IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO. 25 OF 2017

Mrs. Renuka Murthy .... Applicant

Vs.

The Central Bureau of Investigation.... Respondent

Mr. Satishkumar Chettiyar, Advocate for the Applicant.
Mr. H.S. Venegaonkar, Advocate for Respondent no.1- CBI.
Mr. V.B. Konde-Deshmukh, APP for the State

Coram : Smt. R.P. SondurBaldota, J.
Date : 24th January, 2017

P.C.

1 This application challenges the order dtd. 18th October, 2016, by which the Special Judge, CBI allowed the application of CBI for recalling one of the prosecution witness i.e. PW-3. The application for recall was made on the ground that the entire statement of the witness recorded under Section 161 Code of Criminal Procedure was not covered in the evidence. When the witness was examined, the learned Prosecutor then appearing for CBI, had covered only the first statement of the witness recorded on 16th June, 2015 and failed through inadvertence to cover the supplementary statement

dtd. 25th April, 2006. The application was opposed by the applicant contending that recall of the witness would delay completion of the trial and also that similar concession had already given to CBI earlier.

2 The petitioner is facing charge for the offences punishable under Sections 13(2) read with 13(1) (c) and 13(1) (d) of the Prevention of Corruption Act and Sections 201, 467, 471, 477-A read with 120B of the Indian Penal Code. Considering the seriousness of the allegations, the Sessions Court observed that rejection of the application would be against the interest of the society at large, in a case wherein conspiracy alongwith the forgery of securities and accounts that too by a public servant alongwith private individuals is alleged by forging of documents and misusing the official position. Hence, the evidence available on record cannot be left out of consideration. The court also took note of other relevant facts of the conduct of the trial by CBI. After completion of recording of evidence, the court had adjourned the matter for clearing of it's queries as regards the deposition of PW-3. The Special P.P. then in Charge of the matter was unable to explain the same. Finally there was change in the Special P.P.. The new Special P.P. after going through the record noticed that the entire statement of PW-3 recorded on 25th April, 2006 had been omitted in the evidence. This evidence being material evidence was required to be brought on record in the interest of justice.

Since the application was being made at the fag-end of the trial, it was allowed on condition that CBI pays costs quantified at Rs.10,000/- by depositing the same with the Legal Aid Fund of the Sessions Court, Mumbai. The Court directed that CBI shall produce the witness as soon as the costs are paid, on the date given for recording of evidence of PW-3 and complete the entire evidence within a period of two weeks from the date of the order. Considering the above facts and circumstances of the case, in my opinion, there is no infirmity whatsoever with the impugned order.

3 The application is dismissed. The Sessions Court is however directed to complete the evidence of PW-3 on her recall within a period of one week from the date fixed for the purpose. In the event CBI fails to produce the witness on the date fixed by the Sessions Court and proceed with her examination-in-chief, the Sessions Court shall proceed without her evidence.

(Smt. R.P. SondurBaldota, J.)