

09.09.2020

Present:- Sh. Brijesh Kumar Singh, Ld. Senior P.P for CBI.

Accused No. 1 Sh. Ashutosh Verma in person with Ld. Counsels Sh. P.K. Dubey, Ms. Smriti Sinha, Mr. Shri Singh, Mr. Gautam Khazanchi, Mr. Shiv Chopra, Mr. Anurag Andley, Mr. Gaganjyot Singh, Ms. Smriti Ramchandran, Sh. Prince Kumar and Ms. Pinky Dubey.

Accused No. 2 Sh. Suresh Nanda (through VC from UAE) with Ld. Sr. Advocate Sh. Ramesh Gupta along with Sh. Sandeep Kapoor and Sh. Alok Sharma, Advocates.

Accused No. 3 Sh. Bipin Shah in person with Ld. Counsels Sh. Anindya Malhotra and Sh. Shaurya Lamba.

(Through VC using Cisco Webex App.)

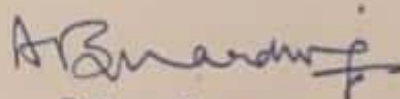
Sh. P.K. Dubey, Ld. Counsel for Accused No. 1 Sh. Ashutosh Verma made submissions with regard to the celebrated judgment of 'Tehsildar' and submitted that a witness may depose in the court as per his statement under Section 161 Cr.P.C. or he may give a contrary version or improved version or there may be omission. In such a situation, the witness has to be confronted with his statement under Section 145 of Evidence Act and the statement signed by the witness in the presence of police is hit by Section 162 Cr.P.C. Ld. Counsel submitted that the judgment in the case of 'Tehsildar' does not say that the statement of accused cannot be given to the accused. He submitted that an accused may enter the witness box under Section 315 Cr.P.C. and be cross-examined by the prosecutor or on behalf of co-accused also, if he deposes against them and in such a situation, the IO should be present in the court with case diary to make available the statement of accused for referring as well as for

contradiction. He submitted that the statement of accused, therefore, should be supplied to the accused and should be on record. He submitted that the bar of Section 25 of Evidence Act is against reading the statement of the accused made in the presence of police but it does not stop the accused from making use of it and if the accused is given this statement, he can give better exclamations under Section 313 of Cr.P.C. He submitted that the manual of CBI also prescribes in Chapter 14 Rule 2.7 and 2.8 recording of statement of accused which he can use as a defence. The Ld. Counsel submitted that the judgment of 'Tehsildar' cannot be referred to refuse statement of accused to the accused. He submitted that in absence of the statement, the accused has suffered prejudice and adverse inference be drawn against prosecution.

Ld. Counsel submitted till 08.03.2008, when the alleged purported conspiracy terminated, there is no legally admissible evidence in as much as the EROS CD, CD of 124 calls, CD of 34 calls and CCTV footage are not admissible as per arguments addressed by him. He submitted there is no evidence of meeting of mind of the accused persons. He submitted that that Section 10 of the Evidence Act prefixes 'an' before the offence which means it refers to single offence and not multiple offences.

Next, Ld. Counsel referred to Section 120A of IPC and submitted there is no evidence of Accused No. 1 having done any illegal act or legal act illegally. He had submitted his Appraisal Report which is not an illegal act. No witness from Income Tax Department has deposed that there was any illegality in the Appraisal Report. He submitted this is the only act which this accused committed and therefore there is no conspiracy.

He further submitted that Sh. Ashutosh Verma had become *functuos officio* after 22.02.2008 and could do nothing thereafter. At Bombay meeting, it is the own say of the prosecution witnesses that they could not find any


09.09.2020

incriminating material there. He submitted that meeting persay is not illegal and that is why Sh. Sanjeev Nanda was discharged.

Ld. Counsel referred to (2005) 12 SCC 631, A.R. Purusotham vs. State of Kerala and read paragraph 14, 15, 21 and 22. He also referred to 2009 (8) SCC 617, Sheetla Sahay and read paragraph 51, 55 and 56. He also read from the judgment in the case of L.K. Advani, 1997 Criminal Law Journal 2559 and read paragraph 63. He also read from the judgment of Kehar Singh vs. State, 1988 (3) SCC 609 and read paragraph 61 to submit that prosecution has not proved any conspiracy in this case.

He submitted that the order on charge dealt in detail only Section 13(1)(d) of P.C. Act which was however set aside by the Hon'ble High Court.

He submitted there is no evidence of abuse of power, there is no pecuniary advantage gained by Sh. Ashutosh Verma. He submitted that the investigation for Goa property also had started in 2010. Sh. Suresh Nanda, Sh. Vipin Shah were not connected to Goa transaction. There is no link/continuity for conspiracy qua Goa property.

Ld. Counsel also referred to 2011 SCC Online Madras 525 and read paragraph 19, 20 and 28 on misjoinder of charge.

Ld. Counsel submitted that additional charge on Accused No. 1 is under Section 7 and on Sh. Bipin Shah and Sh. Suresh Nanda under Section 12 of P.C. Act. He referred to Section 20 of P.C. Act dealing with presumptions which are rebuttable.

He submitted that burden of proof is on the prosecution to establish beyond reasonable doubts that the accused was in a position to accept the bribe, proof of possession is sign qua known for presumption under Section 20 of P.C. Act. He submitted mere acceptance is not sufficient, there must be demand in clear terms without any ambiguity.

A. B. Nanda
09.09.2020

He submitted that there is no clarity about the case of prosecution regarding gratification and from the arguments of Ld. Sr. PP for CBI, it appeared to be a case of attempt to obtain gratification.

He submitted that the applications for remand had mentioned that Accused No. 1 has already obtained huge bribe so therefore there is no question of attempting to obtain bribe on 08.03.2008.

He referred to the evidence of Sh. Surender Malik and Sh. V.M. Mittal who have deposed that attempt for taking the bribe was to take place in the hotel room but there is no evidence as they could gather no incriminatory material in the hotel room. He submitted that the accountant of Sh. Suresh Nanda was not examined to prove demand of bribe.

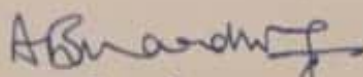
All the four accused were in the custody but there is no confrontation of Sh. Ashutosh Verma regarding gratification.

The CBI did not investigate the ledger account or cash in hand with Sh. Suresh Nanda or his group of companies and there is no movement or link to establish the chain for payment of money from Sh. Suresh Nanda to Sh. Ashutosh Verma.

He submitted that the group of companies of Sh. Suresh Nanda have not been made an accused. In this regard, he referred to *baazi.com* and submitted that the alleged favour is to group of company and not to Sh. Suresh Nanda in individual capacity.

He submitted that there is no evidence that the Goa property was purchased benami by the money of Sh. Ashutosh Verma taken from Sh. Suresh Nanda.

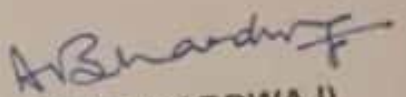
Ld. Counsel submitted that on the next date, he will address arguments with regard to Section 7 of P.C. Act/requirement of demand to prove the said offence.


09.09.2020

List on 11.09.2020 (Friday) at 2:15 PM. for further final arguments
by Ld. Counsel for Accused No. 1 Sh. Ashutosh Verma.

Let a copy of this order be sent by WhatsApp to the learned Senior
PP for CBI, all the accused persons and their learned counsels.

ARUN
BHAR
DWAJ


(ARUN BHARDWAJ)
Special Judge (P.C. Act)(CBI-05)
Rouse Avenue District Court,
New Delhi/09.09.2020