

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

+ **CRL.M.C. 1721/2021 & CRL.M.A. 11963/2021 (Stay)**

Date of decision: 23rd August, 2021

IN THE MATTER OF:

SHRI CHAND

..... Petitioner

Through Mr. Mohinder Nath Dudeja, Advocate

versus

CENTRAL BUREAU OF INVESTIGATION

..... Respondent

Through Mr. Anupam S Sharrma, SPP with
Mr. Prakarsh Airan, and Ms. Harpreet
Kalsi, Advocates

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

SUBRAMONIUM PRASAD, J.

1. This petition under Section 482 Cr.P.C is directed against the order dated 22.02.2021, passed by Special Judge (PC Act), Rouse Avenue Courts, rejecting the application filed by the petitioner herein under Section 311 Cr.P.C, seeking permission to engage a handwriting expert.

2. Material on record discloses that on the directions of this Court, FIR No. RC NO-DST/2005/S-010 dated 14.12.2005 was registered at Police Station CBI/STF/NEW DELHI for offences under Section 120B, 420, 511, 468, 471 of the Indian Penal Code (hereinafter referred to as “IPC”) read with Section 13(2), 13(1)(d) of the Prevention of Corruption Act (hereinafter referred to as “the PC Act”) against seven accused in relation to reviving Narmad Cooperative Group Housing Society on the basis of forged and fabricated documents with the object to get land allotted in the name of the

society by the DDA at reserve price which is at 1/6th or 1/7th of the market rate causing wrongful gains to the accused and corresponding loss to the DDA.

3. The charge sheet was filed on 29.11.2006 and charges were framed on 18.02.2011. The trial has begun. The prosecution has concluded its evidence. When final arguments were to commence, the petitioner filed an application for engaging a hand-writing expert for an opinion in supplement to the opinion rendered by the handwriting expert appointed by the Government. The said application was rejected by the impugned Order dated 22.02.2021 stating that the handwriting expert has given his report. He has been examined and cross-examined by the Petitioner herein. It has also been noted in the impugned Order that there is no allegation against the government expert with respect to his impartiality.

4. Heard Mr. M.N. Dudeja, learned Counsel for the Petitioner and Mr. Anupam S. Sharma, learned SPP for the State and perused the material on record.

5. It is the submission of the learned Counsel for the Petitioner that Section 311 Cr.P.C confers a wide discretionary power on the Court and that these powers of the Court do not impose a limit when it concerns to serving the cause of justice. The learned Counsel for the Petitioner has further relied on V.N Patil v. K. Niranjan Kumar, (2021) 3 SCC 661, to submit that the aim of every Court is to unearth the truth and that Section 311 Cr.P.C vests a discretionary power in the Court to utilize the same.

6. The learned counsel for the petitioner has further argued that the government hand-writing expert has been provided the documents in the form of photocopies as the original documents had not been placed on

record by the prosecution. Submitting that the evidentiary value of expert opinion with regard to hand-writing is inconclusive, the learned Counsel for the Petitioner has relied on Fakhruddin v. State of MP, **AIR 1967 SC 1326** and Padum Kumar v. State of U.P., **(2020) 3 SCC 25**, to state that conviction cannot solely be based on the evidence of a hand-writing expert and that it must be corroborated by other evidence, direct or circumstantial.

7. *Per contra*, Mr. Anupam S. Sharrma, learned SPP appearing for CBI, contends that this application is an abuse of the process of law and is a mere ruse to delay the trial. He further states that the FIR was registered on 14.12.2005, charge-sheet was filed on 29.11.2006, charges were framed on 18.02.2011 and the application under Section 311 Cr.P.C was filed after the prosecution had ended its examination and the petitioner had been given an opportunity to lead defence. He states that the Trial Court has correctly observed that when the documents have already been examined by the Government appointed expert and when there is no allegation against the said government body with respect to their impartiality, then there is no necessity of getting the documents examined by a private expert. He further states that Section 22 of the PC Act provides for a limited application of the Cr.P.C. He places reliance on Section 22(a) of the PC Act which provides that after the evidence is over, the accused is required to give in writing a list of persons (if any) whom he proposes to examine as his witnesses as well as of the documents (if any) on which he proposes to rely. He states that the petitioner has not followed the procedure prescribed in law. He, therefore, states that permitting the petitioner to examine one more hand writing expert would be superfluous in the face of the facts and circumstances of this case, and in fact would delay the mandate of Section 243 Cr.P.C.

8. As stated earlier, there is a procedure prescribed in the Cr.P.C for examination of witness. Section 22(a) of the PC Act states that the Cr.P.C would be applicable with certain modifications and Section 22(a) modifies Section 243 Cr.P.C. Section 22(a) of the PC Act reads as under:

"Section 22 in The Prevention of Corruption Act, 1988

(a) in sub-section (1) of section 243, for the words "The accused shall then be called upon", the words "The accused shall then be required to give in writing at once or within such time as the court may allow, a 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 he shall then be called upon" had been substituted;"

9. Section 22(a) of the PC Act prescribes a procedure by which the Petitioner had the right to submit a list of defence witnesses and documents as required. The Petitioner failed to do the same. The petitioner has failed to explain as to what precluded the petitioner from getting the documents examined by a private expert in the first place.

10. The learned SPP appearing for the CBI is therefore justified in contending that permitting the petitioner to examine the hand-writing expert without any reason forthcoming from the petitioner as to why the petitioner did not choose to produce a hand-writing expert at an earlier stage and further as to why there is any necessity of a second hand-writing expert would cause prejudice to the case.

11. Section 311 Cr.P.C does give power to a Court to summon any person as witness, or examine any person in attendance, though not summoned as a

witness, or recall and re-examine any person already examined if it appears to be essential for adjudication of the case but the said power has to be exercised with care and caution. It cannot be used as a tool to procrastinate trial or as a tool to fill up the lacunae either by the prosecution or by the defence.

12. In Mohanlal Shamji Soni v. Union of India, **1991 Supp (1) SCC 271**, the Supreme Court, while explaining Section 311 Cr.P.C, has observed as under:

“ The aid of the section should be invoked only with the object of discovering relevant facts or obtaining proper proof of such facts for a just decision of the case and it must be used judicially and not capriciously or arbitrarily because any improper or capricious of the power may lead to undesirable results. Further, it is incumbent that due care should be taken by the Court while exercising the power under this section and it should not be used for filling up the lacunae left by the prosecution or by the defence or to the disadvantage of the accused or to cause serious prejudice to the defence of the accused or to give an unfair advantage to the rival side and further the additional evidence should not be received as a disguise for a retrial or to change the nature of the case against either of the parties. The jurisdiction of the Court must be dictated by exigency of the situation, and fair-play and good sense appear to be the only safe guides and the requirements of justice command the examination of any person which would depend on the facts and circumstances of each case. ”

13. The impugned Order dated 22.02.2021 has correctly noted that the hand-writing expert appointed by the government has given his report and he has been examined and cross-examined. No allegations of partiality have

been levelled against the said expert. This Court is of the view that the instant petition is merely a ruse to prolong the trial.

14. In light of the aforementioned observations, this Court is not inclined to interfere with the impugned order of the Trial Court dated 22.2.2021.

15. Accordingly, the present petition is dismissed.

AUGUST 23, 2021

Rahul

SUBRAMONIUM PRASAD, J

