

examined by the prosecution. He submits that the prosecution has filed an application (Exhibit – 336) under Section 311 of the Criminal Procedure Code for examining six witnesses whose names were not disclosed in the chargesheet. Learned Counsel submits that the said application filed by the CBI dated 17th December, 2021 was bereft of details i.e. on which point, the prosecution proposes to examine the said witnesses.

4. Learned SPP does not dispute the fact that the prosecution has not spelt out aspects on which, the said witnesses are to be examined, however, he submits that the proposed witnesses are to be examined with respect to documents, which are part of the chargesheet and that the examination of the said witnesses is essential for the prosecution to prove its case.

5. Perused the papers. It is not in dispute that till date, 53 witnesses have been examined by the prosecution/CBI. The prosecution has not yet filed a closure pursis. It appears that after 53 witnesses were examined by the prosecution, the respondent No.1/CBI filed an application (Exhibit-336) in CBI Special Case No. 120 of 2009 seeking examination of six more witnesses who were not named in the chargesheet and whose statements were not been recorded during investigation. A perusal of

the said application (Exhibit-336) which is on page 13 shows that the said application is bereft of any details i.e. on which point, the witnesses are to be examined. The respondent No.1/CBI should have filed a detailed application setting out on what aspect/which document, the said six witnesses are proposed to be examined by the prosecution in order to give the applicant/accused an opportunity to know on which aspect and the purpose for which the said witnesses are to be examined. It is not in dispute that the prosecution can examine witnesses whose names are not mentioned in the chargesheet, however, it is necessary for the prosecution to atleast spell the reasons and the purpose for which, the particular witnesses are being examined, lest it may cause prejudice to the accused, who will be taken by surprise. The application (Exhibit-336) is completely bereft of any such details. Considering the same, the learned Judge ought not to have entertained the said application and issued summons to the said witnesses.

6. For the aforesaid reasons, the impugned order dated 5th January, 2022 passed by the learned Special Judge (CBI) below Exhibit – 336, cannot be sustained and as such, the same is quashed and set aside. Needless to state, that the CBI is at liberty to file a fresh application seeking the very same prayers after giving reasons and the purpose for

examining the said witnesses.

7. If such an application is filed, the learned Judge to consider the same on its own merits in accordance with law.

8. Petition is allowed and disposed of on the aforesaid terms.

9. It is made clear that this petition has not been heard on merits and as such, all contentions of all parties are kept open.

10. All concerned to act on the authenticated copy of this order.

REVATI MOHITE DERE, J.