

\$~34.

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

+ **Date of Decision: 21.12.2016**

% **TR.P.(CRL.) 88/2016**

VINOD KUMAR CHAUHAN

..... Petitioner

Through: Ms. Rebecca M. John, Senior Advocate along with Mr. Bhavook Chauhaan, Mr. Harsh Bora, Mr. Ratna Appender & Mr. Nikhil Ahuja, Advocates.

versus

STATE THR. CBI & ORS.

..... Respondent

Through: Mr. Sanjeev Bhandari, SPP for CBI Mr. Vishal Gosain & Ms. Rudrani Tyagi, Advocates for respondents No.4 to 6.

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI

VIPIN SANGHI, J. (OPEN COURT)

1. The petitioner has preferred the present transfer petition under Section 407 Cr PC. The petitioner is accused no.3 in the case titled CBI v. R.N. Rastogi & Ors., RC DAI-OO45A/2000, PS CBI/ACB/Delhi. The case is presently pending in the court of Sh. Jitender Kumar Mishra, Special Judge, Karkardooma Courts, Delhi and the petitioner seeks transfer of the said case to another competent court.

2. The reason given by the petitioner to seek transfer of the case is that the manner in which the learned Special Judge is proceeding with the case leaves much to be desired, and the same has given rise to a reasonable apprehension in the mind of the petitioner that he would not get justice at the hands of the learned special Judge. The petitioner submits that on account of the haste and reckless manner in which the learned Special Judge is proceeding, the cause of justice is suffering and the right of the accused of getting a fair trial is being infringed. The petitioner submits that the learned Special Judge is not conducting the proceedings in a fair and reasonable manner, and is not granting reasonable and adequate opportunity to the petitioner and the other accused, inter alia, in the matter of recording evidence. The petitioner has pointed out several instances which have taken place from time to time before the learned Special Judge, and which are borne out from the record, in support of the aforesaid submission. They are taken note of herein below.

3. Ms. Rebecca John - learned senior counsel for the petitioner submits that though the charge sheet in the case was filed way back in 2001, the charges were framed only on 04.10.2016. After that stage was over, the case was fixed for the purpose of admission/ denial of documents before the learned Special Judge on 07.10.2016. She submits that Section 294(1) Cr PC provides that the documents filed before the court shall be included in a list and the prosecution or the accused, as the case may be, or the pleader for the prosecution or the accused, if any, shall be called upon to admit or deny the genuineness of each such document. Thus, the counsel representing the accused is entitled to participate in the exercise of admission/ denial of documents by the prosecution/ accused.

4. Ms. John submits that on the said date, while the documents were being admitted/ denied by the accused no.3/ petitioner, the learned Special Judge called upon his counsel Mr. Bhavook Chauhan not to participate in the proceedings and to leave the court room. Consequently, contemporaneously, the counsel representing the petitioner moved a handwritten application before the learned Special Judge on the same day regarding the developments which took place in the court. The counsel also recorded in the said application the verbal exchange which took place with the learned Special Judge. As per the narration in the said application, the learned Special Judge asked the counsel as to what interest he had in the matter, to which the counsel responded that every counsel has interest in his clients matter. On this, the court proceeded to observe, verbally though, that the counsel has a personal interest in the matter.

5. The aforesaid instance gave rise to a representation being made by the members of the Bar to the learned District & Sessions Judge on the same day, complaining about the manner in which the learned Special Judge was conducting the proceedings. Grievances were made with regard to his habit of making personal remarks against advocates who appear before him. The aforesaid incident regarding the petitioner's counsel being asked to leave the court was also specifically mentioned in the said representation. The petitioner has placed on record the said representation dated 07.10.2016 of the members of the Bar, along with the resolution passed by the Executive Committee of the Shahdara Bar Association on the same day, which were submitted to the learned District & Sessions Judge. Counsel for the petitioner Mr. Bhavook Chauhan also gave a separate representation to the learned District & Sessions Judge on the same day recording his version of the incident aforesaid.

6. The learned Special Judge passed an order on the aforesaid application moved by counsel for the petitioner on the same day, wherein, after reproducing Section 294(1) Cr PC, the learned Special Judge has observed that since he had called upon the accused to admit/ deny the documents and not the pleader of the accused, therefore, the counsel of the accused – though at liberty to remain with the accused, cannot interfere during admission/ denial of documents.

7. The learned Special Judge further observed that the process of admission/ denial of document is between the accused and the court. He denied the participation of the counsel on the ground that the accused is not an illiterate person, and not one who is not able to understand the nature of documents. Another reason given by him was that the documents had already been supplied to the accused and, therefore, he had the opportunity to consult and seek the advice of his counsel regarding the documents in advance.

8. Ms. John submits that this approach of the learned Special Judge strikes the root at the primary principle of criminal adjudication, that every accused has a right to be represented through counsel, and the nature of the proceedings being criminal, at every stage the accused is entitled to seek the advice of his counsel. She submits that the approach of the learned Special Judge compromised the rights of the accused to a fair trial and vitiated the atmosphere in the court by giving rise to avoidable friction.

9. Ms. John also submits that the case file was not being made available by the learned Special Judge to carry out inspection. She submits that the petitioner was desirous of challenging the order on charge. The said order was passed on 23.09.2016 and the formal charge was framed on 04.10.2016.

Since then, the endeavour of the petitioner to inspect the record and obtain the certified copy of the said orders failed, as the file was not actually made available for inspection – though, on paper, inspection was allowed. The petitioner submits that on enquiry the petitioner learnt that the file was not sent to the copying agency for the reason that the learned Special Judge had not corrected and signed the previous orders. In this respect, attention is drawn to an application moved on behalf of the petitioner by the counsel seeking permission to inspect the judicial record. This was moved on 08.10.2016 at 12:50 pm. Though this application was allowed and inspection granted as per rules, as a matter of fact, the inspection was never granted. Since the file was not made available for inspection, a representation was made by learned counsel for the petitioner before the learned District & Sessions Judge on the same day, wherein the counsel, inter alia, stated as follows:

“The aforesaid matter was fixed today for further admission and denial of the documents and at around 12.30 pm, the ld. Court was pleased to adjourn the aforesaid matter for October 15, 2016. At around 12.50 pm, an application for inspection of the judicial record was moved on behalf of the undersigned counsel as she desired to pursue the contents of the order dated 05.10.2016 to 07.10.2016. The said application was though allowed by the ld. Court however the undersigned counsel was asked to wait till 3 pm, for purposes of inspection of the judicial record. A copy of the said application is annexed herewith.

