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

+ CRL.M.C.10/2021, CRL.M.A. 27/2021, CRL.M.A. 1175/2021,
CRL.M.A. 5819/2021

CENTRAL BUREAU OF INVESTIGATION Petitioner

Through: Mr. Rajesh Kumar, SPP with
Ms. Ramneet Kaur, Adv. for CBI.

versus

ABHISHEK VERMA & ANR. Respondents

Through: Mr. Maninder Singh, Sr. Advocate
with Mr. Dinhar Takiar, Ms. Simran
Chawdhary, Advocates for Respondent
No.1.

Mr. Arunabh Chowdhury, Sr. Advocate
with Mr. Vaibhav Tomar, and Mr.
Anirudh Sethi, Advocates for R2.

Mr. Harshvardhan Jha and Aman
Pathak, Advocate for Intervener

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Date of Decision: 08th February, 2023.

CORAM:

HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

J U D G M E N T

DINESH KUMAR SHARMA, J. (Oral)

Crl.M.A.1176/2023 (exemption)

Exemption allowed subject to all just exceptions.

CRL.M.C.10/2021

1. Present petition has been filed challenging the order dated

CRL.M.C. 10/2021

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23.10.2020, passed in CC no. 362/2019 whereby, the learned Spl. Judge (PC Act), CBI, Rouse Avenue Courts, New Delhi has dismissed the plea of one Mr.C. Edmonds Allen and CBI for calling this witness for the purpose of examination.

2. Learned Spl. Judge (PC Act), CBI while dismissing the plea(s) took into account the conduct of the witness and the fact that sufficient opportunities had already been given to the CBI to produce this witness as well. Learned Spl. Judge (PC Act), CBI *inter alia* was of the view that the witness was intentionally playing hide and seek with the Court and cannot be permitted to misuse the process of the law. The CBI has challenged the impugned order dated 23.10.2022 primarily on the grounds that Mr. C. Edmonds Allen is a material witness and his testimony is necessary for adjudication of the dispute.

3. In the petition, CBI has stated that the learned Trial Court has failed to appreciate that the witness is very crucial for the decision of the case which is related to forgery and corruption in a cases where large public interests are involved. CBI stated that the jurisdiction under Section 311 Cr.P.C. was not properly exercised by the learned Spl. Judge (PC Act), CBI.

4. The Hon'ble Supreme Court vide order dated 04.01.2018 in SLP CrI. No(s) 9251-9252/2017, titled as *Jagdish Tytler vs. CBI through Superintendent of Police*, directed the Trial Court to complete the trial within the outer limit of one year.

5. Pursuant to the direction of the Supreme Court, the learned Trial Court, vide order dated 26.11.2018 noted that the summons were duly

executed and served upon PW C. Edmonds Allen but he did not appear before the court. Learned Trial Court noted that PW C. Edmonds Allen had also been served earlier and sufficient time was given to CBI for the service of summons of PW C. Edmonds Allen in accordance with the law. In the order dated 26.11.2018, it was also specifically noted that vide order dated 24.07.2018, it was made clear that in view of the directions of the Supreme Court to complete the trial within one year, no further opportunity would be granted to CBI for summoning PW C. Edmonds Allen. Therefore, Learned Trial Court on 26.11.2018 *inter alia* held that in pursuance to the non-appearance of the witnesses no further opportunity can be granted to the CBI and CBI is not in a position to examine the witnesses namely PWs C. Edmonds Allen and Gang Yong. However, the learned Trial Court gave an opportunity to examine IO/ Dy. S.P. Vipin Kumar. Accordingly, PW-26 IO/ Dy. S.P. Vipin Kumar was examined on 10.01.2019 and PE was closed. Thereafter, the statements of the accused persons were recorded. The defence evidence of the accused persons was also recorded and finally, DE was closed on 26.11.2019. The matter was posted for final arguments on 12.12.2019. On the said date the matter was directed to be listed for final arguments on 17th, 18th, 19th February 2020 but thereafter the matter kept on adjourning for one reason or the other. It is pertinent to note that on 12.12.2019, Ms. Mayuri Shukla, advocate appeared for PW C. Edmonds Allen.

