

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRR-1403-2022 (O&M)
Reserved on: 07.07.2022
Pronounced on: 08.07.2022

Rakesh Jain

... Petitioner

Vs.

Central Bureau of Investigation

... Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Siddharth Pandit, Advocate
for the petitioner.

Ms. Shubhra Singh, Advocate
for the respondent-CBI.

ARVIND SINGH SANGWAN, J. (ORAL)

Prayer in this petition is for setting aside the order dated 23.05.2022 passed by the Special Judge, CBI Court, U.T. Chandigarh, vide which an application filed by the petitioner-accused for granting permission to cross-examine PW40 Karan Singh Rana, in question-answer format, was declined.

Brief facts of the case are that FIR No.RCCHG2013A0011 dated 29.05.2013 under Section 109 IPC and Section 13(1)(e) read with Section 13(2) of Prevention of Corruption Act, was registered at Police Station CBI, ACH, Chandigarh against the petitioner on a complaint given by Inspector Ravinder

Kush, CBI, ACB, Chandigarh and the petitioner-accused was caught red-handed by CBI, while demanding and accepting bribe of Rs.50,000/-. While recording statement of PW40 K.S. Rana, Investigating Officer, who conducted the investigation in part, an application was moved for granting permission to cross-examine him in question-answer format, however, the trial Court dismissed the application, by passing the following order: -

“I have heard the learned counsel for the accused and learned Senior Public Prosecutor for the CBI and also gone through the cited case law.

It is conceded by the learned counsel for the accused that the Hon'ble Supreme Court in cited case law has observed that “where-ever necessary the deposition may recorded in question and answer format”. The only ground being made out by the learned defence counsel in the present case is that the case is a technical case, and hence, cross examination be done in question answer format of PW40 Investigating Officer.

A perusal of the examination in chief recorded of PW 40 goes to show that he was part Investigating Officer of the present case, and his testimony mainly related to the recording of the statements of the witnesses, and having seized the documents received from the bank, insurance companies and financial companies, and he had accordingly prepared the seizure memo of the said documents, and thereafter, on the completion of investigation had filed the charge sheet. There is not an iota of

evidence in the examination in chief of the witness where he may have referred to any calculations of any bank or any financial institution. The witness only related to seizure of documents and not to the proving of the said documents.

This witness was examined on 04.05.2022 and was not cross examined as the junior counsel had requested to defer the cross examination as the main counsel has to undergo cataract surgery. After 04.05.2022, the witness was called for today for his cross examination, and today instead of cross examining the witness, the present application has been filed, which if required could have been filed since the examination of the witness on 04.05.2022. It seems that on the previous date, the cross examination of the witness was deferred due to the genuine reason, but today the application has been filed only to further delay the proceedings.

If the accused was of the opinion that he would have to cross examine the witness in question answer format, then such application could have been filed by him earlier also which he did not do purposely. Moreover, as discussed above, the witness only relates to seizure of documents and putting him questions during his cross examination, and then seeking his answers would further prolong the examination of the witness which can easily be concluded by putting him straight forward questions and getting his answers and recording the same.

It was also suggested to the counsel for the accused that in

case there would be some difficulty in witness understanding the questions put to him, the court would assist in the same, but the learned counsel for the accused has refused to cross examine the witness stating that he was not being allowed to do so by the accused, and that the accused would further like to go into revision against the declining of relief to him to cross examine the witness in question answer format There does not seem to be any prejudice being caused to the accused in case straight forward questions are put to the witness, and he answers to that as is being done to the other witnesses also.

As a result no merit is found in the application filed, and the same is accordingly dismissed.”

The petitioner challenged the aforesaid order by submitting that PW40 has conducted part of the investigation and seized certain documents, permission may be granted to cross-examine him by way of putting questions so that he may not give evasive reply.

Learned counsel for the petitioner has referred to various orders passed by the Special Judge, CBI, to submit that number of opportunities were taken by CBI for recording the prosecution evidence and now the trial Court, while passing the impugned order, has observed that the application has been moved just to delay the proceedings. Learned counsel has relied upon a judgment of the Hon'ble Supreme Court in **To issue Certain Guidelines regarding inadequacies and deficiencies in criminal trials Vs. The State of Andhra Pradesh and others, 2022 (1) SCC (Cri) 100**, wherein with regard to

recording of evidence of witness, it is observed that *“The Presiding Officers shall wherever necessary record the deposition in question and answer format”*. It is thus submitted that the trial Court has wrongly declined the application on technicalities. It is also argued that since the allegation against the petitioner is of disproportionate assets, which is based on documentary evidence, it would be necessary to allow the petitioner to cross-examine PW40 in question-answer format regarding numeric data, being technical in nature.

In reply, learned counsel for the respondent-CBI has, however, opposed the prayer on the ground that PW40 came present on different dates, but the cross-examination was not done and a date was requested and only thereafter, as a delaying tactics, the application is moved for cross-examination of this witness by way of question-answer format. It is argued that in fact, PW40 is a witness, who conducted the investigation in part and recovered various documents, which were put to him and were also exhibited as Ex.D-10 to Ex.D-39.

It is further submitted that the petitioner-accused wants to put questions with regard to contents of these documents, which cannot be permitted, as the same is to be seen and appreciated by the trial Court at the time of final arguments, as PW40 is not the person, who prepared those documents and he is a witness only of recovery of documents from the Bank of Baroda and other banks, Income Tax Authorities, schools or insurance companies and financial companies, therefore, having no personal knowledge about these documents, the trial Court in its wisdom, has rightly declined the prayer for cross-examination of this witness in question and answer format. It is

lastly submitted that FIR pertains to the year 2013 and the petitioner, at the fag end of the trial, wants to delay the same.

After hearing learned counsel for the parties, I find no merit in the present petition, for the following reasons: -

- (a) The judgment of the Hon'ble Supreme Court in **To issue Certain Guidelines regarding inadequacies and deficiencies in criminal trials's** case (supra) regarding guidelines in criminal trials is directive in nature, as it is clearly stated that Presiding Officer shall wherever necessary record the deposition in question and answer format. The Hon'ble Supreme Court left this discretion open to wisdom of the Presiding Officers, who shall whenever necessary, by passing an order, allow the deposition in question and answer format. Even otherwise, the petitioner has neither attached the application filed before the trial Court along with present petition nor in the ground of revision petition, questions to be put to PW40 are suggested, as to how the same are relevant.
- (b) There is a merit in the arguments raised by learned counsel for the respondent-CBI that PW40 being the Investigating Officer, who conducted the investigation in part, has collected various documents from the financial institutions like Banks, Income Tax Department, schools or insurance companies etc., which have been exhibited by the prosecution as well as defence, by putting the same to this witness. Since this witness has not prepared these documents and has only collected the same, he cannot be attributed

any personal knowledge, for which his cross-examination by way of question and answer format is allowed.

(c) Even otherwise, as per Section 139 of The Indian Evidence Act, the witness cannot be permitted to be cross-examined with regard to contents of documents exhibited during the course of trial and the same is to be seen by the trial Court at the time of final adjudication.

(d) The trial Court has passed a well-reasoned order, declining the application and this Court finds no ground to interfere in the findings recorded by the trial Court in the impugned order.

In view of the reasons recorded above, present petition is dismissed.

08.07.2022
vishnu

[ARVIND SINGH SANGWAN]
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No