The undersigned counsel appeared around 3 pm and she was kept waiting by the Reader of the said court till 3.50 pm. It was after repeated asking by the undersigned counsel that the Reader informed that order sheets since 05.10.2016 have not been corrected and signed by the Ld. Presiding Officer and therefore the judicial record cannot be provided for inspection. The undersigned counsel requested the Reader to put it in writing for record however he refused to acknowledge the same

in writing on the pretext that is not under duty to do the same”.

10. Thus, the complaint of the petitioner’s counsel was that even though the case had been adjourned on 08.10.2016 for a week, and the application for inspection was moved after the hearing in the case was already over on the said date, the counsel was made to wait till 3:50 pm. and, subsequently, the counsel was informed that the order sheets had not been signed by the learned Special Judge since 05.10.2016 and, consequently, the file could not be made available for inspection. The petitioner has also placed on record the application dated 20.10.2016 moved before the learned Special Judge, after applying for certified copies of the order sheets, to seek a direction that the file be sent by the staff to the copying agency branch. On the said application, the learned Special Judge passed an order on 20.10.2016, observing that the application for obtaining certified copy had already been allowed by the court and, thus, no further direction was required. He observed that this is an administrative proceeding of the copying agency staff, and interference of the court is not required. Accordingly, the petitioner’s application for sending the file to the copying agency was dismissed.

11. Ms. John submits that the learned Special Judge showed complete indifference to the rights of the accused to obtain certified copies of the orders. He was completely unmindful of the prejudice and inconvenience suffered by the accused, and the disadvantage to which he was subjected to. It should have been the concern of the learned Special Judge to see that the file is sent to the copying branch without undue delay. He was himself responsible for the file not being sent to the copying agency, as he was not releasing the file. In his order, he also did not deal with the real reason as to why the file was not being sent to the copying branch, namely, that his past

order sheets had not been corrected and signed by him.

12. The third aspect pointed out by Ms. John is that on 17.10.2016, the petitioner/ accused appeared before the court at 10:00 am. While he was waiting in the court, he received a telephonic message that his father Sh. Dayanand, aged about 90 years had been admitted to NMC Hospital, Noida in the ICU. Therefore, he moved an application to seek exemption on the ground of his father being critical. He stated in the application that he is the only son and his presence with the father is imminent. He also prayed that he may be permitted to go to the hospital.

13. This application for personal exemption on the said date was, however, turned down by the learned Special Judge at 12:00 noon. The order records that the learned Senior PP for CBI opposed the application on the ground that the present case is already 16 years old, and nothing has been disclosed in the application to show that accused no.3 is required in the hospital. The court agreed with this submission of the learned Senior PP and rejected the application. He directed the petitioner/ accused no.3 to remain present and take part in the admission/ denial proceedings. Ms. John submits that the petitioner's father, in fact, passed away on 25.10.2016.

14. Ms. John submits that the aforesaid shows that the learned Special Judge is proceeding in the matter with complete lack of compassion and in a reckless manner. The learned Special Judge is behaving in a tyrannical and inhuman manner, showing complete disregard for human relationships and emotions. Even the Senior PP for the CBI was taking advantage of the attitude of the learned Special Judge, and rather than adopting a reasonable and fair stand, he too appears to have turned equally unreasonable and uncompassionate.

15. Next, Ms. John points out that the prosecution cited one Anurag Chaudhary as a witness. The case was fixed for recording his evidence on 08.11.2016. On the said date, Mr. Anurag Chaudhary did not turn up. Instead, his brother Aseem Chaudhary came to the court to inform about the non-availability of his brother on the said date. When Aseem Chaudhary appeared before the court for the said purpose, the learned Special Judge roped in Aseem Chaudhary himself as a prosecution witness and proceeded to record his statement, despite an objection being raised by counsel for the accused.

16. Counsels for the accused – including the petitioner’s counsel, moved a handwritten application contemporaneously bringing on record their objection to examination of Aseem Chaudhary as a prosecution witness, who was not named in the list of witnesses initially filed and no application had been moved to introduce him as a witness even subsequently. The grievance of the petitioner is that the learned Special Judge, however, proceeded to record the statement of Aseem Chaudhary without first dealing with the objections raised by the petitioners and other accused. He declined those applications only after recording the statement of Aseem Chaudhary as PW-14 by his order passed on the same day. Thus, the learned Special Judge, placed the cart before the horse. While rejecting the application of the accused, the learned Special Judge placed reliance on Section 311 Cr PC, which empowers the court to examine any person in attendance, though not summoned as a witness. Ms. John submits that the order itself records that the summons had been issued to the brother of Aseem Chaudhary, and that Aseem Chaudhary had appeared as his brother was not well. His examination was permitted on the ground that his signatures were also appearing upon the document which was executed by the originally named

witness.

17. The next episode highlighted by Ms. John relates to the examination of witnesses on the same day i.e. 08.11.2016. The examination in chief of the witness, PW-14 Aseem Chaudhary was conducted before lunch, and part of his cross examination was also done by Mr. Vishal Gosain, counsel for accused nos.4 to 6. Since the lunch break intervened, his further examination was deferred to the post lunch session.

18. Ms. John points out that on 08.11.2016 itself, the learned Special Judge also examined another witness Sh. Rakesh Kumar as PW-12 in the pre lunch session. His examination in chief was concluded in the pre lunch session and his cross examination was also partly done and thereafter deferred to the post lunch session. Ms. John points out that in the post lunch session, when the further cross examination of PW-12 had to be conducted, Ms. Rudrani Tyagi, the counsel assisting Mr. Vishal Gosain (counsel for accused nos.4 to 6) stated that Mr. Gosain would cross examine the witnesses. Mr. Gosain, Advocate was also present in court at that stage. The said request was allowed. Mr. Gosain started the cross examination of PW-12. He desired to read the earlier deposition of PW-12 and requested that the computer screen may be scrolled for the said purpose. On this, the learned Special Judge passed the following order:

“XXX by Sh. Vishal Gosain, Counsel for A4 to A6

I do not remember how many times I have joined the investigation.

No question has been asked Ld. Defence Counsel to scroll down the screen to refer the examination in chief.

(Court observation : When the witness was examined Mr.

Gosain was not present. Ms. Rudrani Tyagi was present. Ld. Gosain again making interruption. Ms. Rudrani Tyagi does not want to cross-examine though she was present according to her when the witness was examined. She submits that now, she was not present.

