



\$~16

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

% Judgment delivered on: 10.07.2023

+ CRL.M.C. 4058/2017

CENTRAL BUREAU OF INVESTIGATION Petitioners
versus

KUNDAN SINGH & ORS Respondents

Advocates who appeared in this case:

For the Petitioner : Mr. Rajesh Kumar, SPP with Ms. Mishika Pandita, Advocate
versus

For the Respondent : Mr. Sulaiman Mohd. Khan, Ms. Taiba Khan, Mr. Bhanu Malhotra, Mr. Akash Bhushan and Mr. Gopeshwar Singh Chandel, Advocates

CORAM:

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

JUDGMENT

TUSHAR RAO GEDELA, J. (ORAL)

[The proceeding has been conducted through Hybrid mode]

1. This is a petition under Section 482 Code of Criminal Procedure, 1973 (For Short 'Cr.P.C.') filed on behalf of the petitioner / CBI assailing the order dated 24.03.2017 passed by the learned CMM (Central), Delhi dismissing the application under Section 311 Cr.P.C. seeking recall of PW4 Subedar Singh and PW7 V. K. Verma who are already examined and discharged by the learned Trial Court.

2. Mr. Kumar, learned counsel appearing for the petitioner submits that the recall of the aforesaid witnesses is necessary to prove the certain signatures and handwriting of one Daya Ram at document No. 16 and since the said Daya Ram has since expired, signature and handwriting



could not have been proved except by recalling the aforesaid witnesses.

3. Learned counsel appearing for the petitioner submits that the learned Trial Court has proceeded on the basis that the prosecution is intending to fill up its lacuna by recalling the aforesaid witnesses for the purposes of filling up any gap which has crept in when the examination of such witnesses were being conducted.

4. Mr. Kumar, learned counsel appearing for the petitioner submits that the prosecution relies upon the judgment of Hon'ble Supreme Court in ***U.T. of Dadra & Nagar Haveli & Anr. Vs. Fatehsinh Mohansinh Chauhan*** reported as (2006) 7 SCC 529, particularly to para 15 of the said judgment which is as under:-

“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.”

5. Mr. Khan, learned counsel appearing for the respondent supports the reasoning given by the learned Trial Court in its impugned order dated 24.03.2017 and submits that the judgment cited and relied upon by learned counsel appearing for the petitioner can be distinguished on facts and therefore, the same does not form a precedent for the purposes



of allowing the present petition.

6. This Court has considered the rival submission of the parties as also perused the impugned order.

7. So far as the submissions of Mr. Kumar is concerned, it will not be left to the vagaries of nature to decide as to whether the handwriting and signature of late Daya Ram and Hansraj can be proved in accordance with law or not for the reason that if there is a document or any other material which is available with the prosecution and which can be proved in accordance with law by virtue of other witnesses, the same can be granted. This is for the reason that the examination of such witnesses or re-examination of such witnesses, obviously would follow up with the right to cross examination by the respondent such right being an indelible part of Article 21 of the Constitution of India.

8. Based on the aforesaid, this Court is of the opinion that no substantial prejudice would be caused to the respondent, in case the petitioner is permitted to recall and examine PW4 Subedar Singh and PW7 V. K. Verma.

9. The learned Trial Court is directed to record the examination of aforesaid persons and permit the petitioner to conduct the examination of the same. Needless to state that the permission / opportunity to cross examine and rebut would obviously be provided to the respondent.

10. The petition is allowed and disposed of with the directions to the learned Trial Court to expeditiously conduct the examination of PW4 & PW7.

TUSHAR RAO GEDELA, J .

JULY 10, 2023/ms