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

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Reserved on: 27.01.2023
Pronounced on: 18.04.2023

+ **CRL.REV.P. 451/2018 & CRL.M.A. 9623/2018**

CENTRAL BUREAU OF INVESTATION Petitioner

Through: Mr. Jeevesh Nagrath, SPP with
Ms. Monika Prakash,
Advocate.

versus

S K GHOSH & ORS Respondents

Through: None.

CORAM:

HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

JUDGMENT

SWARANA KANTA SHARMA, J.

1. The present revision petition under Sections 397/401 read with Section 482 of the Code of Criminal Procedure, 1973 (*hereinafter* 'Cr.P.C.') has been filed by the petitioner i.e. Central Bureau of Investigation (*hereinafter* 'CBI') assailing the orders dated 05.03.2018 and 31.03.2018 passed by learned Special Judge (P.C. Act), CBI, Karkardooma Courts, New Delhi (*hereinafter* 'Trial Court') in case bearing CBI No. 31/2016 arising out of RC No. 57(A)/1999, registered at CBI, ACB, New Delhi whereby learned Trial Court had directed CBI/petitioner to prepare a draft of incriminating evidence for putting

questions to the accused persons for examination under Section 313 of Cr.P.C and had consequently imposed cost upon CBI/petitioner for not filing the incriminating evidence.

2. In a nutshell, the present case was registered on the basis of source information that accused Sh. S.K. Gosh, while being employed as Chief Managing Director at Bharat Aluminium Company Limited (BALCO) during the year 1998-99, had hatched a criminal conspiracy with co-accused (i) Sh. P.C. Aggarwal, Director (Commercial), BALCO, (ii) Sh. G.S. Sandhu, General Manager (C&E), (iii) Sh. Parveen N. Shah, Director, Anish Metals Pvt. Ltd. and (iv) Sh. Kirti Shah, Director, Anish Metals Pvt. Ltd., in order to cause wrongful pecuniary loss to BALCO and to misuse his official position as a public servant for obtaining unlawful gain to co-accused persons namely Sh. Parveen N. Shah and Sh. Kirti Shah.

3. After completion of investigation, charge-sheet was filed before the learned Trial Court under Sections 420/120B of Indian Penal Code, 1860 and Section 13(2)/13(1)(d) of Prevention of Corruption Act, 1988 and charges were framed against the accused persons on 03.01.2012. During the course of trial, the prosecution examined 23 prosecution witnesses and the matter was fixed for examination of accused persons under Section 313 Cr.P.C. for 04.01.2018.

4. By way of present petition, it is submitted by the petitioner that on 04.01.2018, learned Trial Court had verbally directed CBI to submit draft questions containing incriminating evidence two days prior to the next date of hearing which was 20.01.2018. It is stated that 61 draft questions were submitted by the concerned Prosecutor which were then

supplied to the accused persons also on 20.01.2018, and the matter was fixed for further examination on 03.02.2018. Thereafter, on the next date, draft of question number 62 to 104 was submitted by CBI to the learned Trial Court, however, the Court had observed that the speed of projecting incriminating evidence was too slow on the part of CBI and had directed that entire incriminating evidence be filed before the next date of hearing.

5. It is stated that the prosecution could not file the draft of entire incriminating evidence on 05.03.2018, as the concerned Prosecutor was on leave due to the reason that his son had suffered head injury and due to his engagement in other official assignments. It is also stated that in the same Court, there were total four cases which were getting fixed for recording the statement of the accused under Section 313 Cr.P.C. one after the other and the prosecution/CBI had prepared draft questions in three other cases also.

6. Thereafter, the learned Trial Court *vide* order dated 05.03.2018, imposed cost to the tune of Rs.16,600/- upon the petitioner/CBI and passed certain remarks on its conduct. The said order is reproduced as under:

“05.03.2018 (At 10.55 a.m.)

