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

Date of Decision: 01.02.2023

+ W.P.(CRL) 1582/2021, CRL.M.A. 13299/2021

SHRI KISHAN LAL AGARWAL Petitioner

Through: Mr. Vivek Jain, Adv.

versus

CENTRAL BUREAU OF INVESTIGATION Respondent

Through: Ms. Anubha Bhardwaj, SPP CBI

CORAM:

HON'BLE MR. JUSTICE JASMEET SINGH

JASMEET SINGH, J (ORAL)

1. This is a petition seeking to set aside/quash the impugned order dated 04.08.2021 passed by the learned Special Judge, PC Act, CBI -07, RADDC, New Delhi in CC No. 01/2019 (new)/C.C. No. 26/02 (old) titled '*CBI vs. V.S. Jafa & Ors.*'
2. In the present case, FIR was registered in the year 1997. Subsequently, the chargesheet was filed.
3. On 01.10.2014, the Special Judge allowed two applications of the CBI dated 18.09.2013 and 23.10.2013 for filing additional relevant documents. The said documents were filed by CBI.
4. On 08.03.2018, another application was filed by Mr. Rao for and on behalf of CBI for taking on record the original seizure memo/letters.

5. Thereafter, on 27.07.2018, the Special Judge has held
“This case is now the oldest case pending in the court of undersigned. Numerous opportunities have already been given to the prosecution to procure the attendance of witnesses. Therefore, prosecution evidence is hereby directed to be closed.”
6. On 31.03.2021, the parties were directed to file brief written arguments.
7. The petitioner herein i.e., accused No. 4 filed his written arguments on 13.04.2021 and in paras 17 to 27 categorically raised an argument that there is no document on record which shows the forgery committed by the petitioner.
8. It was stated in the written submissions that the prosecution has failed to examine any witness or place any document which proves the signatures of the petitioner.
9. After filing of the said written submissions, the application in question has been filed dated 19.07.2021 seeking permission to submit original file/documents with respect to accused No. 4.
10. In the impugned application paras 2, 3 and 4 read as under:
“2. That during the final argument, it was found that specimen handwritings/signatures from S-1 to S-37 of accused Sh. Kishan Lal Agarwal and witnesses Sh. Ratan Lal, Sh. Deben Mech & Sh. Madan Sharma, could not be mentioned in the List of Documents annexed with the Charge-Sheet inadvertently, which are relevant in the case as the same are lying with the Malkhana. CFSL, Delhi report qua the above handwriting/signatures has been admitted by the accused persons during trial.
3. That the names of the following independent witnesses in

whose presence the aforesaid specimen handwritings/signatures were taken, are also not mentioned in the cited list of witnesses, inadvertently.

Sl. No.	Name of witness	Present address
1.	Sh. Bhuban Chandra Tahbildar	New chachal, Rupkonwar Path, House No. 19, PO Khanapara, P.S. Dispur, Guwahati-781022. Mobile No. 708649104 7
2.	Smt. Prabha Choudhary	OM Residency, 2-D Shantiban Path, Hatigaon, Guwahati, Assam-781038, Mobile No. 9435553851

However, the examination of the aforesaid relevant witnesses as Prosecution Witness is necessary to prove the specimen handwritings/signatures of accused Kishan Lal Aggarwal and witnesses Ratan Lal, Sh. Deben Mech and Sh. Madan Sharma.

4. That the specimen handwriting/signatures of Sh. Ratan Lal and Sh. Madan Sharma were taken by Sh. R. A. Yadav IO. The specimen handwriting/signatures of accused Sh. Kishan Lal Agarwal was obtained by Sh. v. K. Sharma, Dy. Supdt. of Police, CBI (ACU-VI), New Delhi in the presence of independent witness Sh. Pramod Kumar Saxena. Since, both Sh. V. K. Sharma and witness Sh. Pramod Kumar Saxena are expired. Examination of Sh. R. A. Yadav, Addl. Supdt., IO of the instant case is required to prove the signatures of Sh. V. K. Sharma, Dy. Supdt. of Police, part IO of the case.”

11. In the impugned order, the learned Special Judge was pleased to allow the application of the applicant, CBI and permitted CBI to recall witnesses as well as produce additional documents.
12. The Special Court, while allowing the application observed as under:-

“Though the investigation Agency should have been vigilant and should have filed all the original seizure memos/letters along with challan, keeping in mind that photo copies of these memos/search memos/seizure memos are already on record, I hereby allow the application. Such original memos are taken on record.”

13. Mr. Jain, learned counsel states that in the present case, the application filed by CBI at the stage of final arguments, is an abuse of the process of law and has only been filed to fill in the lacunae raised by the petitioner herein in his written submissions.

