

CBI vs. Sh. Ashutosh Verma & Ors.  
CC No. 192/19

14.08.2020

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. Gaganjot Singh, Ms. Smriti Ramchandran, Sh. Prince Kumar and Ms. Pinky Dubey.

Accused No. 2 Sh. Suresh Nanda in person with Ld. Sr. Advocate Sh. Ramesh Gupta along with Sh. Sandeep Kapoor.

Accused No. 3 Sh. Bipin Shah in person with Ld. Counsel Sh. Anindya.

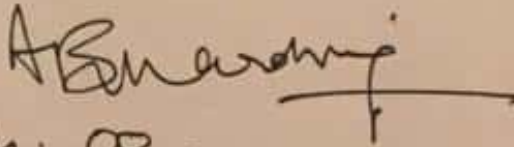
**(Through VC using Cisco Webex App.)**

In the very beginning, Sh. P.K. Dubey, Ld. Counsel for Accused No.1 Sh. Ashutosh Verma (and later on, after joining VC, Sh. Ramesh Gupta, Ld. Sr. Advocate for Accused No. 2 Sh. Suresh Nanda ) submitted that before further arguments are addressed on the admissibility of CD of recorded conversation at Hotel EROS, the stand of Ld. Sr. PP for CBI be also inquired.

At this stage, Ld. Sr. PP for CBI submitted that when he had addressed arguments for the prosecution, he had addressed relying on Shafhi Mohammad vs. State of Himachal Pradesh (2018) 2 SCC 801 but now the law is as laid down by the three Hon'ble Judges of Hon'ble Supreme Court in the case of Arjun Panditrao Khotkar vs. Kailash Kushanrao Gorantyal & Ors., Civil Appeal No. 2407 of 2018 and Civil Appeal No. 3696 of 2018 dated 14.07.2020.

On this, the Ld. Counsel for the Accused No. 1 submitted that in view of the stand of Ld. Sr. PP for CBI, he need not address further arguments with regard to the recorded conversation of EROS Hotel.

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This court has heard the Ld. Sr. PP for CBI as well as Ld. Counsels for the accused *viz-a-viz* applicability of Certificate under Section 65B of the Evidence Act in the light of recent judgment of Supreme Court Arjun Pandit Rao Khotkar (Supra). At this stage, it is for the Ld. Counsels to decide what they have to argue in the best interest of accused represented by them.

Thereafter, the Ld. Counsel for Accused No. 1 submitted that so far as CD of conversation at EROS Hotel is concerned, the foundation of the recorded conversation is lacking. The source was merely a carrier and not maker of the CD as no one has deposed that the conversation was recorded by the source.

He submitted that requisite certificate under Section 65B of Evidence Act could have been taken by the investigating officer from the maker of the said CD.

The Ld. Counsel submitted that as argued by him earlier, there is no source in this case and the story of source has been created only to escape from providing certificate under Section 65B of the Evidence Act.

Ld. Counsel referred to Section 4 and 5 of Cr. P.C. to submit that whenever there is a special law that will prevail over the general law and submitted that the provision under Section 123, 124 and 125 of Evidence Act are applicable to general law and will not apply to instances where certificate under Section 65B of Evidence Act is required as the said Section in itself is a complete code.

Ld. Counsel submitted that in the case of King Emperor vs. Nazir, AIR 1936 PC 253, it is held that when the law prescribes to do a particular thing in a particular session, the same be done in the prescribed manner precisely or be not done altogether.

Ld. Counsel submitted few judgments pertaining to recording of conversation. These judgments do not touch Section 65B of the Evidence Act but

are with regard to other aspects necessary before recorded conversation becomes admissible.

