

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**CRR No.2256 of 2018 (O&M)
Date of decision: 08.07.2022**

Satish Kumar Padam

....Petitioner

Versus

Central Bureau of Investigation

....Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. J.S. Mehndiratta, Advocate
for the petitioner.

Ms. Shubhra Singh, Advocate
and Ms. Meghna Malik, Advocate
for the respondent – CBI.

ARVIND SINGH SANGWAN J.

Prayer in this revision petition is for setting-aside the order dated 07.07.2018, passed by the Special Judge, CBI, Chandigarh, vide which the application filed by the petitioner/accused under Section 311 Cr.P.C., seeking permission to lead additional evidence was dismissed.

It may be noted that this petition is pending since 2018 and the Co-ordinate Bench of this Court, while issuing notice of motion on 13.07.2018 has stayed the passing of the final order.

It is admitted fact by both the parties that the final arguments in this case are heard and the trial Court is awaiting the order in this case as the stay was granted in the year 2018 and the trial is substantially delayed.

Brief facts of the case are that the FIR was registered against the petitioner and one Nand Lal Kaushal by CBI, for offences under Sections 7, 13(2) read with Section 13(1)(d) of the Prevention of

Corruption Act, 1988, for accepting the bribe of Rs.35,000/- from one Pardeep, who has given a complaint on 05.07.2010 that his company has undertaken certain repairs and maintenance work of Administrative Block, Panjab University and the petitioner, who was working as Executive Engineer in the University and the co-accused Nand Lal Kaushal was working as Sub-Divisional Officer (S.D.O.) had demanded bribe @ 3% of the work amount of Rs.16.50 lacs and when the raid was conducted in the presence of independent witnesses, the petitioner was caught red-handed and bribe amount of Rs.35,000/- was recovered from him.

After completion of the investigation, the trial Court submitted the report under Section 173 Cr.P.C. and the trial Court framed the charges and the prosecution evidence was recorded. Thereafter, the petitioner filed an application under Section 311 Cr.P.C., for permission to lead additional evidence. The CBI filed reply to the said application and contested the same.

The trial Court vide impugned order dated 07.07.2018 dismissed the application by passing the following order:-

“12. To appreciate the controversy that has emanated in this application, it is obligatory to state the facts in brief. The facts of the prosecution case are that the instant case was registered against Shri Satish Padam, XEN Punjab University, Chandigarh and Shri Nand Lal Kaushal, SDE, Punjab University, Chandigarh under Section 120-B and Section 7 of Prevention of Corruption Act, 1988 on the basis of a written complaint dated 05.07.2010 lodged by Shri Pardeep Kumar son of Shri Babu Ram and verification report dated 06.07.2010 of

Shri Dinesh Kumar, Sub Inspector/CBI, ACB, Chandigarh. The complainant Shri Pardeep Kumar alleged that his firm M/s Tulsi Ram & Co, which is registered in the name of his father and grandfather, was undertaking the contracts of civil construction and renovation. His company was allotted the work of renovation of Administrative Block of Punjab University, Chandigarh, the tender cost of which was to be tune of Rs. 35,73,000/-. The said work was being supervised by Shri Satish Padam, XEN, Punjab University, Chandigarh and Shri Nand Lal Kaushal, SDE, Punjab University, Chandigarh. Till the date of lodging of the complaint, Rs. 16,50,000/- were paid to his company. The complainant further stated that on 01.07.2010 while handing over cheque of Rs. 10,46,000/-, Shri Nand Lal Kaushal asked him to meet Shri Satish Padam on 05.07.2010 for the balance payment and give him a bribe of Rs. 35,000/- @ 3% of total amount of Rs. 16,50,000/- which was earlier paid to him. Shri Kashal also threatened complainant that in case he did not give bribe @ 3%, his next bill will not be prepared. Since the complainant did not want to give the bribe he made a written complaint to SP, CBI, Chandigarh to take legal action against Shri Satish Padam, XEN Punjab University, Chandigarh and Shri Nand Lal Kaushal, SDE Punjab University, Chandigarh. After receipt of the complaint Sub Inspector Dinesh Kumar to CBI, ACB, Chandigarh was deputed to conduct verification report dated 06.07.2010 recommending registration of a regular case against Shri Satish Padam, XEN, Punjab University, Chandigarh. Accordingly, case RCCHG2010A0016 dated 06.07.2010 was registered and a trap was laid by Inspector K.S. Rana on 06.07.2010 at Construction Office, Punjab University, Chandigarh and Sh. Satish Padam was caught red handed while demanding and accepting the bribe amount of Rs.

35,000/- from complainant Shri Pardeep Kumar.

