

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

1. Crl. Misc. No. M-22438 of 2018

Krishan LalPetitioner

Versus

Central Bureau of InvestigationRespondent

2. Crl. Revn. No. 1827 of 2018 (O&M)

Sant Gurmeet Ram Rahim SinghPetitioner

Versus

Central Bureau of InvestigationRespondent

DATE OF DECISION:24.05.2018

BEFORE:- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present:- Mr. Vinod Ghai, Senior Advocate with
Mr. Tanveer Ahmed Mir, Advocate
for the petitioner in Crl. Misc. No. M-22438 of 2018.

Mr. S.K. Garg Narwana, Senior Advocate with
Mr. Naveen Gupta, Advocate
for the petitioner in Crl. Revn. No. 1827 of 2018.

Mr. Sumeet Goel, Standing Counsel
for respondent-CBI.

DAYA CHAUDHARY, J.

This order of mine shall dispose of two petitions bearing Crl. Misc. Nos. M-22438 of 2018 and Crl. Revn. No. 1827 of 2018 as the question of law involved in both the cases is the same. However, for the sake of convenience, facts are being extracted from Crl. Misc. No. M-22438

of 2018.

The prayer in the present petition is for quashing of impugned order dated 15.5.2018 (pre-lunch) (Annexure P-1) passed by the Special Judge, CBI, Panchkula in case FIR No. RC-10 (s) 2003/CBI/SCB/Chandigarh dated 9.12.2003 (Annexure P-2) qua the part, wherein, during cross-examination of PW-31, namely, Khatta Singh, the defence counsel was not allowed to confront said witness with his previous admitted statement dated 8.10.2015 (Annexure P-17) in another case i.e. FIR No. RC/1/2015/CBI/SC-II/SIU/ New Delhi dated 7.1.2015.

Briefly, the facts of the case are that FIR was registered against the present petitioner and other co-accused. As per prosecution version, a common statement of Khatta Singh was recorded under Section 161 Cr.P.C. on 21.6.2007 by CBI in three cases i.e. RC-5 (case of sexual exploitation of Sadhvis), RC-8 (Ranjeet murder case) and in the present case i.e. RC-10 (Ram Chander Chattarpati murder case). Similarly a common statement of PW-31- Khatta Singh was recorded under Section 164 Cr.P.C. on 22.6.2007 by the Magistrate in all the three cases. It is pertinent to mention here that before recording the aforesaid statements, PW-31 Khatta Singh moved an application dated 29.3.2007 before the Special Judicial Magistrate, CBI, Ambala, wherein, he had stated that Investigating Officer, CBI intimidated and pressurized him to make adverse statement to falsely implicate Dera Chief Sant Gurmeet Ram Rahim Singh and other devotees, whereas, he was not ready to make such statement and, therefore, PW-31-Khatta Singh prayed that his statement under Section 164 Cr.P.C. may be recorded in the interest of justice. Said application was dismissed vide order dated 30.3.2007 on the ground that it was not maintainable as the case was already

committed to the Special Judge, CBI, Haryana.

Against aforesaid order dated 30.3.2007, PW-31-Khatta Singh filed revision petition before Special Judge, CBI, which was dismissed vide order dated 17.8.2007. After almost five years of his deposition, PW-31 Khatta Singh moved an application under Section 311 Cr.P.C. for recalling of his re-examination only on the ground that he was under the apprehension of fear and threat, which was dismissed by the trial Court vide order dated 6.1.2018.

Aggrieved by order dated 6.1.2018, Khatta Singh filed CRR No. 274 of 2018 before this Court, which was allowed vide order dated 23.4.2018, which was upheld upto Hon'ble the Apex Court. In compliance of order dated 23.4.2018, said witness Khatta Singh was recalled for his further re-examination on 5.5.2018 and cross-examination of the said witness was conducted on 15.5.2018. PW-31-Khatta Singh appeared as witness against Gurmeet Ram Rahim Singh and others in castration case i.e. RC-1 dated 7.1.2015. He resiled from his earlier statement while appearing as PW-31. The reason stated by him is that in order to save his land, he recsiled from his earlier statement made before the Court and did not mention anything with regard to apprehension of threat and fear. The petitioner requested the trial Court for allowing him to confront the witness with his previous admitted statement in order to contradict him with his earlier statement. The trial Court did not allow to cross-examine Khatta Singh vide order dated 15.5.2018, which is subject matter of challenge in the present petition.