To scroll down the screen is very minor thing. But the fact remains that witness who is Sr. Citizen is kept waiting by way of harassment since morning. On each date one counsel appears. Now, to harass the witness who is present since morning again and again has to appear though, it is the duty of the counsel who has to remain present in the court at the time when the case is to be called. Counsel is busy in another court is no ground for kept waiting the witness or for the harassment.

A witness who is Sr. Citizen and appears as per the directions of the court without having any interest cannot be allowed to wait only for the convenience of the counsel specially when there are two counsels.

In such circumstances, A4 to A6 have to remain careful in future in case their counsel do not come at the call of the case, then no further opportunity should be given in all circumstances.

Request of Sh. Vishal Gosain, Advocate is allowed. It is 3.15 pm.

No further question is asked". (emphasis supplied)

19. Ms. John submits, and this submission is also made by Mr. Gosain who is present in court on behalf of respondent nos.4 to 6, that the learned Special Judge knowingly made a factually incorrect recording by observing that the said witness PW-12 Rakesh Kumar is a senior citizen, and that he had been kept waiting by way of harassment since morning. It is pointed out that in the pre lunch session, the said witness had been examined in chief and partly cross examined. In the pre-lunch session, the other witness PW-

14 had also been examined in chief and his cross examination had been conducted, inter alia, by Mr. Gosain. It was the learned Special Judge who kept shuffling between witnesses at random, rather than concluding the examination in chief and cross examination of one witness at a time. The learned Special Judge simultaneously recorded the depositions of multiple witnesses and left them incomplete.

20. Ms. John submits that faced with the situation where the learned Special Judge insisted that Rudrani Tyagi, the junior counsel assisting Mr. Gosain should cross examine PW-12, the counsel Mr. Gosain moved a handwritten application seeking withdrawal of his vakalatnama. In this application, Mr. Gosain, inter alia, averred as follows:

*“2. That the matter was fixed today and was taken up from 11.30 am onwards. One of the counsels for the applicants named Ms. Rudrani Tyagi, Adv was present in the court from 11.15 am onwards. **One of the witnesses namely Sh. Rakesh Kumar (PW 12) was examined in chief and his cross examination on behalf of A3 and A4 to A6 was kept pending after lunch.***

*3. That one of the counsels **Sh. Vishal Gosain** appeared before this court after attending to another matter in the High Court. **He partially but extensively cross examined another witness namely Sh. Aseem Chaudhary in the pre lunch session and further cross was deferred for post lunch session.***

*4. That in the post lunch this court was desirous of examining PW12 **Sh. Rakesh Kumar** first but when the counsel **Sh. Vishal Gosain** proceeded to cross examine the said witness in the first instance the request was denied on the ground that only Ms. Rudrani Tyagi would be allowed to cross examine the said witness. However, when a fervent plea was made to allow Mr. Vishal Gosain to cross examine, this court passed some uncharitable and unsavoury comments and then permitted the counsel to proceed with the cross examination.*

5. *That thereafter, when the witness was on stand and at the time when the cross examination was about to commence, this court did not allow the counsel to have the monitor screen scrolled down to peruse the examination in chief of PW12 Sh. Rakesh Kumar. On persistent requests made by all the counsels present in the court including the counsel for the accused, this court again made some totally unwarranted incorrect and uncharitable comments against the counsels of the applicants. After this wholly unnecessary and avoidable incident where some absolutely misleading and unilateral arbitrary observations were made, the counsels were asked to commence with their cross examination.*

6. *That by this time the counsels had lost faith in the manner in which the proceedings were being conducted in this case before this Hon'ble Court.*

7. *That on account of completely biased, unjustifiable and unfair demeanor of this Hon'ble Court, the counsels are not in a position to conduct a proper trial in the case under surcharged and completely prejudicial atmosphere.*

8. *That the counsels would not be able to discharge their obligations to the best of their abilities given the hostility encountered in the court". (emphasis supplied)*

21. The learned Special Judge dealt with this application at 4:10 pm on the same day. The learned Special Judge in his order passed on the said application, inter alia, observed as follows:

"The another contention raised by learned counsel that counsel appeared before this court after attending matter before the Hon'ble High Court. However, no time has been mentioned by the learned counsel appeared in the matter. It is further submitted that he partly cross examined the witness namely Aseem Chaudhary in the pre lunch session and further cross examination was deferred for post lunch session. Thereafter PW12 was examined when the counsel Sh. Vishal Gosain referred to cross examination in the first instance, the respondent was denied on the ground that only Rudrani Tyagi

would be allowed to cross examine the said witness.

Since it is own contention made in the application that Ms. Rudrani Tyagi was present when the witness was being examined therefore it will be in the interest of and fair opportunity to the litigant that Ms. Rudrani Tyagi should cross examine the witness. Sh. Vishal Gosain admittedly was not present when the witness was examined in chief. However, the said contention has been recorded and answered properly in the order sheet itself and learned counsel was allowed to refer to examination in chief though it was duty of the learned counsel to remain present when examination in chief was recorded. It is further submitted that when the learned counsel was allowed to cross examine the witness, the court passed some uncharitable comments and then permitted to the counsel for cross examination. The fact remains that all such observations have been duly recorded during evidence of the witnesses. Fair opportunity was given after making observations. It is further submitted that learned counsel did not allow to scroll the monitor of the screen but the fact remains that hard copy of the evidence was provided to learned counsel and learned counsel insisted to scroll down the screen". (emphasis supplied)

22. Both Ms. John and Mr. Gosain state at the Bar with conviction that the recording made by the learned Special Judge that a hard copy of the evidence was provided to learned counsel is factually incorrect. They point out that the learned Special Judge had not even been granting inspection of the record, or releasing the file to enable the counsels to obtain certified copies. In these circumstances, there was no question of the learned Special Judge being so charitable as to provide hard copies of the evidence recorded on the same day.

23. It is also pointed out by Ms. John that when the cross examination of PW-12 was actually proceeding and contemporaneously the learned Special Judge passed the order at 3:00 pm, he did not observe that a hard copy of the

statement of PW-12 had been provided to learned counsel. It was only while dealing with the application moved by the counsel Mr. Gosain to seek discharge, which was dealt with subsequently at 4:10 pm, that the learned Special Judge introduced - for the first time, a statement that a hard copy of the statement of the said witness had been provided to the counsel.

