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

+ **CRL.M.C. 3511/2023 & CRL.M.A. 13250/2023**

ASHOK CHIKARA

.....Petitioner

Through: Mr. Hitender Kapur, Advocate
(through VC).

versus

CENTRAL BUREAU OF INVESTIGATIONRespondent

Through: Mr. Rajesh Sharma, SPP with Ms.
Mishika Pandita and Mr. Mohd.
Changez Ali Khan, Advocates.

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+ **CRL.M.C. 3601/2023&CRL.M.A. 13668/2023**

ATUL VASHISHT

.....Petitioner

Through: Mr. Manjeet Godara, Advocate
(through VC).

versus

CBI THROUGH DIRECTORRespondent

Through: Mr. Rajesh Sharma, SPP with Ms.
Mishika Pandita and Mr. Mohd.
Changez Ali Khan, Advocates.

CORAM:

HON'BLE MR. JUSTICE AMIT SHARMA

ORDER

23.04.2025

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1. This hearing has been done through hybrid mode.
2. By way of the present petitions under Section 482 of the CrPC, the petitioners have challenged the order dated 04.05.2023 in C.C. No. 88/2019,

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RC No. DAI-2007-A-0051, CBI, ACB, New Delhi. Since both the petitions challenge the same order, they are being disposed of by the present common order. For the sake of reference, Ashok Chikara in **CRL.M.C. 3511/2023** is referred to as petitioner no. 1 and Atul Vashisht in **CRL.M.C. 3601/2023** is referred to as petitioner no. 2.

3. The facts relevant for the determination of the present petitions are as under: -

- a. An FIR bearing No. R.C.No.DAI-2007-A-0051 dated 06.12.2007 was registered by the Central Bureau of Investigation on a complaint of Inspector D.K. Thakur alleging that during the period of 2006-2007, one Mr. Sumer Chand Garg, Assistant Director, Slum Upgradation and Relocation and Atul Vashisht, LDC (petitioner no. 2) and Ashok Chikara, JE (petitioner no. 1) while being posted and functioning in the Slum & JJ Department of the Municipal Corporation of Delhi ('MCD'), entered into a criminal conspiracy amongst themselves and with Mr. Ashok Malhotra and Mr. Ashok Jain and others.
- b. In furtherance of the said conspiracy, it is alleged that fake and forged documents like ration cards and identity cards etc. were prepared and used in the name of fictitious persons for alleged allotment of plots under the resettlement scheme.
- c. It was further alleged that on the basis of the said documents, petitioner no. 1 along with other officials of MCD by abusing their official position and in conspiracy with others had cheated the MCD and dishonestly allotted the plots which were to be sold by the other co-accused persons in the open market at an exorbitant price. After the investigation was complete, chargesheet was filed on 22.12.2008 and

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the charges were framed against the accused persons *vide* order dated 30.08.2012 for the offences punishable under Section 120-B read with Sections 420/467/468/471 of the IPC and Section 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988.

- d. On 06.06.2019, the prosecution evidence stood closed and the statement of the accused was recorded on 05.11.2019. The matter after completion of defence evidence was listed for final arguments on 12.01.2021, and, thereafter, on 11.04.2023 an application was filed by CBI/respondent under Section 311 of the Cr.P.C. seeking recalling/re-examining of the witnesses.
- e. The said application was allowed by learned Special Judge (PC Act), (CBI), Rouse Avenue Courts Complex, New Delhi *vide* order dated 04.05.2023 which is impugned in the present petitions. By way of the aforesaid application under Section 311 of the CrPC, the CBI sought to recall Inspector A.K. Sharma (PW-43), and one additional witness who was not named in the list of the witnesses, namely, Mr. R.C. Goel who was posted as JE in the Development Division, Slum and JJ Department, MCD, Raja Garden, New Delhi. It was stated in the application, that the necessity of examining the aforesaid two witnesses was owing to the fact that the original allotment register which was seized from petitioner no. 1 during investigation of another FIR bearing RC No. 46(A)/2007 had been traced in the said FIR. It was stated in the said application that the certified copy of the said register was placed on record, however, owing to the fact that the original register has now been traced, the same was sought to be produced in evidence by way of the aforesaid two witnesses. It is stated that A.K. Sharma (PW-43) had

