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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL.REV.P. 57/2020 & CRL.M.A. 1170-1171/2020**

JAI DEEP SINGH @ ATUL SINGH SENER Petitioner

Through: Mr. Mohit Mathur, Sr. Advocate with
Mr. Akhand Pratap Singh, Mr.
Abhishek Singh, Ms. Meghna
Sharma, Advocates.

versus

CENTRAL BUREAU OF INVESTIGATION Respondent

Through: Mr. Nikhil Goel, Mr. Naveen Goel,
Mr. Vinay Mathew & Mr. Dushyant
Sarna, SPP.

CORAM:
HON'BLE MS. JUSTICE ANU MALHOTRA

ORDER
% **20.01.2020**

CRL.M.A. 1171/2020 (Ex.)

Exemption allowed subject to all just exceptions.

The application stands disposed of.

CRL.REV.P. 57/2020

The matter has been received by transfer on the directions of the Hon'ble The Chief Justice as the Hon'ble Mr. Justice Chander Shekhar is on leave today.

Vide the present petition, the petitioner assails the impugned order dated 15.01.2020 of the learned Trial Court of the District and Sessions Judge, West in SC No.446/2019 to the extent that the said order dis-allows an application filed by the present petitioner under Section 233 of the

Cr.P.C., 1973 seeking permission to call Dr. Harish M. Pathak, Professor and Head of Department of Medicine and Toxicology of Seth G S Medical College and KEM Hospital, Mumbai, Maharashtra as a witness of the defence of the petitioner. Through the application that had been filed by the applicant herein before the learned Trial Court, it was sought to be submitted that qua the post-mortem conducted of the deceased Surender Singh @ Pappu, it was essential that the testimony of an expert witness was recorded to establish the cause of death and to further prove the innocence of the accused.

It has been submitted further through the said application that the higher standards of objectivity and accuracy are expected from the expert witness and that in the present case, the examination that has been conducted of doctors who have been examined as PW-25 and PW-37 do not take into account any source of medical literature of procedures undertaken which could be found in any standard of procedure followed nationally or internationally and that there is an erratic reasoning in the said testimonies and observations.

Vide the impugned order dated 15.01.2020, the learned Trial Court has observed to the effect:-

“It is borne out from the record that Dr. Tanmay Kakkar was examined in chief and partly cross-examined on 18.09.2019 and on the request of the defence counsel, who wanted to prepare for the cross-examination, the witness was discharged on 18.09.2019 and re-called for further cross-examination on 29.09.2019. Likewise, Professor Dr. Adarsh Kumar from AIIMS was examined in chief and also cross-examined on 11.10.2019. Both the witnesses had been subjected lengthy, searching and rigorous cross-examination eliciting various responses with regard to the

veracity and correctness of the cause of the death recorded in the post-mortem report. Further, in the absence of any profile as to the qualification and professional experience of the witness also, who is desired to be summoned, I do not see how the so called expert witness would elucidate on the matters in issue. The defence has been granted sufficient time to prepare the cross-examination before examining witnesses Dr. Tanmay Kakkar and Professor Dr. Adarsh Kumar and thereafter on the closing of the statement of accused persons that was concluded on 12.12.2019 and there is a clear attempt to derail the conclusion of the trial on the part of the defence. I, therefore, find no ground to allow the present application and same is dismissed.”

During the course of the submissions that have been made on behalf of the petitioner, it has been submitted that the post-mortem has not been conducted by a doctor from the Forensic Medical Department and the post-mortem has been conducted by Dr. Tanmay Kakkar examined as PW-25 from the Office of the CMO, Unnao, U.P. and the said doctor has through his testimony during examination on 23.09.2019 on being cross-examined that his field of specialization was of being an Ophthalmologist Surgeon. It has also been submitted on behalf of the petitioner that Prof. Dr. Adarsh Kumar examined as PW-37 is also not the doctor who had conducted the post-mortem.

