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* IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision: 18.03.2024

+ CRL.M.C. 2163/2024
AJAY SINGHANIA

..... Petitioner

Through: Mr.Ramesh Gupta, Sr.Advocate with
Mr.Harsh K.Sharma, Ms.Vaibhavi
Sharma, Mr.Lakshaya Parashar,
Ms.Bhumika Yadav, Mr.Rishabh
Sharma and Mr.Arjeet Benjamin,
Advocates

versus

CENTRAL BUREAU OF INVESTIGATION Respondent

Through: Mr.Mridul Jain, SPP for CBI with
Insp./AC-III/CBI, Jaibeer Singh,

+ CRL.M.C. 2173/2024
RAM BHAROSE GOEL

..... Petitioner

Through: Mr.Ramesh Gupta, Sr.Advocate with
Mr.Harsh K.Sharma, Ms.Vaibhavi
Sharma, Mr.Lakshaya Parashar,
Ms.Bhumika Yadav, Mr.Rishabh
Sharma and Mr.Arjeet Benjamin,
Advocates

versus

CENTRAL BUREAU OF INVESTIGATION Respondent

Through: Mr.Mridul Jain, SPP for CBI with
Insp./AC-III/CBI Jaibeer Singh

CORAM:

HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA

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J U D G M E N T

ANOOP KUMAR MENDIRATTA, J (ORAL)

CRL.M.A. No. 8400/2024 in CRL.M.C. 2163/2024

CRL.M.A. No. 8427/2024 in CRL.M.C. 2173/2024



Exemption allowed, subject to just exceptions.

Applications stand disposed of.

CRL.M.C. 2163/2024 & CRL.M.A. 8399/2024

CRL.M.C. 2173/2024 & CRL.M.A. 8426/2024

1. Two separate petitions under Section 482 of the Code of Criminal Procedure, 1973 ('Cr.P.C.') have been preferred on behalf of the petitioners for setting aside the entire set of questions i.e. question No.1 to 75 forming part of questionnaire handed over to the petitioners on 05.03.2024 by the learned trial court, Special Judge, CBI, PC Act, Rouse Avenue District Courts, New Delhi, to be answered by the them, for the purpose of recording their statement under Section 313 Cr.P.C. in RC No.2(A)/2011/CBI/AC-III/NEW DELHI and CC No.95/2019, titled as 'CBI v. Rajinder Singh Rana (since deceased) & Ors.'.
2. Issue notice. Learned SPP for the CBI appears on advance notice and accepts notice.
3. The petitioners in the present case are facing trial for the offences under Sections 7/12/13(2) read with Section 13(1)(d) of PC Act, 1988 wherein the evidence of 76 witnesses has been concluded. In brief, as per the case of the petitioners, after the statements of 76 witnesses (cited on behalf of CBI), has been recorded, a questionnaire consisting of 79 questions has been handed over to the petitioners, by the learned trial court for seeking the response of the petitioners. The grievance of the petitioners is that the aforesaid questionnaire is a bare reproduction of the examination-in-chief of the witnesses excluding the cross-examination. It is urged that instead of putting each incriminating piece of evidence separately the questions have been framed in a complex manner by mere reproduction of entire testimony



of the witness. A copy of the aforesaid questionnaire handed over to the petitioners on 05.03.2024 has also been annexed with the petition. Learned counsel for the petitioners points out that the entire questionnaire misses the essence and purpose of Section 313 Cr.P.C. The questions are further stated to be ambiguous and do not clarify as to which portion of the deposition of the respective prosecution witness is an incriminating fact, which the petitioner is required to answer.

4. Learned SPP for CBI, after perusal of the questionnaire handed over by the learned trial court to the petitioners submits that appropriate directions may be issued to the learned Trial Court considering the facts and circumstances of the case as well as the objective of statement under Section 313 Cr.P.C.

5. The object of recording of statement under Section 313 Cr.P.C. is to enable the accused to explain any circumstances appearing against him in evidence. The same is based on cardinal principle of natural justice i.e. *audi alteram partem* and the purpose is to ensure that the accused gets an opportunity to put an explanation to the incriminating circumstances on record which may be considered against him. The trial court needs to ensure that there may not be any material omission or inadequate questioning, which may prejudice the accused. It is also well settled that the statement under Section 313 Cr.P.C. is not on oath and does not qualify as a piece of evidence under Section 3 of the Indian Evidence Act but the inculpatory aspect borne from the statement, may be used to lend credence to the case of prosecution. The circumstances which are not put to the accused while recording the statement may have to be excluded from consideration, if no opportunity is afforded to accused, to explain the same.