13. Here in the present case, the accused has moved an application to lead additional evidence in order to prove following documents:-

i. Letter dated 3.9.2014 by accused to Executive Engineer-I, Panjab University seeking information regarding pendency of payment due towards M/s Tulsi Ram and Company at relevant time.

ii. Letter dated 30.9.2014 from Executive Engineer-I to accused in response to letter dated 3.9.2014.

iii. Letter dated 27.2.2012 by accused to Vice-Chancellor Panjab University for supply of the documents relating to the work of water proofing treatment of roof and painting of Administrative Block in PU Campus.

iv. Reply dated 15.3.2012 in response to letter dated 27.2.2012 vide which documents sought by accused were supplied.

v. Copies of two letters dated 25.2.2010 and 2.3.2010 written by R.K. Jindal seeking the issuance of tenders supplied vide letter dated 15.3.2012 along with other documents.

Prayer is made to allow the application and to summon the witnesses to prove the preferred documents in the application by way of additional evidence.

14. The accused has pleaded that his present application is not an afterthought and it was his defence from the very beginning that he had been falsely implicated by the contractors including R.K. Jindal as he had not issued tenders to their firms due to their poor past performance and he had already taken these documents from the University in the year 2012 but inadvertently, he could not examine the defence witness in this regard.

15. After the recording of statement accused u/s 313 (5) Cr.P.C., on 22.3.2018, the accused moved application

on 9.5.2018 for summoning of five defence witnesses including concerned official from the office of Construction Office, Panjab University with original record relating to the complaint dated 10.5.2010 filed by five contractors against him to Vice Chancellor Panjab University and representation dated 11.5.2010 filed by Satish Kumar Padam against three contractors and Minutes of Meeting dated 13.5.2010 held in order to enquire into the complaint of contractors and the representation of accused as defence witness. It is specifically mentioned by the accused that the above-said witness is required to be examined as defence witness in order to prove the motive for his false implication. The accused examined DW-2 Shri Charandeep Singh, Clerk Construction Office, Punjab University to whom the two complaints dated 11.5.2010 and one complaint dated 10.5.2010 by five contractors including R.K. Jindal were put during his examination along with the other documents i.e. representation of accused and Minutes of Meeting. Thus, the accused has already examined the witness in his defence in support of his plea of false implication in conspiracy with other contractor including R.K. Jindal. Hence, contention of accused that he could not summon defence witness to prove documents mentioned in of the present application is not sustainable.

16. Moreover, on 10.08.2016 the prosecution has examined PW-11 Shri Dilbag Singh, who was Senior Assistant in the Construction Office at the relevant time, with regard to running and pending bills of work allotted to the firm M/s Tulsi Ram. As PW-11 was working under accused at that time and the accused was in possession of the documents which he now wants to prove by way of additional evidence, the accused had opportunity to put the documents to PW-1 during his cross-examination when

he claimed that the same were in his possession since 2012. Hence, the said opportunity was also not availed by the accused. So far as the letter dated 30.9.2015 is concerned, the same is already marked as Mark D-2 and is on judicial record. The same was put to the complainant PW-3 during his cross-examination. Hence, the accused has already led sufficient evidence in his defence in support of his plea of false implication on the behest of contractors as no payment towards the firm of complainant was lying pending with him which would be considered at the time of final arguments. Also, it is the quality of the evidence not the quantity which matters. Therefore, in the opinion of this Court, the documents which the accused wants to prove as additional evidence are not essential for the just decision of the case as the evidence has already been led by the accused on record in this regard.

17. The ground taken by accused for not summoning defence witness to prove the above-referred letters/documents is inadvertence and oversight which is baseless and not convincing. Had the inadvertence and oversight been on the part of counsel for applicant-accused, then it might be convincing to some extent, if proposed additional evidence is found essential as applicant-accused should not be suffered for the mistake of his counsel, but in the present case it is on the part of applicant-accused also as submitted in the application itself. It is also noticable here that the applicant-accused is not a rustic person but an Executive Engineer. The reliance in this regard can be placed on State of Haryana Vs. Ram Mehar & Others Etc. [Criminal Appeal Nos. 805-806 of 2016 @ S.L.P. (CRL.) Nos.3278-79 of 2016] wherein the Hon'ble Supreme Court has held that "The decisions which have used the words that the court should

be magnanimous, needless to give special emphasis, did not mean to convey individual generosity or magnanimity which is founded on any kind of fanciful notion. It has to be applied on the basis of judicially established and accepted principles. The approach may be liberal but that does not necessarily mean "the liberal approach" shall be the rule and all other parameters shall become exceptions. Recall of some witnesses by the prosecution at one point of time, can never be ground to entertain a petition by the defence though no acceptable ground is made out. It is not an arithmetical distribution. This kind of reasoning can be dangerous. In the case at hand, the prosecution had examined all the witnesses.

18. In addition to above, after the close scrutiny of the application under Section 311 Cr.P.C., it comes out that same has also been moved in a very casual and vague manner as the applicant-accused had failed to mention the witness to whom he wants to examine/re-examine/re-call to prove these documents. Section 311 Cr.P.C., empowers the Court to summon/examine the persons as witnesses. In the light of above-discussion in the foregoing paras, it appears that the same has been filed to delay the culmination of the proceedings as the same has been filed when the case was fixed for final arguments on 4.6.2018.

