

(2019) 05 RAJ CK 0185

In the Rajasthan High Court

Case No : Criminal Miscellaneous Petition No. 2240 Of 2019

Central Bureau Of Investigation

APPELLANT

Vs

Sohan Lal Bishnoi And Ors

RESPONDENT

Date of Decision : 22-05-2019

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 60, 62, 68, 69, 105, 227, 228, 274, 275, 276, 284, 285, 294, 311, 482
Indian Penal Code, 1860 — Section 109, 114, 120B, 201, 202, 302, 304, 304B, 338, 364, 365, 498A
Scheduled Castes & Scheduled Tribes (Prevention Of Atrocities) Act, 1989 — Section 3(2)(v)
Constitution Of India, 1950 — Article 21

Citation : (2019) 05 RAJ CK 0185

Hon'ble Judges : P.K. Lohra, J

Bench : Single Bench

Advocate : Ejaz Khan, Panney Singh, J.S. Choudhary, Amandeep Lamba, Hemant Nahata, Sanjay Bishnoi, N.K. Bohra, Nishant Bora

Final Decision : Dismissed

Judgement

1. The prosecuting agency, Central Bureau of Investigation (CBI), by the instant petition under Section 482 of the Code of Criminal Procedure, 1973 (for short, 'Cr.P.C.'), has laid challenge to order dated 25th of January, 2019, passed by Special Judge, Scheduled Castes & Scheduled Tribes (Prevention of Atrocities Cases), Jodhpur (for short, 'learned trial Court'). By the order impugned, learned trial Court thwarted application of CBI for recording statements of Ms. Amber B. Carr, a prosecution witness, through video teleconference in Sessions Case No.97/2011.

2. Succinctly stated, the facts of the case are that, at the threshold, an FIR No.383/11 was registered with Police Station, Bilara, Jodhpur Rural, against one Sohanlal Bishnoi for offence punishable under Section 365/120-B IPC. Subsequently, on a request being made by the State Government, investigation

of the case was entrusted to CBI, wherein Sohanlal Bishnoi was castigated for abduction of one Ms. Bhanwari Devi w/o Amarchand Nut. Initially, chargesheet in the matter was filed on 2nd of December, 2011, however, during investigation on the basis of material collected by CBI many facts/events unfurled and that necessitated filing of supplementary chargesheets on 29th of February 2012, 21st of April 2012 and 30th of August 2017 respectively, against Sohanlal Bishnoi and other accused-respondents for offences punishable under Sections 120-B, 364/120-B, 302/120-B, 201/120-B IPC and Section 3(2)(v) of the Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short, 'Act').

3. While investigating the case, despite sincere endeavour made by CBI, Ms. Bhanwari Devi could not be traced out but finally it succeeded in recovering burnt bones from Rajeev Gandhi Lift Canal upon disclosure of one of the accused persons. The investigating agency suspecting burnt bones of a human being, initially contacted experts of Central Forensic Science Laboratory (CFSL) and All India Institute of Medical Sciences (AIIMS), New Delhi for seeking their opinion about DNA extraction from the burnt bones. However, the efforts of CBI proved abortive and both CFSL as well as AIIMS opined that it is not possible to render any opinion about DNA extraction from burnt bones. Both, CFSL & AIIMS, also conveyed CBI that such facility is available with FBI, America.

4. Thus, in such a situation, the CBI sent the burnt bones to Forensic Laboratory of Federal Bureau of Investigation (FBI) in United State of America (USA) through Embassy of USA, New Delhi. This exercise was made by the CBI for DNA extraction and matching the same with the blood/buccal samples of the children of deceased Bhanwari Devi. Upon receipt of report from FBI, bearing case I.D. No.163A-NL-235 dated 25th of May 2012, under the signatures of Ms. Amber B. Carr, FBI Expert through the embassy of United State of America, the same was placed on record before the learned trial Court on 5th of July 2012 as additional document after furnishing copy of the same to accused-respondents.