24. Ms. John submits that the aforesaid circumstances have shaken the confidence of the accused in the impartiality of the learned Special Judge. The way he is proceeding has given rise to a genuine and reasonable apprehension in the mind of the accused and their counsel that the accused would not get justice from the learned Special Judge, since they are not being fairly treated by him. The learned Special Judge has also been passing uncharitable remarks against the counsel and the atmosphere in the Court is completely vitiated. The learned Special Judge has not truly and correctly recorded the proceedings. The accused are being put to serious disadvantage and prejudice inasmuch, as, they are not being provided inspection and certified copies of the orders passed, and the depositions recorded.

25. Ms. John submits that she regularly appears in such like cases before Special Judges involving PC Act being prosecuted by the CBI, and in other Courts dealing with other criminal cases. She submits that the learned Special Judge in the present case is an exception when it comes to granting a fair trial to the accused and preserving the principles of natural justice.

26. Ms. John has further pointed out that even though the chargesheet in the present case was filed in February 2001, the accused are not responsible for the delay. She submits that the accused were either present on the dates fixed from time to time, or were granted exemption from personal

appearance by the Court. Merely because the trial may have commenced late, is no ground for the learned Special Judge to proceed in a reckless manner and ride rough shod over the rights of the accused to being granted a fair trial. She assures the Court that the petitioner and the other accused are not interested in delaying the trial, and that is not the reason for moving the present petition.

27. Mr. Bhandari, learned SPP appearing for the CBI has submitted that in the present case, the charge sheet had been filed in February 2001, and the trial commenced only when the charges were formally framed on 04.10.2016. He submits that the trial in the case has already been unduly delayed and the only endeavour of the learned Special Judge appears to be to expedite the trial in the case. He expresses apprehension that the present petition should not become a tool in the hands of the accused to further delay the trial.

28. Before I proceed to consider the submissions of the parties, I must record that I am conscious of the fact that the learned Special Judge - in respect of whose conduct the aforesaid allegations have been made, is not a party to these proceedings and has not had the opportunity to defend his conduct. Therefore, while examining the materials relied upon by the petitioner, the Court would have to objectively evaluate the conduct of the learned Special Judge on the basis of the material placed on record. It is equally true that everything that transpires in a Court room does not necessarily get recorded in the orders passed by the presiding learned Judge. Therefore, when credible and senior counsels appear before this Court and advance their submissions with regard to their experiences before the concerned learned Judge and corroborate their submissions by reference to

the proceedings recorded by the learned Judge, the same has to be viewed seriously.

29. Every accused facing a criminal trial is entitled to a fair trial. The concept of fair trial was explained by the Supreme Court in ***Manu Sharma Vs. State (NCT of Delhi)***, (2010) 6 SCC 1, in the following words:

“197. In the Indian criminal jurisprudence, the accused is placed in a somewhat advantageous position than under different jurisprudence of some of the countries in the world. The criminal justice administration system in India places human rights and dignity for human life at a much higher pedestal. In our jurisprudence an accused is presumed to be innocent till proved guilty, the alleged accused is entitled to fairness and true investigation and fair trial and the prosecution is expected to play balanced role in the trial of a crime. The investigation should be judicious, fair, transparent and expeditious to ensure compliance with the basic rule of law. These are the fundamental canons of our criminal jurisprudence and they are quite in conformity with the constitutional mandate contained in Articles 20 and 21 of the Constitution of India.” (emphasis supplied)

30. A three-Judge bench of the Supreme Court in ***Rattiram Vs. State of M.P.***, (2012) 4 SCC 516, observed:

“39. ... Fundamentally, a fair and impartial trial has a sacrosanct purpose. It has a demonstrable object that the accused should not be prejudiced. A fair trial is required to be conducted in such a manner which would totally ostracise injustice, prejudice, dishonesty and favouritism.”

31. Similarly in ***Natasha Singh Vs. CBI***, (2013) 5 SCC 741, the Supreme Court observed:

“16. Fair trial is the main object of criminal procedure, and it is the duty of the court to ensure that such fairness is not hampered or threatened in any manner. Fair trial entails the

interests of the accused, the victim and of the society, and therefore, fair trial includes the grant of fair and proper opportunities to the person concerned, and the same must be ensured as this is a constitutional, as well as a human right. Thus, under no circumstances can a person's right to fair trial be jeopardised.” (emphasis supplied)

32. On the same aspect in **J. Jayalalithaa Vs. State of Karnataka**, (2014) 2 SCC 401, the Supreme Court observed:

“29. Denial of a fair trial is as much injustice to the accused as is to the victim and the society. It necessarily requires a trial before an impartial Judge, a fair prosecutor and an atmosphere of judicial calm. Since the object of the trial is to mete out justice and to convict the guilty and protect the innocent, the trial should be a search for the truth and not a bout over technicalities and must be conducted under such rules as will protect the innocent and punish the guilty. Justice should not only be done but should be seem to have been done. Therefore, free and fair trial is a sine qua non of Article 21 of the Constitution.” (emphasis supplied)

33. The aforesaid decisions were taken note of by the Supreme Court in a more recent decision rendered in **Bablu Kumar & Others Vs. State of Bihar & Another**, (2015) 8 SCC 787. The said case involved a murder trial. On account of the evidence of material witnesses not being led, the Trial Court acquitted the accused. In revision, the High Court held that the Trial Court had not taken effective steps for production of witnesses, and that the Trial Court was not alive to its duties. The High Court opined that there had been no fair trial and, accordingly, remanded the matter back to the Trial Court. The said decision of the High Court was assailed before the Supreme Court. The Supreme Court dismissed the appeal and observed in paragraph 22 of the said decision as follows:

“Keeping in view the concept of fair trial, the obligation of the

prosecution, the interest of the community and the duty of the court, it can irrefragably be stated that the court cannot be a silent spectator or a mute observer when it presides over a trial. It is the duty of the court to see that neither the prosecution nor the accused play truancy with the criminal trial or corrode the sanctity of the proceeding. They cannot expropriate or hijack the community interest by conducting themselves in such a manner as a consequence of which the trial becomes a farcical one. The law does not countenance a "mock trial". It is a serious concern of society. Every member of the collective has an inherent interest in such a trial. No one can be allowed to create a dent in the same. The court is duty-bound to see that neither the prosecution nor the defence takes unnecessary adjournments and take the trial under their control. The court is under the legal obligation to see that the witnesses who have been cited by the prosecution are produced by it or if summons are issued, they are actually served on the witnesses. If the court is of the opinion that the material witnesses have not been examined, it should not allow the prosecution to close the evidence. There can be no doubt that the prosecution may not examine all the material witnesses but that does not necessarily mean that the prosecution can choose not to examine any witness and convey to the court that it does not intend to cite the witnesses. The Public Prosecutor who conducts the trial has a statutory duty to perform. He cannot afford to take things in a light manner. The court also is not expected to accept the version of the prosecution as if it is sacred. It has to apply its mind on every occasion. Non-application of mind by the trial court has the potentiality to lead to the paralysis of the conception of fair trial."