19. It is well settled that the object of provisions of recall of witness under Section 311 Cr.P.C is to reserve the power with the Court to prevent any injustice in the conduct of the trial at any stage. This power available with the Court to prevent injustice has to be exercised only if the court, for valid reasons, feels that injustice is caused to a party. As the legislature in its wisdom has left the power undefined as it is not possible to lay down precise situations when such powers can be exercised thus the scope of power has to be considered from case to case.

Undoubtedly, fair trial is the objective and it is the duty of the Court to ensure such fairness. Width of power u/s 311 Cr.P.C. is beyond any doubt. But in the present application, not a single convincing reason has been given by the accused as discussed in detailed in the foregoing paras, how the said documents are essential for the just decision of the case and even he has failed to mention the witness to whom he wants to examine in defence to prove the documents. In the considered opinion of this Court, the present application under consideration is nothing but an attempt to protract the trial. In the present case, neither the proposed additional evidence is found essential for the just decision of case as discussed earlier nor the ground is found convincing for not leading the proposed additional evidence at the relevant time. Also the manner in which the application is filed without mentioning the name of witness to whom the accused wants to examine, shows that the same is filed at the stage of final arguments only to kill the time.

20. Keeping in view the above facts, discussions and circumstances, the present application u/s 311 Cr.P.C., is hereby dismissed being devoid of merits.”

Counsel for the petitioner has submitted that the petitioner has obtained these documents under the Right to Information Act and therefore, these are necessary documents to be placed on record as the petitioner has already put up these documents, which are marked but not exhibited by the trial Court.

Counsel for the petitioner has further submitted that the documents are relating to the work allotted to the complainant's firm to prove that the entire work was not completed and some communication has taken place between the University authorities and the complainant,

in this regard. It is also submitted that in order to prove the documents, the petitioner be allowed to examine Sr. Assistant of the Construction Office of the University to prove the aforesaid documents.

Counsel for the petitioner has also argued that it is well settled principle of law that the documents which goes to the roots of the case can be allowed by way of additional evidence. It is further submitted that when the evidence was going on, due to oversight, the documents could not be proved, in accordance with law as when a document Mark D2 was put up to witness, who appeared as PW-3, he did not admit the same to be a genuine document.

Reply on behalf of the respondent – CBI is on record. Counsel for the respondent has argued that the petitioner is adopting the delaying tactics as even on an earlier occasion, the trial Court vide order dated 10.12.2018 has dismissed the application filed by the petitioner regarding voice sample. The petitioner challenged the said order before this Court vide CRM-M No.52168 of 2018 and the same was dismissed. It is further submitted that the present application has been moved with an intention to further delay the proceedings as the documents have no direct bearing on the case as in the trap proceedings, the petitioner was caught red-handed and recovery of Rs.35,000/- was effected from. It is also argued that sufficient opportunities were given to the petitioner for leading his defence evidence, after his statement under Section 313(5) Cr.P.C. was recorded on 22.03.2018.

Counsel for the respondent has also contended that the petitioner filed an application on 09.05.2018 for summoning 05 defence

witnesses including the concerned official from the Construction Office, Panjab University along with the original record and the said witness namely Charandeep Singh, Clerk, was examined as DW-2 from Construction Office, Panjab University. It is further submitted that since the accused has already examined the witness in his defence, the present application has been moved to re-examine the same witness just to delay the trial and fill up the lacunas.

Counsel for the respondent has also argued that the petitioner has even failed to make out a case within the ambit of Section 311 Cr.P.C., as the documents mentioned in the application are not relevant for the just decision of the case. It is further argued that the petitioner has not disclosed the name of any witness in the application, which shows that he has filed this application just to delay the decision of the case. It is also submitted that in the absence of any specific averment in the application, a witness cannot be recalled in exercise of powers under Section 311 Cr.P.C. and the trial Court has rightly dismissed the application.

After hearing the counsel for the parties, I find no merit in the present revision petition. The trial Court has passed a well-reasoned order that firstly, PW11 Dilbag Singh, Sr. Assistant in the Construction Office at the relevant time appeared as a prosecution witness and the documents now sought to be produced by the additional evidence were never put to this witness in his cross-examination. It is also observed by the trial Court that when DW-2 Charandeep Singh, Clerk, from the Construction Office, Panjab University, was produced by the petitioner,

again the documents were not produced in the evidence by him, though, it was in his knowledge and therefore, the petitioner is adopting the delaying tactics.

The trial Court has granted sufficient time to the petitioner to lead his defence evidence in which he has already examined the concerned Clerk. Even otherwise, a perusal of the application filed under Section 311 Cr.P.C. as well as the grounds of revision before this Court, nowhere reveals about the relevancy that as to how these documents are required for the just decision of the trial, especially in view of the allegations in the FIR.

Even the final arguments before the trial Court stands concluded and the trial is delayed substantially for a period of 04 years because stay of passing of final order is operating in favour of the petitioner.

Accordingly, finding no merit, the revision petition is dismissed.

The trial Court is directed to conclude the trial expeditiously within a period of 30 days from today.

(ARVIND SINGH SANGWAN)
JUDGE

08.07.2022

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Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No