

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **CRL.REV.P.793/2019**

Date of Decision : 04.12.2019

IN THE MATTER OF:

CENTRAL BUREAU OF INVESTIGATION Petitioner
Through : Mr.Mridul Jain, Spl.PP.

versus

SANJEEV KUMAR & ANR Respondents
Through : Mr.Dinesh Garg, Advocate.

CORAM:
HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

MANOJ KUMAR OHRI, J. (ORAL)

Crl.M.A.39227/2019 (u/S 482 Cr.P.C.) in Crl.Rev.P.793/2019

1. The present application has been filed by the respondents seeking clarification as to whether the petitioner/CBI can play the CDs containing recordings before the trial court. He has drawn the attention of this Court to the order dated 16.10.2019 passed by the trial court whereby the trial court permitted the counsel to seek clarification on the said aspect.

2. It is noted that earlier, vide judgment dated 23.09.2019, an application under Section 311 Cr.P.C. filed by the petitioner/CBI to recall three witnesses, namely Nikhil Malhotra, S.K.Khullar and the complainant-Vijender Singh was allowed. The aforesaid witnesses were sought to be recalled to place and prove on record the certificate under

Section 65-B of the Indian Evidence Act with respect to the CDs that contained the voice recordings and the voice samples of the respondent/accused. It was the case of the petitioner/CBI that whereas the CDs marked Q1 & Q2 contained recordings of the 'pre-trap conversations' as well as the 'spot conversations', the CDs marked S-1 & S-2 contained the voice samples of the respondent/accused.

3. Learned counsel for the respondents submitted that in the aforesaid application, the petitioner/CBI made a limited prayer to recall the witnesses to place and prove on record the certificate under Section 65-B of the Indian Evidence Act, which came to be allowed vide the aforesaid judgment. He submitted that at no point of time, the petitioner/CBI prayed for playing the aforesaid CDs in the trial court. It is the grievance of the learned counsel for the respondent that while the aforesaid three witnesses were being re-examined, the conversations recorded in the CDs were sought to be brought on record by playing the CDs in the court, which amount to filling up the lacuna in the prosecution case. He, thus contended that great prejudice would be caused if the CDs are permitted to be played before the trial court.

4. Learned counsel for the petitioner/CBI submitted that the CDs in question were filed along with the charge-sheet. The CDs were exhibited during the prosecution evidence and no objection was taken at that point of time. He has referred to the paras 16.8 and 16.36 of the charge-sheet to urge that the entire case of the prosecution is based on the conversations recorded in the aforesaid CDs. It is further submitted that besides the complainant, PW-11 and PW-12, in their earlier depositions, have deposed and exhibited the aforesaid CDs marked Q1 and Q2 as Ex.P2 and Ex.P6

respectively. Learned counsel for the petitioner/CBI has also drawn the attention of this Court to the paras 3.9, 8 and 9 of the earlier petition to urge that the application for recall of the aforesaid three witnesses was filed to place and prove on record the conversations contained in the aforesaid CDs.

5. I have heard the learned counsels for the parties and have gone through the case records.

6. The present case relates to an alleged demand of Rs.3,000/- made by the respondent No.2 with respect to issuance of a certificate of registration of the complainant's NGO from the office of SDM-cum-Registrar of Societies, Geeta Colony. After verifying the complaint, the CBI laid a trap on 03.03.2012 during which respondent No.2-Ramesh Mali was caught red handed while negotiating the bribe amount. A perusal of the cross-examination of the complainant-Vijender Singh (PW-8), conducted by the learned APP, would show that the CD contained in the parcel marked Q1 was opened and sought to be played to verify the contents. However, the same was objected to by the learned counsel for the accused on the ground that no certificate under Section 65-B of the Indian Evidence Act was filed in support of the CD. The CD was already exhibited as Ex.P2. Similarly, when the CD contained in the sample parcel marked as Q2 was sought to be played to verify the contents, the same was again objected to on the ground of the absence of a certificate under Section 65-B of the Indian Evidence Act.

7. Vide the aforesaid judgment dated 23.09.2019, this Court allowed the witnesses to be recalled. It was further directed that they shall be examined and cross-examined, if required by the learned counsel for the

respondents. The order dated 23.09.2019 has not been challenged and has attained finality. In pursuance to the aforesaid order, the prosecution has examined the witnesses.

8. In my opinion, the purpose of allowing the witnesses to be recalled and to place on record the certification under Section 65 of the Indian Evidence Act is lost if the content of the CDs is not brought and proved on record. The entire case of the petitioner/CBI is based on the oral testimony as well as the corroboratory material in the form of conversations recorded in the aforesaid CDs at the time of 'pre-trap' as well as 'spot' proceedings. As already noted, the aforesaid CDs were already filed along with the charge-sheet and also exhibited during the prosecution evidence as Ex.P-2 and Ex.P-6. By not permitting to play the aforesaid CDs and prove on record the conversations contained in them would rather make the order dated 23.09.2019 passed earlier by this Court ineffective. The purpose of a criminal trial is to see that the evidence collected during the investigation is brought on record for the just decision of the case. The only objection raised during the previous deposition of the witnesses was confined to absence of a certificate under Section 65-B of the Indian Evidence Act, which no longer survives.

9. The application is disposed of in the above terms.

(MANOJ KUMAR OHRI)
JUDGE

December 04, 2019/sa