

**IN THE COURT OF MS. SUJATA KOHLI, LD. PRINCIPAL DISTRICT &  
SESSIONS JUDGE-CUM-SPECIAL JUDGE (PC ACT) (CBI), ROUSE  
AVENUE DISTRICT COURT COMPLEX, NEW DELHI**

**CC No. 106/2019**

**CBI Vs. M/s Saras Cabs Pvt. Ltd. & Others**

**14.09.2020**

**Order on Application u/s 311 of Cr.P.C. moved on behalf of  
applicant/accused no.4 M.C. Gupta, seeking recalling of  
PW-2 Sh. Gopendra Nath Sharma for cross-examination**

1. Matter has been taken up in terms of orders of Hon'ble High Court bearing No. 26/DHC/2020 dated 30.07.2020 and 322/RG/DHC/2020 dated 15.08.2020, through "Hyperlink URL for Conferencing Via Cisco Webex."
2. The present application has been moved on behalf of the applicant/accused no.4 M.C. Gupta u/s 311 of Cr.P.C. seeking recalling of PW-2 Sh. Gopendra Nath Sharma for cross-examination.
3. It has been submitted in the application that :-
  - (i) PW-2 stepped into the witness box on 07.07.2014 and his examination-in-chief was deferred at the request of Ld. Special Public Prosecutor on the ground that certain documents regarding which the witness is to depose are not

traceable.

- (ii) Thereafter, the witness was recalled on 20.07.2015 on which date the counsel for the applicant/accused was not available and the Ld. Predecessor of this Court was pleased to close the right of the applicant/accused to cross-examine the witness.
  - (iii) PW-2 is a material witness, who served as Senior Manager at the relevant time.
  - (iv) The rebutted testimony of PW-2 on material issues is causing grave prejudice to the applicant/accused and thus, the opportunity to cross-examine the said witness is necessary for just decision of the case.
4. CBI has opposed the present application and filed its reply to the application submitting that :-
- (i) As per record, chief examination of PW-2 Sh. Gopendra Nath Sharma, the then Senior Manager, Federal Bank, GK-II Branch New Delhi was conducted on 07.07.2014 and 20.07.2015 and he was cross-examined on 20.07.2015.
  - (ii) Adequate and sufficient opportunity was given to the applicant/accused for cross-examination of the witness by the Court.

- (iii) The prosecution evidence in this case was closed in the year 2016, Statement of accused u/s 313 Cr.P.C was completed in March, 2017, defence evidence was concluded in August, 2018 and the matter is at the stage of final arguments since 29.10.2018. Since 29.10.2018, this case has been listed for around 15 times in the trial court for final arguments, however, the accused did not file application for re-calling of this witness.
- (iv) This case is very old.
- (v) There sufficient evidence oral as well as documentary to prove that applicant/accused was main associate of accused Santosh Kumar Jasrasaria and hatched a conspiracy with other accused persons and thereby caused huge financial loss to the Bank of Baroda by siphoning off public money on the basis of forged and fake documents.
- (vi) As this case is at the stage of final arguments and finding no other option to delay the trial of this case, the present application has been filed.
- (vii) The accused has not mentioned on record what kind of facts he wish to bring on record, which is necessary for just

decision of this case, therefore, the present application is liable to be dismissed.

(viii) No party should be permitted to fill a lacuna or adopt correcting measures by moving applications u/s 311 Cr.P.C.

(ix) The application of the applicant/accused is without any merit and is liable to be dismissed.

5. Accused no. 1 to 3 and 5 have also filed reply to the present application submitting that the present application has been filed by the applicant/accused after a considerable delay and same is liable to be dismissed. However, it has been submitted that in the eventuality, the application is allowed, accused no. 1 to 3 and 5 may be given opportunity to cross-examine the witness PW-2, after the cross-examination on behalf of applicant/accused M.C. Gupta, is over.

6. I have heard Sh. Umesh Chandra Saxena, Ld. Senior P.P. for CBI and Ld. Counsels Ms. Manisha Sharma for accused no. 1 to 3, Sh. Damanprit Singh Kohli for applicant/accused no. 4 and Sh. Pankaj Garg for accused no. 5 through Video Conferencing on CISCO WEBEX Meeting Platform on the application, at length and have also given my thoughtful consideration to the matter. I have also

perused the material available on record, carefully.