6. Perusal of the order sheets also indicates that the hearing of the application of PW C. Edmonds Allen was postponed and the matter was taken up by the learned Trial Court on 29.06.2020 and thereafter, on

23.10.2020, taking into account the entire proceedings, the request of PW C. Edmonds Allen and the CBI was declined.

7. Aggrieved of this, CBI invoked the jurisdiction of this Court and while the matter rested thus, a miscellaneous application bearing no. IA 145448/2021 was filed by the CBI before Supreme Court seeking an extension of time to conclude the trial. Hon'ble Supreme Court in SLP Crl. No(s) 9251-9252/2017 vide order dated 14.10.2022 allowed the application of CBI and granted six months time reckoned from the date of communication of a copy of the said order dated 14.10.2022 to conclude the trial. The Supreme Court also made it clear that no further extension of time would be granted for the said purpose.

8. Respondent No.1 has filed a detailed reply controverting the pleas taken by the CBI in the present petition. At the outset, it has been stated that the present petition is not maintainable in view of the directions of the Supreme Court to conclude the trial in one year vide order dated 04.01.2018. It has also been stated that since the CBI had never challenged the order dated 21.11.2018, therefore the same has attained finality. It has been stated that CBI has tried to create a fresh cause of action to open the Prosecution Evidence at a belated stage and the present petition has been filed by the CBI with the intention to further delay and prolong the matter. It has also been stated that the averments made by the CBI are bereft of any merit and the order passed by the learned Trial Court dated 23.10.2020 is well reasoned. It was stated on behalf of Respondent No.1 that sufficient opportunities were given to the CBI to produce and examine Mr. C. Edmonds Allen and Mr. Gang Yong but the said witnesses have failed to

appear before the learned Trial Court. Furthermore, it has been stated that even after the lapse of 8 years since the registration of the present case against respondent No.1, the CBI has not recorded the statement under Section 161 Cr.P.C. of the witness Mr. C. Edmonds Allen and there is no investigation qua the said witness filed in the present case. It has been averred in the reply that CBI is attempting to fill up the lacunae in their evidence. Attention has been drawn to the malafide conduct of Mr. C. Edmonds Allen and his continuous inference in the judicial process. It has been stated that Mr. C. Edmonds Allen has taken the Indian legal system for granted and he has been taking steps to create confusion. Mr. C. Edmonds Allen has communicated to different higher authorities dated 02.07.2016 has strongly protested against the receipt of summon by the Court. It has been stated that Mr. C. Edmonds Allen had no intention to depose and has only misled the Indian Judiciary. It has been stated that Mr. C. Edmonds Allen without having to appear or having locus standi has repeatedly tried to harass Respondent No. 1 and has entailed him in a web of malicious litigation.

9. In the present proceedings also, Mr. C. Edmonds Allen has moved an application bearing no. Crl.M.A. 1175/2021 as an intervenor requesting to record his testimony. In the said application it has been stated that his testimony is necessary for the purpose of adjudication of the case and that he is the most important witness in the matter. In the application, it has been stated the Applicant is 76 years old, a distinguished, prominent and well-known, New York-based escrow agent, investment banker and non-practicing Attorney. It has been stated that the Applicant was introduced to

Abhishek Verma (A-1 in this case) in 2000 by Stephan Karolyi a US citizen who also was Abhishek Verma's Financial Advisor. The applicant has averred that A-1 requested the Applicant to act as his escrow agent as he claimed that he had USD 205 Million in bonds and cash in a bank in Liechtenstein which he wanted to liquidate and invest in the US. The Applicant agreed to the above and signed an escrow agreement in 2001 which was renewed in 2004 as A-1 claimed that the funds were frozen by Liechtenstein Authorities at the behest of the Respondent herein (CBI) via Interpol due to his alleged involvement in the Navy War Room Leak Case and Scorpene Submarine kickback deal between 2004-2006. The applicant has also stated that in November 2011, A-1 asked the Applicant to prepare some forged documents to defraud a European Union Investor, which the Applicant refused to do and told A-1 to deal directly with the investor and not to involve him in it. The applicant has stated that at the blunt refusal of the Applicant, A-1, threatened the Applicant both via email as well as telephonically to use his connections in India specifically with the CBI and implicate the Applicant in a false case by using his connections in the CBI as he was an approver for them.