5. The learned trial Court, thereafter, by resorting to Section 227 & 228 Cr.P.C., framed charges against accused-respondents vide its order dated 4th of October, 2012. The learned trial Court framed charges under Section 120-B, 364/120-B IPC against accused-respondent Amarchand, for offence under Section 202 IPC against accused-respondent Parasram Bishnoi and under Section 201 IPC against accused-respondent Om Prakash while discharging both of them for offence punishable under Sections 120-B, 364, 302 IPC and Section 3(2)(v) of the Act. The rest of the accused-respondents were charged for offences punishable under Sections 120-B, 364/120-B, 302/120-B, 201 IPC and Section 3(2)(v) of the Act.

6. After framing of the charges, prosecution evidence commenced and when prosecution evidence was going on, at the behest of CBI, an application under Section 311 Cr.P.C. was filed on 4th of February 2017 with a prayer to issue summons to prosecution witness Ms. Amber B. Carr, FBI Expert. The learned trial Court, while acceding to the prayer of prosecuting agency, allowed the said application by its order dated 25th of May, 2017. The same is followed by

issuance of summons to the witness for her appearance on 22nd of June, 2017 followed by yet another fresh summon for 6th of July 2017. The requisite summons were sent to FBI Expert through the office of Legal Attache, Embassy of USA, New Delhi.

7. Challenge laid to the order of learned trial Court dated 25th of May 2017, by one of the accused-respondent Parasram Bishnoi preferring S.B. Cr. Misc. Petition No.2142/17, proved abortive inasmuch as the petition was dismissed on 12th of October, 2017. Be that as it may, in the interregnum, a communication was received from the office of Legal Attache, Embassy of USA, New Delhi, mentioning therein to fulfill the request via video teleconference facility with an Indian Court and location in USA preferably Indian Embassy in Washington DC. This sort of development prompted CBI to file an application before learned trial Court on 6th of July 2017 with a prayer to record evidence of FBI expert via video teleconference facility. The learned trial Court, declined prayer of the prosecution on 10th of August, 2017 and issued fresh summons to FBI Expert for her appearance on 23 rd of September 2017.

8. Fresh summons were sent to Ministry of Home Affairs for service upon the witness, however, the Ministry informed that atleast three months' time is required to serve the summons. Taking note of the development, CBI laid yet another application before the learned trial Court on 23rd of September, 2017 with a prayer for issuance of fresh summons to the prosecution witness Amber B. Carr, FBI Expert, mentioning next date of hearing after three months from the date of issuance. Acceding to the request of CBI, learned trial Court, vide its order dated 16th of October, 2017, issued fresh summons to the witness alongwith information in prescribed proforma for recording her evidence on 25th of January, 2018. In adherence of issuance of summons, information in prescribed proforma was forwarded to US authorities, through Ministry of Home Affairs, Government of India, for service upon the FBI Expert.

9. Yet again, prosecution filed an application before the learned trial Court for recording evidence of witness Ms. Amber B. Carr through video teleconference facility by citing the reason that Assistant Legal Attache, Embassy of USA, New Delhi has informed that she would be available on 25th of February, 2018 for tendering evidence via video teleconference facility. Taking note of the reasons spelt out for examining prosecution witness Ms. Amber B. Carr through video teleconferencing, the learned trial Court again rejected prayer of the prosecution on 9th of February, 2018. The learned trial Court also observed in order dated 9th of February, 2018 that the witness has not sent any written request to the effect that she is unable to come to India to testify before the Court. This sort of situation prompted the learned trial Court to issue fresh summons to concerned witness for ensuring her presence on 23rd of February, 2018.

10. After issuance of summons to witness Ms. Amber B. Carr for recording her statements on 23rd of February, 2018, she sent a written communication through email dated 13th of February, 2018 showing her inconvenience to travel

to India due to professional schedule and requested again to examine her through video teleconference facility by providing suitable date for the said purpose. Although learned trial Court issued process to witness Ms. Amber B. Carr from time to time but the trial of the case did not halt and the statements of other prosecution witnesses were continuously recorded. During progress of the trial, at the behest of prosecution, a notice under Section 294 Cr.P.C. was filed for admission/denial of FBI report bearing I.D. No.163A-NL-235 dated 25th of May 2012 but all the accused-respondents denied the said notice.