7. In brief the facts of the case are as under:-

- (i) This case was registered on 29.04.2002 on the basis of a complaint dated 21.12.2001 received from Senior Branch Manager, Bank of Baroda, Pusa Road, New Delhi against M/s Saras Cabs Pvt. Ltd., D-53, Greater Kailash Enclave-II, New Delhi and its Director Santosh Kumar Jasrasaria and his wife Mrs. Rachna Jasrasaria and other unknown persons for causing pecuniary loss of Rs.195 lacs (approximately) to the said bank by misusing credit facilities sanctioned to them.
- (ii) The allegations in brief are that a sum of Rs.210 lacs was sanctioned as credit facility to M/s Saras Cabs Pvt. Ltd. By Bank of Baroda, Pusa Road, New Delhi for the purpose of purchasing and radio taxi cabs at New Delhi. The directors of above said firm, subsequently, floated a fictitious proprietorship firm in the name and style of M/s Competent Automobiles and Sh. M.C. Gupta, who was an employee of accused Santosh Kumar Jasrasaria, was made its proprietor and siphoned off an amount of Rs.95 lacs without affecting purchase of 23 radio taxi cabs.

- (iii) Sh. Santosh Kumar Jasrasaria, Director of Saras Cabs Pvt. Ltd. Was sanctioned a term loan of Rs.210 Lacs by Bank of Baroda, New Delhi for the purpose of purchasing 50 radio taxi cabs, out of which an amount of Rs.95 lacs was siphoned off to a fake firm by the name of M/s Competent Automobiles, which accused Santosh Kumar Jasrasaria had floated in collusion with his employee accused M.C. Gupta without affecting purchase of 23 radio taxi cabs.
- (iv) Accused Santosh Kumar Jasrasaria further got cash credit limit of Rs.90 lacs CC limit of Rs.10 lacs and Bank guarantee of Rs.50 lacs from Bank of Baroda, Pusa Road for M/s Abhinav Enterprises, a proprietorship of firm of accused Santosh Kumar Jasrasaria for the purpose of facilitating supply of various food items to the department of social welfare, Govt. of NCR Delhi, Super Bazar, Delhi and Nagaland Government.
- (v) Out of Rs.90 Lacs, disbursed to the borrowing firm, on submission of photocopies of 26 supply bills, an amount of Rs.64.90 lacs was siphoned away to a fake firm namely M/s Ashoka Biscuit Works which was owned by accused MKC

Kurup as its sole proprietor, an employee of accused Santosh Kumar Jasrasaria.

- (vi) During investigation it was disclosed that on request of accused Santosh Kumar Jasrasaria 3 banker cheques amount to Rs.10 lacs, 35 lacs and 50 lacs (total 95 lacs) were issued in favour of M/s Competent Automobiles for purchase of 23 Maruti Cars. The said 3 banker's cheques were deposited in one fake current account bearing no. 10930 in the name of M/s Competent Automobiles opened at Federal Bank Ltd. GK-II, New Delhi and siphoned off by accused Santosh Kumar Jasrasaria in conspiracy with his associate applicant/accused M.C. Gupta and MKC Kurup.
- (vii) Further, the investigation had disclosed that M/s Competent Automobile Co. Ltd. Which was authorized dealer of Maruti Cars at Delhi does not have any account with the Federal bank Ltd. GK-II, New Delhi, GEQD has confirmed writing and signatures of accused MKC Kurup and MG Gupta both employees of accused Santosh Kumar Jasrasaria on account opening form, deposit slip and cheques used for withdrawal of above said Rs.95 lacs.