10. The applicant has also stated that his statement was duly recorded by the Enforcement Directorate and he has always been willing to appear and present before the Court, therefore he has made a request for the recording of his deposition through video conferencing. It was stated that in fact, CBI had not taken appropriate steps and CBI was bound to pay for the travel and stay cost in compliance with Section 312 Cr.P.C.

11. Sh. Rajesh Kumar, learned counsel for the petitioner states that the

examination of this witness is very vital and necessary for proper adjudication of the case. He submits that even the intervenor application of the witness reveals that he has been facing threats and the documents placed on record also reveal that the said witness was medically advised to avoid taking long flights as he had seven leg and hip surgeries and due to his old age, there were very high chances of him suffering a cardiac arrest due to deep vein thrombosis during a long flight. Learned counsel the petitioner submits that the respondents have taken a fallacious plea that the examination of this witness is meant to fill the lacuna of the prosecution case. In support of his contentions, reliance has been placed upon the judgment of Supreme Court in *Manju Devi vs. State of Rajasthan*: (2019) 06 SCC 203 and *UT of Dadar and Nagar Haveli and Anr. Vs. Fatehsinh Mohansinh Chauhan*:. (2006) 7 SCC 529

12. Sh. Maninder Singh, learned senior counsel for Respondent No. 1 (A-1) submits that the present petition moved by the CBI is totally malicious. The learned senior counsel has taken this Court through the entire proceedings conducted by the learned Trial Court to summon and examine PW C. Edmonds Allen and has submitted that it would be totally unjust to call and examine this witness now as the statement of the accused has already been recorded and defence witnesses have also been examined. Learned senior counsel further submits that the conduct of PW C. Edmonds Allen itself is doubtful and in fact, he has been deprecated by various courts in several cases. Learned senior counsel submits that CBI has arisen from a deep slumber and is now taking a plea to examine this witness in the teeth of the directions of the Supreme Court passed vide order dated 04.01.2018.

Furthermore, learned senior counsel submits that in fact there is no material which can be proved by Mr. C. Edmonds Allen and CBI has already examined the material witnesses in support of the case filed by them. He submits that CBI cannot be allowed to misuse the process of law. He also submits that CBI has not challenged the order dated 26.11.2018 and thus the same has attained finality. He also submits that 4 months have already lapsed out of 6 months granted by the Hon'ble Supreme Court to conclude the trial and if at this stage, the CBI is permitted to examine the witness i.e. Mr. C Edmonds Allen then it will lead to *De-Novo* trial where the investigating officer alongwith 25 other prosecution witnesses would be required to re-examined. Further, he submits that the statement of the Accused persons u/s 313 Cr. P. C would be recorded again in view of the fresh testimony and the Respondents will then need to lead further defense evidence. He also submits that the witness i.e. Mr. C. Edmonds Allen was not present In India, nor was he part of any alleged meetings as alleged in the case of CBI and nor has he seen the forging or fabricating of any alleged letter. Moreover, he submits, the original alleged letter has not been produced before the learned Trial Court. Therefore in view of the same the testimony of the witness Mr. C. Edmonds Allen (not recorded) cannot be vital to the present case but is rather an attempt by CBI to delay the matter and fill the lacunas in the present case. He further submits that it is an admitted case that no money was received or transferred in to any account of the accused persons or into any account at the behest of the accused persons.. He also submits that the witness Mr. Gang Yound of M/s ZTE, who is the sole witness of alleged demand and part of the alleged meeting was never examined or traced by the CBI. He submits that CBI till date has

not attempted to trace the said witness and even in the present petition the CBI does not wish to examine Mr. Gang Yong. Learned Counsel for the Respondent no. 1 lastly submits that Mr. C. Edmonds Allen is an interested witness, as he has an ongoing dispute with Respondent No.1, for which criminal complaint are pending before the Ld. ACMM, Patiala House Courts.

