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IN THE HIGH COURT OF DELHI AT NEW DELHI
CRL. M. C. 4417/2017 & CRL.M.A.17696/2017(stay)

Order reserved on: 28th November, 2017
Order pronounced on: 8th December, 2017

CENTRAL BUREAU OF INVESTIGATIONPetitioner
Through: Mr. Anupam S. Sharma, SPP for CBI
with Ms. Prachee Satija and
Mr. Prakash Airan, Advocates.
Versus

RAVI DUTT PATHAKRespondent
Through: Mr. N.B. Joshi, Advocate.

CORAM:
HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

1. By way of the present petition filed under Section 482 of the Code of Criminal Procedure (hereinafter referred to as 'Cr.P.C.'), the petitioner seeks **setting aside of order dated 31.07.2017** (hereinafter referred to as 'Impugned Order') passed by the Court of Additional Chief Metropolitan Magistrate (ACMM) (East), Karkadooma Courts, New Delhi, whereby the application under Section 311 Cr.P.C. filed by the petitioner for recalling of PW-17/Sh. R.K. Sharma for further examination was dismissed.
2. Brief facts of the present case are that a Regular Case bearing No.5(S)/2000/SCB-1/DLI was registered by the petitioner on 27.12.2000 against the respondent, upon a complaint dated 12.12.2000 referred by the Ministry of External Affairs relating to

several forged complaints/letters addressed to the Ministry, various political personalities etc. regarding alleged irregularities in the functioning of B.P. Koirala Institute of Health Services, Dharan, Nepal (BPKIHS Project). The respondent who was the Private Secretary to the Chief Engineer (Project), was appointed on deputation in the BPKIHS Project by the Central Public Works Department (CPWD) amongst other officials. During investigation it was revealed that out of the 16 instances of forged complaints, three were engineered at the instance of the respondent. Search under Section 93 Cr.P.C. was conducted at the respondent's premises and voluminous incriminating documents were seized therefrom. Chargesheet was filed against the petitioner on 06.05.2002 under Sections 465/469/471 of the Indian Penal Code, 1860 (hereinafter referred to as 'IPC').

3. The prosecution in all examined 18 witnesses. Final arguments were concluded by both the parties on 30.05.2017 and the matter was reserved for judgement for 05.07.2017.
4. In the meanwhile, the petitioner moved an application before the Trial Court under Section 311 Cr.P.C. for recalling PW17/Sh. R. K. Sharma for re-examination as he failed to prove his signatures on certain important documents. However the same was dismissed by the Trial Court vide order dated 31.07.2017. Hence the present petition.
5. Assailing the impugned order, Mr. Anupam S. Sharma, learned counsel for the petitioner contended that the impugned order of the

Trial Court dismissing the application for recall filed by the petitioner is erroneous and bad in law; that PW-17 was a witness to the search conducted at the residential premises of the respondent on 04.04.2001; that PW-17 had missed to prove his signatures on certain seized documents which were also a part of the search memo dated 04.04.2001/**Ex. PW 16/4** as the said documents were kept separately in another file of the Court Record and inadvertently could not be placed before the witness during examination; that the opinion tendered by the Government Examiner of Questioned Documents (GEQD) on the seized documents confirmed the culpability of the respondent in the commission of the alleged offence; that for the just decision of the prosecution case it is essential that permission be granted to re-call and re-examine the said witness so that the above mentioned remaining documents could also be examined and exhibited.

6. In support of his contentions, the learned counsel for the petitioner has relied upon the judgements in *Rajendra Prasad v Narcotic Cell Through Its Officers In-Charge, Delhi* reported in *AIR 1999 SC 2292*, *Zahira Habibullah H. Sheikh v State of Gujarat* reported in *(2004) 4 SCC 158*, and *P Chhaganlal Daga v. M. Sanjay Shaw* reported in *(2003) 11 SCC 486*.
7. Per Contra, Mr. N.B. Joshi, learned counsel for the respondent opposed the present petition and submitted that the impugned order does not suffer from any illegality or material irregularity so as to

