

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

21.07.2020

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.

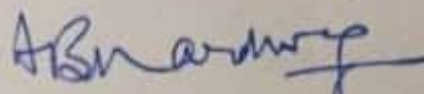
Accused No. 2 Sh. Suresh Nanda in person with Ld. Sr. Counsel Sh. Ramesh Gupta along with Sh. Sandeep Kapoor and Sh. Alok Sharma, Advocates.

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

(Through VC using Cisco Webex App.)

Shri PK Dubey learned counsel for Accused No. 1 Shri Ashutosh Verma today started arguments on in-admissibility of recorded conversation comprising 134 calls and 32 calls.

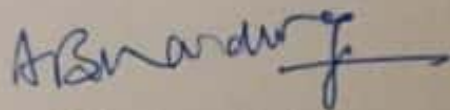
Learned counsel referred to various Rules of the Indian Telegraph (Amendment) Rules, 2007. Learned counsel read Rules 11, 12, 13, 14, 15, 16, 17, 18 and 19 dealing with designating two senior executives of the company in every licensed service area as nodal officers to receive requisitions for interception, issuance of acknowledgement letters by the designated nodal officers to the concerned security and law enforcement agency within 2 hours on receipt of intimations for interception, system to be followed in emergent cases/unavoidable cases, forwarding of list of interception authorisations to the nodal officers of the security and law enforcement agencies for confirmation of the authenticity of such authorisations, internal checks to ensure that unauthorised interception of messages


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server was shut down for maintenance and also deposed that he had no personal knowledge of the record. The witness was not knowing whether the company in the year 2007-08 had received any directions from MHA or any other authority to intercept the calls of the phone numbers appearing in the CDRs. The learned counsel submitted that the evidence of this witness shows violation of Rules of 2007 referred above. Learned counsel submitted that in this case not only required certificate under Section 65B of the Evidence Act is not on record but the service provider during his evidence could not fulfil the conditions of section 65B of the Evidence Act.

Learned counsel referred to the evidence of PW-44, nodal officer in Vodafone Mumbai. He deposed that the nodal officer who had given the certificate was still working with him in Vodafone company. The learned counsel submitted that this witness handed over CAF for mobile of Shri Bipin Shah but there is no CDR with regard to said phone number.

Learned counsel submitted that as per the case of CBI, there are 3 meetings of this accused at Delhi at Ashok Hotel, Hotel Eroes and at Golf links. Learned counsel submitted that as per CBI Accused No. 1 had 2 drivers, PW5 Sultan Singh and PW 35 Sudama Singh. It was submitted that PW 35 has deposed that he does not remember the exact date, month or year but once he had driven Mr and Mrs Verma to Ashok Hotel where they had to attend a party. Learned counsel submitted that the testimony of this witness is not proving meeting of Shri Ashutosh Verma with Shri Bipin Shah at Ashok Hotel. It was also submitted that there is no evidence about Tata Indica vehicle which was driven by this witness for driving Shri Ashutosh Verma. Learned counsel pointed out that the address of this witness as noted on D-17 at serial No. 5 is not matching with the 2 addresses of this witness given by him at


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does not take place, responsibility of service providers for actions of their employees, constitution of review committee, meeting of review committee to record its findings with regard to directions given for interception, destruction of records every six months unless required for functional requirements and destruction of records within two months of discontinuance of the interception of such messages.

Learned counsel submitted that the calls intercepted and recorded in the year 2008 were given to CBI in the year 2012 but there is no order of review committee to keep these records for all this period.