It has been submitted thus, on behalf of the CBI that even the witness sought to be produced by the petitioner would not be a doctor who conducted the post-mortem and would base himself on the basis of the documents and the videography done of the post-mortem conducted. It has further been submitted on behalf of the CBI that the application has been filed as a dilatory tactic as observed by the learned Trial Court during the

course of the impugned order as also during the course of the proceedings dated 11.10.2019 to indicate that frivolous queries were being put to witnesses during the course of the trial.

It has also been submitted on behalf of the CBI placing reliance on the proceedings dated 01.08.2019 of the Hon'ble Supreme Court in Suo Moto Writ Petition (Criminal) No.1/2019 whereby the proceedings of the present matter in relation to R.C.No. (s)/2018 titled as "the Central Bureau of Investigation (CBI) Vs. Ashok Singh Bhadauria & Ors." were transferred to the District Court at Delhi with directions to the effect that the trial of the cases would be concluded within a period of 45 days from the commencement of the trial with it having been submitted on behalf of the CBI that an extension of time has been granted for the completion of adjudication.

On behalf of the petitioner, reliance has been placed on the provisions of Section 233(3) of the Cr.P.C., 1973 which reads to the effect:-

"233. Entering upon defence.

(1)

(2)

(3) *If the accused applies for the issue of any process for compelling the attendance of any witness or the production of any document or thing, the Judge shall issue such process unless he considers, for reasons to be recorded, 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."*

submitting to the effect that except for reasons that are specifically recorded which would bring forth the vexation or delay on part of the petitioner for defeating the ends of justice, it would be the mandate upon the Court in terms of Section 233(3) of the Cr.P.C., 1973 to issue the process for

compelling the attendance of any witness or the production of any document or thing.

Inter alia reliance is placed on behalf of the petitioner on the verdict of the Hon'ble Supreme Court in "**Natasha Singh VS. CBI (State)**" 2013 **LawSuit (SC) 404** a verdict dated 08.05.2013 to contend to similar effect, wherein there are observations to the effect:-

"Fair trial is the main object of the criminal procedure, and it is the duty of the court to ensure that such fairness is not hampered or threatened in any manner. Fair trial entails the interests of the accused, the victim and of the society, and therefore, fair trial includes the grant of fair and proper opportunities to the person concerned, and the same must be ensured as this is a constitutional, as well as a human right. Thus, under no circumstances can a person's right to fair trial be jeopardized. Adducing evidence in support of the defence is a valuable right. Denial of such right would amount to the denial of a fair trial. Thus, it is essential that the rules of procedure that have been designed to ensure justice are scrupulously followed, and the court must be zealous in ensuring that there is no breach of the same."

On a consideration of the submissions that have been made on behalf of either side, without any observations on the trial in progress and without any observations qua the testimonies of PW-25 & PW-37 that have been recorded, taking into account the factum that PW-25 is an Ophthalmologist Surgeon, in the interest of justice it is considered appropriate to give **one single opportunity** to the petitioner to produce the witness Dr. Harish M. Pathak, Professor and Head of Department of Medicine and Toxicology of Seth G S Medical College and KEM Hospital, Mumbai Maharashtra before the learned Trial Court to examine the said witness in defence on a single date only and the date for the recording of the said testimony shall be fixed

by the learned Trial Court.

In as much as, it has been brought forth in reply to a specific Court query on behalf of the petitioner that the matter is fixed for 28.01.2020 before the learned Trial Court for final arguments, the parties are directed to appear before the learned Trial Court on the date 23.01.2020 for the fixation of the date of the recording of the testimony of Dr. Harish M. Pathak, Professor and Head of Department of Medicine and Toxicology of Seth G S Medical College and KEM Hospital to be recorded before the date 28.01.2020.

The petition is disposed of accordingly.

Copy of this order be sent to the learned Trial Court.

Copy of the order be given Dasti under the signatures of the Court Master.

ANU MALHOTRA, J

JANUARY 20, 2020
'neha chopra'