13. Learned senior counsel further submits that even otherwise, the witness cannot be allowed to be examined through video conferencing and if this Court feels that Mr. C. Edmonds Allen is required to be examined, he may be summoned to appear physically before the Court for the purpose of recording his testimony. Attention has been invited to the Video Conferencing Rules by the High Court of Delhi, New Delhi notified vide Circular No.325/Rules/DHC dated 01.06.2020. Learned senior counsel submits that Rule 5.3.11 of the Video Conferencing Rules by the High Court specifically states that the witness can be examined in the criminal trial only with the consent of the accused. Rule 5.3.11 reads as under:-

“5.3.11 Notwithstanding the provisions of Clause 5.3.1, where witness examination is to take place in a criminal case of a person located outside the country, the provisions of the "Comprehensive Guidelines for investigation abroad and issue of Letters Rogatory (LRs) / Mutual Legal Assistance (MLA) Request and Service of Summons / Notices/ Judicial documents in respect of Criminal Matters" (available <http://164.100.117.97/WriteReadData/userfiles/ISIIComprehensiveGuidelinesMutualLegal Assistance 17122019.pdf>) will be followed to the extent they comport with the provisions of the CrPC and the Evidence Act. Furthermore, before the Court employs its discretion to carry out witness examination via video conference, it will obtain the consent of the accused.”

14. Sh. Arunabh Choudhary, learned counsel for respondent No.2 has also argued in detail and has taken this Court through various orders passed by the learned Trial Court. Learned counsel for respondent No.2 submits that the learned Trial Court has given more than sufficient opportunities to summon the witness and after the defence has already been disclosed on behalf of the accused persons, the examination of this witness by the prosecution would only amount to filling in the lacuna.

15. Sh. Maninder Singh, learned Senior counsel for respondent No.1 has stated that the lacuna in the prosecution case is, in fact, the inherent weakness and the advantage of it should be given to the accused in the trial of the case. Reliance has been placed upon ***Rajinder Prasad vs. Narcotic Cell***: (1999) 6 SCC 110.

16. Learned senior counsel has also relied upon ***Swapan Kumar Chatterjee vs. Central Bureau of Investigation***: (2019) 14 SCC 328 wherein it was *inter alia* held as under:

“ 11. It is well settled that the power conferred under Section 311 should be invoked by the court only to meet the ends of justice. The power is to be exercised only for strong and valid reasons and it should be exercised with great caution and circumspection. The court has vide power under this Section to even recall witnesses for reexamination or further examination, necessary in the interest of justice, but the same has to be exercised after taking into consideration the facts and circumstances of each case. The power under this provision shall not be exercised if the court is of the view that the application has been filed as an abuse of the process of law.

12. Where the prosecution evidence has been closed long back and the reasons for non-examination of the witness earlier are not

satisfactory, the summoning of the witness at belated stage would cause great prejudice to the accused and should not be allowed. Similarly, the court should not encourage the filing of successive applications for recall of a witness under this provision.”

17. Learned senior counsel submits that in view of the above the present petition is liable to be dismissed.

18. There cannot be any doubt to the submissions made by the learned counsels for the respondents that the learned Trial Court had given more than sufficient opportunities to summon PW C. Edmonds Allen. It is a matter of record that PW C. Edmonds Allen did not appear before the learned Trial Court despite having been served. However, it is also a matter of record that PW C. Edmonds Allen is an old aged person with various ailments. It is pertinent to note that the plea of CBI is that the witness did not appear despite being served whereas the plea taken by the witness is that the CBI did not take appropriate steps for his appearance before the learned Trial Court. The question to be considered by this Court is whether only in the view of these rival contentions can a criminal trial be allowed to be adjudicated without the examination of a material witness.

