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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CRL.M.C. 6551/2019 & CRL.M.A. 42989/2019, CRL.M.A. 135-
136/2020
SURINDER KAPOOR Petitioner
Through: Mr. C. Shekher Malhotra, Adv.

versus

CENTRAL BUREAU OF INVESTIGATION Respondent
Through: Mr. Rajesh Kumar, SPP with Ms.
Saumya Johari, Adv.

CORAM:
HON'BLE MS. JUSTICE ANU MALHOTRA

ORDER

% **07.01.2020**

CRL.M.A.136/2020 (Exemption)

Exemption allowed, subject to just exceptions.

CRL.M.C. 6551/2019 & CRL.M.A. 42989/2019, CRL.M.A. 135/2020

Vide the present petition, the petitioner seeks that he be allowed to examine himself under Section 315 of the Cr.PC, 1973 in relation to CC No.06/2012 in the case titled as *State vs. Arvind Johri & Ors.* in which the petitioner Mr. Surinder Kapoor, S/o Mr. Manohar Lal Kapoor is arrayed as an accused.

Inter alia the prayer made vide the present petition also seeks the setting aside of the order dated 20.11.2019 of the learned Special Judge, CBI whereby the prayer made by the petitioner herein seeking leave to file the opinion of a handwriting expert was declined. Submissions have been made on behalf of either side qua the said prayer. It has been submitted on behalf of the petitioner that the prayer made by the petitioner that he be allowed to

put himself forth in the witness box has been necessitated by observations made vide order dated 24.12.2018 vide paras 10 to 14 thereof which read to the effect:

“10. In the present case, charge sheet was filed on 24.10.2007. In the charge sheet, it was alleged that accused Surinder Kapoor had impersonated as A.K. Jaggi while applying for loan before Punjab National Bank, New Rohtak Road Branch, Delhi.

11. After receipt of charge sheet by accused Surinder Kapoor and during the course of evidence, no application was filed by accused Surinder Kapoor for the appointment of handwriting expert to establish his plea that he had never visited the Punjab National Bank, New Rohtak Road Branch, Delhi and had never executed any loan documents as A.K.Jaggi.

12. Further, the evidence of PW32 Rajiv Kumar Mahajan recorded on 09.02.2015 had also established on record that loan documents were signed by the person whose photographs were affixed on the loan documents. No cross examination was done by accused Surinder Kapoor of PW32 Rajiv Kumar Mahajan when he had deposed in the court in the year 2015.

13. Only recently PW32 Rajiv Kumar Mahajan has been recalled for the purpose of cross examination and thereafter, PW32 Rajiv Kumar Mahajan was cross examined by accused Surinder Kapoor on 27.10.2018.

14. Even in the said cross examination by accused Surinder Kapoor, no suggestion was put to PW32 Rajiv Kumar Mahajan that accused Surinder Kapoor had never signed any loan documents impersonating as A.K.Jaggi or that his photograph appearing on the loan documents, has been misused.”,

in as much as vide para 14 it has been observed to the effect that even in the cross examination of the PW32 Rajiv Kumar Mahajan who had been allowed to be recalled for cross examination, there was no suggestion that had been put forth by the petitioner herein that he had not signed any loan

documents impersonating as A.K. Jaggi or that his photograph appearing on the loan documents, has been misused. The petitioner has further submitted that there were prayers made by the petitioner seeking the production of the handwriting expert which was first declined vide order dated 24.12.2018 and also as detailed in the impugned order dated 20.11.2019, the prayer made under Section 311 of the Cr.PC, 1973 for the handwriting expert opinion was dismissed as withdrawn on 11.11.2019 and the other application that was preferred on 14.05.2018 was dismissed vide order dated 24.12.2018 already adverted to hereinabove.

On behalf of the CBI, the petition has been vehemently opposed submitting to the effect that dilatory tactics have been adopted by the petitioner. Vide the impugned order it has been observed to the effect that in terms of Section 22 of the Prevention of Corruption Act, 1988 as then applicable to the case, r/w Section 243 (1) of the Cr.PC, 1973, it is mandated that the accused is required to give in writing at once or within such time as the Court may allow, the list of the persons (if any) whom he proposes to examine as his witnesses and of the documents (if any) on which he proposes to rely and that the applicant in the instant case is making an attempt by way of piecemeal requests from time to time and had already availed enough opportunities after closure of his evidence and that other accused persons had also led their evidence and that the petitioner could not be granted an opportunity to lead the further evidence after closer of the evidence.

On behalf of the CBI reliance is also placed on the provisions of Section 243 (2) of the Cr.PC, 1973 which read to the effect:

*“(2) If the accused, after he has entered upon his defence, applies to the Magistrate to issue any process for compelling the attendance of any witness for the purpose of examination or cross-examination, or the production of any document or other thing, the Magistrate shall issue such process **unless he considers that such application should be refused on the ground that it is made for the purpose of vexation or delay or for defeating the ends of justice and such ground shall be recorded by him in writing: Provided that, when the accused has cross-examined or had the opportunity of cross-examining any witness before entering on his defence, the attendance of such witness shall not be compelled under this section, unless the Magistrate is satisfied that it is necessary for the ends of justice.**”*

to submit that the provisions of Section 243(2) of the Cr.PC, 1973 itself spell out that where the application has been filed only for the purpose of vexation or delay or for defeating the ends of justice, the prayer made by an accused to enter upon defence for compelling the attendance of any witness for the purpose of examination or cross-examination or production of documents or other thing may be declined by the Magistrate and that the prayer made by the petitioner thus to lead evidence in defence under Section 315 of the Cr. PC, 1973 and also to produce the evidence in the form of the handwriting expert has been rightly declined vide the impugned order.

On a consideration of the submissions that have been made on behalf of either side, as regards the prayer that has been made by the petitioner seeking that he be allowed to produce a handwriting expert in his evidence, the same apparently cannot be granted in as much as the said prayers have already been declined previously repeatedly i.e. order dated 24.12.2018 and

then previous application that had been filed by the petitioner were also dismissed as withdrawn on 11.11.2019. The impugned order also reflects to the effect that the defence evidence was closed on 04.05.2018 and other accused persons have since led their defence also thereafter and an opportunity was granted to the petitioner herein for recall of PW 32 which was availed of on 27.10.2018.

In the circumstances, the prayer that has been made by the petitioner seeking to produce the handwriting expert in his defence thus cannot be granted. However, taking into account the factum that the petitioner seeks to put himself forth in the witness box under Section 315 of the Cr.PC, 1973, taking into account the deposition of PW 32 dated 27.10.2018, in terms of Section 315 (1) of the Cr.PC, 1973, it is considered appropriate that the petitioner is given one opportunity by the learned trial Court to put himself forth in the witness box in terms of the said provisions on a date to be fixed by the learned trial Court subject to payment of cost of Rs.10,000/- by the petitioner to the respondent. It is made clear that not more than one opportunity be granted to the petitioner for the same.

The petition is disposed of accordingly.

ANU MALHOTRA, J

JANUARY 07, 2020

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