34. The instances narrated by the learned senior counsel for the petitioner, and taken note of hereinabove, may now be examined in the backdrop of the obligation of the Court to ensure that the trial is fair.

35. The first submission of Ms. John, was in relation to the denial of the counsel for the petitioner accused to assist the accused in the matter of admission/ denial of documents. The learned Special Judge, as is evident

from his order dated 07.10.2016 passed on the application moved by the petitioner herein, did not allow learned counsel for the petitioner to assist the petitioner in the matter of admission/ denial of documents. This approach of the learned Special Judge, in my considered view, was not correct. Pertinently, the process of admission/ denial of documents by either the accused or the prosecution, is not done under oath. The process of admission/ denial of documents may be carried out either by the pleader of the prosecution/ accused, or by the prosecution/ accused. In fact, even when it is carried out by the pleader, it is on behalf of his client and under his authority. It is not personal to the pleader. Whatever may be the consequences of a document being admitted or denied, they affect the party on whose behalf they are admitted/ denied by the pleader. The purpose of the said exercise is only to curtail the process of formally proving such of the documents/facts as may be admitted by the party to whom they are put for admission/ denial. It is the right of the accused to seek the advice and assistance of his counsel at all stages of the trial – irrespective of whether he is literate or illiterate, or whether he had been supplied copies of the documents under admission/ denial in advance, or not. Merely because the Court may have asked the accused to admit/ deny the documents relied upon by the prosecution, it does not mean that the accused cannot seek assistance of his counsel while conducting admission/ denial of documents. An accused is entitled to seek advice of his counsel on the aspect of admission/ denial of documents and to be advised, firstly, as to whether he is at all obliged to admit/ deny the document(s), or whether the admission/ denial of document may adversely impact his defence. An accused is not obliged to admit any document or fact against him.

36. The language of Section 294 Cr.P.C. itself shows that either the

pleader for the prosecution or the accused, or the prosecution or the accused may be called upon to admit/ deny the genuineness of the documents. Thus, in relation to the same set of documents, the process of admission/ denial of documents may be conducted either by the pleaders – on behalf of and under the authority of their clients, or by the prosecution/ accused. Section 294 does not seek to create any distinction or classification in relation to the cases in which the Court may require the pleader to conduct admission/ denial, or may require the prosecution/ accused to carry out the said exercise. The pleader is not independent of his client when he acts for and on behalf of his client and under his authority. If the pleader himself can carry out the said exercise of admission/ denial of documents on behalf of his client, it does not stand to reason that-when the prosecution/ accused carries out the said exercise, they should be denied the right to seek counsel from their pleader in that respect.

37. I find merit in the submission of Ms. John that the routine exercise of admission/ denial of documents conducted by the accused with the assistance of his/ her counsel, day-in and day-out in criminal Courts, was unnecessarily turned into a point of friction by the learned Special Judge on account of his approach in the case.

38. The counsel Mr. Bhavook Chauhan also raised a grievance in his application dated 07.10.2016 that the Court had made an uncharitable remark that the counsel had a interest in the case, whereas the counsel had stated that every counsel has interest in his client's matter.

39. In his order passed on the said application on the same day, i.e. on 07.10.2016, the learned Special Judge does not record that he had not made the comments as specifically pointed out in the application moved by the

counsel Mr. Bhavook Chauhan. I would think that if a party or his counsel were to attribute conduct/ statements to a judge allegedly adopted/stated during the proceedings, which are not true, the judge would take exception to such an accusation and would certainly make it a point to deal with all such allegation in his order disposing of the application wherein such allegations are made. No doubt, the failure of the learned Special Judge to deal with the allegations with regard to his conduct/utterances in his order passed on the application of the counsel would not tantamount to an admission of such conduct by the learned Special Judge, but, at the same time, it is true that there is hardly a way in which such allegations may be substantiated by a party in another Court. Thus, the failure of the learned Special Judge to refute the allegations made by the accused with regard to the conduct/utterances made in court, does probablise the truth of such allegations.

40. The next submission of Ms. John that the petitioner and the other accused were not being granted inspection of the Court record, and that the certified copies of the orders were also not being prepared on account of the files not being released by the learned Special Judge to the Copying Branch, also appear to have a ring of truth in them. One does not normally come across such grievances being raised by the counsel representing accused in a criminal trial. In the present case, the petitioner's counsel-contemporaneously, that is without any delay moved representation to the learned District & Sessions Judge on 08.10.2016 itself, raising a grievance that inspection was not being granted of the judicial record and also disclosing the reasons therefor. Unfortunately, it appears, the learned District & Sessions Judge also did not deal with the said grievance of the petitioner, which he should have. Since grant of inspection and release of

files for obtainment of certified copies are administrative matters, one would expect that the learned District & Sessions Judge would intervene and enquire as to what is the hitch in the release of the judicial record for the purpose of inspection and for preparation of certified copies of judicial orders/ proceedings so that the accused is not handicapped in effectively defending the prosecution. Pertinently, on the petitioner's application dated 20.10.2016 for direction to send the file to the Copying agency for the purpose of supplying certified copies of order sheets, the learned Special Judge merely observed that the *"CA form has already been allowed by this Court and thus, no further direction is required. This is an administrative procedure for copy agency staff wherein interference of this Court is not required. Accordingly, present application is without any merit, hence, same is hereby dismissed"*. This approach of the learned Special Judge leaves much to be desired. It should have been his concern, upon it being pointed out to him that the file had not been sent by the concerned staff to the Copying Agency, to enquire as to what is the reason for the same, and to call for a report in this regard. The trial of the case was proceedings in his Court. It was he who was seized of the case record. It was his staff who was handling the case record. It was for him to issue necessary directions on the petitioner's application directing that the file be sent to the Copying Agency, and it was for him to call for a report – with a view to fix the responsibility of the delinquent officer, if any, on whose account the certified copies could not be prepared in a timely manner and delivered to the applicant/ accused. The learned Special Judge could not have acted in such an indifferent manner and dismiss the application as being without any merit. It was for the learned Special Judge to ensure that the trial is not vitiated on account of denial of a fair opportunity to the accused by denying inspection/certified

copies of the judicial proceedings and orders to the accused.

