

Asif Balwa Vs. the Cbi and ors

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Court : Delhi

Decided On : Feb-06-2012

Appellant : Asif Balwa

Respondent : The Cbi and ors

Advocate for Def. : Ms. Sonia Mathur

Advocate for Pet/Ap. : Mr. Vijay Aggarwal, Mr. Gurpreet Singh

Judgement :

* THE HIGH COURT OF DELHI AT NEW DELHI + W.P.(CRL.) NO. 60/2012 Date of Decision: 06.02.2012 ASIF BALWA PETITIONER Through: Mr. Vijay Aggarwal with Mr. Gurpreet Singh, Advocates. Versus THE CBI and ORS. RESPONDENTS Through: Ms. Sonia Mathur, Advocate with IO Rajesh Chahal. CORAM: HON'BLE MR. JUSTICE M.L. MEHTA M.L. MEHTA, J..

1. The present writ petition under article 226 and 227 of the constitution read with section 482 Cr PC is preferred by the Petitioner against the order of the Ld. Special Judge dated 21.11.2011 whereby the Ld. Special Judge had opined that the objections raised by the defense counsel during evidence shall be decided at the time of final arguments and not as and when they are raised..

2. The brief facts necessitating the present petition are that the Petitioner has been named as an accused in FIR bearing no. RC No. DAI-2009-A- 0045, ACB/CBI/NEW DELHI dated 21.10.2009. The charge-sheet was filed W.P.(Crl.)

60/2012 Page 1 of 9 before the Ld. Special Judge on 02.04.2011 and thereafter charges were ordered to be framed against the Petitioner vide order dated 22.10.2011 under section 12 r/w section 7 or in the alternate section 11 of the Prevention of Corruption Act ("PC Act") read with section 193 IPC read with section 120-B IPC. The Petitioner was further charged with the offence of conspiracy u/s 120 B r/w 409/420/468/471 IPC and section 7 or in alternate section 11 r/w section 12 and 13 (2) r/w 13(1)(d) of the PC Act..

3. During the examination-in-chief of PW 5, the defense counsel objected to the exhibition of certain documents as they were allegedly not proved in accordance with law and thereupon the Ld. Special Judge after consideration passed an order rejecting the plea of the defense counsel to adjudicate upon the objections raised regarding proof of documents being irregular as and when they are raised and postponed such adjudication until final arguments. The said proceedings have been assailed in this petition..

4. The Ld. counsel for the Petitioner submitted that the procedure followed by the learned Special Judge in deferring decisions on his objections was erroneous. He relied upon the Delhi High Court Rules, Part- E, Rule- I, Vol III wherein the procedure for recording evidence has been prescribed. It reads as, "in recording evidence, Magistrates should take care to see that it is relevant and admissible under the provisions of the Indian Evidence Act. If any objection is raised as to the admissibility of any evidence, the Magistrate should endeavor to decide it forthwith and the particular piece of evidence objected to, the objection and the decision thereon should be clearly recorded.". W.P.(Crl.) 60/2012 Page 2 of 9.

5. A plain reading of the aforesaid Rule would reveal that while recording the evidence, the court is necessarily to take care to see that the evidence that was being recorded was relevant and admissible. In the event of any objection being raised as to the admissibility of any evidence, effort should be made to decide it forthwith. The words which have been used in the aforesaid Rule are "endeavor to decide", which by any means would not have any element of mandate to decide. All that is contemplated by the plain and literal interpretation of these words would be to make an earnest attempt and effort to decide the objections forthwith. The

use of these words expresses the intention of legislature. These words take care of situations wherein the nature of the evidence, the conduct of the parties and other factors such as nature of objections and the like, that may not make it possible every time for the court to decide the objection then and there. Giving any other meaning to these words and making it mandatory to decide the objection then and there would simply amount to adding in the Rule which is not contemplated. Therefore, the interpretation that was sought to be given by the learned counsel for the petitioner to this Rule was apparently untenable..