19. CBI in its petition has stated that Mr. C. Edmonds Allen shall prove the following facts:-

(a) That, he will prove that e-mail ID <evaherzigova@gmail.com> was used by Abhishek Verma and through the said e-mail ID Abhishek Verma transmitted to him the forged letter of Ex-Minister of State Shri Ajay Maken and that Abhishek Verma also informed him about deal with ZTE, China and also informed him that ZTE had received notice from GOI

regarding sending all Chinese engineers back to China due to Visa problem. He will also proved mail ID mr.abhishekverma@gmail.com was used by Abhishek Verma. Through the said e-mail Abhishek Verma has sent an e-mail to Sachin Kumar regarding changing the name of the company from Ganton Consultancy Private Limited to Ganton India Private Limited.

(b) That e-mail ID gan.yong@zte.com.cn was used by Mr. Gan Yong of ZTE Telecom. Abhishek Verma through his e-mail ID i.e. Mr.abhishekverma@gmail.com has sent an e-mail to Mr. Gan Yong, regarding arranged a meeting between ZTE officials and Jagdish Tytler (A-2) said mail was seized by ED.

(c) That, he will prove Certificate u/s 65B of Indian Evidence Act provided by him to Enforcement Directorate. He will also prove that M/s. Ganton India Pvt, Ltd. has been formed by Abhishek Verma. He will also proved that M/s. Ganton Limited, USA is owned by Abhishek Verma.

20. The plea of the respondents that this witness cannot be summoned merely because his statement under Section 161 Cr.P.C. has not been recorded is liable to be rejected. It is a settled proposition of law that the best available evidence should be brought before the Court to prove a fact or a point in an issue. In no circumstances, the parties can be deprived of producing such evidence. It has also repeatedly been held by the Courts that

a trial is not a battle of wits and the ultimate quest of the Courts is to reach justice. It is a settled proposition that the courts should be magnanimous even in permitting mistakes to be cured on facts and circumstances of the case.

21. The object of Section 311 Cr.P.C is that there may not be a failure of justice on account of the mistake of either party in bringing the valuable evidence on record or leaving ambiguity in the statements of the witnesses examined from either side. A bare reading of Section 311 would show that this section vests in the courts the power to summon any person as a witness or to recall and reexamine any witness at any stage of the inquiry, trial, or other proceedings under the code if his evidence appears to be essential for the just decision of the case. It will not be an improper exercise of the powers of the court under section 311 Cr.P.C. to summon a witness merely because the evidence supports the case of the prosecution and not that of the accused. It is, however, to be borne in mind that whereas the section confers a very wide power on the court on summoning witnesses, the discretion conferred is to be exercised judiciously, for strong and valid reasons with caution and circumspection to meet the ends of justice. The function of the criminal court is to administer justice and not to evaluate the parties on the basis of their performance.

22. The scope of Section 311 Cr.P.C. has been discussed by the Hon'ble Supreme Court in ***UT of Dadar and Nagar Haveli and Anr. Vs. Fatehsinh Mohansinh Chauhan***:. (2006) 7 SCC 529, wherein it has been *inter alia* held as under:-

“13. In Mohanlal Shamji Soni v. Union of India it was observed

that: (SCC p. 277, para 10)

"10. it is a cardinal rule in the law of evidence that the best available evidence should be brought before the Court to prove a fact or the points in issue. But it is left either for the prosecution or for the defence to establish its respective case by adducing the best available evidence and the Court is not empowered under the provisions of the Code to compel either the prosecution or the defence to examine any particular witness or witnesses on their sides."

It is the duty of a Court not only to do justice but also to ensure that justice is being done. It was further held that the second part of the Section does not allow for any discretion but it binds and compels the Court to take any of the aforementioned two steps if the fresh evidence to be obtained is essential to the just decision of the case. It was emphasized that power is circumscribed by the principle that underlines Section 311 Cr.P.C., namely, evidence to be obtained should appear to the court essential to a just decision of the case by getting at the truth by all lawful means. Further, that the power must be used judicially and not capriciously or arbitrarily. It was further observed that evidence should not be received as a disguise for a retrial or to change the nature of the case against either of the parties and the discretion of the Court must obviously be dictated by exigency of the situation and fair play and good sense appear to be the safe guides and that only the requirement of justice command the examination of any person which would depend on the facts and circumstances of each case."