11. Subsequent to the rejection of notice under Section 294 Cr.P.C., learned trial Court considered the application of the prosecution dated 23rd of April, 2018, which was edified on email of the witness dated 13th of February, 2018. The learned trial Court, upon consideration of the application, declined the prayer of prosecution on 13th of November, 2018. For nixing the application of prosecution, the learned trial Court clarified in the order that the witness has not specifically mentioned her inability to remain physically present before the Court for testifying for some compelling reasons, or she is unable to visit India.

12. Consequent upon rejection of the prayer, yet again summons were issued to the witness but somehow or other those summons also met the same fate and the witness did not appear for recording her statements. In her last communication, the witness conveyed following reasons for her non-appearance before the learned trial Court:

"Due to my official commitments, it is extremely difficult and inconvenient for me to attend the Court in person in India as it involves lot of expenditure, besides undertaking very long/hard journey."

13. Upon receipt of the communication from the concerned witness, the prosecution agency CBI apprised the learned trial Court on 20th of December, 2018 and requested for examining her through video teleconferencing on the convenient date shown by the witness. This time, the learned trial Court again considered the request of prosecution and, while reiterating its earlier view, declined the prayer. The learned trial Court also observed that it is not clothed with the power to review its earlier order dated 13th of November, 2018.

14. For assailing the impugned order, petitioner CBI has set out many grounds. Emphasizing that testimony of the witness is important, the petitioner CBI has also pleaded that if her statements are not recorded through video teleconferencing, the same would result in miscarriage of justice. The prosecution has also made endeavour to impress upon this Court that in the backdrop of peculiar facts and circumstances of the case wherein the witness has shown her inability to come to India for testifying, it would be just and appropriate to upset the impugned order and permit the prosecution to examine her through video teleconferencing.

15. Harping on the present era of advancement in information technology and other devices like Skype and Whatsapp, petitioner CBI has urged that allowing

recording of statements of witness through video teleconferencing ought to have been permitted by the learned trial Court for securing ends of justice. As per petitioner CBI, rejection of its genuine prayer by the learned trial Court, in the peculiar facts and circumstances of the case, is ex-facie an abuse of process of the Court, rendering impugned order vulnerable.

16. Contesting the petition, on behalf of respondents No.7, 8 & 17, written submissions are made touching factual and legal aspects. The respondents raised a preliminary objection about maintainability of criminal misc. petition under Section 482 Cr.P.C. with a specific plea that petition is bereft of requisite ingredients, pre-requisite for invocation of inherent powers of this Court. In the alternative, it is also urged by the respondents that inherent powers under Section 482 Cr.P.C. are to be exercised with great care and circumspection very sparingly and the instant one is not a case wherein such power is invocable at the behest of petitioner CBI. Joining issue with the petitioner, respondents have also urged in their written submissions that, while passing the impugned order, the learned trial Court has not violated any statutory provision of law. Dilating on the expression "ends of justice", it is submitted by respondents that legislature never intended to use the term for highlighting any vague or nebulous concept of justice, or in the philosophical sense. As per respondents, the intent of law is to do justice according to law, i.e., statutory law and common law.

17. While referring to the impugned order, respondents have also pleaded that instant one is not a case wherein either miscarriage of justice has resulted due to passing of the order under challenge, or deducible in the overall fact scenario. It is also pleaded by the respondents that this Court has not framed rules for recording evidence through video teleconferencing. Objecting to invocation of the inherent powers, it is also urged by respondents that such power is not exercisable by this Court when statutory provision/provisions are available to deal with a particular issue. For substantiating their plea, respondents have referred to Sections 60, 62, 68, 69 and 87 Cr.P.C. and Section 87 read with Section 105 Cr.P.C. The respondents have also relied on Section 276 Cr.P.C. wherein Legislator has not provided any scheme of video teleconferencing but for providing the same under Section 275 Cr.P.C. by way of amendment in the year 2009. Apart from all these submissions, respondents have made an attempt to narrate chronological events during trial and also cited some of the legal precedents for thwarting the plea of petitioner CBI.