6. The counsel for the Petitioner also relied upon the judgments of Smt Shail Kumari v. Smt. Saraswati Devi, 96 (2002) DLT 131 and R.V.E. Venkatchala Gounder v. Arulmigu Viseraraswami and V.P. Temple and Anr. AIR 2003 SC 4548 in support of his contention that the objections raised regarding mode of proof of documents shall be decided as and when the objection are raised. Both the aforesaid cases are of civil nature. In the case of Smt. Shail Kumari (Supra) it was held that objections regarding admissibility of documents should be disposed off promptly as and when W.P.(Crl.) 60/2012 *Page 3 of 9* they are raised. However the ratio of Smt. Shail Kumari (Supra) is not applicable to the present case as the documents objected to were only two i.e. documents marked "X" and "Y" whereas in the present case the documents are voluminous touching almost 1 lac pages. That was a decision on its own facts..

7. The case of R.V.E Venkatchala (Supra) was mainly as regard to the stage of objections as to the admissibility of documents in evidence. In this case, no objection as regard to the admissibility of documents was taken in the evidence before the Trial Court. It was only in the High Court that such objections were raised. It was held that the objections regarding admissibility of documents could be raised at a later stage or even in appeal or revision. However, the objections directed towards the mode of proof alleging the same to be irregular and insufficient necessarily need to be taken before the evidence is tendered and any objection in this regard cannot be allowed to be raised at any stage subsequent to the marking of documents as an exhibit..

8. Having noted that both the above-cited cases were decisions on their own facts and in any case, the ratio was not applicable to the present case. Further, in both these cases, it was also observed that ordinarily, the objections should not be kept pending, which again is in consonance with the interpretation that has been given to the Part E. Vol III, Rule-1, Delhi High Court Rules as above. It is well settled that any judgment cannot be applied in a mechanical manner..

9. While making observations with regard to the afore-cited cases, I am guided by the principles of interpretation of judgment as enunciated by W.P.(Crl.) 60/2012 *Page 4 of 9* Honble Supreme Court in catena of judgments. Reference can be made to the judgment of Kesar Devi Vs. UOI, 2003 VII AD, SC 468, wherein the Supreme Court held that "the judgment of a court is not to be interpreted like a statute where every word, as far as possible, has to be given a literal meaning and no word is to be ignored. The observations made have to be understood in the context of the facts and contentions raised". Likewise, in the case of Bharat Petroleum Corporation Ltd v. N.R. Vairalamani, 8 SCC 579, the Supreme Court discussed the interpretation of precedents, which reads thus: "Observations of Courts are neither to be read as Euclid's theorems nor as provisions of the statute and that too taken out of their context. These observations must be read in the context in which they appear to have been stated. Judgments of Courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for judges to embark into lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes; their words are not to be interpreted as statutes."

10. Recently, Division Bench of this Court in case of International Financial Corporation Vs. Bihar Sponge and Iron Ltd., 2010 VI AD (Delhi) 889 (DB) held that "the ratio is to be seen in the context of the facts of the case and language of decision of court of law is not to be read as statute"..

11. Further, this Court in case of Gujarat Ambuja Cement Ltd. V. Monopolies and Restrictive Trade Practices Commission and Others, {2006} Comp Cas 482 (Delhi) had the occasion to deal with the similar question and it was held thus: W.P.(Crl.)

60/2012 Page 5 of 9 "12. The Court may rule on the objection as soon as it is raised, and not that it must. That is entirely up to the Court or Tribunal before whom the trial or enquiry is taking place. That element of discretion must be permitted to the Court or Tribunal concerned since the presiding officer is in the best position to decide whether a ruling on the evidence is required to be given then and there or at a later stage. The facts and circumstances of the case, the nature of evidence, the conduct of the parties will all be relevant factors to be considered by the Court"..

