

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRL. MISC. No.M-38037 OF 2016
DATE OF DECISION : 16th MARCH, 2017

M. S. Walia

.... Petitioner

Versus

Central Bureau of Investigation, Sec-30, Chandigarh

.... Respondent

CORAM : HON'BLE MR. JUSTICE A. B. CHAUDHARI

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Present : Mr. Brijeshwar Singh Bhalla, Advocate for the petitioner.

Mr. Sumeet Goel, Advocate, Retainer Counsel for CBI.

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A. B. CHAUDHARI, J. (ORAL)

Rule heard forthwith with consent of counsel for the rival parties.

By the present petition, the petitioner has impugned the order dated 03.10.2016 (Annexure P-6) passed by learned Special Judge, CBI Court, Chandigarh by which the application dated 07.09.2016 (Annexure P-4) filed for leading secondary evidence after the petitioner examined as many as 34 defence witnesses, was dismissed.

It is not in dispute that the investigation began in the year 1999 and prosecution took number of years for examination of the witnesses. Therefore, the delay cannot be attributed to the petitioner alone. The petitioner has also examined large number of defence witnesses namely 34 witnesses. The case is one of disproportionate assets.

Learned trial Judge in paras 14 and 19 of his order recorded the reasons that the petitioner was not entitled to secondary evidence in the form of photocopies of the ledgers and that the photocopies of the alleged ledgers are not public documents and they could not be allowed as secondary evidence.

I have seen the documents which are sought to be filed by way of secondary evidence from pages 16 to 20. Upon perusal of these documents, I find that they seem to be the photocopies of the ledger maintained by the Bank of Rajasthan Limited. It is not necessary that for the purpose of leading secondary evidence only public documents are admissible under Section 65 of the Evidence Act. In my opinion, the prayer for leading secondary evidence of these documents should have been granted, since there is no point in denying the opportunity to lead secondary evidence. The mere filing of photocopies of those documents cannot prejudice any of the parties to the trial. Since by mere filing of the documents, the same does not become an evidence. The prosecution is always at liberty to question in the cross-examination and also to show that the documents are not genuine. Therefore, there is no prejudice to any of the parties, particularly because the documents looked by me appears to be photocopies of some ledgers. What is the evidentiary value of these documents would be decided only after the documents undergo the test of cross-examination.

At any rate, learned counsel for the petitioner states that he would not hereafter file any application for any additional evidence and this would be the last witness to be examined. The statement is accepted.

In view of the statement the apprehension about delay in trial is taken care of. The counsel for the petitioner also states that only on one date the witness would be examined. This statement is also accepted.

In that view of the matter, the petition is allowed. The order dated 03.10.2016 (Annexure P-6) is set aside. The trial Court is directed to give one opportunity to the petitioner to lead secondary evidence as aforesaid. The trial Court shall thereafter proceed further in accordance with law. The trial Court may issue summons if found expedient on 21.03.2017 to the concerned witness(es) to be named by the petitioner.

16th March, 2017
‘raj’

(A. B. CHAUDHARI)
JUDGE