18. Learned Special Public Prosecutors Mr. Ejaz Khan and Mr. Panney Singh have assailed the impugned order by canvassing all the grounds set out in the petition. Learned Special Public Prosecutors would contend that in the backdrop of serious delinquencies attributed to the accused-respondents including charge of criminal conspiracy, learned trial Court has seriously erred in nixing application of the prosecution. Elaborating submissions in this behalf, learned Special Public Prosecutors argued that ramifications of the impugned order are writ large as it has substantially diminished chances of securing ends of justice. Learned Special

Public Prosecutors further submit that by rejecting plea of the prosecution to examine FBI Expert, witness Amber B. Carr, through video teleconferencing, learned trial Court has abused the process of the Court.

19. Learned Special Public Prosecutors have strenuously urged that in the present era utilization of the technology is need of the hour to unearth truth or to possibly clear certain doubts and perceptions. Learned Special Public Prosecutors contend that technological advancement is a welcome phenomenon for judiciary and to make adjudicatory process more effective, the application ought not have been disallowed by the learned trial Court in the light of significance/importance attached with the testimony of concerned witness. Learned Special Public Prosecutors lastly urged that no whisper about importance of FBI Expert/witness in the impugned order for just decision of the case, has rendered it vulnerable warranting interference by exercising inherent jurisdiction. For substantiating all these arguments, learned Special Public Prosecutors placed reliance on following legal precedents:

? State of Maharashtra Vs. Dr. Praful B. Desai & Anr. [(2003) 4 SCC 601]

? Criminal Appeal No.688 of 2019 Manju Devi Vs. State of Rajasthan & Anr. [2019 (6) SCALE 515].

20. E.converso, learned Senior Counsel Mr. J.S. Choudhary, assisted by Mr. Amandeep Lamba, appearing for some of the accused-respondents, has vehemently argued that impugned order is just and proper and warrants no interference in exercise of inherent jurisdiction. Learned Counsels Mr. Hemant Nahata, Mr. N.K. Bohra and Mr. Nishant Bora, representing other accused-respondents have submitted in unison that prosecuting agency CBI itself has flagrantly abused the process of the Court by filing this petition. Mr. Hemant Nahata would urge that CBI is espousing cause to examine FBI Expert i.e. witness Amber B. Carr through video conferencing since 26th May 2017 but in vain inasmuch as learned trial Court has declined its plea umpteen times by passing orders from time to time. He, therefore, submits that when those orders are not assailed by the CBI, how and in what manner it can be allowed to challenge impugned order, which is simply reiteration of previous orders passed by the learned trial Court.

21. Learned counsel Mr. Nahata, while dilating on inherent powers of the Court under Section 482 of the Cr.P.C., strenuously urged that these powers are not akin to appellate/revisonal Court and therefore require to be exercised vary sparingly in exceptional circumstances. Learned counsel, with a view to elaborate inherent powers, contends that two expressions find mention in the Section do not confer unlimited jurisdiction on this Court and therefore securing these ends, adherence of law including procedural law cannot be sacrificed. Learned counsel further argued that the intent of the legislature is to mandate non-invocation of such extraordinary power in respect of any matter covered by specific provision of the Code and with utmost care. It is also submitted by learned counsel that

Court is loathed with the inherent powers where its exercise would infringe any specific provision of the Code. Learned counsel Mr. Nahata with full emphasis argued that in the entire petition neither abuse of the process of the Court is complained by the petitioner CBI, nor it is discernible inasmuch as no law is violated by the learned trial Court.

22. Mr. Nahata has further contended that High Court has not laid down any procedure by enacting rules or instructions for recording evidence of a witness through video conferencing. Learned counsel has, therefore, urged that in such circumstances recording evidence through video teleconference would be dehors rules of procedure and therefore violative of Article 21 of the Constitution which envisage fundamental right to an accused of getting tried in accordance with procedure established by law. It is also submitted by learned counsel that the judgment in Praful B. Desai & Anr. (supra) is clearly distinguishable inasmuch as it was a case of summons trial wherein recording evidence is governed by Section 275 Cr.P.C. permitting evidence to be recorded by audio video electrical means whereas no such provision is available under Section 276 Cr.P.C. laying down procedure for recording evidence in sessions case. Alternatively, it is argued by learned counsel that the concerned witness has not refused to appear before the learned trial Court for recording her statement and the reasons for her non-appearance with other option are simply illusory.

23. Learned counsel, therefore, supporting the impugned order, canvassed with full emphasis that learned trial Court in the overall facts scenario has not committed any manifest error of law while declining prayer of the prosecution. Referring to decision in Manju Devi (supra), learned counsel submits that the judgment is clearly distinguishable inasmuch as it was an appeal against rejection of complainant's application under Section 311 Cr.P.C. and therefore in that context supreme Court has observed that learned trial Court could have taken recourse to the provisions of Section 284 & 285 Cr.P.C. Learned counsel lastly argued that fact situation in the instant case is entirely different therefore ratio decidendi of Manju Devi's case cannot be applied in abstract sense. In support of various contentions, learned counsels appearing for the accused-respondents have placed reliance on following legal precedents:

- (1) Mary Angle Vs. State of Tamil Nadu [(1999) 5 SCC 209]
- (2) Radhey Shyam Vs. Chhabinath [(2015) 5 SCC 423]
- (3) Som Mittal Vs. Govt. of Karnataka [(2008) 3 SCC 574]
- (4) Kusheshwar Prasad Singh Vs. State of Bihar [(2007) 11 SCC 447]
- (5) Ranjan Dwivedhi Vs. CBI [(2012) 8 SCC 495].

24. I have given thoughtful consideration to the arguments advanced by learned Counsels for the parties and perused available material minutely for testing sustainability of the impugned order within the ambit and scope of inherent jurisdiction. That apart, the record of Criminal Revision Petition No.120/2013

(decided) is also scanned.

25. Prosecution of the accused-respondents for serious offences is edified on FIR No.383/2011, registered with Police Station, Bilara, Jodhpur Rural. With the advent of time, investigation was entrusted to petitioner-CBI and during the course of investigation many accused-respondents were apprehended and later on sent to judicial custody, in the backdrop of attribution of serious criminal delinquency. The investigation progressed, culminating into first chargesheet on 2nd of December, 2011, followed by supplementary chargesheets on 29th of February, 2012, 21st of April, 2012 and 30 th of August, 2017 respectively. During trial before the learned trial Court, prosecution examined many witnesses to prove the charges. Some of the accused persons are attributed the charges under Section 120-B as well as 302/120-B IPC. Before the commencement of trial, prosecuting agency submitted report of FBI, USA dated 25th of May, 2012 on 5th of July, 2012 as additional document.

26. Upon hearing defence and perusal of the report of FBI, purporting to be opinion about DNA extraction from burnt bones, matching with the blood/buccal samples of children of deceased Bhanwari Devi as well as available material, the learned trial Court framed charges against the accused-respondents under Sections 120-B, 364/120-B, 302/120-B, 201 IPC and Section 3(2)(v) of the Act barring accused-respondents Amarchand, Parsaram Bishnoi, Om Prakash, as against these accused persons other charges were framed vide order dated 4th of October, 2012. The charge of murder, coupled with criminal conspiracy by some of the accused persons, as per prosecution, rested on many circumstantial evidence besides report of the FBI expert. Feeling aggrieved by the order framing charges, some of the accused respondents, including Malkhan Singh, preferred revision petitions before this Court, which were disposed of in due course of time.

27. The CBI, therefore, taking note of its predicament to furnish "the body of the offence, or the substance of crime", made endeavour to tender requisite corroborative evidence for bringing home guilt against accused persons. Thus, in that prevalent situations, CBI realized that proof about contents of FBI Expert Report is crucial to establish corpus delicti, at its behest, an application under Section 311 Cr.P.C. was filed on 4th of February, 2017 for issuance of summons to prosecution witness Ms. Amber B. Carr, the FBI Expert. Acceding to the prayer of CBI, learned trial Court issued summons to the witness for her appearance on 12 th of June, 2017, followed by further summons for 6th of July, 2017. Dismayed with the order dated 12th of June, 2017, accused respondent-Paras Ram Bishnoi laid Criminal Misc. Petition No.2142/2017 before this Court but the same was rejected on 12.10.2017.