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seized the register and the other witness sought to be examined *i.e.*, Mr. R.C. Goel, was on account of the fact that the main witness with respect to the subject register being Sh. Dore Lal who was examined as PW-25 had since passed away and, therefore, Mr. R.C. Goel who had also made certain entries in the said register be allowed to be examined to prove the authorship of the other entries alleged to have been in the handwriting of petitioner no. 1, which he can identify.

4. Learned counsel appearing on behalf of the petitioners submits that CBI was well aware of the original allotment register and at the time of examination of PW-25, the photocopy of the said register was shown and CBI did not seek time to trace out the original register for putting it to the witnesses. It is further submitted that so far as the witness Mr. R.C. Goel is concerned, the said witness cannot be produced at this stage as he was not named in the list of witnesses and his statement under Section 161 of the CrPC. was not recorded at the time of the filing of the chargesheet.

5. In view of the above, it is submitted that Mr. R.C. Goel as a witness could only be done by way of a supplementary chargesheet and cannot be summoned under Section 311 of the CrPC. It is also submitted that the fact that the Investigating Officer himself reached out to the aforesaid Mr. R.C. Goel itself shows that the matter was further investigated.

6. *Per contra*, learned SPP for the CBI submits that the photocopy of the original allotment register was already part of the chargesheet and was exhibited during the course of the trial for which the learned counsel for the petitioners had taken objection to. It is submitted that the said register could not be traced out earlier and, therefore, the photocopies of the same were shown to the witnesses during the trial. It is further submitted that Inspector

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A.K. Sharma (PW-43), who was sought to be re-examined, was the seizing officer of the present register and, therefore, the same would be relevant for the decision of the case.

7. Similarly, it is pointed out that other witness who is sought to be examined is Mr. R.C. Goel who was then the JE and had made certain entries in the register and was also in a position to identify the hand-writing of petitioner no. 1.

8. Reliance is placed upon by the learned SPP for CBI on a judgement of a learned Coordinate Bench of this Court in ***Sonu v. Central Bureau of Investigation, 2025:DHC:971***, where in a similar situation, a challenge to an order allowing the application under Section 311 of the CrPC on behalf of the CBI was dismissed. In the said case, it is submitted that on an application moved by the CBI under Section 311 of the CrPC the learned Special Judge permitted at the stage of final arguments to place on record certain portions of screenshots which were omitted in the chargesheet earlier. In addition to introducing the said complete screenshots, the CBI had sought to call for examination of 4 witnesses which were necessary for the proper adjudication of the said case. The opposition taken by the petitioner in the aforesaid case was that such evidence could only be brought on record through further investigation under Section 173(8) of the CrPC. It is submitted after a detailed discussion on law, the learned Coordinate Bench had held that furnishing rectified or complete documents which were otherwise part of the chargesheet will not be considered as fresh evidence which would require compliance under Section 173(8) of the CrPC.

9. Heard the learned counsel for the parties and perused the records.

10. Admittedly, the photocopies of the allotment register, original of which

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was sought to be brought on record by way of an application under Section 311 of the CrPC was a part of the chargesheet and it is also a matter of record that the same was seized in RC No. 46(A)/2007. The photocopies of the said document when exhibited before the Court were objected to by learned counsel for the petitioners on the ground that the same were photocopies and not original documents.

