
(2018) 03 UK CK 0002

In the Uttarakhand High Court

Case No : Criminal Miscellaneous Application No. 347 of 2018

G.B. GOYAL

APPELLANT

Vs

CENTRAL BUREAU OF INVESTIGATION SPE DEHRADUN

RESPONDENT

Date of Decision : 05-03-2018

Acts Referred:

Indian Penal Code, 1860 — Section 120B, 420, 467, 468, 471

Code of Criminal Procedure, 1973 — Section 311, 313

Prevention of Corruption Act, 1988 — Section 13(1)(d), 13(2)

Citation : (2018) 03 UK CK 0002

Hon'ble Judges : V.K. BIST, J

Bench : Single Bench

Advocate : Pankaj Miglani, Sandeep Tandon

Final Decision : Dismissed

Judgement

1. A Petitioner has approached this Court seeking the following reliefs:

1. quash the impugned order dated 17.01.2018 passed by learned Special Judge, Anticorruption CBI, Dehradun in Case No. 13/2010 under

Sections 120-B, 420, 467, 468, 471 of I.P.C. r/w Section 13(2) & 13(1)(d) of Prevention of Corruption Act titled as CBI Vs. G.B. Goyal & others and

allow the application of the petitioner to recall PW 10 so that the petitioner may cross-examine PW-10.

2. stay the proceedings of Case No. 13/2010 under Sections 120-B, 420, 467, 468, 471 of IPC r/w Section 13(2) & 13(1)(d) of Prevention of

Corruption Act titled as CBI Vs. G.B. Goyal & Others pending in the Court of Special Judge Anticorruption CBI, Dehradun during the pendency of

the present case.

2. An F.I.R. was registered against the applicant with the allegations that the

applicant with other co-accused person, while posted at BHEL, Canteen, Main Stores, Haridwar entered into a criminal conspiracy with the suppliers of the goods with the object to cheat BHEL to the extent of 32 lakhs approximately by submitting bogus bills of the supplies and also on account of misappropriation in accounting of various items thereby causing wrongful loss to the BHEL and wrongful gain to themselves. The Investigating Officer, after investigation, submitted charge sheet against the applicant.Â Thereafter, on 07.01.2016 witness, namely, Mr. Ravinder Singh, Constable CISF No. 884493853 was examined as PW10.Â On that day, the counsel for the applicant could not come to the Court due to illness.Â He was duly cross-examined by the counsel for other co-accused persons; but, insofar as the applicant is concerned, the applicant expressed his inability to cross-examine the witness due to the illness of his counsel.Â Thereafter, applicant moved an application under Section 311 of the Code of Criminal Procedure seeking recall of the witness PW-10 Mr. Ravindra Singh for cross-examination.Â The learned Special Judge, Anticorruption CBI, Dehradun rejected the said application of the applicant on 17.01.2018. Against the said order, present criminal misc. application has been filed by the applicant.Â Â

3. Learned counsel for the applicant submitted that cross examination could not be conducted, as the counsel for the applicant was ill on that day; but, the trial Court closed the right of the applicant.Â Â He further submitted that applicant waited for other witnesses of CISF to be examined. Had those witnesses been examined, in that event, there was no need for applicant to move such application; but, since those witnesses were not examined, the applicant moved an application under Section 311 Cr.P.C.Â Lastly, he submitted that the application of the applicant be allowed subject to payment of costs.Â

4. Learned counsel for the applicant referred to paragraph nos. 6 & 9 of the judgment rendered by Karnataka High Court in the matter of H.K. Sathisha Vs. State, reported in 2007 (3) Crimes 632 (Kar.) and submitted that there must be a free & fair trial. Fair hearing should be given to the parties and trial should not be hasty.Â It is also submitted that in case any party is playing dilatory tactics, in that event, the Court is competent to deal such dilatory tactics.Â Paragraph nos. 6 & 9 of the aforesaid judgment read as

follows:

6. It is unfortunate that the accused refused to avail of the legal assistance offered by the Trial Court at the State expense, when the Counsel appearing for him filed the retirement memos. It is equally unfortunate that subsequently when the accused had engaged an Advocate and sought for recalling of the prosecution witnesses for the purpose of cross-examination, the same was refused by the Trial Court. No doubt the Trial Court had its own constraints in view of the time frame fixed by this Court for the trial and the accused had adopted his own tactics to prolong the trial obviously with intent to secure the benefit of bail during the trial. But then having regard to the nature of the charges framed against the accused, the Trial Court ought to have safeguarded the legitimate interest of the accused. It would be of some relevance to note here itself that everyone charged with a criminal offence has the following minimum rights: (a) to defend himself in person or through legal assistance of his own choosing or, if he has no sufficient means to pay for legal assistance, to be given it free when the interests of justice is so required; (b) to examine or have examined witnesses against him and to obtain his attendance and examination of witnesses on his behalf under the same conditions as witnesses against him; and (c) to have a free assistance of an interpreter if he cannot understand or speak the language used in Court. In the determination of any criminal charge against him, everyone is entitled to fair trial within reasonable time by a Court of law. Free and fair trial is a sine qua non of Article 21 of the Constitution. Failure to accord fair hearing either to the accused or the prosecution violates even minimum standards of due process of law. It is inherent in the concept of due process of law that condemnation should be rendered only after the trial in which the hearing is a real one, not sham or a mere farce and pretence. Since the fair hearing requires an opportunity to preserve the process, it may be vitiated and violated by an over hasty trial. The fair trial for a criminal offence consists not only in technical observance of the frame and forms of law, but also in recognition and just application of its principles in substance, to find out the truth and prevent miscarriage of justice. A trial without affording all adequate opportunity to the accused to cross-examine the witnesses called on behalf of the prosecution cannot be said to be a fair trial from the point of view of the accused. A trial which

is primarily aimed at ascertaining the truth has to be fair to all the concerned.Â

