

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

CRR No.3349 of 2018 (O&M)

Date of Decision: 05.10.2018

Satish Kumar Padam

....Petitioner

Versus

Central Bureau of Investigation

....Respondent

BEFORE :- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present:- Mr. Jasdev Singh Mehndiratta, Advocate
for the petitioner.

DAYA CHAUDHARY, J.

The petitioner is aggrieved by impugned order dated 18.09.2018 passed by the Special Judge, CBI Court, Chandigarh, whereby, the application dated 11.09.2018 filed by the petitioner under Section 311 Cr.P.C for leading additional evidence by bringing on record certified copies of documents received under the Right to Information Act, 2005, has been dismissed.

Briefly, the facts of the case, as made out in the present petition, are that petitioner along with one Nand Lal Kaushal, is facing trial before the CBI Court, Chandigarh for offences punishable under Sections 7, 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988 for accepting bribe of Rs.35,000/- from one Pradeep. A complaint was made by said Pradeep on 05.07.2010 with the S.P., CBI, Chandigarh against the petitioner and said Nand Lal alleging that M/s Tulsi Ram and Company had been awarded certain repair and maintenance work of Administrative Block of Panjab University and in spite of completion of said work, the money was not paid by the petitioner, who was working as an Executive Engineer

in the University and co-accused Nand Lal was working as a Sub Divisional Officer. It was also the allegation in the complaint that bribe @ 3% was demanded which was already paid and threat was given to him that in case, the bribe amount was not paid further, payment would not be released. SP, CBI marked the complaint for verification to Sub Inspector Dinesh Kumar, who submitted his report on 06.07.2010. On the basis of said report, the FIR was registered on 06.07.2010. A trap was laid and two independent witnesses were associated. The petitioner was alleged to be caught red handed and the amount of bribe was recovered. Both the petitioner and Nand Lal Kaushal were made accused and were challaned under Section 120-B IPC, Section 7, 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988 and thereafter, the charge sheet was framed against both the accused. Petitioner and co-accused were examined under Section 313 Cr.P.C and they adduced their defence evidence. During the course of prosecution evidence, PW-16 Ms. Amandeep Kaur, Junior Scientific Officer, Ballistic, CFSL, Chandigarh was examined. She deposed that she had analysed the voices of various suspects and submitted her report. An information was sought under the Right to Information Act, 2005 by the petitioner and copy of the notification notifying CFSL, Chandigarh for examination of voice identification and electronic evidence was sought. Vide letter dated 01.08.2018, it was informed that no such information was available in the laboratory. The appeal was filed by the petitioner and the information was supplied vide order dated 05.09.2018 but the copies of the notifications were not available as the laboratory had not been notified for the purpose of seeking information. The petitioner moved an application under Section 311 Cr.P.C., which was dismissed vide order dated

18.09.2018 by observing that the opinion of expert is primarily to assist court in arriving at a final conclusion and the opinion was to be formed by the Court on its own on the basis of other material available as well. It was also mentioned in the order that no such question was put to PW16 during her cross examination and the application was filed at the belated stage. The examination of witness for bringing the document on record was not stated to be necessary. Said order dated 18.09.2018 passed by the Special Judge, CBI Court, Chandigarh is under challenge in the present petition.

Learned counsel for the petitioner submits that the trial Court while dismissing the application has not considered the import of Sections 74 to 77 of the Indian Evidence Act, 1872. The order passed by the First Appellate Court on 05.09.2018 is a public document. Certified copies of public documents can be produced in proof of the contents of such documents. Learned counsel also submits that the trial Court should have taken the certified copy of order dated 09.08.2018 along with certified copies of the documents supplied with it on record and should have exhibited them as no other proof of the said documents was required. At the end, learned counsel for the petitioner submits that the trial Court has stated in paragraph 14 that if the application is allowed, it would mean that the report of the expert cannot be relied upon by the trial Court. The provisions of Section 311 of the Code can be invoked at any stage, in case, the same is essential for just decision of the case but a finding has been recorded that the evidence sought to be brought on record is not necessary.

Heard the arguments of learned counsel for the petitioner and have also perused the impugned order as well as other documents available on the file.

The factum of filing the application by the petitioner under Section 311 Cr.P.C and dismissal thereof are not disputed. The main argument of learned counsel for the petitioner is that the provisions of Sections 74, 75, 76 and 77 of the Indian Evidence Act, 1872 are necessary to be considered which relates to public documents. The order passed by the First Appellate Authority on 05.09.2018 is a public document and certified copies of public documents may be produced in proof of the contents of such documents. As per provisions of Section 77 of the Indian Evidence Act, 1872, the certified copy of order dated 09.08.2018 along with certified copies of the documents should have been exhibited as no other proof of such documents was required. Sections 74, 75, 76 and 77 of the Indian Evidence Act, 1872 are relevant for resolving the controversy in the present case and the same are reproduced as under :-

“74. Public documents – The following documents are Public documents –

1. Documents forming the acts, or records of the acts

a. Of the sovereign authority,

i. Of Official bodies and the Tribunals, and

(iii) Of Public officers, legislative, judicial and executive, of any part of India or of the Commonwealth, or of a foreign country.

1. Public records kept in any State of private documents.

75. Private documents – All other documents are private.

76. Certified copies of Public Documents – Every public officer having the custody of a public document, which any person has a right to inspect, shall give that person on demand a copy of it on payment of the legal fees there for together with a certificate written at the foot of such copy that it is a true copy of such document or part thereof, as the case may be, and such certificate shall be dated and subscribed by such officers with his name and his official

title, and shall be sealed whenever such officer is authorized by law to make use of a seal, and such copies so certified shall be called certified copies.

77. Proof of documents by production of certified copies –
Such certified copies may be produced in proof of the contents of the public documents or parts of the public documents of which they purport to be copies.”

No doubt, the order passed by the First Appellate Court on 05.09.2018 is a public document and public documents may be produced in proof of the contents of such documents.

As per said provisions, the trial Court may have the certified copy of order dated 09.08.2018 along with certified copies of the documents supplied with it on record and should have exhibited them as no other proof of said documents is required. Neither any discussion is there nor the provisions have been dealt with.

Accordingly, the present petition is allowed and impugned order dated 18.09.2018 passed by the Special Judge, CBI, Chandigarh is set aside and the case is remanded back with a direction to re-consider the same and pass necessary orders in view of provisions of Sections 74, 75, 76 and 77 of the Indian Evidence Act, 1872.

However, the necessary exercise be done within a period of 15 days from the date of receipt of certified copy of the order.

(DAYA CHAUDHARY)
JUDGE

05.10.2018
gurpreet

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No