41. The next instance pointed out by Ms. John is of 17.10.2016 when the petitioner, while he was present in Court, sought exemption from personal appearance on the ground that he had received a telephonic message that his 90-year old father had been admitted to a hospital in Noida in the ICU. The said application for personal exemption was turned down by the learned Special Judge at 12:00 Noon. The order passed on the said application shows that the learned SPP for CBI also opposed the application on the ground that the case is 16 years old and there was nothing to show that the petitioner/ accused No.3 is required in the hospital.

42. Firstly, I may observe, that the order passed on the said application seeking exemption shows that neither the learned SPP for the CBI, nor the learned Special Judge doubted the claim of the petitioner/ accused No.3 that his father had been admitted in ICU at NMC Hospital, Noida. He had disclosed in his application that he is the only son of his 90-year old father. The reason for opposing the application seeking personal exemption was that *“nothing has been alleged in the application that A3 was required in the hospital”*. One fails to understand as to what is the requirement that the petitioner was expected to disclose when he stated that his 90-year old father had been admitted on the same day in the ICU of the hospital and in relation to the said development, he had received telephonic information while in Court. The petitioner had stated that he is the only son of his father. In these circumstances, there was absolutely no further “requirement” that the petitioner/ accused need have established. Pertinently, the order does not show that the petitioner/ accused No.3 had been taking adjournments in the past on one or the other ground. The order also does not record that the

petitioner/ accused No.3 appear to be avoiding the conduct of admission/ denial, or that the ground disclosed in the application from personal exemption appear to be not true. No doubt, the case had been pending for the last 16 years, but there is nothing to show from the order dated 17.10.2016 passed on the application seeking personal exemption, that the petitioner was responsible for the delay of 16 years in any manner. Though there can be no quarrel with the proposition that the Trial Court should try to expedite the trial in every such case, and efforts made by the Trial Court in this regard deserve appreciation, but it does not mean that while doing so the Trial Court can act in a brazen and uncompassionate manner. It is human-beings who are put to trial, and they deserved to be treated as human-beings with the same dignity as any other person. Merely because they are accused of an offence, it does not mean that they have lost their right to be treated with respect and dignity. Even a convict has to be treated with dignity and courtesy. The Court cannot exhibit such indifference in its attitude to the rights and needs of an accused. The learned Special Judge should have appreciated the anxiety through which the petitioner/ accused No.3 would have been undergoing on account of his 90-year old father being admitted into ICU of a hospital while he was away to Court to attend the hearing of the case in which he is an accused. Heavens would not have fallen, had the said accused/ petitioner been exempted from personal appearance on that particular day, i.e. 17.10.2016. The proceedings were being conducted by the learned Special Judge by giving short dates – an aspect for which he deserved appreciation. In these circumstances, the petitioner/ accused No.3 could have been bound down to appear on the next date for his admission/ denial of documents.

43. At this stage, I may also take note of the conduct of the learned SPP

appearing for the CBI. No doubt, it is the concern of the SPP to see that the trial concludes early. It is also his concern to see that the accused succeeds in his prosecution. However, the Public Prosecutor is also an officer of the Court and, as such, it is his concern as well to act fairly and reasonably in the manner and guide the Court appropriately. It should also be his concern to see that the proceedings are conducted fairly and do not result in a mistrial.

44. In *V.K. Sasikala Vs. State represented by Superintendent of Police*, (2012) 9 SCC 771, in relation to the role and duties of a Public Prosecutor, the Supreme Court, inter alia, observed as follows:

*“18. In a recent pronouncement in Manu Sharma v. State (NCT of Delhi) [(2010) 6 SCC 1 : (2010) 2 SCC (Cri) 1385] to which one of us (Sathasivam, J.) was a party, the role of a Public Prosecutor and his duties of disclosure have received a wide and in-depth consideration of this Court. **This Court has held that though the primary duty of a Public Prosecutor is to ensure that an accused is punished, his duties extend to ensuring fairness in the proceedings and also to ensure that all relevant facts and circumstances are brought to the notice of the Court for a just determination of the truth so that due justice prevails. The fairness of the investigative process so as to maintain the citizens' rights under Articles 19 and 21 and also the active role of the court in a criminal trial have been exhaustively dealt with by this Court. Finally, it was held that it is the responsibility of the investigating agency as well as that of the courts to ensure that every investigation is fair and does not erode the freedom of an individual except in accordance with law**”.* (emphasis supplied)

45. In the present case, it appears to this Court that taking advantage of the attitude displayed by the learned Special Judge in relation to the rights and concerns of the accused, the learned SPP for CBI played along and

opposed the application for personal exemption moved by the petitioner/ accused No.3 unreasonably. By doing so, this Court is of the opinion, that the learned SPP representing CBI did not do service to his office. In all fairness, he need not have opposed the said application for personal exemption in view of the grounds disclosed in the said application by the petitioner/ accused No.3, and even if the learned Special Judge was not inclined to grant the application, the learned SPP representing the CBI could have advised the learned Special Judge appropriately to grant exemption from personal appearance on that particular day, rather than opposing the application unreasonably.

46. So far as the grievance of the petitioner with regard to the examination of Mr. Aseem Chaudhary in place of named witness Anurag Chaudhary is concerned, the issue is not whether Aseem Chaudhary could have been examined as a witness by the Court, or not. It could well be that the learned Special Judge was justified in recording statement of Mr. Aseem Chaudhary/ PW-14 by invoking Section 311 Cr.P.C. However, what is relevant is that, the objections of the petitioner and the accused No.6 to examination of Aseem Chaudhary were not decided, and the learned Special Judge permitted the examination of Aseem Chaudhary as PW-14 without dealing with their objections. The petitioner/ accused No.3 in his application dated 08.11.2016, inter alia, stated that:

“3. That this Hon’ble Court has allowed the recording of evidence of the said witness without taking objections of the applicant/ accused on record. That no opportunity was given to the applicant/ accused for recording his objections before passing the order allowing examination of the said witness. Request was made on behalf of the applicant/ accused that his objections may be recorded before passing the aforesaid order, however this Hon’ble Court was pleased to reject the said

request of the applicant/ accused and asked him to move an application for brining his objections on record, though the order allowing the examination of the witness was already passed by this Hon'ble Court". (emphasis supplied)

47. Similarly, accused No.6 in his application dated 08.11.2016, stated as follows:

"2. That during examination of PW 14 Aseem Chaudhary, objection was raised by counsel for A6, on leading questions being put to the witness by the learned Public Prosecutor for the CBI, the same may kindly be taken on record.

3. That moreover, PW14 is not a cited witness in the list of witnesses filed by the CBI.

4. That the objection regarding examination of PW14 was raised at which time the court directed A6 to give the same in writing, before which time, the examination of PW 14 had started. Therefore, before even deciding the objection of A6, the examination of PW 14 was started.

5. That no application u/s 311 Cr PC has been supplied to A6 nor has he got the opportunity of being heard". (emphasis supplied)

48. Learned Special Judge while passing the order dated 08.11.2016, inter alia, observed:

"Sh Aseem Chaudhary appears on behalf of his brother Sh Anurag Chudhary. Ld. PP for CBI submits that except execution of documents of sale of the crime property, CBI does not want to prove anything from him and the witness is in attendance.

Objected by the Ld. Defence Counsel on the ground that no application under Section 311 Cr PC has been moved by the CBI; the witness to whom the CBI wants to examine is not a cited witness in the list of prosecution witnesses; it is further submitted that no notice of the application has been issued to

any of the counsel as such; no opportunity has been given to the accused persons so that they could prepare reply as to why the person who is not been summoned shall be examined as witness.

Objection heard.

Section 311 Cr PC provides that if a person present, then he can be examined as the Court has to see the interest of justice. Moreover, learned PP submits that legislature has used words "or examine any person in attendance". Section 311 Cr PC empowers the Court to examine the person who is present may be not summoned. Moreover summons were issued to the brother of the witness who appeared on the ground that his brother is unwell. Perusal of record shows that signatures of the witness is also appearing upon the document which was executed by the brother of the witness with him. Therefore, this Court, in the interest of justice and for the just decision of the case, is of the view that let this witness be examined.

PW-14 Sh Aseem Chaudhary is examined in chief, partly cross examined. However, his remaining cross examination is deferred as it is already 1.45 p.m. to be continued after lunch".

49. The order dated 08.11.2016 passed by the learned Special Judge does not deal with the categorical averments made by the petitioner and accused No.6 that, without recording their objections and without dealing with them, the learned Special Judge permitted Aseem Chaudhary to be examined as PW-14. The grievance of the petitioner in this respect also appears to be justified. The order dated 08.11.2016 passed by the learned Special Judge shows that the same has been passed subsequent to the taking of the decision by the learned Special Judge to permit the examination of Aseem Chaudhary as PW-14. Pertinently, the learned Special Judge does not controvert the specific averments made in the applications of the petitioner and accused No.6 taken note of hereinabove and, after recording that remaining cross-examination of PW-14 is deferred till after lunch (as it was already 01:45

p.m.), he records the proceedings in relation to another application moved on behalf of accused No.3/ petitioner, which was moved at 01:25 p.m. This shows that the order was not recorded as the proceedings were being undertaken, stage by stage, but the order was recorded subsequently i.e. subsequent to the examination of PW14.

50. All the aforesaid instances leave this Court with a feeling that the learned Special Judge lacks the sensitivity required of a trial Judge, particularly dealing with criminal trials. The aforesaid may be termed as abrasions arising out of attitudinal issue. By themselves, they may not tantamount to lack of independence, and may not give rise to an apprehension in the mind of the accused that the learned judge is proceeding with a bias against him. Such an approach would not only be affecting the rights of accused in a singular case, but may be affecting other accused in other cases as well.

51. However, the following instances highlighted that the petitioner, unfortunately, had leave this Court with a feeling that the petitioner's apprehension that the learned Special Judge is proceeding with a bias appears to be reasonable. The orders passed by the learned Special Judge placed on record show that both PW-12 and PW-14 were examined in chief and partly cross-examined on 08.11.2016 in the pre-lunch session. The cross-examination of both these witnesses were deferred to the post-lunch session. In the pre-lunch session Mr. Vishal Gosain, learned counsel representing accused No. 4 to 6 had cross-examined PW-14. It appears that Mr. Vishal Gosain, representing accused No.4 to 6, after cross-examining PW-14 left for the High Court to attend to a case since the cross-examination of PW-12 had been deferred to the post-lunch session.

However, his assisting counsel Ms. Rudrani Tyagi remained present when PW-12 was under examination in the pre-lunch session.

52. In the post-lunch session, the learned Special Judge was informed that Mr. Vishal Gosain would cross-examine PW-12. For that purpose, Mr. Gosain desired to read the earlier deposition of PW-12 and requested that the computer screen may be scrolled. The said minor request made by learned counsel Mr. Gosain representing accused No.4 to 6 evidently was turned into an unnecessary issue by the learned Special Judge. In his order, he, inter alia, recorded:

“(Court observation : When the witness was examined Mr. Gosain was not present. Ms. Rudrani Tyagi was present. Ld. Gosain again making interruption. Ms. Rudrani Tyagi does not want to cross-examine though she was present according to her when the witness was examined. She submits that now, she was not present.

To scroll down the screen is very minor thing. But the fact remains that witness who is Sr. Citizen is kept waiting by way of harassment since morning. On each date one counsel appears. Now, to harass the witness who is present since morning again and again has to appear though, it is the duty of the counsel who has to remain present in the court at the time when the case is to be called. Counsel is busy in another court is no ground for kept waiting the witness or for the harassment.

A witness who is Sr. Citizen and appears as per the directions of the court without having any interest cannot be allowed to wait only for the convenience of the counsel specially when there are two counsels.” (emphasis supplied)

53. I find merit in the submission of Ms. John that the learned Special Judge made an incorrect recording, and that too, to his knowledge, that the witness PW-12 “*is kept waiting by way of harassment since morning*”. He

further observed “*Now, to harass the witness, who is present since morning again and again has to appear though*”. The record shows that the Court itself partly examined PW-12 and PW-14 in the pre-lunch session. When the Court broke for lunch at 01:45 p.m., PW-14 had been partly cross-examined. The same is evident from the extract quoted hereinabove from the order dated 08.11.2016. It was, thus, not factually correct, and much less fair on the part of the learned Special Judge to accuse the counsels representing the accused of harassing the witness by keeping them waiting since morning. The learned Special Judge had himself been conducting the proceedings in the case since the morning. He was aware of the aforesaid facts & circumstances. In this background, and in these circumstances, to record that the counsel for the accused had been harassing the witness, or that he had been kept waiting since morning, is most unfortunate and unfair. A Judge who does not honestly and fairly record the proceedings, does the greatest injustice to the parties. A judge is supposed to have no personal interest in a case being tried or dealt with by him. He is always expected to truthfully record the proceedings conducted by him. It is for this reason, that the proceedings recorded by a judge in his orders is accepted as true. If a judge breaches this trust reposed in him, it reflects on his credibility and on his independence and impartiality.