Present: Sh. U.C. Saxena, Sr. P.P. for CBI alongwith
Insp. Sudeep Punia, HIO.
Sh.Dharamvir Singh, SP (SDOP), CBI
alongwith Insp. Subhash Chander, Incharge
Summon Cell, CBI.

All the five accused persons are present in
person on bail.

Sh. Anil Kumar, counsel for A-1.

Sh. Shiv Shankar Singh, counsel for A-2.

Sh. Prashant Jain, counsel for A-4 and A-5.

All the five accused persons have filed their answers with the attested set of questions supplied to them i.e. from Sr. No. 62 to 104. Same are taken on record.

Verification report filed on bonds furnished on behalf of accused A4 and A5 today. In view of reports, both bonds are accepted.

Sh. Dharamvir Singh, SP (SDOP), CBI submitted that copy of last two orders dated 03.02.2018 and 20.01.2018 were received in the department during the tenure of some other SP and he has recently joined this department. He further stated that the report in respect of verification of bond for last date of hearing was inadvertently sent to Tis Hazari Courts and for such reason, the report could not be filed here.

No draft of incriminating evidence was filed two days prior to this date as directed on the last date of hearing i.e. 03.02.2018. From the response of all the officials appearing today, it appears to me that probably no one bothered even to go through the orders and to know such directions passed by this court. HIO states that he was on leave on last date of hearing and joined duties on 12.02.2018. Mr. Saxena, Sr. PP for CBI was also on leave on last date of hearing, who offered to prepare some draft today. Apparently, this is not feasible to prepare the draft of Incriminating evidence during today's day time. The nutshell of the situation remains that directions passed by this court remain flouted by CBI. This is the situation when the copy of orders were sent to the Head of Department with expectation that the needful shall be done by this date of hearing.

This has become general experience of this court that officials of CBI remain reluctant to comply with the directions passed by this court. **A warning for all the cases is being recorded herein for CBI that in any such situation arising out of proceeding in any of the cases pending before this court, this court shall be compelled to think of issuing show cause notice for making reference for contempt of court on the grounds of defiance to the orders passed by the court.**

At present, I am not doing so on the assurance of Sh. Dharamvir Singh, SP (SDOP). CBI. He further states

that he shall take sufficient steps to ensure that none of the orders remain non-complied by the officials of CBI in any of the cases.

The case has to be adjourned for the want of duty performed by officials of CBI, so as to submit draft of remaining incriminating evidence. Two of the accused persons come from Mumbai. The period of one month given to CBI was wasted and therefore, a cost of Rs. 1,000/- is being imposed upon CBI to be paid to accused A1, A2 & A3 and a cost of Rs. 6,800/- is imposed upon CBI to be paid to A4 & A5. The cost has been imposed as per financial implications for each accused to attend this court for this proceeding today. Since A4 & A5 come from Mumbai, hence different' quantum of cost has been imposed for them.

The cost must be paid to all the accused persons by next date of hearing. On request of Sh. Dharamvir Singh, SP (SDOP), CBI, a copy of this order be given dasti to him for compliance and for record of CBI.

Draft of remaining incriminating evidence must be filed at least two days prior to next date of hearing.

Put up on 31.03.2018 for further SA.”

(Emphasis supplied)

7. It is further stated that CBI had filed further draft of 26 questions i.e. from question number 105 to 130, in the absence of regular trial conducting prosecutor, on 29.03.2018, i.e. two days prior to the next date of hearing. However, the learned Trial Court did not find the said questions appropriate and again passed adverse comments on the functioning of the CBI and its officials. The order dated 31.03.2018 reads as under:

“31.03.2018 (At 10.45 a.m.)

Present: Sh. M.Saraswat (substitute) P.P. for CBI
alongwith Insp. Sudeep Punia, HIO.

All the five accused persons are present in person on bail.