(viii) During investigation it was revealed that in pursuance of said criminal conspiracy accused V.B. Katoria, R.K. Singhal, G.K. Chawala, all bank officials in collusion with private person Santosh Kumar Jasrasaria, Director of M/s Saras Cabs Pvt. Ltd. And proprietor of M/s Abhinav Enterprises, Mehar Chandra (MC) Gupta, MKC Kurup both employee of Sh. Santosh Kumar Jasrasaria and Sh. Om Prakash Agarwal caused a wrongful pecuniary loss to Bank of Baroda, Pusa road, New Delhi to the tune of Rs.1,63,37,040/- in the term loan account of M/s Saras Cabs Pvt. Ltd., Rs.93,12,948/- in the cash credit account no.20046 of M/s Abhinav Enterprises and Rs.18,45,115/- in the cash credit account on. 20047 of M/s Abhinav Enterprises. Thus, the accused persons in conspiracy with each other caused wrongful loss to the Bank of Baroda Pusa Road, New Delhi to the tune of Rs.2,75,95,103/- on the basis of false projection of facts and through bank accounts maintained in the name of fake firms. Hence, this case.

8. Statement of PW-2 Sh. G.N. Sharma was recorded u/s 161 Cr.P.C. on 27.05.2002 and 25.02.2003, during the course of investigation.

9. During trial, PW-2 appeared in witness box on 07.07.2014 and on 20.07.2015, he was cross-examined by the counsels for accused no. 1 to 3, however for rest of the accused persons, the opportunity for cross-examination was closed after giving adequate and sufficient opportunity.
10. After hearing the arguments at length and seeing the material on record, it cannot be disputed that the instant application is hopelessly belated and infact without any justification even remotely. As per record, the witness was in the witness box way back in the year 2014 and 2015, concluded and discharged. Many other witnesses were examined thereafter. Statement of accused was recorded. In fact the accused examined himself in this case u/s 315 Cr.P.C. even defence evidence was also led. Case had reached the stage of final arguments and was even adjourned for final arguments for 15 occasions and throughout all these five years, there was not a whisper from the side of accused for seeking permission to recall this witness.
11. The justification attempted that the previous counsel had neglected to conduct the matter, does not hold water. The counsel who has moved this application in January, 2020 had already been

the counsel in this case for applicant/accused no. 4 way back since 2017. That implies that he was already there in the case for last three long years and watching the entire proceedings, conducting them and still he did not bother to move this application. No doubt that the delay is peculiar and is not at all justified as rightly contended on behalf of prosecution.

12. In support of its case, CBI has relied upon the judgment in ***Crl.A. Nos. 1187-1188 of 2015*** (arising out of SLP (CRL.) No. 1899-1900 of 2015) titled as '***AG Vs. Shiv Kumar Yadav & Anr.***' wherein it has been observed that without considering the hardship to the witnesses, undue delay in the trial, and without any other cogent reason, allowing recall merely on the observations that it is only the accused who will suffer by the delay as he was in custody, could, in the circumstances, be hardly accepted as valid or serving the ends of justice. It is not only matter of delay but also of harassment for the witnesses to be recalled which could not be justified on the ground that the accused was in custody and that he would only suffer by prolonging of the proceedings.

The present case stands on even a better footing that as much as the accused is not even in custody in this case.

13. The Counsel for the applicant/accused has rebutted the said citation by CBI submitting that the facts of this case and the facts of the above said case are totally different as in the said case the defence wanted to cross-examine 28 witness, who were already cross-examined, on the ground of change of advocate. He relied upon the judgments in cases:-

- (i) **'P. Sanjeeva Rao Vs. The State of A.P.'** in Crl. Appeal Nos. 874-875 of 2012 (arising out of S.L.P. (Crl.) Nos. 4286-87 of 2011) of Hon'ble Supreme Court of India,
- (ii) **'Hoffman Andreas Vs. Inspector of Customs, Amritsar'** in Crl. Appeal No. 815/1998 passed by Hon'ble Supreme Court of Inida.
- (iii) **'CBI Vs. Sanjeev Kumar & Anr.'** in Crl. Rev. P. 793/2019 passed by our own Hon'ble High Court.
- (iv) **'Shiv Kumar Yadav vs. State'** in Crl. M.C. No. 725/2015 & Crl. MA 2765/2015 passed by our own Hon'ble High Court.

14. I have also gone through the above said judgments cited on behalf of applicant/accused, carefully.

15. However, it is equally true that the relevance and cruciality of the

witness's testimony going unrebutted and its impact on case of the accused would indeed be too detrimental to be ignored. The witness in question was a bank official.