In ***UT of Dadar and Nagar Haveli and Anr.*** case it was further *inter-alia* held:

"Finally, it was held that the proposition that the Court cannot exercise power of re-summoning any witness if once that power was exercised, cannot be accepted nor can the power be whittled down merely on the ground that the prosecution discovered laches only when the defence highlighted them during arguments. Similar view has been taken in P. Chhaganlal Daga v. M. Sanjay Shaw

where permission granted by the Court to a complainant to produce additional material after evidence had been closed and case was posted for judgment was upheld repelling the contention that production of the document at that belated stage would amount to filling in a lacuna.

15. A conspectus of authorities referred to above would show that the principle is well settled that the exercise of power under Section 311 Cr.P.C. should be resorted to only with the object of finding out the truth or obtaining proper proof of such facts which lead to a just and correct decision of the case, this being the primary duty of a criminal court. Calling a witness or re-examining a witness already examined for the purpose of finding out the truth in order to enable the Court to arrive at a just decision of the case cannot be dubbed as "filling in a lacuna in prosecution case" unless the facts and circumstances of the case make it apparent that the exercise of power by the Court would result in causing serious prejudice to the accused resulting in miscarriage of justice."

23. Further, the Supreme Court in the case of ***Varsha Garg v The State of Madhya Pradesh & Ors, Criminal Appeal No. 1021 of 2022*** has also *inter-alia* held as under:

"32 The power of the court is not constrained by the closure of evidence. Therefore, it is amply clear from the above discussion that the broad powers under Section 311 are to be governed by the requirement of justice. The power must be exercised wherever the court finds that any evidence is essential for the just decision of the case. The statutory provision goes to emphasise that the court is not a hapless bystander in the derailment of justice. Quite to the contrary, the court has a vital role to discharge in ensuring that the cause of discovering truth as an aid in the realization of justice is manifest." From the above discussion, it can be summed up that there is no impediment on a criminal court to summon any person as a witness or recall and re-examine any such person while exercising the powers conferred under Section 311 Cr.P.C even if

his statement under Section 161 Cr.P.C. has not been recorded. However, such jurisdiction of the court must obviously be dictated by the exigency of the situation. If the evidence proposed to be adduced, appears to be essential to render a just decision in the case, the witness can be examined and the plea can be rejected only if there is material on record that such a witness has been planted in the garb of an additional witness only to support the prosecution case. The Court has to be cautious that such evidence should not be received as a disguise for retrial or to change the nature of the case against either of the parties.”

24. In respect of the recording of evidence through VC, the Supreme Court in ***Manju Devi vs. State of Rajasthan***: (2019) 06 SCC 203 has inter alia held as under:-

“14.2 The aforesaid relevant submissions of the appellant have also been ignored by the Trial Court as also by the High Court. For the purpose of dealing with such a prayer of the appellant the Trial Court could have, rather ought to have, taken guidance from the decisions of this Court including that in State of Maharashtra v. Praful B. Desai where this Court approved of the process of recording the evidence of a witness in the criminal trial through videoconferencing when the witness was found residing/situate in the United States of America but whose evidence was essential for the case set up by the prosecution. This Court observed, inter alia, as under: (SCC p.613, para 20)

"20. Recording the evidence by video-conferencing also satisfies the object of providing, in Section 273, that evidence be recorded in the presence of the Accused. The Accused and his pleader can see the witness as clearly as if the witness was actually sitting before them. In fact the Accused may be able to see the witness better than he may have been able to if he was sitting in the dock in a crowded Court room. They can observe his or her demeanour. In fact the facility to play back would enable better observation of demeanour. They can hear and rehear the deposition of the witness. The Accused would

be able to instruct his pleader immediately and thus cross-examination of the witness is as effective if not better. The facility of play back would give an added advantage whilst cross-examining the witness. The witness can be confronted with documents or other material or statement in the same manner as if he/she was in Court. All these objects would be fully met when evidence is recorded by videoconferencing. Thus no prejudice, of whatsoever nature, is caused to the accused. Of course, as set out hereinafter, evidence by videoconferencing has to be on some conditions."