11. The learned Special Judge while allowing the application of the CBI has observed and held as under: -

“13. As per chargesheet, it is all along the prosecution case that employees of Slum and J.J. Deptt. of MCD namely, accused Sumer Chand Garg (since deceased), Atul Vashishth. Ashok Chikara had entered into a criminal conspiracy with one Ashok Malhotra (since deceased), Ashok Jain (since deceased) and others. Fake and forged documents like ration card, identity cards etc. were prepared and used in the name of fake /fictitious persons for allotment of plots under resettlement scheme. The said officials of MCD by misusing/ abusing their official position and in conspiracy with Sh. Ashok Malhotra (since deceased) and Ashok Jain (since deceased) cheated MCD and dishonestly allotted plots in the names of fake/fictitious persons under resettlement scheme. On 12.03.2007, the said officials of MCD by abusing their official position and in conspiracy with Sh. Ashok Malhotra and Ashok Jain (both deceased) cheated MCD and dishonestly allotted plots in the names of fake/fictitious persons on the basis of forged/fabricated documents. Further the provisional identification slips which were used as proof of allotment and other official records of such plots were knowingly passed on by the said MCD officials to Sh. Ashok Malhotra and Sh. Ashok Jain (both deceased), which were recovered at the instance of Sh. Ashok Jain during the course of investigation of RC DAI 2007 A 0034. Further the officials records of SUR, Slum and 1 J Department i.e. the draw list and



draw parchies dated 12.03.2007 were recovered from the house no. B 62, Nehru Vihar, Delhi where they had been kept on the directions of Sh. Ashok Malhotra. Sh. Ashok Malhotra and Sh. Ashok Jain (both deceased) in furtherance to said conspiracy prepared fake and forged documents, with the intention to illegally sale the said plots in the open market at exorbitant price in order to cause wrongful gain to themselves and wrongful loss to the Government.

14. Hence, it is apparent from chargesheet that there is clear mention of allotment of plots in the name of fake persons on the basis of fake/forged documents like ration card, identity cards etc. and rather the prosecution case is heavily based on survey reports and allotment registers because the allotment of plots is alleged to have been made in violation of said survey reports.

15. The witnesses namely, Inspector A.K.Sharma is proposed to be recalled for proving the seizure of said allotment register, while the witness Sh. R.C.Goel is proposed to be summoned at the place of witness PW 25 Dore Lal, who could not be shown the original register, and now he is stated to have already expired. In the background of aforementioned facts and circumstances, the witnesses are very important to prove the entries in the register, which is vital for the CBI to prove charges against the accused persons. Without the allotment register, illegality in the allotment of alternative plots cannot be established. In the instant case, 45 witnesses were examined during trial. Sh. R.C. Goel is the fresh witness sought to be examined whereas, witness/PW-43 Sh. A.K.Sharma is sought to be recalled for his further examination. Further, as observed in above referred judgment in **Mohanlal Shamji Soni v. Union of India & Anr., AIR 1991 SC 1346**, courts should avoid rendering judgments on an inchoate, inconclusive and speculative presentation of facts, as the same would otherwise defeat the ends of justice. Therefore, for bringing clarity on record, examination of aforementioned witnesses is necessary for just decision of the case. No prejudice will be caused to the accused as they would get the

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opportunity to cross-examine said witnesses.

16. In view of the above discussion, I find no reason to decline request of Prosecution for examining the witness Sh. R.C. Goel and recall witness/PW-43 Sh. A.K.Sharma. Furthermore, merely because the application is filed at a belated stage cannot be a ground to disallow the application especially when the document sought to be shown to the witnesses is a vital document and was not earlier traceable.

17. We can not lose sight of the fact that the rules of procedure are designed as means of fair and just trial because the real purpose of criminal trial is to unravel the truth and ascertainment of real facts. In my considered view, Section 311 Cr.P.C which is analogous to section 540 of old Code of Criminal Procedure empowers the court to allow not only the additional evidence at any stage of trial but to also allow any additional document in evidence at any stage of proceedings provided the same is considered essential for just decision of case and does to lead to any prejudice to the accused.

