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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Delivered on : 16th March, 2021

+ **CRL M.C.No.865/2021**

ANOOP SINGH

..... Petitioner

Through : Mr.Mohit Mathur, Sr. Advocate
with Mr.Manu Sharma and
Mr.Varun Kumar, Advocates.

versus

THE STATE

..... Respondent

Through : Mr.Dayan Krishnan, SPP and
Mr.Amit Ahlawat, APP for State.
Mr.Vikas Pahwa, Senior Advocate
with Mr.Syed Arham Masud,
Mr.Abhishek Pati, Mr.Varun
Bhati, Advocates for complainant.

CORAM:

HON'BLE MR. JUSTICE YOGESH KHANNA

YOGESH KHANNA, J.

1. This petition challenges the impugned order dated 06.03.2021 passed by the learned CMM, Patiala House Courts, Delhi in case FIR No.207/2006 registered at police station Tilak Marg in *State vs D.C Sharma & Others* being *Cr. Case no.39858/2016*.

2. In this FIR *PW31* Sh.A.K.Singh, Assistant Registrar of Companies, NCT of Delhi and Haryana, New Delhi was examined on 23.07.2019 and he exhibited various documents *viz* record pertaining to M/s.Star Estate Management Limited (hereinafter referred *SEML*) as

Ex.PW31/A to Ex.PW31/F and also the certificate under Section 65B of the Indian Evidence Act, dated 23.07.2019 as Ex.PW31/G.

3. Similarly, PW39 Mr.Anokhe Lal Pal, Director in *M/s.A Plus Security and Training Institute Private Limited* was examined on 11.02.2020 wherein he deposed he was a director at the relevant time, but did not know if the accused Dinesh Chand Sharma was working with the company or if the address of the company was at A-96, M.B.Road, Saidulajab, New Delhi. However, he admitted the petitioner herein was the Chairman of the said company at relevant time.

4. On 01.03.2021, the respondent moved an application, primarily, under Section 311 read with Section 91 Cr P C for recalling PW31 Sh.A.K.Singh and PW39 Sh.Anokhe Lal Pal for their re-examination. It was alleged during the examination of PW31 Sh.A.K.Singh though the documents relating to SEML were produced and proved, but due to an oversight the prosecution could not ensure the production of relevant documents of M/s.A Plus Security and Training Institute Private Limited lying with ROC and thus, sought production of documents viz *Master Data; Certificate of Incorporation, List of Directors; resignation letter dated 14.10.2010 of Sh.Anokhe Lal Pal from directorship of M/s.A Plus Security and Training Institute Private Limited; Form No.32E filed on 03.11.2012; annual returns of the company as on date 30.09.2004 and 30.09.2005 with their annexures; balance sheet pertaining to M/s.A Plus Security and Training Institute Private Limited lying with ROC* and that production of such documents being necessary for the trial and essential for its just decision, hence it was necessary to recall PW31 alongwith

aforesaid documents pertaining to M/s.A Plus Security and Training Institute Private Limited and to put the above documents to PW39 to elicit the truth.

5. Learned Trial Court while noting the contentions had allowed the application stating *inter alia* the documents so sought to be produced by the prosecution are *germane to the issues involved, viz positioning of accused Dinesh Chand Sharma at the relevant time* as an important fact which can bring clarity for just decision and its imperative the veracity of testimony of PW39 is also to be tested by putting the said documents to him. The application was thus allowed.

6. It is the submission of the learned senior counsel for petitioner such documents have no relevance to the issues involved and cannot be admitted as evidence, since PW39 has himself deposed to be a Director of M/s A Plus Security(Supra) from November 2004 to June 2005 and that petitioner was the Chairman and the company was running its office from A-96, M.B.Road, Saidulajab, New Delhi, hence, there is no need now to produce these documents and the production of these documents is nothing but to plug the loopholes to the prosecution case. It is argued the power under Section 91 Cr P C cannot be exercised on vague submissions and while ordering re-examination, newer evidence cannot be brought on record. Heard.