6. It may also be noticed that considering the salutary purpose of recording of statement under Section 313 Cr.P.C., Sub-section (5) of Section 313 Cr.P.C. was added by way of amendment thereby enabling the Court to take the assistance of the Public Prosecutor and Defence Counsel in preparing relevant questions which are to be put to the accused and the Court may permit the filing of written statement by the accused as sufficient compliance of the section. The very purpose of the amendment was that the recording of statement under Section 313 Cr.P.C. does not remain ritualistic but in its true objective, the questions are put up in order to enable the accused to explain the incriminating circumstances appearing against him in evidence.

7. The principles laid down in **Dwarkanath Varma v. Emperor**, AIR 1933 PC 124, may also be beneficially reiterated:

“If a point in the evidence is considered important against the accused and the conviction is intended to be based upon it, then it is right and proper that the accused should be questioned about the matter and be given an opportunity of explaining it if he so desires. This is an important and salutary provision and I cannot permit it to be slurred over. I regret to find that in many cases scant attention is paid to it, particularly in the Sessions Courts. But whether the matter arises in the Sessions Court or in that of the Committing Magistrate, it is important that the provisions of Section 342 should be fairly and faithfully observed.

Section 342 requires the accused to be examined for the purpose of enabling him “to explain any circumstances appearing in the evidence against him Now it is evident that when the Sessions Court is required to make the examination under this section, the evidence referred to is the evidence in the Sessions Court and the circumstances which appear against the accused in that court. It is not therefore enough to read over the questions and answers put in the Committing Magistrate's Court and ask the



accused whether he has anything to say about them. In the present case, there was not even that. The appellant was not asked to explain the circumstances appearing in the evidence against him but was asked whether the statements made before the Committing Magistrate and his answers given there were correctly recorded. That does not comply with the requirements of the section.”

8. In order to appreciate, the contentions made on behalf of the petitioners, proposed question No. 3 may be reproduced in verbatim:

*“Quest 3: It is in evidence against you and your co-accused persons that **PW3 Shri Rajeev Sabharwal** has deposed that since the last 15 years, he is in the mobile trade business and in the year 2010-11, he was running a proprietorship firm in the name of M/s R.V. Enterprises, which firm was brought into existence around the year 2005-2006 and the registered address of his above firm was M-35, West Patel Nagar, New Delhi, and apart from this address, this firm was also being run from shop no. 273, Palika Bazar, Connaught Place, New Delhi. He has deposed that one other firm Mod Electronics was also being run from this shop and this firm belonged to the owner of the said shop named Shakeel Ahmad. He has deposed that he was maintaining proper records in respect of purchase of mobile phones by him in the of his above firm from different companies and also with regard to the sale of these mobile sets to different customers. He has deposed that in the year 2011, he was called by the CBI in their office in connection with investigation of some case and they had provided him IMEI no. of one mobile handset of make Black Berry and sought the purchase & sale records pertaining to the said mobile handset, which he produced before them. Thereafter document D68, which is a tax invoice dated 22.03.2010 of M/s Vision Distribution Pvt. Ltd. regarding sale of two mobile handsets of Black Berry having IMEI nos. 35629703 3243 728 and 3562 9703 3243 801 to M/s R.V. Enterprises Mark PW3/I was shown to him and he has deposed that vide the above tax invoice, the above two mobile handsets of Black Berry were purchased by him from M/s Vision Distribution Pvt. Ltd. for a total amount of Rs.58353.00.*



He was shown document D67, which is bill book containing carbon copies of bills no. 51 to 100 of M/s R.V. Enterprises, including carbon copy of one invoice/bill no. 058 dated 15.04.2010 regarding the sale of one mobile handset of Black Berry having IMEI no. 3562 9703 3243 801 on cash payment of Rs.29,500/-, but the name of the purchaser of the said handset is not written in the cash Memo and he has deposed that vide the invoice/bill, he had sold the above mobile handset having the above IMEI no. 3562 9703 3243 801 to some unknown customer, to whom he cannot identify. He has identified the above bill book and the carbon copy of the above invoice /bill no. 058 as belonging to their above firm and issued from their above shop in Palika Bazar, but he has deposed that the above bill has been issued in the handwriting of his brother Arun Sabharwal, who also used to sit on the above shop with him. He also identified the bill i.e. Ex. PW3/A. He has deposed that the original bill/cash Memo was given to the purchaser.

