

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

**RESERVED ON : 26<sup>th</sup> MAY, 2016**  
**DECIDED ON : 10<sup>th</sup> AUGUST, 2016**

+ **CRL.M.C.2159/2010 & CRL.M.A.No.8504/2010**

DIRECTORATE OF REVENUE INTELLIGENCE..... Petitioner

Through : Ms.Pooja Bhaskar, Proxy counsel for  
Mr.Satish Aggarwala, Advocate.

versus

PRAKASH CHAND & ORS. .... Respondents

Through : Mr.Naveen Malhotra, Advocate.

**CORAM:**  
**HON'BLE MR. JUSTICE S.P.GARG**

**S.P.GARG, J.**

1. Present petition under Section 482 Cr.P.C. has been filed by the petitioner "Directorate of Revenue Intelligence" (In short 'DRI') to challenge the correctness and legality of an order dated 08.04.2010 of learned Addl. Chief Metropolitan Magistrate whereby application moved under Section 311 Cr.P.C. to examine / recall certain witnesses was dismissed. The petition is contested by the respondents.

2. I have heard the learned counsel for the parties and have examined the file.

3. A complaint case was filed against the respondents on 21.01.1987, when the respondents were in judicial custody, for commission of offence punishable under Section 135 Customs Act. One of the

respondents Naresh Kumar Sharma has since expired. On 04.02.1987, the case was listed for recording pre-charge evidence for 04.03.1987. Numerous dates have been taken by the complainant to complete its pre-charge evidence since then. It, however, utterly failed to do so. Finally, vide order dated 17.04.2001, the complainant was directed to produce the entire evidence on the next date i.e. 14.08.2001; it had no effect and again the complainant sought number of adjournments to record the statements of prosecution witnesses. On 12.11.2006, the Trial Court afforded last and final opportunity to the prosecution to complete its evidence. When the complaint did not comply the said order, vide order dated 19.04.2007, further evidence of the prosecution was ordered to be closed. When the matter was listed for arguments on charge, an application under Section 311 Cr.P.C. was moved on 22.08.2007 which resulted in its dismissal by an order dated 08.04.2010.

4. Apparently, the petitioner was not at all diligent to record its pre-charge evidence despite grant of uncountable adjournments. Finding no alternative, the court has constrained to close the prosecution evidence vide order dated 19.04.2007. Soon thereafter, the application under Section 311 Cr.P.C. was filed to recall the order and to examine the remaining prosecution witnesses. For detailed reasons given in the impugned order, the Trial Court declined to accede to the petitioner's prayer.

5. No plausible and convincing reasons have been offered by the petitioner for dragging the pre-charge evidence for about more than two decades. There was complete slackness on the part of the prosecution to pursue its complaint case. On several dates, no prosecution witness was available; on many other dates, the prosecution was unable to produce the

case property required for examination of the witnesses present in the Court. No satisfactory explanation has been offered as to why the case property was not available on those dates. Despite specific directions to complete its entire evidence vide order dated 17.04.2001, no seriousness was shown to complete it. Instead of examining any witness, on 30.07.1987, an application was filed under Sections 219/222/223 Cr.P.C. for joint trial which resulted in its rejection on 03.10.1987. On 26.10.1987, no PW was present. The complainant rather filed certain documents. On 05.03.2003, the prosecution got to know that material document i.e. 'Panchnama' was not on record. Adjournment was again sought on 20.05.2003 as the original documents could not be filed. On 10.06.2003, the documents were filed and the case was listed for recording pre-charge evidence for 11.09.2003. On that date, witness could not be examined completely for want of case property. On 04.08.2004, two PWs were present but adjournment was sought as the complainant wanted to file certain 'documents'. Needless to say, no sincere efforts were made to record the statements of the prosecution witnesses. On several dates unwarranted adjournments in routine manner were sought by the complainant and were granted without any valid cause. Adjournments must not be allowed on the mere asking for it or to suit the convenience of the complainant.

6. True, some adjournments were attributable to the respondents but the complainant cannot take benefit of it as it failed to examine all the witnesses despite availing numerous adjournments. After all how many effective dates are required to record the statements of six or seven prosecution witnesses in pre-charge evidence? In 2007, the complainant was still to examine four material witnesses in its pre-charge evidence. It is

unclear as to when the trial would come to an end in such a scenario. The prosecution has not given any justification for not examining the witnesses; for not producing the case property and documents on the relevant dates. None was held responsible as to why the vital document i.e. panchnama was not placed on record at the time of filing the complaint or soon thereafter. The petitioner cannot be granted indefinite adjournments as per its convenience. Enough is enough; somewhere, a final stop is to be put. Shifting the blame upon the respondents or the Court would serve no purpose. The respondents cannot be made to suffer endlessly. Reasonably expeditious trial is a fundamental right of the accused.

7. The impugned order based upon fair appreciation of the facts and circumstances deserves no intervention.

8. The petition lacks in merit and is dismissed. Pending application also stands disposed of. Trial Court record (if any) be sent back forthwith with the copy of the order.

9. Efforts will be made by the Trial Court to expedite the trial as the case pertains to the year 1987.

**(S.P.GARG)**  
**JUDGE**

**AUGUST 10, 2016 / *tr***