Learned counsel referred to the evidence of PW 14, nodal officer of Bharti Airtel Ltd who deposed about CDR of mobile No. 9910487945 for the period 1st January 2008 to 8th March 2008. Learned counsel submitted that as per the Investigating Officer the recorded calls are for the period from 9th February 2008 to 8th March 2008. It was submitted that the evidence of this witness was deferred on 9th February 2017 on the request of learned PP for CBI as he had to check with the Department/IO regarding certificate under section 65B of Indian Evidence Act of CDRs and Customer Application Form. On the adjourned day, the witness deposed that the CDRs for the phone numbers referred in his examination in chief on the previous date are not available on his data storage system. The witness identified the signatures of Shri RK Singh the then nodal officer of the company on the CDR. It was submitted that exhibiting of the CDR was objected to on mode of proof and due to absence of certificate under section 65B of Evidence Act. The learned counsel referred to the evidence of this witness where he deposed that he does not know where was the location of server on the relevant time when the printout of CDRs was taken. He was not knowing the software used to maintain the CDRs, the specifications of the server which was being used to store the CDRs, whether the

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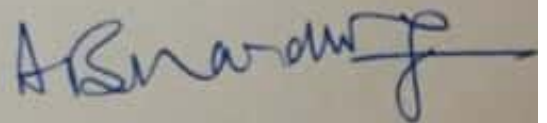
the time of recording of his evidence. For in admissibility of CDRs the learned counsel relied on Udai Kumar Singh, para 5,13.4, and 15 reported as 2015 and 6) SCC 217, State versus Mukesh Kumar Singh, 248 (2018) DLT 564, para 58, 61, 102 and 130, Ashwini versus State, 2018 SCC online Delhi, 11706, para 84 and 86 and Nilesh versus State of Maharashtra, 2011 (4) SCC 143, para 42 and also Ram Kishan Fauji versus State of Maharashtra, 2015 SCC online P and H 5058, para 21

Learned counsel submitted that the letters from Ministry of Home affairs for intercepting the calls were merely marked and not exhibited and there is no authorisation from Ministry of Home affairs and therefore the CDRs are inadmissible in evidence.

Reference was made to the evidence of PW-21 where he deposed that if he wanted, he could have changed the particulars mentioned in Annexures A. Learned counsel submitted that the details in Annexures A and CDRs are not tallying. Reference was also made to the evidence of this witness where he deposed that he had not provided letters written to the service provider for interception of calls.

Further arguments would now be heard on **24th July 2020 at 02.15 PM.**

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 BHARDWAJ)
Special Judge (P.C. Act)(CBI-05)
Rouse Avenue District Court,
New Delhi/21.07.2020

21.07.2020

CC No. 63/2019

Present: Sh. B.K. Singh Ld. Sr. P.P. for CBI.
Accused No. 1 Sh. D.S Sandhu and Accused No. 5 Smt. Sudershan Kapoor
in person along with Ld. Counsels Sh. Y. Kahol and Sh. Deepak Sharma.
Accused No. 12 Sh. Vikas Srivastava in person alongwith Ld. Counsel Sh.
I.D. Vaid.
Accused No. 7 Sh. Amit Kapoor along with Ld. Counsel Sh. Manoj Pant.
Accused No. 6 Sh. Ashwani Dhingra and Accused No. 8 Sh. Rishiraj Behl in
person along with Ld. Counsel Sh. M.K. Verma who represents Accused
No.11 Sh. D.B.Singh also.

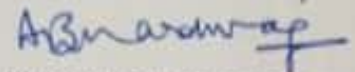
(Through VC using Cisco Webex App.)