14. Mr. Jain, at the outset has restricted his arguments only to the aspect of permitting the CBI to file additional documents and relies on

a) Md. Ghouseuddin Vs. Syed Riazul Hussain & Anr. Criminal Appeal No. 585 OF 2021

15. Per contra, Ms. Bhardwaj, learned standing counsel for CBI states that in the present case, the CFSL report was filed on record and duly proved. But some of the documents due to inadvertence and bona fide error were left out which is sought to be filed by virtue of this petition.

16. The documents are relevant for arriving at a just decision of the case and no prejudice would be caused as the accused will have a right to cross-examine the witnesses produced by the prosecution.

17. Ms. Bhardwaj relies on the following judgments:

a) Varsha Garg vs. State of Madhya Pradesh & Ors

b) Rajendra Prasad vs. Narcotic Cell through its officer in charge Delhi'
(1999) 6 SCC 110

Analysis

18. I have heard learned counsel for the parties.

19. A bare perusal of the narration of facts above shows that the case pending before the Special Judge is the oldest case pending before the judge.

20. In the present case, 3 applications were filed by the respondent in a piecemeal fashion and all the 3 applications were allowed by the Special Judge and additional documents filed by the respondent were taken on record.

21. The CBI has filed numerous applications for placing additional documents on record. It seems that due indulgence has also been shown to permit filing of the additional documents.

22. The impugned application for filing the additional documents is now the latest one, predicated on the written arguments filed by the petitioner.

23. The Special Judge in the impugned order has exercised his jurisdiction u/s 311 of the Cr.P.C. Section 311 of the Cr.P.C. permits the Special Judge to bring additional witnesses but does not permit filing of additional documents.

24. The Hon'ble Supreme Court in ***Md. Ghouseuddin Vs. Syed Riazul Hussain & Anr.*** Criminal Appeal No. 585 OF 2021, while declining to summon the documents under Section 311 Cr.P.C. held as under:

“Having heard learned counsel for the parties and going through the record, we are of the considered opinion that even if the question as to the jurisdiction of the High Court need not be over-emphasized, the fact remains that the Trial Court had given sound and tangible reasons for rejecting the application for summoning of the document(s) - moved at such a belated stage and without any justification for such relief. The High Court has completely glossed over this aspect in the impugned judgment. The right to summon document(s), indeed, is available but that has to be exercised when

the trial is in progress and not when the trial is completed, including after the statement of accused under Section 313 of Criminal Procedure Code had been recorded. The efficacy of the trial cannot be whittled down by such belated application.

Accordingly, this appeal succeeds and the impugned judgment and order passed by the High Court is set aside and the order of the Trial Court is restored, rejecting the application for summoning the document(s). ”

(Emphasis supplied).

25. I am of the considered view that the reliance placed by Ms. Bhardwaj in ‘*Varsha Garg vs. State of Madhya Pradesh & Ors.*’ 2022 SCC OnLine SC 986 is misplaced as in the said case the FIR was pertaining to Section 302 read with Section 34 IPC. The Hon’ble Supreme Court was of the view that Section 311 Cr.P.C. empowers the Trial Court to summon witnesses at a belated stage. There is no finding that the Trial Court can permit filing of additional documents and that too to fill the lacunae pointed out in the written arguments filed by the petitioner.

26. Another decision of Hon’ble Supreme Court relied upon by Ms. Bhardwaj is ‘*Rajendra Prasad vs. Narcotic Cell through its officer in charge Delhi*’ (1999) 6 SCC 110, and more particularly para 8 which reads as under:

“ 8. Lacuna in the prosecution must be understood as the inherent weakness or a latent wedge in the matrix of the prosecution case. The advantage of it should normally go to the accused in the trial of the case; but an oversight in the management of the prosecution cannot be treated as irreparable lacuna. No party in a trial can be foreclosed from correcting errors. If proper evidence was not adduced or a relevant

material was not brought on record due to any inadvertence, the court should be magnanimous in permitting such mistakes to be rectified. After all, function of the criminal court is administration of criminal justice and not to count errors committed by the parties or to find out and declare who among the parties performed better.”

27. In the said judgment as well, the Hon’ble Supreme Court was again dealing with an application seeking summoning of a witness u/s 311 Cr.P.C.

28. As is clear from the above, that Section 311 CrPC, which although provides a wide power to the Court has to be exercised with great caution and circumspection keeping the efficacy of trial in mind.

29. As already noted in the present case, the respondent is seeking placing of documents on record which, as per the petitioner, was a material omission and only after filing the written submissions, was taken note of by the respondent.

30. It is a settled law that filing of additional documents is a concession which needs to be exercised sparingly. I am of the opinion that while filing of documents, the party has to be conscious of the legal procedure and must take adequate and due care to file all documents which are relevant and germane to the issue in controversy and will prove the case of the respondent. The FIR is of the year 1997 and more than 26 years have elapsed.