28. From the checkered history, it is clearly borne out that summons were sent to the concerned witness umpteen times. The CBI also made endeavour before the learned trial Court to examine said witness through video teleconferencing but the request was turned down by learned trial Court on 13th of November, 2018. Subsequently, yet again summons were issued to the witness but the

witness did not turn up. It is, in such circumstances, the prosecution by citing email dated 13th of February, 2018 received from the witness, requested the trial Court to give a suitable date in the month of March or April, 2018 for recording statement of the witness through video teleconferencing. The learned trial Court, after considering all the facts, and more significantly the reasons shown by the witness for non-appearance to depose, observed in the impugned order that the reasons are not convincing and per se illusory.

29. At this stage, it would be just and appropriate to observe that most of the accused persons are under incarceration for last more than seven years and the trial has not progressed for last eight months, inasmuch as, during the period of eight months no prosecution witness has been examined also persuaded learned trial Court to exercise its discretion in disfavour of the prosecution. Therefore, taking this vital fact into consideration, coupled with the fact that the summons sent to the witness nineteen times for ensuring her presence went in vain, it has declined the plea of the prosecution. The learned trial Court has also observed in the impugned order that the order passed by it earlier on 13th of November, 2018 cannot be reviewed.

30. Judicial review of the impugned order in exercise of inherent jurisdiction merits threadbare examination on the peculiar facts and circumstances as well as ambit and scope of extraordinary power endowed upon the Court. I may hasten to add that it is not possible, desirable or expedient to lay down any inflexible rule governing the province of inherent jurisdiction. However, there remains no quarrel that the said jurisdiction is discretionary and exercisable with utmost care and circumspection very sparingly. Supreme Court has meticulously analyzed inherent jurisdiction from time to time. As per ratio of all the judgments, power under Section 482 Cr.P.C. is to be exercised judiciously for achieving purposes mentioned therein, in most appropriate cases.

31. In substance, the provision is intended to meet the three situations cataloged therein and therefore inherent jurisdiction is distinct from appellate or revisional jurisdiction. The Section is not intended to bye-pass the procedure prescribed. While broadly construing Section 482 Cr.P.C., it clearly emerges out that, essentially concern of the court is one of discretion and not of jurisdiction. Therefore, the Court is required to see in the factual backdrop of the case as to whether discretion is to be exercised to interfere with an impugned order or proceeding. It is needless to emphasize here that wider power and discretion conferred on the Court casts a corresponding duty to exercise it with great restraint judiciously. Jurisdiction being discretionary is normally invocable when party approaching the Court comes with clean hands and not with tainted hands or oblique motive.

32. Now switching on to the factual backdrop of the case, it has come to the fore that petitioner-CBI has placed on record before the learned trial Court report of FBI Expert dated 25th of May, 2012 on 5th of July, 2012. After framing of the charges, prosecution evidence commenced and at that juncture petitioner

prosecuting agency laid an application under Section 311 Cr.P.C. to summon prosecution witness Ms. Amber B. Carr, FBI Expert. Acceding to the prayer of CBI, learned trial Court issued summons to the witness for her appearance on 22nd of June, 2017, followed by another fresh summon for 6th of July, 2017. Endeavour made by CBI to summon witness Ms. Amber B. Carr presupposes that in the estimation of prosecuting agency her testimony is vital for just decision of the case.

33. It has also come to the fore that the prosecuting agency by realizing significance of the evidence of the concerned witness, persuaded/requested learned trial Court to issue her summons from time to time and in all on 19 occasions summons were sent for ensuring her presence. At this juncture, it may also be observed that at one point of time learned trial Court had given next date of three months for recording evidence of the witness vide its order dated 16th of October, 2017. On 16th of October, 2017, the learned trial Court, while issuing fresh summons to the witness along with information in prescribed proforma for recording her evidence, posted the matter on 25th of January, 2018. This indulgence was granted by the learned trial Court on a request made by CBI. Later on also, from time to time endeavour was made by the learned trial Court to summon the witness but on one pretext or the other the witness did not turn up to depose before the Court. All these sequence of events clearly goes to show that CBI has soft peddled its efforts to examine the witness, leading to a situation of halting the trial for last eight months.

