

Court No. - 12

Case :- CRIMINAL REVISION No. - 588 of 2022

Revisionist :- Shyam Sunder Prasad

Opposite Party :- Central Bureau Of Investigation Lucknow

Counsel for Revisionist :- Dhananjay Singh

Counsel for Opposite Party :- Shiv P. Shukla

Hon'ble Dinesh Kumar Singh,J.

1. Heard Sri Ajay Kmar Rai, learned counsel for the accused-revisionist and Sri Shiv P.Shukla, learnerd counsel for the Central Bureau of Investigation, Lucknow.

2. Present Criminal Revision under section 397 readwith section 401 of the Code of Criminal Procedure, 1973 has been filed against the impugned order dated 02-05-2022 passed by the Special Judge, C.B.I. Court No. 6, Lucknow on an application filed by the C.B.I. under section 311 Cr.P.C. in Criminal Case No. 04 of 2014, Union of India Versus Shyam Sunder Prasad, arising out of RC006202014A0015 registered under section 7 & 13(2) readwith 13(1)(d) of the Prevention of Corruption Act,1988.

3. The case in question was registered vide RC No. 006202014A0015 against the accused-revisionist, Sri Shyam Sunder Prasad, the then Branch Manager, Punjab National Bank, Branch-Dhanghata district-Sant Kabir Nagar under section 7 of the Prevention of Corruption Act, 1988, on 26-04-2014 on the basis of written complaint made by Sri Kaleem

Ahmad. It was alleged in the F.I.R. that the complainant, Sri Kaleem Ahmad was sanctioned the Cash Credit Limit of Rs. 8 Lakh from the Punjab National Bank, Dhanghata Branch, district-Sant Kabir Nagar on 26-03-2014. The complainant was issued one Cheque Book bearing nos. UKM 065501 to 065520 in respect of this Cash Credit Limit Loan Account. The complainant had issued eight cheques from the said cheque book and out of the these eight cheques, three cheques issued by him got cleared and three cheques were bounced/dishonoured. The complainant therefore, requested the parties to whom the remaining two cheques had been issued, not to produce/present them as the cheques issued by him in respect of the Cash Credit Limit Loan Account were being bounced/dishonoured.

4. It is alleged that the complainant enquired from the accused-revisionist about the reason for the cheques which got dishonoured/bounced. The accused-revisionist replied that the account had been frozen. It was further alleged that the accused-revisionist had demanded bribe of Rs. 80,000/- from the complainant for defreezing the account. It was also alleged that the accused-revisionist had demanded the bribe through cheques to be issued in the name of other person.

5. The complaint made by the complainant was verified and a criminal case was registered against the accused-revisionist

under section 7 of the Prevention of Corruption Act,1988 on 26-04-2014. It is further said that during verification of the complaint, on 25-04-2014, when the complainant met and requested the accused-revisionist for reducing the bribe amount, he agreed to accept the bribe of Rs. 50,000/- by cheque. This conversation was recorded and transferred into a blank Compact Disc, marked as Q-1 and taken into record. The C.B.I. Team was formed on the instructions of Head of Branch, CBI, ACB, Lucknow including Sri Diwakar Pande, Inspector(Trap Laying Officer) for laying of trap. The Trap Laying Team completed the pre trap proceedings and Cheque No. UKM 065514 for a sum of Rs. 50,000/- was drawn which was to be given as illegal gratification to the accused-revisionist and it was treated with phenolphthalein powder to be handed over to the accused-revisionist during the trap proceedings. The accused-revisionist was caught red-handed with tainted bribe cheque. The conversation between the accused-revisionist and the complainant was recorded during the transaction of bribe cheque and the same was transferred into a blank Compact Disc, marked as Q-2. The voice samples of the accused-revisionist were sent to CFSL, New Delhi for voice analysis.

6. During course of the investigation, the C.B.I. noted that the Cash Credit Loan Account of the complainant was de-frozen a day before the trap to facilitate the payment of illegal

gratification.

7. The C.B.I. after investigation of the offence, filed chargesheet for the offences punishable under sections 7 & 13(2) readwith section 13(1)(d) of the Prevention of Corruption Act, 1988 against the accused-revisionist.

