

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

**CRM-M-55051-2019
Date of decision : 10.02.2020**

Chandra Shekhar

... Petitioner

Versus

Central Bureau of Investigation

... Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. R. S. Rai, Sr. Advocate with
Mr. Karan Pathak, Advocate
for the petitioner.

Mr. Sumeet Goel, Advocate
for the respondent –CBI.

ARVIND SINGH SANGWAN, J. (Oral)

Prayer in this petition is for quashing of order dated 12.12.2019 (Annexure P-1), passed by the Special Judge, CBI, Haryana at Panchkula in case RC-CHG2004A0013 dated 03.06.2004 under Sections 7, 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988 at Police Station CBI, ACB, Chandigarh.

Learned senior counsel has argued that the petitioner is facing prosecution in the aforesaid case on account of registration of FIR with the allegation that the petitioner, who was posted as General Manager, BSNL, has accepted a bribe of Rs. 25,000/- and thereafter, the sanction was granted to prosecute him.

Learned senior counsel has further submitted that PW-1 Mohinder Singh, Director, Vigilance Department, was examined on 08.05.2006 and during his examination-in-chief or cross-examination, he could not be put to certain questions as there is variation in the audio

cassette and its transcription as the cassette was played for the first time on 09.10.2019. The transcription, which was sent to authorities seeking sanction for the prosecution of the petitioner, is not correct as per original cassette.

Learned senior counsel has referred to the sanctioning order/Ex. PW-1/1, wherein the following transcription was put before the sanctioning authority:

“9. AND WHEREAS, it is alleged that the digital audio recorder handed over by the complainant was then connected to a lead and recording therein was transferred to a blank audio cassette in the presence of independent witnesses and the said audio cassette was duly sealed. Similarly, another audio cassette was prepared on the basis of the said recording in the digital audio recorder and a transcript of the conversation was prepared and signed by the independent witnesses. The relevant text of the conversation is as under:

Complainant : “DIYE HUAY TIME PER
PAHAUNCH GAYA NAA SIR ABH
TO KOI SHIKAYAT NAHIN HAI
NAA SIR”

Accused : “BILKUL-BILKUL”

Complainant : “ABH TO MATURITY DIKHAI NAA
SIR”

Accused : “HOON”

Complainant : “MATURITY DEKHAI NAA SIR. SIR
ABH TO JALADI DECIDE HO
JAYEGA SIR”

Complainant : “HAAN SIR BILKUL TAYARI
MAIN AYA HOON SIR, MAIN DE
DETA HOON JO AADESH THA
SIR”

Learned senior counsel has further submitted that while playing the said audio cassette during the cross-examination of PW-12, it came to the knowledge of the petitioner for the first time that there is a variation in the original cassette and its transcription, which has changed the nomenclature of entire document.

Learned senior counsel further submitted that at the first instance, it is stated by the complainant that ***“MATURITY DIKHAYI NA SIR”*** and the subsequent part where it is stated that ***“SIR AB TO JALDI DECIDE HO JAYEGA SIR”*** is not there in the original transcription of the audio cassette.

Learned senior counsel further submitted that in the second part of this document, it is written as ***“HAAN SIR BILKUL TAYARI MAIN AYAH HUN SIR”*** whereas in the original audio cassette it reads as ***“HAAN BILKUL AGREEMENT KEE TAYARI MEIN AAYA HUN SIR”***.

Learned senior counsel has further submitted that both these lines make the nomenclature of the document giving a different meaning and, therefore, the petitioner had moved an application before the trial Court for summoning of PW-1 for his further cross-examination, who being the sanctioning authority had proved Ex. PW1/1, however, the same has been declined by the trial Court.

Learned senior counsel further submitted that it is relevant to further cross-examine the aforesaid witness for the reasons that petitioner has to put his defence in the light of the fact which has come to his knowledge for the first time during cross-examination of PW-12 when the audio cassette was played.

Learned senior counsel has relied upon ***2013 (3) RCR (Criminal) 726, Rajaram Prasad Yadav vs. State of Bihar and another***, wherein Hon’ble Supreme Court, while discussing the scope of Section 311 Cr.P.C., has observed as under:

“23. From a conspectus consideration of the above decisions, while dealing with an application under [Section 311](#) Cr.P.C. read along with [Section 138](#) of the Evidence Act, we feel the following principles will have to be borne in mind by the Courts:

- a) Whether the Court is right in thinking that the new evidence is needed by it? Whether the evidence sought to be led in under [Section 311](#) is noted by the Court for a just decision of a case?
- b) The exercise of the widest discretionary power under [Section 311](#) Cr.P.C. should ensure that the judgment should not be rendered on inchoate, inconclusive speculative presentation of facts, as thereby the ends of justice would be defeated.
- c) If evidence of any witness appears to the Court to be essential to the just decision of the case, it is the power of the Court to summon and examine or recall and re-examine any such person.
- d) The exercise of power under [Section 311](#) Cr.P.C. should be resorted to only with the object of finding out the truth or obtaining proper proof for such facts, which will lead to a just and correct decision of the case.
- e) The exercise of the said power cannot be dubbed as filling in a lacuna in a prosecution case, unless the facts and circumstances of the case make it apparent that the exercise of power by the Court would result in causing serious prejudice to the accused, resulting in miscarriage of justice.
- f) The wide discretionary power should be exercised judiciously and not arbitrarily.
- g) The Court must satisfy itself that it was in every respect essential to examine such a witness or to recall him for further examination in order to arrive at a just decision of the case.
- h) The object of [Section 311](#) Cr.P.C. simultaneously imposes a duty on the Court to determine the truth and to render a just decision.
- i) The Court arrives at the conclusion that additional evidence is necessary, not because it would be impossible to pronounce the judgment without it, but because there would be a failure of justice without such evidence being considered.
- j) Exigency of the situation, fair play and good sense should be the safe guard, while exercising the discretion. The Court should bear in mind that no party in a trial can be foreclosed from correcting errors and that if proper evidence was not adduced or a relevant material was not brought on record due to any

inadvertence, the Court should be magnanimous in permitting such mistakes to be rectified.

k) The Court should be conscious of the position that after all the trial is basically for the prisoners and the Court should afford an opportunity to them in the fairest manner possible. In that parity of reasoning, it would be safe to err in favour of the accused getting an opportunity rather than protecting the prosecution against possible prejudice at the cost of the accused. The Court should bear in mind that improper or capricious exercise of such a discretionary power, may lead to undesirable results.

l) The additional evidence must not be received as a disguise or to change the nature of the case against any of the party.

m) The power must be exercised keeping in mind that the evidence that is likely to be tendered, would be germane to the issue involved and also ensure that an opportunity of rebuttal is given to the other party.

n) The power under [Section 311](#) Cr.P.C. 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.”

Learned senior counsel has, thus, argued that keeping in view the exigency as well as the facts and circumstance of the case, where a new fact has come to the knowledge of the petitioner during the cross-examination of a witness, the application under Section 311 Cr.P.C. should not have been dismissed merely on the ground that the same was moved at a belated stage.

Learned senior counsel further submitted that from 2006 till 2019, the prosecution has taken almost 13 years to examine 12 witnesses, hence, it is the prosecution who has delayed the trial.

Learned counsel for the respondent-CBI has opposed the prayer of the petitioner on the ground that when the cross-examination of PW-1 was done, necessary questions were put to him regarding sanction order Ex. PW-1/1, that it was issued after an approval by the competent authority.

Learned counsel for the respondent-CBI has further argued that even PW-12 was cross-examined at length, wherein he has admitted that there is a variation in the transcription and audio cassette, which was played in Court with reference to aforesaid two points and, therefore, there is no need to re-examine PW-1.

Learned counsel for the respondent-CBI has further argued that the delay cannot be entirely put on respondent-CBI as in the intervening period, the petitioner had filed a petition before this Court seeking quashing of the FIR, in which the proceedings were stayed.

After hearing learned counsel for the parties, I find merit in the present petition.

It is a simpliciter case of the petitioner that after the audio cassette was played in Court on 09.10.2019, it came to the knowledge of the petitioner for the first time that there is variation in the transcription Ex. PW-1/1 and the original audio cassette, which was played for the first time in Court and thus, the necessary question which needs to be put to PW-1 is that if in the alleged conversation between the petitioner and complainant, there are some variations, how the competent authority/sanctioning authority has granted the sanction in the said scenario without verifying the original audio cassette and, therefore, granting one more opportunity to further cross-examine PW-1 will not

amount to filling up lacuna as argued by learned counsel for the respondent-CBI. Moreover, in view of changed nomenclature of Ex. PW-1/1, it relevant to put a question to this witness whether as per correct transcription, still sanction order could have been granted or not.

Therefore, in view of the judgment in *Rajaram Prasad Yadav’s case (supra)*, this Court finds that it is in the interest of justice, fair play and to safeguard the interest of the petitioner/accused, who has a right to put his entire defence to a witness during his cross-examination, hence, this petition deserves to be allowed.

Accordingly, the present petition is allowed and impugned order dated 12.12.2019 is hereby set aside.

The trial Court is directed to grant one effective opportunity to the petitioner to further cross-examination of PW-1 by fixing a date.

(ARVIND SINGH SANGWAN)
JUDGE

10.02.2020
Waseem Ansari

Whether speaking/reasoned : Yes / No
Whether reportable : Yes / No