31. The Supreme Court in ***State of U.P. v. Amar Nath Yadav, (2014) 2 SCC 422***

“2. This Court in Postmaster General v. Living Media India Ltd. [(2012) 3 SCC 563 : (2012) 2 SCC (Civ) 327 : (2012) 2 SCC (Cri) 580 : (2012) 1 SCC (L&S) 649] has deprecated such practices

on the part of the government authorities/departments in the following words: (SCC pp. 573-74, paras 27-30)

*“27. It is not in dispute that the person(s) concerned were well aware or conversant with the issues involved including the prescribed period of limitation for taking up the matter by way of filing a special leave petition in this Court. **They cannot claim that they have a separate period of limitation when the Department was possessed with competent persons familiar with court proceedings. In the absence of plausible and acceptable explanation, we are posing a question why the delay is to be condoned mechanically merely because the Government or a wing of the Government is a party before us.***

*28. Though we are conscious of the fact that **in a matter of condonation of delay when there was no gross negligence or deliberate inaction or lack of bona fides, a liberal concession has to be adopted to advance substantial justice, we are of the view that in the facts and circumstances, the Department cannot take advantage of various earlier decisions.** The claim on account of impersonal machinery and inherited bureaucratic methodology of making several notes cannot be accepted in view of the modern technologies being used and available. **The law of limitation undoubtedly binds everybody, including the Government.***

*29. In our view, it is the right time to inform all the government bodies, their agencies and instrumentalities that unless they have reasonable and acceptable explanation for the delay and there was bona fide effort, there is no need to accept the usual explanation that the file was kept pending for several months/years due to considerable degree of procedural red tape in the process. **The government departments are under a special obligation to ensure that they perform their duties with diligence and commitment. Condonation of delay is an exception and should not be used as an anticipated benefit for the government departments.** The law shelters everyone under the same light and should not be swirled for the benefit of a few.*

30. Considering the fact that there was no proper explanation offered by the Department for the delay except mentioning of various dates, according to us, the Department has miserably failed to give any

acceptable and cogent reasons sufficient to condone such a huge delay. Accordingly, the appeals are liable to be dismissed on the ground of delay.”

32. In the present case, 3 applications for filing additional documents on oversight and inadvertence were already allowed. In spite of this, neither the CBI nor the person-in-charge has filed any explanation for not filing the documents in question within the prescribed period or with the 3 subsequent applications. The application in question was filed by the Investigating Agency/ Authority on 19-07-2021 i.e., after completion of the Prosecution evidence, after completion of statement of Accused persons under 313 Cr.P.C. and completion of entire Defence Evidence and thereafter at the time when the Final Arguments in the matter were to be heard by the Hon'ble Court and moreover when the petitioner herein had already filed his Written Arguments along with various Judgments before this Hon'ble Court on 14-04-2021, in which the petitioner had taken various arguments and cited legal precedents in his favour qua his innocence. In the written submissions, the petitioner has clearly highlighted the absence of evidence and proof of documents and more particularly the CFSL report. After filing of the written submissions, the respondent seems to have become wiser and has filed the impugned application on 19.07.2021 to fill up the lacunae left in the evidence of the respondent.

33. The fact that three earlier applications were filed and were allowed but despite the same, the respondent neither showed any diligence nor any care to file the documents and lead evidence in this regard.

34. Though in the impugned application, it was stated by the Department that the delay was due to oversight and inadvertence, the fact remains that

the person/persons concerned have shown lack of diligence in prosecuting the matter.

35. Moreover, I am of the opinion that the words ‘inadvertence’ and ‘oversight’ have been used very casually by the respondent in their application. The respondent has failed to show any bonafides that it took expeditious action in filing those documents. Merely using the words ‘inadvertence’ and ‘oversight’ cannot mean that each and every delay ought to be overlooked by a Court. Since the respondent has failed to offer any explanation and failed to show due diligence in ensuring all relevant documents are placed on record, this negligence cannot be termed as mere ‘oversight’ or ‘inadvertence’.

36. This court cannot allow the respondent to shadow their lapses, fill the lacunae and further delay the present matter which is at the stage of final arguments by the way of this application.

37. For the aforesaid reasons, the impugned order dated 04.08.2021 passed by learned Special Judge, PC Act, CBI -07, RADDC, New Delhi in CC No. 01/2019 (new)/C.C. No. 26/02 (old) titled ‘*CBI vs. V.S. Jafa & Ors.*’ is unsustainable in law and is hereby quashed.

38. Since the matter is now at the stage of final arguments and is one of the oldest cases, it is expected that Trial Court shall conclude hearing of the case at the earliest, preferably 6 months from today.

39. With these observations, the petition is disposed of.

JASMEET SINGH, J

FEBRUARY 1, 2023/dm

[Click here to check corrigendum, if any](#)