being tampered with. It was submitted that due to sheer inadvertence, these sealed CDs could not be filed along with the charge-sheet and since these two sealed CDs are vital evidence, therefore, trial court has rightly permitted respondent-CBI to bring these

two sealed CDs on record. It was further submitted that in the Seizure Memos of 4th May & 10th May, 2013 there is reference of these two sealed CDs and so their authenticity cannot be doubted. In the last, it was submitted that in compliance to the impugned order, these two sealed CDs have been already sent to the CFSL for preparation of ten copies to be supplied to accused persons and these two sealed CDs have been received back along with ten copies and thus, the challenge to the impugned order no longer survives.

7. After having heard both the sides and on perusal of impugned order and the material on record, it becomes evident that supplying of copies of unsealed CDs to accused persons is no substitute for the supply of copies of the sealed CDs. The question of admissibility and reliability very much arises for the simple reason that the two sealed CDs were never the part of judicial record. During the course of hearing, learned Special Public Prosecutor for the CBI has drawn the attention of this Court to the relevant chapter of the *Delhi High Court Rules* to submit that the charge of the case property is to be retained by the investigating agency during the disposal of a case and so, these sealed CDs can be brought on record even during the course of trial. This submission is noticed only to be rejected for the reason that in the first instance, the *Delhi High Court Rules* provide for transmission of the case property to the court and thereafter only, with the permission of the court, the case property can be retained by the investigating agency. It is neither clear from the impugned order nor from the Seizure Memo that the two sealed CDs had the contents of how many call records. Therefore, reference to the Seizure

Memo or the Certificate under Section 65 (b) of the *Evidence Act* appears to be of no avail. In any case, since opportunity of hearing have been provided to petitioner by this Court therefore, the impugned order does not deserve to be quashed on the ground of violation of the rule of *audi alteram partem*. However, the question of admissibility and reliability of the two sealed CDs is certainly required to be considered before they are brought on record. Since, these two sealed CDs are not part of judicial record, therefore, trial court has gravely erred in routinely permitting the respondent-CBI to bring these sealed CDs on record. Such a view is being taken because petitioner maintains that the contents of the sealed CDs and the unsealed ones are in variation.

8. In view of the aforesaid, impugned order, so far as it permits respondent-CBI to bring on record these two sealed CDs (M-137/13 & M-170/13), is not in consonance with law, as it is not shown that under which provision of law these CDs (M-137/13 & M-170/13) can be brought on record during the course of recording of evidence, especially when these sealed CDs (M-137/13 & M-170/13) are not part of the main or the supplementary charge-sheet. Consequentially, impugned order to the aforesaid extent is quashed with direction to the trial court to permit respondent-CBI to file an appropriate application to bring on record these sealed CDs (M-137/13 & M-170/13) and after satisfying itself, as to whether these CDs (M-137/13 & M-170/13) can be brought on record during the recording of evidence and under what provision of law. The said application be promptly dealt with while considering the admissibility and authenticity of these two sealed CDs.

9. With aforesaid directions, this petition and the application are accordingly disposed of.

(SUNIL GAUR)
JUDGE

May 12, 2015

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