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

Judgment delivered on: 17th November, 2015

+ **CRL.M.C. No.4653/2015**

DHARRAMBIR KHATTAR

..... Petitioner

Represented by: Mr.S.K.Rungta, Senior
Advocate with Mr.Prashant
Singh, Adv.

versus

CENTREAL BUREAU OF INVESTIGATION

..... Respondent

Represented by: Ms.Sonia Mathur, Standing
Counsel with Mr.Shushil Kr
Dubey, Adv and IO
Inspector Sanjay.

**CORAM:
HON'BLE MR. JUSTICE SURESH KAIT**

SURESH KAIT, J. (Oral)

Crl. M.A.No.16669/2015 (Exemption)

Exemptions allowed, subject to all just exceptions.

Accordingly, the application is allowed.

CRL.M.C. No.4653/2015

1. Vide the present petition filed under Section 482 of the Code of Criminal Procedure, 1973, petitioner seeks direction thereby setting aside the orders dated 19.10.2015, 26.10.2015, 28.10.2015, 30.10.2015 and 02.11.2015 passed by learned Trial Court in RC No.39(A)/2003-DLI pending trial against him.

2. The issue in the present petition is that the petitioner/Accused No.1

moved applications under Section 91 read with Section 313(5) of the Cr P C and as well as under Section 243 of the Cr P C for production of documents as mentioned in para No.7 of the application under Section 91 of the Cr P C, which are as under:-

<i>“Doc u-ment No.</i>	<i>Description of document</i>	<i>Authority in whose possession the document is available</i>
<i>a.</i>	<i>The complete allotment file of the plot No.1, East of Patel Nagar Institutional Area (Prasad Nagar), Delhi containing the application for allotment, its processing and the order thereby directing the allotment. The file bearing No.F.8 (25)/84-IL and the same is evident from the relied upon document of the prosecution; (Only part file without complete note side or correspondence side had been produced). Document D-27, reflect the calculation of ground rent in the corresponding file for the year 1985 to 23.12.03.</i>	<i>Malkhana of CBI pertaining to RC No.39(A)/2003-DLI/ACB/New Delhi, dated 11.07.2003 or in PE No.5(A) / 2003.</i>
<i>b.</i>	<i>The File No.F.8(25)/84/IL/Pt. (here Pt. Reflect Part File), only some pages</i>	<i>Malkhana of CBI pertaining to RC No.39(A)/2003-DLI/ACB/New</i>

	<i>of the same had been brought on record. Complete set of note sheet side and correspondence side had not been brought. The complete file required to be summoned.</i>	<i>Delhi, dated 11.07.2003 or in PE No.5(A) / 2003.</i>
<i>c.</i>	<i>The record reflecting compliance of the order dated 05.11.2007, passed in the present proceedings.</i>	<i>Malkhana of CBI pertaining to RC No.39(A)/2003-DLI/ACB/New Delhi, dated 11.07.2003 or in PE No.5(A) / 2003.</i>
<i>d.</i>	<i>Original Assessment File of House Tax, existence of which had been reflected in the deposition of Lw-10/PW23/Sh.R.P. Gola.</i>	<i>Malkhana of CBI pertaining to RC No.39(A)/2003-DLI/ACB/New Delhi, dated 11.07.2003 or in PE No.5(A) / 2003.</i>
<i>e.</i>	<i>File pertaining to Civil Suit NO.1135/06/98 and No.1146/06/98 titled Shri Bhairon Mandir Smiti Vs. DDA decided by Ld Civil Judge, Sh. Sanatan Prasad, Tis Hazari Courts, Delhi and date of decision is 08.03.2007.</i>	<i>The file would be available with the Record Room, Tis Hazari Courts, Delhi</i>
<i>f.</i>	<i>File pertaining to Civil Appeal /RCA No.12/07 and 15/07 titled LG & Anr v/s Shri Bhairon Mandir Simiti, decided by Ld. ADJ, Dr. Kamini</i>	<i>The file would be available with the Record Room, Tis Hazari Courts, Delhi</i>

	<i>Lau, Tis Hazari Courts, Delhi and date of decision is 16.10.2008.</i>	
g.	<i>File pertaining to Writ Petition (Civil) No.134/04 and 17021/08 tilted Shri Bhairon Mandir Samiti vs DDA & Ors, decided by Hon'ble High Court of Delhi at Delhi and date of decision is 12.02.2009.</i>	<i>The file would be available with the Record Room, Hon'ble Delhi High Court at New Delhi.</i>

3. Mr.Rungta, learned senior counsel appearing on behalf of petitioner submits that DW1 Inspector Arjun Singh from Malkhana of CBI had deposed that these documents are not available in his custody. Accordingly, petitioner sought permission from the learned Trial Court to summon the witness from DDA/MCD to produce such records. Accordingly, vide order dated 02.11.2015, learned Trial Court granted last opportunity to the petitioner to summon and examine the witnesses, to which the petitioner is aggrieved.

4. Learned senior counsel further submits that since these documents are also relied upon as mentioned in the seizure memo itself, the petitioner has right to summon the concerned witness with relevant record.

5. Admittedly, the statement under Section 313 Cr P C of the petitioner /accused No.1 has already been recorded. Thereafter, he opted to lead defence witnesses. Accordingly, he summoned DW1 Inspector Arjun Singh from CBI, who deposed that the documents summoned for are not in his possession, though mentioned in the seizure memo.

6. Needless to state that the petitioner has every right to have access to the documents relied upon by the CBI and if for any reason the prosecuting agency failed to produce them, the benefit thereof shall be given to the accused, as per law.

7. In the present case also, without commenting upon the impugned orders passed by learned Trial Court, I am of the considered opinion that in case the petitioner summons the witnesses either from CBI/DDA/MCD or any other institution, then it is the duty of the Court to ensure that said witness(s) appear and depose before the Court. If for any reason, such witnesses do not come and depose or produce the relevant record, the benefit thereof will be given to the accused as per law.

8. Learned standing counsel for CBI submits that the documents sought by petitioner are part of the Trial Court Record, which is being disputed by learned senior counsel for petitioner.

9. Let learned Trial Court to ensure that the documents mentioned the application under Section 91 of the Cr P C, are on record; then there would be no necessity to call for the record. However, the liberty would certainly be granted to the petitioner to call for the defence witnesses as desired by him.

10. I further make it clear that if the documents are not on record, the relevant witnesses maybe summoned with the documents and in case the documents are not produced, accordingly, learned Trial Court shall give the benefit thereof to the petitioner, in accordance with provisions of law.

11. In above terms, instant petition is allowed.

12. Order *dasti* to the learned counsel for the parties under signature of the Court Master.

Crl. M.A.No.16668/2015 (Stay)

Dismissed as infructuous.

**SURESH KAIT
(JUDGE)**

NOVEMBER 17, 2015

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