14.3 Thereafter, with reference to Sections 284 and 285 CrPC, this Court further observed that:(Praful B. Desai case, SCC pp. 614-15, para 22)

"22. Thus in cases where the witness is necessary for the ends of justice and the attendance of such witness cannot be procured without an amount of delay, expense or inconvenience which, under the circumstances of the case would be unreasonable, the Court may dispense with such attendance and issue a commission for examination of the witness. Normally a commission would involve recording evidence at the place where the witness is. However advancement in science and technology has now made it possible to record such evidence by way of videoconferencing in the town/city where the court is. Thus in cases where the attendance of a witness cannot be procured without an amount of delay, expense or inconvenience the court could consider issuing a commission to record the evidence by way of videoconferencing."

25. It is also true that the Rule 5.3.11 of the Video Conferencing Rules by the High Court of Delhi, New Delhi provides that consent of the accused be obtained before the examination of a witness via video conference. However, this court is conferred with the power to relax the requirements of

any rule vide Rule 18 of Video Conferencing Rules by the High Court of Delhi, New Delhi. Rule 18 of Video Conferencing Rules No.325/Rules/DHC dated 1.6.2020 reads as under:-

“18. Power to Relax

The High Court may if satisfied that the operation of any Rule is causing undue hardship, by order dispense with or relax the requirements of that Rule to such extent and subject to such conditions, as may be stipulated to deal with the case in a just and equitable manner.”

26. In the present case, the allegations include that of the forgery of a letter of the then Minister and thus are quite serious in nature. It is correct that this witness had not appeared before the Court despite having opportunities been given. There may also be a possibility that there might be some lethargy on the part of the prosecution but it is the duty of the Court to ensure that justice should be done and a criminal trial should conclude with the desired objective of the quest for justice. Suppose this witness is not examined, the Court or this case shall always be deprived of some material facts which could have been produced.

27. I consider that the learned Spl. Judge (PC Act), CBI took a hyper-technical view and thus the order is liable to be set aside. However, at the same time, this Court is conscious of the time limit set up by the Hon'ble Supreme Court which has to be respected without any fail in letter and spirit.

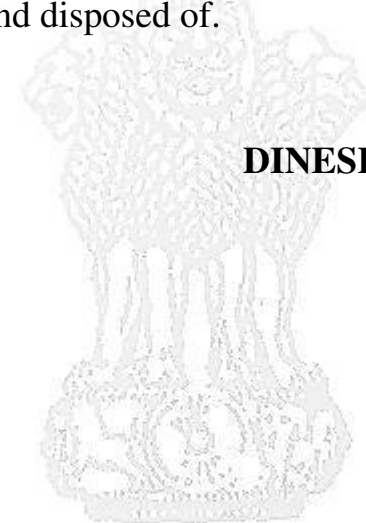
28. Taking into account the timeline set up by the Supreme Court, which shall expire in the middle of April, the CBI is directed to examine PW C. Edmonds Allen through video conferencing on the date set up by the learned Trial Court. CBI shall not be given more than two opportunities for

examining this witness. If the witness fails to appear on these two dates or CBI fails to examine (except for some technical reason), the right to his examination shall automatically stand closed. The learned Trial Court shall also give an opportunity to the defence for the statement of the accused and the defence witnesses, if any, on a day-to-day basis. The Learned Trial Court may fix a schedule accordingly to ensure that the trial is completed within the time frame given by the Hon'ble Supreme Court.

29. In view of the above, the present petition along with the pending applications are allowed and disposed of.

DINESH KUMAR SHARMA, J

FEBRUARY 08, 2023
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