Learned senior counsel for the petitioner (s) contend that the impugned order, vide which, the petitioner was not allowed to confront PW-

31 Khatta Singh with his previous statement has been passed without any application of mind and against the principle of right of fair and just trial and the same is contrary to the provisions of Section 162 Cr.P.C. read with Sections 145 and 155 of Indian Evidence Act. Learned senior counsel further contend that the statement of PW-31-Khatta Singh is necessary to be confronted with his earlier statement as he has resiled from his previous statement in the year 2012. PW-31-Khatta Singh in his re-examination gave an explanation that he was under the constant threat and fear on account of safety and security of his own and his family and the statement was made falsely in the year 2012. Learned senior counsel also contend that the accused has a right to confront the witness qua to his earlier statement just to show the contradiction and credibility of the witness. In case the petitioner is not allowed to confront PW-31-Khatta Singh with his earlier statement, a great prejudice would be caused to him as it would amount to denial of fair trial. It is also the contention of learned senior counsel that cross-examination of PW-31-Khatta Singh is likely to be concluded and in case the petitioner is not granted opportunity to confront the witness with his earlier statement, he would suffer an irreparable loss. Mr. Ghai, learned senior counsel for the petitioner has relied upon by judgments of Hon'ble the Apex Court in the cases of **Lallan Rai and others Vs. State of Bihar** (2003) 1 SCC 268, **Sarah Mathew Vs. Institute of Cardio Vascular Diseases by its Director Dr. K.M. Cherian and others** 2014 (2) SCC 62, **Bhushan Kumar and another Vs. State (NCT of Delhi)** and another (2012) 5 SCC 424, **Harshendra Kumar D. Vs. Rebatilata Koley and others** (2011) 3 SCC 351, **Anita Malhotra Vs. Apparel Export Promotion Council and another** (2012) 1 SCC 520, **Pooja Ravinder**

Devidasani Vs. State of Maharashtra and another (2014) 16 SCC 1, **State of Kerala Vs. Babu and others** 1999 (2) ACR 1307 (SC), **Tahsildar Singh and another Vs. State of U.P.** AIR 1959 SC 1012, **Arulvelu and another Vs. State represented by the Public Prosecutor and another** (2009) 10 SCC 206, **Dayal Singh and others Vs. State of Uttaranchal** (2012) 8 SCC 263, **Purshottam Jethanand Vs. State of Kutch** AIR 1954 SC 700, **Nitya Dharmananda and others Vs. Gopal Sheelum Reddy and others** (2018) 2 SCC 93, **Dilawar Balu Kurane Vs. State of Maharashtra** (2002) 2 SCC 135, **Union of India Vs. Prafulla Kumar Samal and another** (1979) 3 SCC 4, of Bombay High Court in **Kamal Ahmed Mohammed Vakil Ansari Vs. The State of Maharashtra** 2013 Cri LJ 858, of Rajasthan High Court in **Neelesh Jain Vs. State of Rajasthan** 2006 Cri LJ 2151, of Delhi High Court in **Raujeev Taneja Vs. NCT of Delhi and others** passed in Crl. M.C. 4733 of 2013 decided on 11.11.2013 and before the Privy Council in the case of **Pulukuri Kottaya and others Vs. Emperor** AIR 1947 PC 67, in support of his contentions.

Mr. S.K. Garg Narwana, learned senior counsel has also relied upon the judgment of Lahore High Court in the case of **Gopi Chand Vs. Emperor** AIR 1930 Lahore 491, of Kerala High Court in the case of **Surendran Vs. State of others** 1994 CriLJ 464, of Supreme Court in the cases of **State of Kerala Vs. Babu** 1999 (2) RCR (Criminal) 662, **Bishna @ Bhiswadeb Mahato and others Vs. State of W.B.** (2005) 12 SCC 657, **Binay Kumar Singh Vs. State of Bihar** (1997) 1 SCC 283, **V.K. Mishra and another Vs. State of Uttarakhand and another** (2015) 9 SCC 588, **Bipin Shantilal Panchal Vs. State of Gujarat and another** (2001) 3 SCC

1, **Central Bureau of Investigation (CBI) Vs. Hopeson Ningshen and others** JT 2010 (4) SC 392, of this Court in **Uppal Credit and Investment Pvt. Ltd. Vs. Ashwani Kumar** 2016 (2) RCR (Criminal) 684, of Bombay High Court in **Deborah Mary Crasto Leclerc Vs. Patrick Oliver Leclerc** 2015 (3) RCR (Criminal) 876 and of Delhi High Court in the case of **Ram Jethmalani Vs. The Director, CBI, SPE, CIA-I, New Delhi** 1987 CriLJ 570, in support of his contentions.

Mr. Sumeet Goel, learned standing counsel for CBI submits that the request of the petitioner has rightly been rejected by the trial Court on the ground that there is no reference to the present occurrence i.e. alleged murder of Ram Chander Chattarpati to the statement and said witness is not necessary to be allowed to be confronted with the document or statement, which has no relevancy with the issue in dispute. Learned counsel further submits that this is not the proper stage for confronting with the statement. The petitioner will get the opportunity to confront the witness with the statement at the time of leading defence evidence. The petitioner is also at liberty to raise arguments on the point at the time of framing of charge as well as to confront with the statement got recorded by Khatta Singh earlier at the time of final arguments. Learned counsel has also relied upon the judgment of this Court in the case of **Khatta Singh Vs. CBI, Chandigarh and others** Crl. Revn. No. 3592 of 2017 decided on 23.4.2018 and of Delhi High Court in the case of **R.K. Chandolia Vs. CBI and others** 2014 (9) RCR (Criminal) 2073, in support of his contentions.