9. Having given our anxious consideration to the entire matter in issue, we are of the clear view that the principles enunciated in the above two

decisions of the Division Bench of this Court are aptly applicable to the facts and circumstances of the case at hand. The Trial Court has not adopted

the procedure indicated in the above two decisions of this Court rendered by the Division Bench. In the instant case also, the Trial Court ought to

have, in the interest of justice, either itself tested the evidence of the prosecution witnesses by putting questions in order to get the relevant facts

elaborately elicited or appointed a competent Counsel to defend the accused in the case and thereby assist the Court in doing justice in the matter. The

Trial Court having not done so, we are of the view that the case has to be remitted to the Trial Court for fresh disposal according to law. The

procedure adopted by the Trial Court is not in our opinion a correct procedure. It is no doubt true that the appellant accused was trying to dodge and

prolong the trial and he was not at all diligent in conducting the trial of his case. But then, the Trial Court was not so helpless as not to deal with such a

situation. It could have adopted the procedure prescribed by this Court in the above two decisions. But unfortunately the Trial Court instead of dealing

with the situation in the manner as prescribed therein, proceeded to hold the trial wherein the prosecution witnesses could not be cross-examined, nor

the accused could be questioned under Section 313 of the Cr.P.C. Thus the trial proceeded one sided. No doubt the accused was mainly responsible

for the situation that was brought out during the trial and the Trial Court may be right in proceeding with the trial to curb the tactics adopted by the

accused to prolong and dodge the trial. However while dealing with such tactics adopted at the trial by the accused, the Trial Court ought not to have

given an impression that the accused did not have a fair trial before it. We find that the Trial Court in its anxiety to dispose of the case within the time

frame fixed either by this Court or by the Apex Court has disposed of the case in such a way that it gives an impression that the accused did not have

a fair trial. Under the circumstances, therefore, we are left with no other alternative except to set aside the conviction and sentence passed against the

accused-appellant by the Trial Court and remit the case for fresh disposal according to law.â??

5. I have considered the submission advanced by the learned counsel for the parties. I have also gone through the order passed by the learned Special Judge, Anti Corruption. The learned Judge has dealt the application in the following manner:

In present matter witness P.W. 10 const. Ravinder Singh had been examined on 7-1-2016. This witness was posted at the entry gate during the period of this incidence and the duty assigned to him was to made the entry in the entry gate register, after physical verification of the goods.

Accused G.B. Goyal has moved application 311 crpc with the delay of almost one & a half year after the P.W. 10 deposition and has not explained

delay in filing application for re calling the witness. Honable Supreme Court in Ratan Lal vs. Prahalad Jat & others (2017) 9 S.C.C. 340 has

held that power u/s 311 crpc must be exercised with caution and circumspection and only for strong and valid reasons. Recalled witness already

examined is not a matter of course and discretion given to court in this regard has to be exercised judicially to prevent failure of justice. Reason for

exercising said power should be spelt out to order. Delay in filing application for recalling a witness is one of the important factors, which has to be

explained in the application.

As the accused G.B. Goyal had been given the sufficient opportunity to cross examine the witness P.W. 10 but was failed to cross examine him and

its not like that court without giving proper opportunity to cross examine the witness has closed the cross examination opportunity of the accused G.B.

Goyal. Accused has not also mentioned any reason why he has not moved present application earlier and moved application with so much delay of

one & a half year. Recalling the witness Shri Ravinder Singh for cross examination does not seem essential to the just disposal of the case. Rather will

cause unnecessarily delay in the disposal of the case. Hence keeping in view of all the above circumstances and in the light of the law laid down by

the Honable Supreme Court in Ratan Lal vs. Prahalad Jat & others (2017) 9 S.c.C. 340. Accused G.B. Goyal application u/s 311 crpc deserves

to be dismissed.

6. In my view, this is not a fit case where process of law has been misused. The Honable Supreme Court in catena of judgments has held that the

High Court should interfere in rarest of the rare cases. This Court does not find

that this case comes under that category. Application under Section 311 Cr.P.C. was moved by the applicant after a delay of one and half year and that too without explanation for delay. It is not the case that no opportunity was given to cross-examine the witness but, in fact, he failed to cross-examine the witness. I do not find any illegality in the order passed by the learned Special Judge, Anti Corruption. Case law cited by the learned counsel for the applicant do not help the applicant, as there is nothing to show on record that free and fair trial is being denied to the applicant and Court is proceeding in hasty manner.

7. The criminal misc. application is dismissed.