

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

WRIT PETITION NO. 774 OF 2017

Pramod V. Shastri

... Petitioner

vs.

Central Bureau of Investigation and ors.

... Respondent

Mr. Satyavrat Joshi, Advocate for the petitioner.

Mr. H. S. Venegaonkar, Advocate for respondents no.1 & 2/CBI.

Mr. S. R. Agarkar, A.P.P. for the State/respondent no.3

Coram : Smt. R. P. SondurBaldota, J.

Date : 2nd March, 2017

P.C. :

1. This petition challenges the common order dated 4th February, 2017 passed by Special Judge (CBI, ACB), Pune on the application at Ex.587 and Ex.588 filed by the petitioner (accused no.3) in Special Case No.38 of 2004. The application at Ex.587 was filed under Section 65 of the Indian Evidence Act for production of secondary evidence of photocopy of the complaint dtd. 16th December, 2001 addressed to Superintendent of Police, CBI, (BS & FC), Mumbai. The application at Ex.588 was filed under Section 311 of Criminal Procedure Code for recalling PW-18 to prove contents of the complaint dated 16th December, 2001.

2. The petitioner as accused no.3 in CBI Special Case

No.38 of 2004 is facing charge for the offences punishable under Sections 13(1)(d) and 13(2) of the Prevention of Corruption Act, 1988 as well as Section 420 and 468 of Indian Penal Code. During the course of the trial, the prosecution has examined as PW-18 one Sudhir Divekar. During his cross-examination he was confronted with the photocopy of the complaint dated 16th December, 2001. He had identified his initials on the complaint which is addressed to Superintendent of Police, CBI (BS & FC), Mumbai. The acknowledgement thereon is dtd. 16th December, 2001. As the original document of the complaint was expected to be either in the custody of the CBI or the concerned Bank i.e. Central Bank of India, where he was employed, the petitioner on 22nd February, 2016 filed a pursis reserving his right to recall PW-18 for proving the complaint dtd. 16th December, 2001 and cross-examine him thereon. Thereafter the petitioner filed two applications under Section 91 Criminal Procedure Code for issuance of summons to CBI and also the Central Bank of India for production of the original complaint. The Special Court had allowed the applications at Ex.91. Both the authorities however communicated to the Court their inability to produce the document stating that the original complaint, being old document, was not in their possession. Thereafter the petitioner filed the applications at Ex.587 for production of secondary evidence and Ex.588 for recalling PW-18 for his further cross-examination. The Special Court rejected both the applications.

3. The reason stated by the Special Judge for rejecting the application at Ex.587 is that the document proposed to be

produced by way of secondary evidence thereunder is an incomplete document. It notes that the photocopy of the complaint desired to be produced by the petitioner does not bear the name of the complainant and his signature. Though there is seal of CBI (BS & FC), Mumbai thereon along with an initial, the date below the initial and the initial are not readable. According to the learned Judge though PW-18 has admitted his initial on the document and the seal of the CBI thereon, the admission by itself is not sufficient to admit the document in evidence. The learned Judge further noticed that CBI has already produced and proved the format of FIR at Ex.563 and the FIR signed by one K. N. Narola at Ex.539, the efficacy of which documents as FIR will have to be decided at the time of final arguments.

4. Undoubtedly with the material already on record on the photocopy of the complaint dtd. 16th December, 2001 proposed to be produced by the petitioner as secondary evidence is not sufficient for its admission in evidence. However in the facts of the case the petitioner cannot be denied an opportunity to prove the document by recalling PW-18 whose initials thereon are already admitted by him. As regards the application at Ex.588, the Special Judge rejects the same on the ground that the witness has been cross-examined at length and relevant questions have already put to him. But what is lost sight off by him is the pursis given by the petitioner of reserving his cross-examination on the document in question. On receiving intimations from CBI and the Central Bank of India of non-availability of the original the learned Judge ought to have

given an opportunity to the petitioner to cross-examine PW-18 further on the document.

5. For the above reasons the petition is allowed. The order dated 4th February, 2017 is set aside. The application at Ex.588 is allowed. The application at Ex.587 is partly allowed to the extent of permitting the petitioner to tender the photocopy of the document as secondary evidence and examine PW-18 thereon for proving the same. Thereafter the Court shall pass appropriate order as regards admission of the document in evidence.

6. Parties to act on authenticated copy of the order.

[Smt. R. P. SondurBaldota, J.]