Application filed on behalf of Accused No. 1 Shri Dilbhajan Singh Sandhu for exemption from personal appearance today. For the reasons mentioned in the application same is allowed for today. Shri Yudhishtar Kahol, learned counsel for Accused No. 5 Smt. Sudarshan Kapoor continued his arguments today. Reference was made to evidence of PW-49 Shri Jaga Jyoti Bhattacharjee who had granted the sanction to prosecute Accused No. 5. The witness deposed he does not remember how many documents he had perused before according sanction as the same was accorded 18 years ago. The witness also deposed that he does not remember how many files and how many documents were placed before him by the Vigilance Department at the time of according sanction. He was not remembering whether Shri U B Upadhyay was the Vigilance Officer. He deposed that he had seen the report given by Vigilance Department but he could not tell the number of pages of that report. He deposed that nobody from CBI had contacted him or had spoken to him telephonically before he granted the sanction. The learned counsel submitted that the witness has not seen statements of witnesses or any document and granted sanction on the basis of draft sanction received from CBI without application of mind. Learned counsel referred to the evidence of the investigating officer of the case recorded on 9th March 17 where he deposed that he had not processed the sanction against the public servant's in this case, the same was done by SP through CVC. He deposed that he had not parted with his file or the documents and statements of witnesses during the period of investigation, except for few hours. The learned counsel pointed out from the sanction order where the sanctioning authority has used the prefix "Shri" before his own name to submit that this clearly shows total non application of mind by the sanctioning authority. Learned counsel submitted that it was incumbent upon the prosecution to prove what documents were placed before the sanctioning authority. Learned counsel referred to the judgement of the Hon'ble Supreme Court in the case of Ashok Aggarwal in this regard. Learned counsel also relied on Mohd. Iqbal versus State of Andhra Pradesh, 1979 SCC Criminal 926, Head Note 3. Reliance was also placed on State of Karnataka versus Ameer Jain, AIR 2008 SCC 108 and SP Bhatnagar versus State of Maharashtra, 1979 SCC Criminal 323, Para 50. It was submitted that Shri RK Prasad SP CBI was not examined as prosecution witness. Learned counsel submitted that D112 is the photocopy of charge handing/taking over of Armapur Post Office, Kanpur along with the attendance sheet for the period from October 1997 to April 1998 but the prosecution witness Shri Natha Parsad Hans still refused to identify the signatures of Shri SN Pandey. The learned counsel submitted that the endorsement made on the records of the court below D118, D119 and D120 showed that documents were sought to be concealed and the accused had to procure them under Section 207 of CrPC. Now, the

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learned counsel referred to the evidence of Defence Witnesses. Learned counsel submitted that DW 1 has proved that civil liability of the bank was duly settled by Accused No. 1 Shri Dilbhajan Singh Sandhu on payment of ₹ 90,11,537 as per one-time settlement. Learned counsel submitted that DW-2 avoided answering the post offices of Armapur and Armapore within the jurisdiction of Kanpur by giving evasive reply that this can be answered by Senior Superintendent of Post Office Kanpur. The learned counsel submitted that the witness took the refuge of matter being 18 years old even for answering procedural questions. The learned counsel submitted that DW 4 is Dak Assistant who is a class IV employee and the department deliberately avoided deputing a senior officer for appearing as defence witness before this court. It was submitted that this employee was not even having his official identity card and showed only Adhaar card to prove his identity. Learned counsel submitted that DW 5 has proved that there are post offices at Armapur as well as at Armapore. Relying on the evidence of this witness it was submitted that it falsifies the evidence of other prosecution witnesses that seal/stamp of the Post Office was not required on the KVPs/receipts for pledging. The learned counsel from the evidence of DW 5 also submitted that the borrower has to go with the banker to the Post Office as he has to give an application for pledging the KVPs. Learned counsel submitted that no one bothered to find out the truth especially whether the receipts for depositing money for pledging of KVPs were genuine or not. The learned counsel submitted that once the prosecution has not placed on record the report received from GEQD, the presumption is that the report was in favour of the accused. Learned counsel relied on 1996 SCC Criminal 1046 (Duncan Industries Calcutta case), 2008 (9) SCC 677 (Nikhil Merchant's Case) and CBI versus Narinder Lal Jain, para 11, and submitted that the accused knew at the time of settlement that he is settling only the civil liability but still honestly paid Rs. 90 lakhs towards OTS. Learned counsel submitted that although he would have concluded the arguments today but requested for some more time to cite few judgements on the point of conspiracy. The matter shall now again be taken up on **23rd July 2020 at 11 AM** for concluding the arguments by learned counsel for Accused No. 5 Smt. Sudarshan Kapoor. Bonds under section 437A of CrPC have been furnished on behalf of Accused No. 5 Smt. Sudarshan Kapoor and Accused No. 7 Shri Amit Kapoor. The surety shall appear before the court on the date of judgement and will file the physical copy of the bond and solvency documents/FDR. Letter be sent to the bank not to release the FDR of surety of Shri Amit Kapoor without leave of this court.

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 BHARDWAJ)
Special Judge (P.C. Act)(CBI-05)
Rouse Avenue District Court,
New Delhi/21.07.2020