Heard the arguments advanced by learned counsel for the parties and have also gone through the impugned order and other documents available on the file.

The grievance of the petitioner in the present petition is that he has not been allowed to confront the witness, namely, Khatta Singh with his previous statement recorded under Section 161 Cr.P.C. in case RC No.1(S)-2015/SCU-5/SC(ii)/CBI/New Delhi dated 08.10.2015 pertaining to castration of devotees recorded by Inspector CBI Arvind Jaitely. The request has been rejected only on the ground that there is no reference to the present occurrence i.e alleged murder of Ram Chander Chhattarpati and confrontation with the statement made under Section 161 Cr.P.C. is not relevant at this stage as the petitioner will get the opportunity at the appropriate stage. The accused-petitioner wanted to impeach the credibility of said witness by confronting him with his earlier statement recorded in the other case as well as statement recorded under Section 161 Cr.P.C.

Sections 145 and 155 of Indian Evidence Act, which are relevant for deciding the controversy in the case in hand, are reproduced as under:-

145. Cross-examination as to previous statements in writing.—A witness may be cross-examined as to previous statements made by him in writing or reduced into writing, and relevant to matters in question, without such writing being shown to him, or being proved; but, if it is intended to contradict him by the writing, his attention must, before the writing can be proved, be called to those parts of it which are to be used for the purpose of contradicting him.1145. Cross-examination as to previous statements in writing.—A witness may be cross-examined as to previous statements made by him in writing or reduced into writing, and relevant to matters in

question, without such writing being shown to him, or being proved; but, if it is intended to contradict him by the writing, his attention must, before the writing can be proved, be called to those parts of it which are to be used for the purpose of contradicting him."

155. Impeaching credit of witness :-The credit of a witness may be impeached in the following ways by the adverse party, or, with the consent of the Court, by the party who calls him:-

- (1)by the evidence of persons who testify that they, from their knowledge of the witness, believe him to be unworthy of credit;
- (2)by proof that the witness has been bribed, or has [accepted] the offer of bribe, or has received any other corrupt inducement to give his evidence;
- (3)by proof of former statements inconsistent with any part of his evidence which is liable to be contradicted;
- (4)when a man is prosecuted for rape or an attempt to ravish, it may be shown that the prosecutrix was of generally immoral character.

No doubt, the accused has a right to cross-examine any witness in respect of statement made before the Court during trial in order to get fair trial. A witness may be cross-examined just to test the credibility of said witness, in case any statement contrary to the earlier statement has been made.

While rejecting the claim of the petitioner, it has been observed

by the trial Court that there is no relevancy at this stage as the trial court is

the best judge to decide the relevancy of the question put up by the defence counsel during cross-examination of a witness. Sometimes the purpose is just to prolong the trial and in such like situation the Court has power to control the cross-examination of the witness. The Court has duty to ensure that the cross-examination is not made a means to harass or causing humiliation to the witness. The Court is also to see that the questions are directed towards the facts which are deposed in chief, credibility of the witness. In case it appears to the trial Court that the questions are vexatious and are not relevant, it can disallow such a request. Even for purpose of impeaching the credibility by contradicting him. The witness cannot be put to an irrelevant question in the cross-examination. However, if the question is relevant to the issue, the witness is bound to answer the same and cannot take an excuse of such a question. The Court has ample power to disallow such questions which are not relevant to the issue or the witness had no opportunity to know and on which, he is not competent to speak. It is well established principle of law that a witness must be put to what is relevant at that stage. Under the garb of shaking credibility, irrelevant or vexatious questions cannot be allowed to put to the witnesses.

In view of the settled proposition of law, the accused has a right to get a fair trial and for that, he is required to give reasonable opportunity to defend himself in the trial to permit him to confront the witnesses with the statement and other evidence upon which the prosecution is relying upon. The Court is to ensure that the accused gets a fair trial and for that, he is to be afforded a reasonable opportunity to defend himself by permitting him to confront with the statements of the witnesses. By passing the impugned order and by not granting opportunity to confront that witness

with the statement recorded under Section 161 Cr.P.C amounts to curtailment of his right by denying him his right to have a fair trial.

Accordingly, the impugned order dated 15.05.2018 is set aside to the extent that “**witness cannot be allowed to be confronted with a document which has no relevancy to the fact in the case.**”

However, it is directed that the defence counsel be allowed to confront said witness with the statement recorded under Section 161 Cr.P.C pertaining to castration of devotees recorded by Inspector CBI Arvind Jaitely. However the relevancy can be considered by the trial Court at the time of final arguments.

To my mind, there could be no other purpose for which the accused petitioner could use the previous statement otherwise except to impeach the credibility or discredibility to pull down or bring down the reliability of the witness. These purposes for which the previous statements are required could not be said to be purposes which were not against the witness.

May 24, 2018
pooja

(DAYA CHAUDHARY)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes