

R-129&130

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

Date of Decision: April 06, 2015

+ **CRL.M.C. 4991/2014 & Crl. M.A.No.17104/2014**

TUNCAY ALANKUS Petitioner

Through: Mr. Bahar C. Barqui &
Mr. Mahmood Alam, Advocates

versus

CENTRAL BUREAU OF INVESTIGATION Respondent

Through: Mr. Sanjay Jain, ASG, with
Mr.V.N.Ojha & Mr. Rajul Jain,
Advocates

+ **CRL.M.C. 296/2015 & Crl. M.A.No.1146/2015**

TUNCAY ALANKUS Petitioner

Through: Mr. Bahar C. Barqui &
Mr. Mahmood Alam, Advocates

versus

CENTRAL BUREAUS OF INVESTIGATION Respondent

Through: Mr. Sanjay Jain, ASG, with
Mr.V.N.Ojha & Mr. Rajul Jain,
Advocates

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT

% **(ORAL)**

In the above captioned two petitions, challenge is to the order of 28th November, 2014 and the summons issued in pursuance thereto. Vide

impugned order witnesses have been directed to be summoned to appear before the trial court while noting that neither any defence witness is available for video conferencing nor defence counsel has made personal efforts to produce any defence witness. Impugned order also notes that on various dates, petitioner sought time to coordinate with defence witnesses and steps have not been taken to get the summons issued to the defence witnesses.

With the consent of learned counsel representing both the sides, the above captioned two petitions were heard together and are being disposed of by this common judgment.

At the hearing, learned counsel for petitioner had drawn the attention of this Court to the willingness given by six witnesses i.e. *Mr. G.A.Batalin, Mr. Ivanov Sheri Petrovitch, Mr. Rafael Leoni, Mr. Dydk Georgly Michailovich, Mr. Ahmad Murad Masimovitch and Mr.Karpenko Alazander Efimovich.*

It was pointed out by learned counsel for petitioner that the summons issued to these witnesses are liable to be quashed, as these summons have been issued in utter violation of Coordinate Bench decision of this Court on 4th June, 2010 in Criminal Revision Petition No. 126/2005 & CrI. M.C.No.1347/2008 (*Annexure P-3*). It is submitted that in the aforesaid decision of 4th June, 2010 (*Annexure P-3*), directions have been issued to trial court to get these witnesses examined through video conferencing at the expense of petitioner and petitioner is ready to deposit the expenses, provided it is made known by respondent-CBI as to what expenses are to be deposited by the petitioner.

Thus, it is submitted that the impugned order as well as summons

issued in pursuance thereto are to be quashed with direction to the trial court to comply with the directions issued by a Coordinate Bench of this Court in the decision of 4th June, 2010 (*Annexure P-3*) in letter and spirit.

Mr. Sanjay Jain, learned Additional Solicitor General for respondent-CBI has drawn attention of this Court to trial court's order of 17th September, 2014 to point out that steps for getting three witnesses i.e. *Mr. G.A.Batalin, Mr. Dydk Georgiy Michailovich and Mr. Michail Capuryan* examined through video conferencing have been already taken but the steps for remaining three witnesses i.e. *Mr. Karpenko Alazander Efimovich, Mr. Alexander Miailov & Mr. Ahmed Murad* could not be taken because their addresses were not found to be correct. Thus, it is submitted that the impugned order does not suffer from any infirmity, as the lapse is on the part of petitioner to ensure that video conferencing of the defence witnesses takes place.

Upon hearing and on perusal of the impugned order and the material on record, I find that directions issued by a Coordinate Bench of this Court in the decision of 4th June, 2010 (*Annexure P-3*) have to be complied with in true letter and spirit. As per trial court's order of 17th September, 2014, steps for recording of evidence of defence witnesses through video conferencing have been taken in respect of at least three witnesses i.e. *Mr. G.A.Batalin, Mr. Dydk Georgiy Michailovich and Mr. Michail Capuryan*. So far as remaining three witnesses i.e. *Mr. Karpenko Alazander Efimovich, Mr. Alexander Miailov & Mr. Ahmed Murad* are concerned, learned counsel for petitioner submits that within a period of four weeks, steps to find out correct address of these witnesses would be taken and if it is not possible to do so, then these witnesses would be

dropped. Regarding defence witness- *Mr. Bartrand Grillon, Manager of Nimaco*, learned counsel for petitioner submits that steps would be taken to get him summoned through the local court at the place where he is stationed.

In the face of trial court's order of 17th September, 2014 and the willingness obtained by petitioner from the defence witnesses, I find that impugned order of 28th November, 2014 cannot be sustained and is accordingly quashed. Consequently, summons issued in pursuance to the impugned order also stand quashed. A direction is issued to the trial court to take effective steps for service of defence witnesses after obtaining a report from respondent-CBI about expenses which are required to be deposited by petitioner for video conferencing. It is made clear that if petitioner is not able to provide the correct address of any of the defence witnesses, then this judgment will not stand in the way of trial court to refuse summons to said witnesses.

With aforesaid directions, above captioned petitions and applications are disposed of. Trial court be apprised of this order forthwith.

(SUNIL GAUR)
JUDGE

APRIL 06, 2015

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