Sh. C.S. Sharma, counsel for A-1.
Sh. Shiv Shankar Singh, counsel for A-2.
Sh. Prashant Jain, counsel for A-4 and A-5.
Sh. B.P Singh, counsel for A-3.

HIO has filed one compliance report alongwith a draft of incriminating evidence. In the report, it is stated that this court had imposed cost upon the CBI on the last date of hearing and had directed to file draft of incriminating evidence two days prior to this date. However, the matter related to payment of cost was put up before senior officers for taking administrative approval and some more time is required to finalise the same. It is further reported that incriminating evidence in this case was prepared by Sh. U.C. Saxena, Sr. PP for CBI, who has been transferred on 22.03.2018 and the new Sr. PP for CBI shall join this court on 02.04.2018. HIO has further stated that he consulted the previous Sr. PP for CBI and produced the questions prepared by him before this court on 28.03.2018, however, same were not found acceptable by this court, as they were not in order. Thus, HIO has sought some more time to file incriminating evidence and to comply with directions to pay the cost.

In nutshell, situation is that after 03.02.2018 upto this date (i.e. in the span of around 2 months), not a single question has been put up before accused persons to seek their response U/S 313 Cr.P.C., because CBI failed to project the relevant incriminating evidence. It cannot be said that this was such a short period that despite being willingness there, this job could not have been done. Being dissatisfied with the conduct of relevant functionaries of CBI, this court on 03.02.2018 observed that speed of projecting the incriminating evidence was too slow and thus, direction was given to file complete draft of incriminating evidence two days prior to next date of hearing. The next date was given after a month i.e. 05.03.2018, but no such draft was filed.

Incidentally, Id. SP (SDOP) was present before this court in this case on 05.03.2018 and he assured that directions of the court shall be complied with in all the cases. However, despite such assurance, the net result is that the period of 25 days became insufficient for CBI to

complete necessary administrative processing, so as to make payment of cost to the accused persons today, in compliance of last order. HIO was asked today to place that draft on record (which was shown to me during evening hours of 28.03.2018). **This draft is from question no. 105 to 130 i.e. a total number of 26 questions. Unfortunately many of these questions are not even framed in proper sentence, so as to make out any meaning.**

Let a copy of this draft be sent to concerned Id. SP, Id. SP (SDOP), Id. DOP and concerned Id. Jt. Director to make an assessment of the work done by concerned functionaries of CBI, so as to prepare such draft of incriminating evidence (total 26 questions only) in the span period of two months and to take a stand before this court whether this is going to be the quality and speed of work from the side of CBI. I just wish to remind that this FIR was registered in the year 1999 and is 19 years old case.

On next date of hearing, it is expected that some responsible officer shall appear before this court from CBI to inform this court about the assessment made by the CBI and stand of CBI. It is also expected that in the meanwhile, sufficient steps shall be taken to prepare the draft of incriminating evidence and present it before the court two days prior to next date of hearing.

An application was filed by accused Sh. G.S Sandhu (A3) seeking permission to visit Austin, USA from 28.05.2018 to 18.08.2018. HIO has filed reply to this application, wherein he referred this period as 25.08.2018 to 18.08.2018, though, it is incorrectly so mentioned in the reply. Ld. Counsel for A3 has filed a fresh application, thereby modifying the period and permission is being sought from 06.06.2018 to 12.07.2018 stating that daughter of the applicant has to undergo a surgery on account of her pregnancy and since there are no immediate family members to take care of her, therefore, applicant alongwith wife intends to visit their daughter during such period, so as to take care of her.

The daughter of A3 resides at Austin, USA. HIO has taken objection that no itinerary has been provided and

applicant has not provided complete address of his daughter etc.

It is matter of record that such kind of permission was being given to all the accused persons as per momentary requirements. Passport of the accused is deposited in the record of this case. The period of proposed visit i.e. 06.06.2018 to 12.07.2018 is not going to disturb the hearing of this case because most of the part of it would be falling in summer vacation.

