

03.07.2020

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, Ms. Harpreet Kalsi, Mr. Gaganjyot Singh, Ms. Smriti Ramchandran, Mr. Nirvikar Singh and Sh. Prince Kumar.
Accused No. 2 Sh. Suresh Nanda in person with Ld. Sr. Counsel Sh. Ramesh Gupta along with Sh. Sandeep Kapoor and Sh. Alok Sharma, Advocates
Accused No. 3 Sh. Bipin Shah in person with Ld. Counsel Sh. Anindya Malhotra and Sh. Shaurya Lamba.

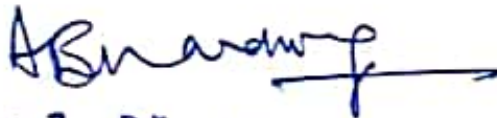
(Through VC using Cisco Webex App.)

Today, the arguments of the Ld. Counsel Sh. P.K. Dubey representing Sh. Ashutosh Verma are that there is no 'case property' of 134 recorded calls relied upon by the prosecution. The Ld. Counsel referred to D-21 and submitted that this has two seals, one of SU(SU-Special Unit)-CBI and other sample seal.

Ld. Counsel referred to the evidence that PW-21 Sh. M.C. Kashyap, where he has described himself as System Administrator. The Ld. Counsel submitted that there is no evidence that PW-21 Sh. M.C. Kashyap was the System Administrator of the special unit of CBI.

Ld. Counsel referred to Mark PW-21/A and Mark PW-21/B (Part of D-21) and submitted that the so called permission letters of the Union Home Secretary of India were not proved as the observations of the court itself show that the two letters do not indicate that they were marked to PW-21 in his official capacity and he was also not the author of these letters. Therefore, as the letters remained not proved, they were merely marked and not exhibited.

The submission of Ld. Counsel is that in the light of this evidence, there is no permission of the Union Home Secretary of India for putting on surveillance telephone numbers of the accused persons.


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The Ld. Counsel submitted that the writer of these letters Sh. Madhukar Gupta, Secretary to the Government of India, Ministry of Home Affairs, New Delhi was not examined in this case. There is no forwarding letter from Ministry of Home Affairs to CBI for sending these orders. There is no evidence, who requested from CBI to the Home Ministry for surveillance of these telephones. There is no evidence who dealt with these letters in the Home Ministry.

The Ld. Counsel submitted that he is addressing arguments at the moment about tampering of documents and not their admissibility.

Referring to the evidence of PW-21, it was further argued that the witness has deposed that in May 2008, he received a letter from AC-1, CBI New Delhi. However, the said letter is not on record. Who had written this letter and who had received this letter in Special Unit is not on record.

Ld. Counsel referred to internal page 9 of cross-examination of this witness where the witness has deposed that he has not been shown the letter of AC-1 whereby the call records were requisitioned. The witness was not knowing when the letters of AC-1 were received or who had received them.

The Ld. Counsel again referred to internal page 3 of the examination-in-chief of this witness where he has deposed that on receipt of a letter from AC-1 CBI New Delhi recording of 134 calls were handed over to the IO of the case and in the cross-examination at page 9, the witness has deposed the requisition of AC-1 had not asked for 134 calls.

Ld. Counsel submitted that without details of case, FIR, requisition letter from AC-1 and in the absence of correspondence between Special Unit and AC-1, it was not possible for this witness PW-21 to know the relevancy of the calls for segregating 134 calls out of the total calls intercepted.

Ld. Counsel submitted that without information of culprits and allegations against him, it was not possible to find relevancy in the calls by PW-21.

Ld. Counsel submitted that adverse inference ought to be drawn against prosecution for hiding material evidence from the court.

Ld. Counsel submitted that PW-21 is therefore unreliable witness and has made contradictory statements in his examination-in-chief and in his cross-examination.

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Ld. Counsel referred to internal page 3 of the evidence of PW-21 recorded on 06.03.2017 where he has stated that on the same day (i.e. 30.05.2008), he had also issued certificate under Section 65B of the Evidence Act along with Annexure 'A' in respect of aforementioned 134 calls.

The Ld. Counsel also submitted that the witness has also deposed about handing over of another CD to the IO for investigation purposes. Ld. Counsel submitted that this witness is deposing contrary to the provisions of Section 91 and 92 of the Evidence Act as D-21 does not speak about any copy of CD for IO for investigation. Further, Ld. Counsel submitted Seizure Memo D-21 does not speak about Annexure 'A' or certificate under Section 65B of Evidence Act. There is no contemporaneous separate Seizure Memo for seizure of Annexure 'A' and certificate under Section 65B of Evidence Act.

Ld. Counsel referred to page 4 of the examination-in-chief of this witness where the witness had deposed that he had handed over the specimen seal of SU to the IO through Seizure Memo Exhibit PW-21/1.

Now, Ld. Counsel referred to the evidence of PW-1, page 2 where the reference is to the seal on the envelop containing CD seal of CFSL and not seal of SU/Special Unit. Ld. Counsel questioned, how the seal of SU changed to the seal of CFSL when the article was never sent to CFSL. Ld. Counsel submitted there is no evidence of deposit of case property i.e. CD in Malkhana.

Ld. Counsel referred to list of documents where at Serial No. 21, the Seizure Memo is mentioned but no Malkhana register number is mentioned.

Ld. Counsel submitted that the seal was not given to any independent witness and case property got tampered with.

Ld. Counsel referred to the order sheet of 04th November 2016 of this court where there is no mention of anyone from Malkhana present in the Court for producing the article.

Ld. Counsel referred to the judgment of Hon'ble Delhi High Court in the case of Prem Singh vs. State, 1996 SCC (Online) Delhi 936, where the contradiction in the seal was that in place of seal of DP J, the witness had deposed about the seal of DP and due to difference of one alphabet, the Hon'ble High Court held that there was no case property at all. On similar analogy, Ld. Counsel submitted that the CD recording 134 calls has no value. It is not the case property at all.



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Ld. Counsel referred to Delhi High Court Rules Chapter 18 Part B Rule 11 titled as proper custody of articles to be proved.

Ld. Counsel submitted that Malkhana Moharrar was not examined in this case. There is no road certificate. There is no evidence of status of seal. The prosecution had to prove chain of link of case property and in the absence thereof, prosecution cannot rely on this CD containing 134 calls.

Ld. Counsel also referred to the judgment of Aayub Khan to submit that evidence of Malkhana Moharrar is necessary to prove the case property. On the basis of all these submissions, the Ld. Counsel submitted that the CD containing 134 calls handed over vide D-21 cannot be treated as case property.

Further arguments will be now heard on Tuesday i.e. 07.07.2020 at 2:30 pm.

Let a copy of this order be sent by WhatsApp for information to all the accused and their learned counsels.



**(ARUN BHARDWAJ)
Special Judge (P.C. Act)(CBI-05)
Rouse Avenue District Court,
New Delhi/03.07.2020**