

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL WRIT PETITION NO.2971 OF 2022

Manoj Agarwal and another ...Petitioners

versus

The State of Maharashtra and another ...Respondents

Mr.Aadil Parsurampururia i/by Mr.Prashant Parsurampururia, Advocate
for petitioners.

Mr.S.R.Agarkar, APP, for State.

Mr.Harsh Dedhia i/by Mr.Hiten Venegavkar, Special P.P for CBI.

CORAM : PRAKASH D. NAIK, J.

DATE : 5th SEPTEMBER, 2022

PC :

1. The Petitioners seeks to challenge the impugned order dated 21.07.2022 passed by the Sessions Court, Mumbai allowing the application preferred by Respondent No.2 - C.B.I. under Section 311 of Cr.PC.

2. The Petitioners are accused Nos. 2 & 3 in CBI Special Case No.76 of 2000 pending before the Sessions Court, Mumbai. The charge was framed under Sections 409, 420, 467, 468 & 471 read with Section 120-B of Indian Penal Code. The trial commenced. The prosecution examined 38 witnesses. PW-36 Mr. Sandeep Manohar Mehra is the Investigating Officer. He was examined on 17.12.2019, 23.01.2020, 29.01.2020 & 04.02.2020. The said

witness was discharged on 04.02.2020.

3. The Respondent No.2 preferred an application under Section 311 of Cr.P.C. on 07.06.2022. The Petitioners filed a reply objecting the prayer for recall of witness. The application Exhibit-427 was heard and it was adjourned for further hearing on 07.07.2022. The prosecution then filed an application for recall of PW-36. The fresh application was numbered as Exhibit - 433. The accused filed their say opposing the said application. The application was allowed vide order dated 21.07.2022.

4. Learned Advocate for the Petitioner submitted that, PW-36 was examined and the said witness was discharged on 04.02.2020. The application for recall of witness was preferred belatedly. The impugned order is contrary to law. It is in defiance of the mandate of Section 311 of Cr.P.C. The application has been preferred to plug loopholes in the prosecution case. The trial Court has overlooked the say filed by Petitioners. In the second application Exhibit - 433, C.B.I. has referred to multiple documents without spelling out a word as to what are these documents and how they are related to PW-36 for what purpose and the same were brought on record. The learned Judge has committed an error in observing that, the documents were not shown to the witness at the relevant time and that the documents were collected during

investigation. The discretionary powers under Section 311 of Cr.P.C. has to be exercised judicially.

5. Learned Advocate for the Petitioner has relied upon the following decisions :-

- i) *Ratanlal Vs. Prahlad Jat and Others*¹.
- ii) *Virender Singh and Others Vs. State*².
- iii) *Om Prakash Berlia and Another Vs. Unit Trust of India and Others*³.
- iv) *Madholal Sindu Vs. Asian Assurance Co. Ltd and Others*⁴.
- v) *Rakesh Jain Vs. Central Bureau of Investigation* in CRR 1403 of 2022 dated 08.07.2022 passed by the Punjab and Haryana High Court, Chandigarh.

6. Learned Advocate for Respondent No.2 submitted that, there is no infirmity in the impugned order. The application was preferred within consonance of Section 311 of Cr.P.C. The application Exhibit-427 was not pressed and disposed off vide order dated 21.07.2022. Reliance is placed on the decision of the Hon'ble Supreme Court in the case of *Varsha Garg Vs State of Madhya Pradesh and Others*⁵.

7. Perused the documents on record. The prosecution had

1 (2017) SCC 340

2 1993(26) DRJ

3 1982 SCC OnLine Bom 148.