In these circumstances, application is allowed and A3 is permitted to visit Austin, USA for period 06.06.2018 to 12.07.2018, subject to furnishing an undertaking to report back to this court within two working days, after 12.07.2018 and subject to furnishing surety bond in the sum of Rs. 1 lac with one surety in the same amount. Accused Sh. G.S. Sandhu (A3) shall furnish complete details of his itinerary as well as his local address at Austin, USA alongwith his undertakings. Subject to fulfillment of these conditions, passport of accused be released to him.

Copy of this order be handed over dasti to Pairvi Officer, so as to be delivered in the offices of respective officers as mentioned in the order herein above, for compliance. Put up on 21.04.2018 for statement of accused.”

(Emphasis supplied)

8. Learned SPP for the CBI argues that the order dated 05.03.2018 passed by the learned Trial Court is bad both on facts as well as on law. It is argued that the Court can take help of the prosecutor and defence counsel in preparation of relevant questions, which are to be put to the accused under Section 313 Cr.P.C., but the assistance cannot be and should not be equated with an obligation upon the prosecuting agency to complete the whole exercise. It is stated that the duty to prepare and put questions to the accused rests with the Courts only, and thus,

imposition of cost upon CBI for non-submission of draft questionnaire of incriminating evidence is arbitrary and perverse.

9. It also argued by learned SPP for CBI that even otherwise, records would show that CBI had filed draft questionnaires on the two date of hearings which had also been supplied to the accused persons by the learned Trial Court and even before the hearing on 31.03.2018, CBI had submitted further draft of questions, although the same were not found to be apt by the learned Trial Court. It is stated that delay, if any, in recording of statement of accused under Section 313 Cr.P.C. was not attributable to the petitioner and there was no reason to impose any cost upon the petitioner/CBI. It is further stated that the remarks passed against the investigating agency were uncalled for and be expunged from the record.

10. The arguments addressed have been heard and the material on record has been perused.

11. At the outset, this Court deems it necessary to take note of the provision contained under Section 313 Cr.P.C., which reads as under:

“313. Power to examine the accused.—(1) In every inquiry or trial, for the purpose of enabling the accused personally to explain any circumstances appearing in the evidence against him, the Court—

(a) may at any stage, without previously warning the accused put such questions to him as the Court considers necessary;

(b) shall, after the witnesses for the prosecution have been examined and before he is called on for his defence, question him generally on the case:

Provided that in a summons-case, where the Court has dispensed with the personal attendance of the accused, it may also dispense with his examination under clause (b).

(2) No oath shall be administered to the accused when he is examined under sub-section (1).

(3) The accused shall not render himself liable to punishment by refusing to answer such questions, or by giving false answers to them.

(4) The answers given by the accused may be taken into consideration in such inquiry or trial, and put in evidence for or against him in any other inquiry into, or trial for, any other offence which such answers may tend to show he has committed.

(5) The Court may take help of Prosecutor and Defence Counsel in preparing relevant questions which are to be put to the accused and the Court may permit filing of written statement by the accused as sufficient compliance of this section.”

12. The scheme of Section 313 Cr.P.C. was analysed by Hon’ble Apex Court in *Parminder Kaur v. State of Punjab* (2020) 8 SCC 811.

The relevant portion of the said decisions reads as under:

“22. Under the Code of Criminal Procedure, 1973 after the prosecution closes its evidence and examines all its witnesses, the accused is given an opportunity of explanation through Section 313(1)(b). Any alternate version of events or interpretation proffered by the accused must be carefully analysed and considered by the trial Court in compliance with the mandate of Section 313(4). Such opportunity is a valuable right of the accused to seek justice and defend oneself. Failure of the trial Court to fairly apply its mind and consider the defence, could endanger the conviction itself. Unlike the prosecution which needs to prove its case beyond reasonable doubt, the accused merely needs to create reasonable doubt or prove their alternate version by mere preponderance of probabilities. Thus, once a plausible version has been put forth in defence at the

Section 313 CrPC examination stage, then it is for the prosecution to negate such defense plea.”

