

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO. 3596 OF 2022

Vasudeo Madhukar Mhapsekar & Anr .. Petitioners

Versus

Central Bureau of Investigation and .. Respondents
Anr

...

Mr.P.D. Sawardekar for the petitioner
Mr.Shantanu Thorat i/b Hiten Venegavkar for respondent no.1.
Ms.P.N. Dabholkar, APP for the State.

CORAM: BHARATI DANGRE, J.

DATED : 20th MARCH 2023

P.C:-

1 Heard learned counsel for the petitioner and learned proxy counsel appearing for Mr.Venegavkar for CBI.

2 A case was registered against the petitioner, on the basis of source of information, alleging that from 1/1/2000 to 31/12/2007, the petitioner working as Inspector, Central Excise, Thane-1 Commissionerate, Dadar (W), and his wife, Assistant Administrative Officer, LIC of India, both public servants, acquired movable and immovable assets to the tune of Rs.22,48,090/- against their likely savings to the tune of Rs.12,24,500/-. They were found in possession of assets worth

Rs.10,23,590/- which were claimed to be disproportionate to their known sources of income, as they could not be accounted for.

This resulted in the charge-sheet being filed by the CBI, ACB, before the Special Judge u/s. 13(2) and 13(1)(e) of the Prevention of Corruption Act, 1988.

3 The trial commenced and 53 witnesses came to be examined and prosecution moved an application (Exhibit-336) under Section 311 of Cr.P.C for examining six witnesses whose names were not disclosed in the charge-sheet.

The said application was granted by the learned Special Judge on 5/1/2022 and on a Writ Petition before this Court, by recording that though the prosecution can examine the witnesses, it must spell out the reasons for which the witnesses are to be examined, the order passed by the Special Judge, was set aside.

However, in the order dated 5/4/2022, this Court reserved a liberty in CBI to file a fresh application, seeking the very same prayers after giving reasons and the purpose of examining the witnesses.

4 The CBI availed this liberty and once again filed an application u/s.311, specifically stating the reasons for examining these witnesses and this application at Exhibit 353, gave the purpose why the six witnesses were desired to be examined by the prosecution, and it was also specified that the documents were

filed with the charge-sheet and the accused are having knowledge of the same, and these documents need to be proved through the said witnesses.

In the backdrop of the reasons cited, the Special Court found substance in the application this time and granted the application by the impugned order dated 19/9/2022.

5 I do not see any legal infirmity in the said order, since in an earlier round, this Court had clearly stated that it is upto the prosecution to examine the witnesses, whose names are not mentioned in the charge-sheet, but on establishing that their examination is necessary and since section 313 contemplate that at any stage of the trial, such witnesses can be examined, the application has been rightly allowed. Pertinent to note that no prejudice is demonstrated by the petitioner and his statement u/s.313 of Cr.P.C is yet to be recorded.

In the circumstances, by upholding the impugned order, Writ Petition is dismissed.

(SMT. BHARATI DANGRE, J.)