8. After framing of the charges against the accused-revisionist, the first prosecution witness was examined on 26-09-2014 and in so far as many as 11 witnesses in the case have been examined. An application under section 311 of the Code of Criminal Procedure, 1973 was filed on 22-11-2021 to bring on record two certificates dated 24-09-2021 & 25-09-2021 under section 65-B of the Indian Evidence Act, 1872 as well as to recall the witnesses to prove those certificates. It was said that the certificates were produced alongwith the chargesheet, but, same were not in a proper form and during the trial proceedings, proper certificates have been prepared, which need to be produced in prescribed forms. It was further said that the application was not an attempt to fill up the lacuna of the prosecution case. In the said application, the C.B.I. also relied on the Judgment of the Hon'ble Supreme Court in the case of ***Arjun Panditrao Khotkar Versus Kailash Kushanrao Gorantyal and Others***, reported in ***(2020) 7 Supreme Court Cases 1***, to say that the certificates under section 65-B of the Indian Evidence Act can be produced at any stage of the trial, if

the same was not produced alongwith electronic record or not produced in the court with the chargesheet.

9. The accused-revisionist filed his objections to the said application and the learned trial court after looking at the certificates, noted that the certificates of section 65-B of the Indian Evidence Act in respect of the Compact Disc marked as SQ-1 were issued by Sri Raka Kant Tewari, Investigating Officer.

10. During verification of the complaint on 25-04-2021, Compact Disc. marked as Q-1 and Investigation Copy Q-1 was prepared. This certificate was in respect of recording of the conversation between the accused-revisionist and the complainant. The conversation was recorded in a Digital Voice Recorder in presence of an independent witness namely, Sri Amir Ali. This recorded conversion was copied in two empty compact Discs in the presence of independent witnesses and no tampering was made in the recording.

11. Sri Diwakar Pandey, Trap Laying Officer, had issued certificates marked as Compact Discs marked as Q-2 and S-1 and during the trap proceedings, the investigation copy, S-1 was prepared, in which the conversation between the accused-revisionist and the complainant was recorded. The certificates had been issued for recording the said conversation in the presence of the independent witness and sealing the same and

there was no tampering in the said recording of the conversation.

12. Learned Trial Court after taking note of the provisions of Section 65- B(4) of the Indian Evidence Act and the Judgment of of the Hon'ble Supreme Court in the case of **Anvar P.V. Versus P.K.Basheer**, reported in **(2014) 10 SCC 473** as well as **Arjun Panditrao Khotkar(Supra)**, held that the powers of section 311 Cr.P.C. are to be used for just and fair decision in the case. It is held that the trial is still on and therefore, for a just and fair decision in the trial, the certificates issued under section 65-B (4) of the Indian Evidence Act are to be taken on record. The trial court allowed the application for taking on record the certificates issued by Sri Raka Kant Tiwari and Sri Diwakar Pandey and they have been summoned by the impugned order to prove the certificates.

13. Sri Ajay Kumar Rai, learned counsel for the accused-revisionist has submitted that the C.B.I did not file any certificate of Section 65-B of the Indian Evidence Act, 1872 alongwith the chargeheet in respect of the Compact Discs. marked as Q-1 and Q-2 in the manner as prescribed under law. During the examination of the prosecution witnesses, the Compact Discs. were exhibited without having the certificates as contemplated under section 65-B of the Indian Evidence Act.

14. It is submitted that now the certificates under section 65-B

of the Indian Evidence Act have been sought to be produced at the belated stage when the prosecution witnesses have already been examined and only the Investigating Officer remains to be examined. It is submitted that at this belated stage, there was no occasion for the trial court to allow the application of the prosecution to produce the certificates under section 65-B of the Indian Evidence Act and recalling the witnesses, who are the C.B.I. Officers to prove them.

15. It is further submitted that the C.B.I. has wrongly stated that alongwith chargesheet, certificates under section 65-B of the Indian Evidence Act were filed, however, they were not in correct form and therefore, fresh certificates in correct form were to be filed. He has further submitted that as a matter of fact no certificate under section 65(B) of the Indian Evidence Act was filed with the Compact Discs marked as Q-1 & Q-2 initially with the chargehseet. He has further submitted that no reason is coming forth in the application for issuing the certificates under section 65-B of the Indian Evidence Act so belatedly inasmuch as the chargesheet was filed in the year 2014 itself, but, the certificates are of the years 2021. When the certificates are being issued by the C.B.I. Officers itself, at this belated stage accepting the certificates and allowing the application to recall the witnesses is highly prejudicial to the trial of the accused-revisionist. He therefore, submits that the

C.B.I. is trying to fill up the lacuna inasmuch as in the absence of the certificates issued under section 65-B of the Indian Evidence Act are mandatory for proving the conversation allegedly recorded in the Compact Discs and in the absence of the certificates, the said Compact Discs would not have been evidence in law and therefore, to that extent, the accused-revisionist would be prejudiced.