13. Recently, the Hon’ble Supreme Court in *Premchand v. State of Maharashtra* 2023 SCC OnLine SC 218 has summarized the principles governing Section 313 Cr.P.C., which are reproduced herein-under for reference:

“15. What follows from these authorities may briefly be summarized thus:

a. section 313, Cr. P.C. [clause (b) of sub-section 1] is a valuable safeguard in the trial process for the accused to establish his innocence;

b. section 313, which is intended to **ensure a direct dialogue between the court and the accused, casts a mandatory duty on the court to question the accused** generally on the case for the purpose of enabling him to personally explain any circumstances appearing in the evidence against him;

c. when questioned, the accused may not admit his involvement at all and choose to flatly deny or outrightly repudiate whatever is put to him by the court;

d. the accused may even admit or own incriminating circumstances adduced against him to adopt legally recognized defences;

e. an accused can make a statement without fear of being cross-examined by the prosecution or the latter having any right to cross-examine him;

f. the explanations that an accused may furnish cannot be considered in isolation but has to be considered in conjunction with the evidence adduced by the prosecution and, therefore, no conviction can be premised solely on the basis of the section 313 statement(s);

g. statements of the accused in course of examination under section 313, since not on oath, do not constitute evidence under section 3 of the Evidence Act, yet, the answers given

are relevant for finding the truth and examining the veracity of the prosecution case;

h. statement(s) of the accused cannot be dissected to rely on the inculpatory part and ignore the exculpatory part and has/have to be read in the whole, inter alia, to test the authenticity of the exculpatory nature of admission; and

i. if the accused takes a defence and proffers any alternate version of events or interpretation, the court has to carefully analyze and consider his statements;

j. any failure to consider the accused's explanation of incriminating circumstances, in a given case, may vitiate the trial and/or endanger the conviction.”

(Emphasis supplied)

14. The Hon'ble Apex Court in *Reena Hazarika v. State of Assam* (2019) 13 SCC 289 had emphasized the importance of Section 313 in the following manner:

“19. Section 313 CrPC cannot be seen simply as a part of audi alteram partem. It confers a valuable right upon an accused to establish his innocence and can well be considered beyond a statutory right as a constitutional right to a fair trial under Article 21 of the Constitution, even if it is not to be considered as a piece of substantive evidence, not being on oath under Section 313(2) CrPC. The importance of this right has been considered time and again by this Court, but it yet remains to be applied in practice as we shall see presently in the discussion to follow...”

15. Further, in *Satbir Singh v. State of Haryana* (2021) 6 SCC 1, the Hon'ble Apex Court has observed as under:

“38.6. It is a matter of grave concern that, often, Trial Courts record the statement under Section 313, CrPC in a very casual and cursory manner, without specifically questioning the accused as to his defense. It ought to be noted that the examination of an accused under Section 313, CrPC cannot be treated as a mere procedural formality, as it based on the

fundamental principle of fairness. This aforesaid provision incorporates the valuable principle of natural justice “audi alteram partem” as it enables the accused to offer an explanation for the incriminatory material appearing against him. **Therefore, it imposes an obligation on the court to question the accused fairly, with care and caution.**

38.7. The Court must put incriminating circumstances before the accused and seek his response. A duty is also cast on the counsel of the accused to prepare his defense since the inception of the Trial with due caution...”

(Emphasis supplied)

16. Thus, a conspectus of the decisions of Hon’ble Apex Court reveals that examination of an accused under section 313 Cr.P.C. is not a mere formality or futile exercise and it embodies the fundamental principle of *audi alteram partem* [See also: *Sanatan Naskar v. State of West Bengal* (2010) 8 SCC 249; *Kalicharan & Ors. v. State of Uttar Pradesh* (2023) 2 SCC 583]. It is an important step in the trial of a case and is meant to enable an accused to explain incriminating evidence emerging against him, which is put to him by the Court.