34. For amelioration at this stage, it would also be necessary to consider the reasons furnished by the witness for her non-appearance to depose before the Court. Essentially, the witness has not shown her unwillingness/refusal to appear before the learned trial Court for deposition. The partial reluctance of the witness to appear before learned trial Court, as quoted hereinabove, is per se not convincing, or founded on substantial/genuine reasons. Suffice it to observe that inconvenience of a witness due to schedule conflict in attending proceedings or taking long journey for the same is hardly a ground to dispense with personal presence of witness. The other reason, that her travel to India would involve lot of expenditure, is per se illusory inasmuch as under the law, expenditure incurred by a witness is to be borne by the prosecuting agency and not by the witness himself/herself. Every prayer for recording statements of the witness through video teleconference by CBI is half-hearted inasmuch as in its application also there is a rider with following recitals "on the convenient date shown by the witness". True it is that in the present era of advancement in technology, optimum use of information technology and other devices like Skype and Whatsapp are to be encouraged but then if the learned trial Court has declined to exercise its discretion based on genuine reasons, I am afraid, same cannot be categorized perverse or de hors the law much less an abuse of the process of the Court.

35. In *Dr. Praful B. Desai & Anr. (surpa)*, a judgment of Supreme Court, on which

prosecuting agency has placed heavy reliance, suffice it to observe that it was a case of construing Sections 274 and 275 Cr.P.C. for recording evidence by way of video conferencing in open Court. In that matter, essentially, the Court examined the relevant provisions pertaining to a trial for offences under Section 338 read with Sections 109 and 114 IPC, in accordance with summons trial. Moreover, the witness in that case, Dr. Ernest Greenberg of Sloan Kettering Memorial Hospital, New York, USA, though had expressed his willingness to give evidence but refused to come to India for that purpose. Therefore, in that background, the Court permitted his examination as a witness by video conferencing and laid down the procedure. Therefore, besides being a summons case, it was a case of unwillingness of the witness to come to India to depose and the Supreme Court permitted recording statements of the witness though video conferencing. The present one is a Sessions trial and there is nothing on record to show that the concerned witness has shown her unwillingness to visit India for deposition, therefore, the judgment aforesaid is clearly distinguishable on the facts and circumstances of the case.

36. In *Manju Devi (supra)*, Supreme Court has essentially examined the power of Court under Section 311 Cr.P.C., and therefore, while interfering with the order of trial Court as well as High Court declining prayer of the complainant to summon witness Dr. I. Yusuf, and set aside the orders passed by the High Court as well as trial Court, by allowing the application aforesaid. While considering the appeal, the Court has also examined autopsy report of the deceased showing cause of death as "asphyxia secondary to strangulation" as well as gravity of offence under Sections 302, 304, 304-B and 498-A IPC. Besides that, the Court has also dilated on the opinion of Medical Board, which had not given any definite opinion about cause of death in juxtaposition to the autopsy report prepared by Dr. I. Yusuf. This sort of situation persuaded the Court to accept application under Section 311 of Cr.P.C. While examining the matter, the Court also dilated on the provisions of Sections 284 and 285 Cr.P.C. As Dr. I. Yusuf was residing in Nigeria, therefore, in that background, the Court made observation about examining the witness through video conference by relying on the decision in *Dr. Praful B. Desai & Anr. (supra)*.

37. That apart, taking into account a vital fact that the issue involved therein was about power under Section 311 Cr.P.C. coupled with serious dichotomy in respect of cause of death of the deceased indicated in the autopsy report and the report of medical board, the Court also made certain observations about examining the witness through video teleconferencing. The fact situation in the present case is entirely different because no post-mortem report is available on record and therefore the Court was pleased to make these observations by realizing that testimony of medical practitioner is vital to unfurl cause of death. Moreover, there is nothing on record to show that the concerned witness has refused to appear before the learned trial Court for deposition. Therefore, in the backdrop of peculiar facts and circumstances of the instant case, this judgment too cannot render any assistance to the cause of petitioner-CBI.