54. In fact, the learned Special Judge should not have been recording the depositions of two witnesses simultaneously. Since examination of PW-12 had commenced in the pre-lunch session, the examination of PW-14 should not have commenced without completing the cross-examination of PW-12. By doing so, it is the learned Special Judge who left both PW-12 and PW-14 in the lurch till after lunch on 08.11.2016. It is unfortunate that the learned Special Judge sought to put the blame for this state of affairs on the counsel

for the accused No.4 to 6.

55. I have already set out hereinabove the substantive part of the application moved by Mr. Gosain seeking his discharge in the matter. In the order passed by the learned Special Judge at 04:10 p.m. on the said application, the learned Special Judge does not disagree with the averments made by Mr. Gosain in his application. He justifies his reluctance to allow Mr. Gosain to cross-examine PW-12 in the first instance, by observing that *“it will be in the interest of and fair opportunity to the litigant that Ms. Rudrani Tyagi should cross-examine the witness”*.

56. Here itself, I may observe that it is not for the Court to decide as to which of the counsel representing the accused should examine or cross-examine a witness. Pertinently, in his order, the learned Special Judge does not even state that he allowed the counsel Mr. Vishal Gosain to scroll the monitor of the screen to read the earlier deposition of PW-12. He introduced, as a fact, the position *“that hard copy of the evidence was provided to learned counsel and learned counsel insisted to scroll down the screen”*. There is nothing to substantiate this observation made by the learned Special Judge, and I would tend to agree with Ms. John and Mr. Gosain that no hard copy of the evidence of PW-12 recorded in the pre-lunch session was provided to Mr. Gosain, or his assisting counsel – much less before Mr. Gosain started cross examination of PW-12 in the post lunch session. Pertinently, no such recording was made by the learned Special Judge when he passed the order at 03:00 p.m., which has been extracted in paragraph 18 hereinabove. Had Mr. Vishal Gosain or his assisting counsel Ms. Rudrani Tyagi been provided with a copy of the deposition of PW-12, as recorded in the pre-lunch session on 08.11.2016, the same would have

certainly found mention in the proceedings recorded at 03:00 p.m. on the same day. It does appear to this Court that the learned Special Judge has made a knowingly wrong recording of the proceedings, only with a view to cover up his own conduct of not permitting Mr. Vishal Gosain to view the earlier deposition of PW-12 recorded in the pre-lunch session by scrolling the computer screen.

57. This Court fails to appreciate as to why the learned Special Judge should have adopted such a petty approach by raising an issue with regard to the scrolling of the computer screen so that Mr. Gosain could have viewed the earlier deposition of PW-12! The Trial Court is bound to conduct the proceedings in a manner conducive to fairplay. The facility of providing the computer screen to the Trial Court (and I am informed that there are two computer screens – one to be viewed by the Court/ stenographer and the other for the benefit of the counsel and parties) is to enable the concerned counsel and the parties to read the earlier recorded depositions. Merely because the counsel Mr. Vishal Gosain may have proceeded to another Court while PW-12 was under examination in the pre-lunch session (and his assisting counsel Ms. Rudrani Tyagi was present in Court) it does not mean that the counsel should have been admonished for the same, or denied the opportunity to scroll the earlier deposition of PW-12. Pertinently, the counsel Mr. Vishal Gosain was present in the pre-lunch session as well in the same Court and in the same matter, when he cross-examined PW-14. It appear that rather than offering PW-12 for his cross-examination by Mr. Vishal Gosain, the learned Special Judge stopped the examination of PW-12 in between and started examining PW-14 in the pre lunch session. It was this unusual conduct of the learned Special Judge which led to cross-examination of PW-12 by Mr. Vishal Gosain being deferred till after lunch.

The learned Special Judge could not have insisted that the cross-examination of PW-12 be conducted by Ms. Rudrani Tyagi, the junior assisting counsel with Mr. Vishal Gosain as the accused has the right that his case be pursued by his appointed counsel, and not by the assistant/ junior counsel. The assistant/ junior counsel, on account of lack of experience, may not have had the confidence to cross-examine the witness PW-12, even though she was present when he was examined in chief in the pre-lunch session.

58. I agree with the submissions of Ms. John and Mr. Vishal Gosain, counsel representing accused No.4 to 6, that the proceedings of 08.11.2016 would shake the confidence of any accused and would lead to a reasonable apprehension that the accused would not get justice at the hands of the learned Special Judge, as the proceedings recorded on 08.11.2016 smack of bias. It is clear to me that the learned Special Judge, in his haste to conclude the trial, and even otherwise, had conducted the proceedings unfairly and his approach in the case, and the orders passed by him, disqualify him from the proceeding any further in the matter. I am satisfied that a fair and impartial trial cannot be had by the petitioner accused before the learned Special Judge Sh. Jitender Kumar Mishra, Special Judge, Karkardooma Courts, Delhi in the present case.

59. I am, therefore, constrained to allow the present petition and to direct the transfer of the aforesaid case titled CBI v. R.N. Rastogi & Ors., RC DAI-OO45A/2000, PS CBI/ACB/Delhi, pending in the court of Sh. Jitender Kumar Mishra, Special Judge, Karkardooma Courts, Delhi to another criminal Court of equal jurisdiction.

60. Let the present order along with the case record be placed before the learned District & Sessions Judge for assignment of the case to another

Special Judge of equal jurisdiction.

61. A copy of this order shall also be communicated to the learned Special Judge, and it is hoped that the observations made hereinabove shall serve the purpose of correction in his attitude and approach in cases pending before him. I may only remind the learned Special Judge of the off-quoted phrase that “*Justice should not only be done but also be seen to be done*”.

62. The petition stands disposed of in the aforesaid terms.

VIPIN SANGHI, J

DECEMBER 21, 2016

SR/B.S. Rohella