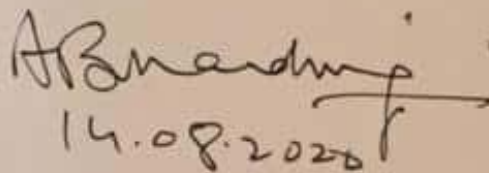
The first judgment is Anil vs. NCT of Delhi, 2015 SCC (Online) Delhi 9867 and Id counsel referred to Para 5, 10, 11, 16, 20, 26, 27, 28 and 29. The second judgment referred by the Ld. Counsel is Mukesh Kumar Singh, 2018 (248) DLT 564 and read Para 28, 54, 58, 97, 98, 99 and 101. The third judgment relied on is Sanjaysinh Rama Rao, 2015 (3) SCC 123 and also relied on Ashish Kumar Dubey ILR (2014) 111 Delhi 2331 and read Para 36, 37, 39, 42, 43, 45, 46 and 49.

Ld. Counsel also referred to S.K. Saini vs. CBI, 2015 SCC (Online) Delhi 111472 and read Para 82 to 86 and also relied on Ram Kishan Fauzi, a judgment of Hon'ble Punjab and Haryana High Court.

Ld. Counsel submitted that all these judgments are regarding the necessity of examination of the instrument used for recording the conversation and in the end, the Ld. Counsel read relevant paragraphs from the judgment of Arjun Pandit Rao Khotkar (Supra) to insist that without certificate under Section 65B of Evidence Act, no recorded conversation be it from source or any other source can be taken into consideration by the prosecution.

With this, the Ld. Counsel concluded arguments about all the recorded conversations and CCTV recordings which are heavily relied on by the prosecution and as per submissions of Ld. Counsel for Accused No. 1, neither recorded conversation of 134 calls nor conversation of 32 calls nor the recorded conversation of EROS Hotel nor the CCTV recording of EROS Hotel is admissible/available for reliance by the prosecution.

Ld. Counsel for Accused No. 1 submitted that on the next date, he will address arguments with regard to the arrest of four accused persons from Hotel Room at Bombay.

  
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The Ld. Sr. PP for CBI submitted that the judgment in the case of Ram Singh, which lays down the criteria for taking into consideration recorded conversations, is of the era when Section 65B of Evidence Act was not inserted in the Statute Book and now, when Section 65B of the Evidence Act is inserted in the Statute Book. This be considered while deciding the case.

List now on **Tuesday i.e. 18.08.2020 at 2:15 pm.**

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

**ARUN**

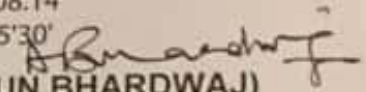
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(ARUN BHARDWAJ)

Special Judge (P.C. Act)(CBI-05)

Rouse Avenue District Court,

New Delhi/14.08.2020

CC No.247/19

CBI Vs Durga Madhab & Ors.

14.08.2020

Present: Sh. B.K.Singh, Ld.Sr.PP for CBI.

**(Through VC using Cisco WebEx App.)**

It is submitted by the Reader that the chargesheet of the case could not be sent through e-mail to the undersigned as the same was very voluminous.

Accordingly, Ahlmad of the Court is directed to send the CD containing the chargesheet and documents at the residence of the undersigned before next date of hearing.

List on **01.09.2020 at 11.00 A.M** for consideration on cognizance.

Let a copy of this order be sent by WhatsApp to Ld. Sr.PP for CBI.

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BHARDWAJ**

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**(ARUN BHARDWAJ)**  
Special Judge, CBI-05 (PC Act),  
RADC, New Delhi/ 14.08.2020

CC No.248/19

CBI Vs Umesh Sadhna & Ors.

14.08.2020

Present: Sh. B.K.Singh, Ld.Sr.PP for CBI.

(Through VC using Cisco WebEx App.)

It is submitted by the Reader that the chargesheet of the case could not be sent through e-mail to the undersigned as the same was very voluminous.

Accordingly, Ahlmad of the Court is directed to send the CD containing the chargesheet and documents at the residence of the undersigned before next date of hearing.

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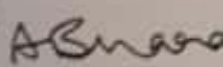
Let a copy of this order be sent by WhatsApp to Ld. Sr.PP for CBI.

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(ARUN BHARDWAJ)

Special Judge, CBI-05  
RADC, New

(PC Act),  
Delhi/ 14.08.2020