38. On behalf of accused-respondent, it is vociferously canvassed that unlike Section 275 Cr.P.C., there is no amendment in Section 276 Cr.P.C. permitting recording of evidence of a witness by audio video electronic means in a trial before Court of Session. However, in my view, this question need no elaborate examination/adjudication. While refraining to dilate on this question, I feel its threadbare examination would unnecessarily encumber the order. Precisely, the plea raised in the instant petition is thrashed out by the Court on the touchstone of peculiar facts and circumstances besides sequence of events during trial. Therefore, for thwarting plea of the prosecuting agency, it would not be appropriate to scrutinize contention of defence touching Section 276 Cr.P.C. Thus, this question is left open.

39. In the instant matter, Court cannot overlook a very vital fact that trial in the matter is pending since eight years and most of the accused respondents are under incarceration as undertrials for a considerable period. Unquestionably, consequences of prolonged detention of an under-trial are grave and at times its ill-effects on the social, physical and psychological life of the deceased are clearly apparent. Prolonging trial, when accused in custody, is clearly violative of Article 21 of the Constitution.

Supreme Court in many verdicts has acknowledged that speedy trial is an implied ingredient of a fair trial guaranteed by Article 21 of the Constitution. In the matter of Abdul Rehman Antulay & Ors. Vs. R.S. Nayak & Ors. [(1992) 1 SCC 225], Constitution Bench of Supreme Court, while emphasizing its significance within the four corners of Article 21 of the Constitution, held:

"(1) Fair, just and reasonable procedure implicit in Article 21 of the Constitution creates a right in the accused to be tried speedily. Right to speedy trial is the right of the accused. The fact that a speedy trial is also in public interest or that it serves the social interest also, does not make it any the less the right of the accused. It is in the interest of all concerned that the guilt or innocence of the accused is determined as quickly as possible in the circumstances.

(2) Right to Speedy Trial flowing from Article 21 encompasses all the stages, namely the stage of investigation, inquiry, trial, appeal, revision and re-trial. That is how, this Court has understood this right and there is no reason to take a restricted view."

40. It is also noteworthy that earlier request of petitioner-CBI was declined by learned trial Court on 13th of November, 2018 and thereafter Court has issued fresh summons to the witness and at the behest of CBI no endeavour was made to challenge the said order. Keeping in view that aspect of the matter also, the learned trial Court has declined the plea of petitioner-CBI. The factum of issuing summons to the concerned witness umpteen times and in acknowledgment thereof the witness not furnishing genuine/plausible reason for her non-appearance before the learned trial Court also paved the way for rejection of CBI plea on legitimate grounds. Thus, in overall scenario, if the impugned order is

objectively examined, then, unhesitatingly, in my opinion, discretion exercised by the learned trial Court cannot be faulted. The learned trial Court has passed a detailed order spelling out cogent reasons for declining prayer of prosecuting agency. In view thereof, none of the three situations cataloged under Section 482 Cr.P.C. are forthcoming for exercising discretion in favour of prosecuting agency.

41. Every Court has the right to arrange its own affairs and discretionary power conferred upon a Court/Judge provides claws to laws. A Judge presiding a Court has to devise his own procedure, sometimes mechanism, sometimes laying down his own guideline to act in some situations to take decision where to nail the board, of course within its four corners, to meet the demands by exigencies of situations. Normally, exercise of discretionary power vested in a Court is not open to interference by the higher Court so long as it is exercised reasonably, in good faith and on correct/plausible grounds. Any Court clothed with discretionary power must be given some latitude and superior Courts while making judicial review of such discretionary order is not expected to upset the same simply because other view is possible so long as discretion exercised by the inferior Court is neither perverse nor dehors the law.

Upon examination of the impugned order on all these parameters, I record my satisfaction that the learned trial Court has exercised its discretionary power judiciously, in good faith and upon consideration of the factual gamut of the case. That apart, by passing the impugned order, neither the learned trial Court has abused the process of the Court, nor it is a case wherein inherent power is to be exercised to give effect to any order passed under the Code, or to secure the ends of justice.

Resultantly, the petition fails and the same is hereby rejected.