7. As per prosecution case, Sushil Ansal, Gopal Ansal and H.S.Panwar in order to scuttle the process of law and to escape the legal consequences of their misdeeds, hatched the criminal conspiracy with Dinesh Chand Sharma, P.P.Batra, Stenographer in Legal Cell of Ansal

Properties and Infrastructure Limited. In further of such criminal conspiracy the documents from the judicial file in the Main Uphaar Trial were destroyed, some documents went missing; some were mutilated, torn; and ink was spread over some of the documents. The destruction of the documents was brought to the notice of the Court and inquiry was initiated and Dinesh Chand Sharma was dismissed from service. He then contacted Sh. P.P.Batra, Stenographer to secure employment, who then at the behest of Sushil Ansal and Gopal Ansal was provided job in M/s.A Plus Security and Training Institute Private Limited on the recommendations of Mr. Malhotra and was paid cash salary at the higher rate than the actual rate for the similar work at Rs.15,000/- per month (as against Rs.7500/- paid to other field officer of the firm). It is alleged Anoop Singh, petitioner herein was the Chairman of M/s.A Plus Security and Training Institute Private Limited and provided such job to Dinesh Chand Sharma upon the recommendations of Mr.Malhotra and he applied fluid on the name of Dinesh Chand Sharma in the firm's wages register in order to scuttle the process of law when he came to know about the investigation in the present case.

8. The acts thus allegedly committed in furtherance of conspiracy were *a)* act of destruction of documents from the part of the judicial record vital to the case of prosecution in connection with main Upahaar Trial against Sushil Ansal, Gopal Ansal, and H.C.Panwar; and *b)* providing job to Dinesh Chand Sharma in order to take care of him in lieu of his role in the conspiracy. Thus, it was argued by the CBI that the fact SEML had a service contract with M/s.A Plus Security and Training Institute Private Limited to supply later the man-power; that Anoop

Singh was the chairman of M/s.A Plus Security and Training Institute Private Limited; Dinesh Chand Sharma was recommended and was doing job at A Plus (*supra*) at the behest of Ansals need to be proved in this FIR and hence, these documents become relevant.

9. The documents sought to be produced relate to M/s.A Plus Security(*supra*) and are required to show involvement of two companies viz. SMEL and M/s.A Plus Security(Supra) where at the behest of directors of SMEL, one Dinesh Chand Sharma was provided job in M/s.A Plus Security(*supra*), hence if the documents of SMEL have been brought on record to prove its constitution then I feel no prejudice shall be caused if the documents of M/s.A Plus Security(*supra*) are also brought on record for the same purpose. Even otherwise, the documents sought to be produced are formal in nature and relate only to the constitution of M/s.A Plus Security(*supra*). It is essential for the prosecution to independently establish the corporate structure and background of each of these corporate entities, in addition to the positions held and tenures of the accused persons and to demonstrate the conspiracy pertaining to the rehabilitative employment of Dinesh Chand Sharma.

10. During the course of arguments, the learned senior counsel for the petitioner argued though he would have not objected to production of documents by *PW31* alone but he has issues to put these documents to *PW39* as is being sought for ulterior motive.

11. I do not think, the documents if brought on record would show more than the existence of M/s.A Plus Security and Training Institute

Private Limited at the relevant time; the petitioner being its chairman and PW39 its director. There is no newer evidence which the prosecution is bringing on record. Such documents being formal in nature, no prejudice shall be caused to the accused / petitioner even if are put to PW39 since the fact of he being a director; the petitioner being a Chairman of the company working at A-96, M.B. Road, Saidulajab, all stand admitted by him in his deposition and hence to recall witnesses would not be filling up of any lacunae and would not give any unfair advantage to CBI. Rather it is essential as the burden of the prosecution is compounded by the fact PW39 has not stood by his statement under Section 161 Cr P C and been ambiguous at best about his involvement with the company despite having been a director.

12. Even otherwise, in *Mohan Lal Shamji Soni vs Union of India & Others* (1991) Supp. (1) SCC 271 it has been held a bare perusal of Section 311 Cr P C and the use of words such as *any Court, at any stage or of any enquiry or other proceedings, any person and any such person* clearly spells out the section in question is expressed in the widest possible terms and do not limit the discretion of the court in any way. It is also rightly stated in the said decision that the said width requires a corresponding caution that the discretionary power should be invoked as the exigencies of justice require and exercised judicially. As such it was held the discretion granted by Section 311 Cr P C is circumscribed by the underlying principle that the evidence to be obtained must be essential to a *just decision* of the case.

13. Thus, there is no merit in the petition and it is accordingly dismissed. Pending application, if any, also stands disposed of. No order as to costs.

YOGESH KHANNA, J.

MARCH 16, 2021

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HIGH COURT OF DELHI



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