16. On the other hand, Sri Shiv P.Shukla, learned counsel representing the C.B.I. has submitted that the certificates issued under section 65-B of the Indian Evidence Act can be produced at any stage of the trial in respect of the electronic evidence being relied on by the prosecution. He has further submitted that the trial is still on and the witnesses are being examined and therefore, producing the certificates under section 65-B of the Indian Evidence Act in respect of the two Compact Discs would not create any prejudice to the accused-revisionist in any manner rather the trial court after considering the provisions of the Indian Evidence Act and the law laid down by the Hon'ble Supreme Court as mentioned above, allowed the application under section 311 Cr.P.C. for a just and proper decision in the case. He further submits that the present revision is without merits and is liable to be dismissed.

17. I have considered the submissions advanced on behalf of learned counsel for the accused-revisionist as well as learned

counsel for the C.B.I.

18. By amending the section 65 of the Act of 2000 w.e.f. 17th October, 2000, a special provision as to evidence led into electronic record and admissibility of the electronic record have been incorporated in section 65-A & 65-B of the Indian Evidence Act. The contents of the electronic record may be proved as per the provisions of section 65-B of the Indian Evidence Act. The subject matter of sections 65-A & 65-B of the Indian Evidence Act is the proof of information contained in electronic records. These are the special provisions relating to evidence led in electronic records. For convenience, Section 65-A & Section 65-B of the Indian Evidence Act, read as under :-

"[65A. Special provisions as to evidence relating to electronic record.– The contents of electronic records may be proved in accordance with the provisions of section 65B.

[65B. Admissibility of electronic records.– (1) Notwithstanding anything contained in this Act, any information contained in an electronic record which is printed on a paper, stored, recorded or copied in optical or magnetic media produced by a computer (hereinafter referred to as the computer output) shall be deemed to be also a document, if the conditions mentioned in this section are satisfied in relation to the information and computer in question and shall be admissible in any proceedings, without further proof or production of the original, as evidence or any contents of the original or of any fact stated therein of which direct evidence would be admissible.

(2) The conditions referred to in sub-section (1) in respect of a computer output shall be the following, namely:–

(a) the computer output containing the information was

produced by the computer during the period over which the computer was used regularly to store or process information for the purposes of any activities regularly carried on over that period by the person having lawful control over the use of the computer;

(b) during the said period, information of the kind contained in the electronic record or of the kind from which the information so contained is derived was regularly fed into the computer in the ordinary course of the said activities;

(c) throughout the material part of the said period, the computer was operating properly or, if not, then in respect of any period in which it was not operating properly or was out of operation during that part of the period, was not such as to affect the electronic record or the accuracy of its contents; and

(d) the information contained in the electronic record reproduces or is derived from such information fed into the computer in the ordinary course of the said activities.

(3) Where over any period, the function of storing or processing information for the purposes of any activities regularly carried on over that period as mentioned in clause (a) of sub-section (2) was regularly performed by computers, whether—

(a) by a combination of computers operating over that period; or

(b) by different computers operating in succession over that period; or

(c) by different combinations of computers operating in succession over that period; or

(d) in any other manner involving the successive operation over that period, in whatever order, of one or more computers and one or more combinations of computers,

all the computers used for that purpose during that period shall be treated for the purposes of this section as constituting a single computer; and references in this section to a computer shall be construed accordingly.

(4) In any proceedings where it is desired to give a statement in evidence by virtue of this section, a certificate doing any of the following things, that is to say,—

(a) identifying the electronic record containing the statement and describing the manner in which it was produced;

(b) giving such particulars of any device involved in the production of that electronic record as may be appropriate for the purpose of showing that the electronic record was produced by a computer;

(c) dealing with any of the matters to which the conditions mentioned in sub-section (2) relate, and purporting to be signed by a person occupying a responsible official position in relation to the operation of the relevant device or the management of the relevant activities (whichever is appropriate) shall be evidence of any matter stated in the certificate; and for the purposes of this sub-section it shall be sufficient for a matter to be stated to the best of the knowledge and belief of the person stating it.

(5) For the purposes of this section,–

(a) information shall be taken to be supplied to a computer if it is supplied thereto in any appropriate form and whether it is so supplied directly or (with or without human intervention) by means of any appropriate equipment;

(b) whether in the course of activities carried on by any official, information is supplied with a view to its being stored or processed for the purposes of those activities by a computer operated otherwise than in the course of those activities, that information, if duly supplied to that computer, shall be taken to be supplied to it in the course of those activities;

(c) a computer output shall be taken to have been produced by a computer whether it was produced by it directly or (with or without human intervention) by means of any appropriate equipment.

Explanation.–For the purposes of this section any reference to information being derived from other information shall be a reference to its being derived therefrom by calculation, comparison or any other process.]"