12. To deal with such controversies, the Honble Supreme Court in case of Bipin Shantilal Panchal v. State of Gujarat, JT 2001 (3) SC 120 laid down guidelines for dealing with objections regarding admissibility of evidence raised at the time of recording of evidence. It was observed that: "It is an archaic practice that during the evidence collecting stage, whenever any objection is raised regarding admissibility of any material in evidence the court does not proceed further without passing order on such objection. But the fall out of the above practice is this: Suppose the trial court, in a case, upholds a particular objection and excludes the material from being admitted in evidence and then proceeds with the trial and disposes of the case finally. If the appellate or revisional court, when the same question is re- canvassed, could take a different view on the admissibility of that material in such cases the appellate court would be deprived of the benefit of that evidence, because that was not put on record by the trial court. In such a situation the higher court may have to send the case back to the trial court for recording that evidence and then to dispose of the case afresh. Why should the trial prolong like that unnecessarily on account of practices created by ourselves. Such practices, when realised through the course of long period to be hindrances which impede steady and swift progress of trial proceedings, must be recast or re-moulded to give way for better substitutes which would help acceleration of trial proceedings. When so recast, the practice which can be a better substitute is this: Whenever an objection is raised during evidence taking stage regarding the admissibility of any material or item of oral evidence the trial court can make a note of such objection and mark the objected document tentatively as an exhibit in the case (or record the objected part of the oral evidence) subject to such objections to be decided at the last stage in the final judgment. If the court finds at the final stage that the

objection so raised is sustainable the judge or W.P.(Crl.) 60/2012 *Page 6 of 9* magistrate can keep such evidence excluded from consideration. In our view there is no illegality in adopting such a course. (However, we make it clear that if the objection relates to deficiency of stamp duty of a document the court has to decide the objection before proceeding further. For all other objections the procedure suggested above can be followed.) The above procedure, if followed, will have two advantages. First is that the time in the trial court, during evidence taking stage, would not be wasted on account of raising such objections and the court can continue to examine the witnesses. The witnesses need not wait for long hours, if not days. Second is that the superior court, when the same objection is re-canvassed and reconsidered in appeal or revision against the final judgment of the trial court, can determine the correctness of the view taken by the trial court regarding that objection, without bothering to remit the case to the trial court again for fresh disposal. We may also point out that this measure would not cause any prejudice to the parties to the litigation and would not add to their misery or expenses. We, therefore, make the above as a procedure to be followed by the trial courts whenever an objection is raised regarding the admissibility of any material or any item of oral evidence."

13. Having seen the dictum of law of precedents as also the Delhi High Court Rules, it may be noted that the petition impugns the proceedings in the criminal case pending before the Special Judge. The documents which are sought to be produced by the prosecution are voluminous. Having seen the way the evidence of the witnesses was being recorded and the objections being raised by the defence counsel as regard to the mode of proof of certain documents, it would be a cumbersome process to decide the objections then and there. Some of the objections that may be raised may be possibly determined by the Court then and there, but then, some of the objections which are raised in the process of examination of a witness may not be possible to be decided then and there. In addition to the nature of evidence and the conduct of the parties, the nature of objections which are raised would also have a bearing on the time of decision on objections. It is W.P.(Crl.) 60/2012 *Page 7 of 9* experienced that the judges taking upon themselves to decide the objections then and there ultimately have not only contributed in delaying the trial, but also have impacted the outcome. The exercise

to determine the admissibility/mode of proof of certain documents should not constitute a trial within a trial and unduly delay the final hearing and decision of the matter. Every case has to be dealt with on its own facts and requirements depending upon the nature of evidence, the conduct the parties and also the nature of questions/objections. The concerned judge trying the case is the best person to appreciate and consider all these factors in determining to decide the question then and there or to defer it for determination at a later date. Unless the refusal to determine such an issue is ostensibly perverse and would defeat the ends of justice, this court in exercise of its inherent or supervisory powers under Section 482 Cr PC or Article 227 of the Constitution of India would not interfere with the discretion of the concerned court. The guidelines which have been laid down by the Supreme Court in the case of Bipin Shantilal Panchal (supra), when followed, would protect the rights of the defence as also will not delay the trial..

14. Having regard to the above discussion, I do not see any impropriety or illegality in the impugned order of the Special Judge, CBI. The petition being without any merit is accordingly dismissed..

15. Copy of this order be circulated to the Judicial Officers of Subordinate Judiciary for information..

16. Writ Petition stands disposed of. W.P.(Crl.) 60/2012 *Page 8 of 9* M.L. MEHTA, J. FEBRUARY 06, 2012/akb W.P.(Crl.) 60/2012 *Page 9 of 9*

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