18. Though the Prosecution has committed mistake by not filing the aforementioned application at the appropriate stage but, Section 311 CrPC gives wide powers to court to act as the exigency of the case would require provided no prejudice is caused to the accused. Here, I would refer to the judgement of Hon'ble Apex in **Rajendra Prasad v. Narcotic Cell through its Officer-in-Charge (DOD 12 July, 1999) in Appeal (Crl.) 621 of 1999** wherein, the Hon'ble Apex Court observed that "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 over sight in the management of the prosecution cannot be treated as irreparable lacuna. No party in a trial can be foreclosed from correcting. error. If proper evidence was not adduced or a relevant material was not brought on record due to any inadvertence. th Court should be magnanimous in permitting such mistakes to be rectified. After all

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function of the criminal Court is administration of criminal justice and not to count error committed by the parties or to find out and declare who among the parties performed better.”

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12. So far as the production of the original allotment register and re-examining of PW-43, Inspector A.K. Sharma is concerned, this Court is of the considered opinion that the photocopy of the document is already part of the record and production of original document would not in any way prejudice the present petitioners. It was always the case of the CBI that the said original document was seized in a different RC bearing No. 46(A)/2007. The same is, therefore, necessary to be produced in order to ensure that all the relevant evidence is brought on record for the just decision of the case. The issue of allotment being the basis of the prosecution's case, the original allotment register is a material and essential piece of evidence.

13. As has been held consistently, the purpose of criminal trial is to ensure that all the material evidence is placed before the Court to enable it to reach at a just decision of the case. If the evidence is crucial to the determination of the case then non-production of the same earlier would not come in the way of the Court exercising its power under Section 311 of the CrPC. The language of Section 311 of the Cr.P.C. itself is very wide and the determining factor ought to be whether the evidence is essential for the just decision of the case.

14. So far as examining Mr. R.C. Goel as a witness is concerned, the objection with regard to the same taken by learned counsel for the petitioners is that the said witness can only be introduced by way of a supplementary chargesheet and not otherwise. It is noted that Sh. Dore Lal (PW-25) who was



examined earlier, for identification of the handwriting of the petitioner no. 1 as well as certain entries made, had since passed away. The testimony of Dore Lal (PW-25) is again with respect to the allotment register which at that relevant point of time was produced by way of photocopy. The evidence of proposed witness Mr. R.C. Goel, therefore, would not be a new fact which has emerged by way of further investigation. The witness would be relevant for the same purpose as Inspector A.K. Sharma (PW-43). During the course of the hearing, learned SPP for the CBI had submitted that only reason for examining Mr. R.C. Goel would be for the purpose of identification of the handwriting of the petitioner no. 1 as well as certain entries made by said witness himself. This witness is not introducing any new fact which has to be brought by way of a supplementary chargesheet.

15. In the considered opinion of this Court, the learned Special Judge was justified in exercising power under Section 311 of the CrPC and allowing the application filed on behalf of the Central Bureau of Investigation.

16. In view of the above, this Court does not find any reasons for interfering with the order dated 04.05.2023 passed by learned Special Judge (CBI) (PC Act), Rouse Avenue Courts Complex, New Delhi in C.C. No. 88/2019.

17. The present petition is dismissed and disposed of.

18. Pending application(s), if any, also stand disposed of.

19. Needless to state that any observations made herein are only for the purpose of the present petition and not on the merits of the case.

20. The learned Special Judge shall proceed with the matter as expeditiously as possible without giving any undue adjournments to either of the parties.

21. Interim order dated 17.05.2023 in **CRL. M.C. 3551/2023** stands

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vacated.

22. Copy of the order be sent to the concerned learned Trial Court for necessary information and compliance.

23. Order be uploaded on the website of this court *forthwith*.

AMIT SHARMA, J

APRIL 23, 2025/kr/sc

Click here to check corrigendum, if any

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