4 1945 SCC Online Bom 44

5 2022 SCC OnLine Sc 986

indeed preferred an application Exhibit-427 for recalling of witness under Section 311 of Cr.P.C. The prosecution latter on filed pursis at Exhibit-435 and submitted that the application Exhibit-427 is not pressed as another application Exhibit-423 is filed. The advocate for the accused had contended that the application Exhibit - 427 was argued by the prosecution and after it was realized that the application was not maintainable, they filed another application for seeking similar relief. Learned Special Judge (C.B.I.) vide order dated 21.07.2022 passed below Exhibit - 427 observed that the application Exhibit-427 is not pressed by the prosecution and the application Exhibit - 433 for similar relief is in existence. Defence has not pointed out any provision which would prevent the prosecution from not pressing the application. Hence, the application at Exhibit - 427 is treated as not pressed as the prosecution do not want to pursue with the same. Application Exhibit - 433 was preferred for recalling witness PW-36. It was stated that the said witness was examined on 23.01.2020. Thereafter PW-37 and 38 were examined. Inadvertently some of the original documents mentioned in the said application has left to be proved by the prosecution. These documents are important for just decision of the case. No prejudice will be caused to the accused because the said documents are already on record and

provided to the accused. The application was opposed by the accused Nos.2 & 3 by filing say. The learned Special Judge was allowed the application Exhibit - 433 vide order dated 21.07.2022. It is well reasoned order. The learned Judge has assigned cogent reasons for allowing the application. I do not find any illegality in the said order. The documents collected during investigation by the Investigating Officer were necessary to be shown to the witness. However, inadvertently the prosecution has not shown the same. On going through the documents, it is seen that, D29, D75, D77, D79, D81, D83, D87, D90, D92, D94, D96, D98, D100 are the cheques which are drawn on Canara Bank by Dessar Enterprises, Chirag Trading Company, Swapnika Tiles and Granites D76 is the request to issue DD, beneficiary is A.V. Exports. D78 is the request to issue DD/MT, beneficiary B. Ashokkumar. Likewise, D80, D82, D84, D86, D89, D91, D93, D95, D97, D99, D101 are the requests to Canara Bank to issue DD/MT in favour of several beneficiaries and the purchaser is Dessar Enterprises or concerned companies. So also D7, D8, D13, D16, D25 are cheques drawn on Canara Bank by Globe Agro Products Ltd. and Abhay Trading Company. D28 to D30 are extract of 'register for advances sanctioned/granted under discretionary powers'. D32, D33 are copies of specimen handwritings/signatures. D35, D37 are cheques (copies). D39 is a

letter dated 29.07.1999 by Superintendent of Police, CBI BSFC, Mumbai to the Government Examiner with annexures - in Spl. Case No.8/2001. Documents at D52, D56, D58 are cheques drawn on Canara Bank by Sha Kapoorchand & Sons and Jeweller Kapurchand Pvt. Ltd., whereas D57 is a credit slip. D44 and D45 are copies of specimen handwriting/signatures. D53, D54, and D55 are cheques (copies) drawn on Canara Bank by Jewellers Kapurchand Pvt Ltd in Spl Case No.9 of 2001. The names of Dessar Enterprises, Chirag Trading Company and Swapnika Tiles and Granites and other companies are mentioned in the charge. It is the specific allegation and charge that, along with these companies, accounts of several other companies were permitted to be opened by accused No.1 in the Canara Bank, Dahisar Branch. Therefore, the documents referred in the application are directly connected with the charge against the accused persons and are relevant. The documents mentioned above thus are connected with serious allegations against the accused persons.

8. Both the sides have relied upon decisions. The law relating to exercise of powers under Section 311 of Cr.P.C. is well settled. Section 311 of Cr.P.C. enables the Court to recall any witness if it considers the evidence necessary for the just decision of the case of course the intention cannot be to fill up lacuna. Having regard to

the ambit of Section 311 of Cr.P.C. it was appropriate to allow the application preferred by Respondent No.2. No case is made out to interfere in the impugned order dated 21.07.2022 and therefore the Petition deserves to be rejected. Request is made to defer the recording evidence of Investigation Officer for some time.

ORDER

(i) Criminal Writ Petition is rejected and disposed off.

9. The Trial Court is requested to defer recording of evidence of Investigating Officer by two weeks.

(PRAKASH D. NAIK, J.)