16. The case in brief was that it was alleged that the loan which had been sanctioned by the concerned bank had been siphoned off by the accused persons in conspiracy and that they have opened various fictitious companies/firms and applicant/accused no.4 was one of the persons involved in all this. However, the stand of the accused has been that he was a mere employee, innocent of the goings on and completely unaware. Irrespective of the falsity or the truth of this defence when the bank witness appeared and stated about the opening of these fictitious accounts in the bank he has named the applicant/accused no.4 being an employee under the accused no.1 whereas he omitted to state about this fact in his statement recorded in Court as PW-2.

17. It was the contention on behalf of applicant/accused no.4 that the portion marked 'A' to 'A' in the statement u/s 161 CrPC of PW-2 has not been told by the witness in Court and has been deliberately omitted by the witness, as it was suitable to the prosecution in as much as prosecution did not even seek permission from Court to

cross-examine and confront the witness on this point.

The portion marked 'A' to 'A' in the statement u/s 161 CrPC of PW-2 is reproduced hereunder :-

*"I have been shown original account opening form of M/s Competent Automobile and other enclosures. I have to say that this account No. 10930 in the name of M/s Competent Automobiles having address Village Ranhala, Nangloi, Delhi-41 was opened on 08.08.2000 on my authority whose proprietor was Sh. M.C. Gupta. This account was opened with opening deposit of Rs.5,500/-. Regarding this account I have to say that Sh. Santosh Kumar Jasrasaria had telephoned me on 08.08.2000 that Sh. M.K. C. Kurup along with another employee Sh. M.C. Gupta is going to your bank to open an account in the name of M/s Competent Automobiles. He also told me that he is introducing this account as this firm M/s Competent Automobiles is also his sister concern. He also told me that Sh. M.C. Gupta would be proprietor. Thereafter Sh. M.K. C. Kurup along with Sh. M.C. Gupta came to G.K. II Branch and Sh. Anand Ghug, Asstt. Manager in charge of the Section verified the said account after taking all required documents like form No. 6, photocopy of driving licence and photographs of proprietor. It is also to be mentioned here that Sh. Anand Chug had seen the original driving licence and noted the details on the photocopy of driving licence of Sh. M.C. Gupta. Thereafter the name was presented before me for my signature. This account has been opened in normal course as Sh. Santosh Kumar Jasrasaria, prop. Of M/s Abhinav Enterprises was maintaining a number of accounts having sufficient balance in the Fedral Bank Ltd., Greater Kailash-II Branch. I identify my signature on the account opening form and also I identify the signatures of Sh. Anand Chug who had verified and opened the account as I am familiar with his signature. "*

18. Seeing the totality of the circumstances it certainly cannot be

disputed that this witness was truly crucial to arrive at the truth of the controversy and for a just decision of the case. His testimony going unrebutted on behalf of applicant/accused no.4 can also not be justified, even if there is grossly unjustified delay. The delay aspect can be compensated but the aspect of the testimony of such a crucial witness going unrebutted cannot be permitted, unless of course, as a travesty of justice. In fact it may be observed here, with all due respect, that this witness when he appeared first in the witness box, his examination in chief was deferred at the instance of prosecution, as certain documents were not available, which were to be put to the witness. After getting it deferred, the witness, when steps into the witness box, and the chief concludes, it is on the very same day that the cross-examination opportunity for the applicant/accused no.4 gets closed, which certainly cannot be considered as a sufficient and adequate opportunity.

19. Keeping in view both the aspects i.e. unjustified delay on one hand and the cruciality of the witness on the other and applying the well settled principals of Law governing the recalling of witnesses, as relied upon by the applicant/accused no.4 and by the prosecution, weighing the said principals and keeping in view the interest of

justice as being paramount, I am of the considered view that the application deserves to be allowed though subject to heavy cost.

Consequent to this, permission to cross-examine PW-2 by/on behalf of other co-accused/non-applicants be also granted though on limited points.

Accordingly, the application stands allowed subject to a cost of Rs.20,000/- (Twenty Thousand) to be deposited with DSLSA. Compliance be shown within three days from today.

Application stands disposed of.

**Announced in open Court  
today on 14.09.2020**

**(SUJATA KOHLI)**  
Principal District & Sessions Judge-cum-Spl. Judge  
(PC Act)(CBI)/RADC/ND