He identified Seizure Memo dated 27.05.11 i.e. Ex. PW3/B and deposed that vide Ex. PW3/B he had handed over the above documents to the CBI officials. He was shown one black colour mobile handset of make Black Berry having camera of 3.2 MP Auto Focus and he identified the same to be the same mobile handset which was sold vide the above invoice/bill no. 058 as the same IMEI no. 3562 9703 3243 801 is written on the slip pasted inside this handset. He has deposed that the mobile set can only be identified from the IMEI no. otherwise all the handsets of any particular model of a company will look similar. He identified the mobile phone i.e. Ex. PW3/C, along with cloth wrapper. He has deposed that after they had sold the above Black Berry handset bearing IMEI no. 3562 9703 3243 801 to some unknown customer, the said customer had never approached them with any complaint regarding the functioning of the said mobile handset or otherwise for the return thereof.

Thereafter during his cross-examination conducted by Ld. SPP for the CBI he state that two employees were working with him at the above shop and assisting the trading of mobile handsets and their names were Ajay Sharma and Sagar Chauhan. He has stated that they did not use to deliver the handsets sold by them at any address of a customer.



He has stated that his statement recorded by the CBI officials when he visited their office in connection with the above enquires. He has stated that he is graduate and can read and understand English language. He has stated that he had not stated to the CBI in his above statement that after about 1 or 2 months of the sale of the above mobile handset of Black Berry having IMEI no. 3562 9703 3243 801, the customer to whom the said handset was sold had returned the above handset as he was not satisfied with the said handset. He has stated that he had also not stated to the CBI in the above statement that then, he had resold the above handset to you accused Ajay Singhania of Rohtak in August- September, 2010 for Rs.25,000/- only in cash and got the handset delivered to Gulab Rewri (a sweet shop) at Pitam Pura, Delhi through Ajay Sharma, staff of his shop on your instructions over phone. What do you have to say?

Most of the other questions in the questionnaire have been similarly framed reproducing the entire testimony of the witness in a single question.

9. On the face of record, the framing of the questions as proposed by the learned trial court by putting the entire deposition of the witness in a single question is ambiguous and possibly no specific answer can be given by the accused/petitioners. The exercise appears to have been undertaken in a causal manner without separately putting out each piece of incriminating evidence. It may be virtually impossible for the accused to articulate his defence against such a question. The process of framing the questions in such a manner, in fact, impedes the process of arriving at a fair decision. The learned trial court for the purpose of examining the accused under Section 313 Cr.P.C. is to avoid springing together of several circumstances into a single question. The question is expected to be couched in a simple format which is comprehensible and possibly as far as feasible each material incriminating circumstances has to be separately put up. The mixing of the distinct facts and questions does not give a fair opportunity to the accused to



properly explain the circumstances appearing against him. It may not be feasible to exhaustively lay down the process of framing of the questions but it is imperative to put each incriminating piece of evidence separately to which the answer may be separately recorded. Reliance may also be placed upon *Kalpnaath Rai v. State*, AIR 1998 SC 201. It needs to be kept in perspective that failure to put the incriminating evidence to the accused or consider the accused's explanation of incriminating circumstances, in a given case, may vitiate the trial and/or endanger the conviction.

10. Considering the facts and circumstances, the proposed questionnaire handed over by the learned trial court to the petitioners/accused requires reconsideration by the learned trial court. Accordingly, it is directed that the learned trial court shall record the statement of accused under Section 313 Cr.P.C. by putting each piece of incriminating evidence separately and keeping in perspective the principles noticed above.

Petitions are accordingly disposed of. Pending applications, if any, also stand disposed of.

A copy of this order be forwarded to learned trial court for information and compliance. A copy of the same be also forwarded to Director, Delhi Judicial Academy for purpose of undertaking session of Judicial Officers of District Courts on recording of statement under Section 313 Cr.P.C.

A copy of this order be kept in connected petition.

ANOOP KUMAR MENDIRATTA
(JUDGE)

MARCH 18, 2024/v