19. Section 65-B (i) of the Indian Evidence Act begins with a non-absent clause and it provides that any information that is contained in an electronic record printed on a paper, stored,

recorded or copied in optical or magnetic media produced by a computer shall be deemed to be a document, and shall be admissible in any proceedings, without further proof or production of the original, as evidence of any contents of the original or of any fact stated therein of which direct evidence would be admissible.

20. Sub. Section (2) of Section 65-B of the Indian Evidence Act refers to the condition that must be satisfied in respect of the computer output and states that the test of being included in conditions are provided in Section 65-B (2) (a) to Section 65-B (2) (d) which states that computer be regularly used to store or process of information for the purposes of any activities regularly carried on over the period in question. The conditions mentioned in sub. section 2(a) to sub. section 2(d) must be satisfied cumulatively. Sub. Section 4 of Section 65-B provides that a certificate is to be produced that identifies the electronic record containing the statement and describing the manner in which it was produced or gives particulars of any device involved in the production of that electronic record to show that the electronic record was produced by a computer, by either a person occupying a responsible official position in relation to the operation of the relevant device; or person who is in the management of relevant activities-whichever is appropriate.

21. The Hon'ble Supreme Court in the case of **Arjun Panditrao Khotkar(Supra)** held that for admissibility of an electronic

record/document, section 65-B(4) is mandatory for recording it in evidence. When the electronic record is produced in evidence without proper certificate, trial court must summon the person/persons referred in Section 65-B (4) of the Indian Evidence Act, and require that such certificate be given by such person/persons. It has further held that in criminal trials, the accused must be supplied all documents that the prosecution seeks to rely upon before commencement of the trial under section 207 Cr.P.C. to enable the accused to prepare for the trial before it commences. However, that does not mean that the trial court cannot exercise powers under section 311 Cr.P.C. in permitting the evidence to be filed at a later stage. The only caveat is that the same should not result in serious or irreversible prejudice to the accused-revisionist. The Hon'ble Supreme Court in para no. 56 of the said Judgment held that in appropriate cases, the trial court depending on the facts and circumstances of the case may exercise its discretion under section 91 or section 311 Cr.P.C. or Section 165 of the Indian Evidence Act as the case may be and can allow the prosecution to produce the certificates under section 65-B of the Indian Evidence Act at later point of time and same would also be the case in respect of an accused who desires to produce the requisite certificates as part of his defence. Para no. 56 of the said Judgment, which is relevant, is extracted hereinunder :-

"56. Therefore, in terms of general procedure, the prosecution is obligated to supply all documents upon which reliance may be placed to an accused before commencement of the trial. Thus, the exercise of power by the courts in criminal trials in permitting evidence to be filed at a later stage should not result in serious or irreversible prejudice to the accused. A balancing exercise in respect of the rights of parties has to be carried out by the court, in examining any application by the prosecution under Sections 91 or 311 of the CrPC or Section 165 of the Evidence Act. Depending on the facts of each case, and the Court exercising discretion after seeing that the accused is not prejudiced by want of a fair trial, the Court may in appropriate cases allow the prosecution to produce such certificate at a later point in time. If it is the accused who desires to produce the requisite certificate as part of his defence, this again will depend upon the justice of the case - discretion to be exercised by the Court in accordance with law."

22. Section 311 Cr.P.C. empowers the court that if the court considers the evidence of witnesses to be essential for a just and fair decision of the case, it can summon such a person not only on the motion of either prosecution or of the defence case, but, also it can do so on its own motion. The court has power to recall any witness or witnesses already examined or to summon any witness even if the evidence in both sides is closed so long as the court retains seisin of the criminal proceedings.

23. In the present case, the two Compact Discs have already been supplied to the accused-revisionist and only certificates under section 65-B of the Indian Evidence Act have been allowed to be produced to prove and by allowing the application under section 311 Cr.P.C., this court does not find that the accused-revisionist is prejudiced in any manner by producing the certificates in respect of the electronic

record/evidence, which are being relied upon by the prosecution, which have already been supplied to the accused-revisionist at the stage of complying with the provisions of Section 207 Cr.P.C. The trial court has exercised its discretion as vested in it under section 311 Cr.P.C. for just and valid reasons for rendering a just and proper decision in the trial and therefore, this court does not find that there is any error of law or jurisdiction which has been committed by the trial court by allowing the application of the C.B.I. under section 311 Cr.P.C. by the impugned order.

24. Thus, this court, does not find that there is any scope for interference with the impugned order and the present revision is ***dismissed.***

Order Date :- 6.6.2022

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