
(2005) 07 DEL CK 0038

In the Delhi High Court

Case No : Criminal Revision Petition 126 of 2005

Tuncay Alankus

APPELLANT

Vs

The C.B.I.

RESPONDENT

Date of Decision : 14-07-2005

Acts Referred:

Citation : (2005) 121 DLT 590 : (2005) 83 DRJ 407

Hon'ble Judges : R.S. Sodhi, J

Bench : Single Bench

Advocate : Herjinder Singh and Shika Tyagi, for the Appellant; Sanjay Jain and Ruchi Jain, for the Respondent

Judgement

R.S. Sodhi, J.

CRL.M.A.4005/2005:

1. Allowed subject to just exceptions. Application disposed of.

CRL.REV.P.126/2005 & CRL.M.A. Nos. 2192, 4005/2005:

2. This revision petition seeks to challenge orders of the Special Judge dated 11th October, 2004, whereby the learned Judge has restricted the witness of the defense. It also challenges order dated 17th November, 2004 whereby the learned Judge has while allowing witnesses to be examined by video conference directed the costs thereof to be borne by the accused. It further goes on to challenge the order dated 6th December, 2004 whereby the time schedule was indicated, failing which the defense evidence will be closed.

3. It is contended by counsel for the petitioner that the order dated 11th December, 2004 is working hardship, inasmuch as the case of the defense is being closed without giving him sufficient opportunity to lead essential and proper evidence in his defense. He submits to curtail the evidence which is otherwise essential to prove his defense is extremely unjust. Out of 63 witnesses initially sought to be examined he has shown to this court that 21 are those that

are essential so as to prove documents, transactions and/or the case of the defense in its totality. He further contends that the order dated 17th November, 2004, which enjoins the accused to bear the entire expenses of video conference is also unfair since it is the duty of the State to ensure that equality is maintained between the prosecution and the defense. Further, the video conference itself is in the nature of court proceedings. In such a case, it is the State's responsibility to bear the expenses that are necessary for a court proceeding.

4. As regards the order dated 6th December, 2004, he submits that, in the event, this court was to allow the defense to examine further witnesses the time schedule set down in that order would not be possible to adhere to.

5. Counsel for the State, on the other hand, submits that the trial court has on careful scrutiny of witnesses and on what they chose to depose has arrived at a conclusion that only 7 of the 63 witnesses are necessary and that the others are surplus. He says that the Supreme Court has held that the quality and not the quantity is to be seen while evaluating evidence.

6. As regards expenses, counsel for the State submits that the Code of Criminal Procedure envisages that the defense should bear the expenses of defense witnesses and, Therefore, it is not proper that the State be burdened with the expenses of examining defense witnesses. He further says that the trial has already taken 7 years and if the defense is allowed to examine a larger number of witnesses it would further delay the proceedings. He states that the Supreme Court in Chandra Swami Vs. C.B.I. - CrI.A.No.1912/1996 has held that the defense should bear its own expenses. He further submits that the Supreme Court has held that that he who wants to examine the witness shall bear the expenses.

7. Heard counsel for the parties and have perused the order under challenge. It appears to me that in the matter which has such wide ramifications, as also a large number of witnesses have been examined from the side of the prosecution, full and complete opportunity ought to be given to the defense to lead its evidence.

What each witness of the defense seeks to depose has been stated in the application which according to me justifies their examination. It is, Therefore, fair to permit the defense to examine the 21 witnesses, list whereof has been placed on record, in addition to the witnesses allowed by the trial court.

8. As regards facilities of video conferencing, since it is a court proceeding and for all intents and purposes the venue where the witnesses would be examined through video conferencing channels would be a court, it is the duty of the State to bear those expenses. However, it will be the responsibility of the accused person to pay for and bring the witnesses he chooses to examine at the venue fixed by the trial court for the purpose of the video conference.

9. As regards the order of the Supreme Court referred to by counsel in Chandra Swami's case (supra), it appears that the expenses borne by the defense in that case were on a concession made by the accused. The judgment does not lay down law. Consequently, I hold that the expenses of video conferencing shall be borne by the State at the venue fixed by the trial court. The expenses incurred on bringing the witnesses to the venue for the purposes of video conferencing shall be that of the accused.

10. As already held by the trial court in its order dated 8th April, 2005, summons, if required to be issued to the witnesses may be issued through proper channels. Counsel for the petitioner appearing before me agree that they shall not seek any adjournments and shall make every effort to expeditiously examine witnesses and shall cause no impediment, whatsoever, in the smooth process of the trial. It is also made clear that if the witnesses summoned do not adhere to the schedule fixed by the trial court they shall be deemed to have been dropped unless the trial court in its discretion extends the time.

11. With this Crl.Rev.P.126/2005 stands disposed of. CRL.M.A. Nos. 2192, 4005/2005 also stand disposed of.