warrant any interference by this Court; that it is the fourth application under Section 311 Cr.P.C. filed by the petitioner after two months of conclusion of final arguments in the matter which has been reserved for judgement and is therefore merely an abuse of the process of law; that the present petition has been filed by the prosecution to fill the lacunae in its case after 586 days of examination and discharge of PW17 and after 62 days of completion of final arguments without assigning any proper reason for non-filing at an earlier stage; that re-examination of PW17 is not likely to advance the case of the prosecution in any manner and the same is only going to delay the trial which has been going on for the last 15 years; that the present petition is nothing but a dilatory tactic adopted by the petitioner to prejudice the respondent; that hence in the above mentioned circumstances the present petition be dismissed.

8. I have heard the learned counsel for the parties and perused the material available on record.
9. As per records, chargesheet in the present case was filed on **06.05.2002**, charges were framed on **11.08.2008** and the matter was fixed for prosecution evidence on 07.05.2009. After conclusion of prosecution evidence on **18.12.2015** and defence evidence on 02.06.2016 the matter was fixed for final arguments on 02.08.2016 and 03.08.2016. In the meanwhile the petitioner moved a revision petition before the Court of District and Sessions Judge against the order of ACMM dated 07.04.2016 dismissing the third application

filed by the petitioner under Section 311 Cr.P.C. and the same was subsequently allowed vide order dated 30.11.2016 only in respect of one witness.

Thereafter the prosecution evidence was concluded on 27.04.2017 and defence evidence was closed on 02.05.2017 after recording the supplementary statement.

After hearing the final arguments on 30.05.2017 the matter was reserved for pronouncement of final judgement on 05.07.2017. However the petitioner again moved an application under Section 311 Cr.P.C. for re-examination of PW-17 who, though was cross-examined and discharged on 18.12.2015.

10. The entire timeline of the present case reflects that the prosecution was given sufficient time and ample opportunities to lead evidence during trial and also to re-examine a material witness despite conclusion of final arguments. It has come on record that PW-17 was partly examined on 24.11.2015. Again on 18.12.2015 when PW-17 appeared for his cross- examination, he was not examined by the learned PP for CBI. Even thereafter when the application filed by the petitioner under Section 311 Cr.P.C. was allowed by the Court of Additional Sessions Judge vide order dated 30.11.2016 in respect of one witness, the petitioner could have prayed for the re-examination of PW-17 alongwith other witnesses. However it is only now after the matter has been fixed for the pronouncement of final judgement that the petitioner has filed the present application for re-examination of

PW-17 that too merely on the ground that inadvertently PW17 had missed out to prove certain important documents as they were placed separately in another file of the Court Record. In the absence of any explanation in this regard it would not be fruitful at this stage, to allow the prosecution to re-examine PW-17 as the same would be prejudicial to the interests of the respondent/accused who has been facing trial for over 15 years. It is only in a case where it appears that re-call/re-examination of a witness is essential to arrive at a just decision of the case, the Court may allow an application under Section 311 Cr.P.C. during any stage of trial. However the same is not the position in the present case which needs to be expedited in the interest of justice.

11. Reference may be made to the decision in ***Rajaram Prasad Yadav v. State of Bihar*** reported in ***AIR 2013 SC 3081***, wherein the Apex Court inter-alia observed as under:-

"n) The power under Section 311 Code of Criminal Procedure must therefore, be invoked by the Court only in order to meet the ends of justice for strong and valid reasons and the same must be exercised with care, caution and circumspection. The Court should bear in mind that fair trial entails the interest of the accused, the victim and the society and, therefore, the grant of fair and proper opportunities to the persons concerned, must be ensured being a constitutional goal, as well as a human right."

12. Keeping in view the well settled principles of law, the basis for recall, as is discernible from the present petition, does not even remotely

make out a case that such recalling is necessary for just decision of the case or to arrive at the truth. Hence the impugned order passed by the Trial Court does not call for any interference by this Court as the same does not suffer from any illegality or infirmity.

13. Accordingly, the present petition alongwith the pending application stands dismissed.

SANGITA DHINGRA SEHGAL, J.

DECEMBER 8, 2017

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