17. Before sub-section (5) was added in Section 313 Cr.P.C. by way of an Amendment, the Hon’ble Apex Court in *Mir Mohd. Omar v. State of West Bengal* (1989) 4 SCC 436 had held that Courts were not required to consult any prosecutor or counsel as to what questions were to be put to the accused, since it was the Court’s duty to examine the accused as per law.

18. However, the 154th Law Commission Report, published in the year 1996, had suggested certain changes to Section 313 Cr.P.C., in order to curb the delay in trials. Thereafter, having felt the need to tone up the criminal justice system so as to ensure fair and speedy justice,

the Code of Criminal Procedure (Amendment) Bill, 2006 was introduced to incorporate numerous changes in the Cr.P.C., including those suggested by the Law Commission of India in its 154th and 177th Report, and the Bill later culminated into Code of Criminal Procedure (Amendment) Act, 2008. By way of this Amendment of 2008, sub-section (5) was added to Section 313 Cr.P.C., which reads as under:

“(5) The **Court may take help of Prosecutor and Defence Counsel** in preparing relevant questions which are to be put to the accused and the Court may permit filing of written statement by the accused as sufficient compliance of this section.”

(Emphasis supplied)

19. The issue before this Court, in the instant case, primarily raises questions pertaining to interpretation of Section 313(5) of Cr.P.C.

20. Guided by the 154th Report of Law Commission of India, the intent of introducing this provision was to ensure that the delay which was being caused in the trial of cases due to process of framing of questions under Section 313 Cr.P.C was reduced, by *permitting* the Courts to *take help* of prosecutors and defence counsels in framing proper and relevant questions which could be put to an accused, as per the scheme of Section 313. However, considering the relevancy and significance of this provision, it cannot be held by any means that the aim of the Legislature was to delegate the duty of framing the relevant questions entirely to the prosecution or defence counsels, and the use of words “may take help” in Section 313(5) is suggestive of the same. Even after introduction of Section 313(5), the power and duty to

prepare the questions and put incriminating evidence to the accused continues to vest with the Courts only.

21. The discretion to seek assistance from the prosecutor or defence counsel cannot absolve the Court from its primary duty to personally ascertain what is incriminating and then examine the accused. In other words, it would be too far-fetched to hold a view that the Court's power or discretion to seek help of prosecutors in preparing relevant questions would imply that this duty of the Court can be entirely abdicated to the prosecuting agency.

22. Examination of an accused under Section 313 essentially remains a dialogue between the Court and the accused, and this important judicial act has to be performed by the Court itself. It is only the assistance that the Court can seek as per Section 313(5), however, it is always the primary duty of the Court itself to extract the incriminating evidence against the accused from the records of the case and then put the same to the accused and seek his explanation, as the Court is the best judge as to what is incriminating and what is not.

23. In the opinion of this Court, at the stage of examination of an accused under Section 313 of Cr.P.C., the Courts may take assistance of prosecutor as well as defence counsel in preparation of relevant questions, however, for a just and fair trial, it is apt for the Court to base its examination of an accused on its own assessment about incriminating evidence against the accused which has come on record.

24. This Court is constrained to observe that duty of the Court has been tried to be delegated to the prosecuting agency in the present case. The judicial function which is vital for any criminal case has to be

performed by the Court itself and not by prosecuting agency. The function and duty of the prosecuting agency is to lead evidence and it is for the Trial Court to ascertain the incriminating material on record on the basis of testimony of witnesses which includes the examination-in-chief as well as cross-examination and thereafter put the incriminating evidence to an accused. Needless to say, it is an important stage of criminal trial. It was not the primary duty of the prosecuting agency to prepare the statement of accused and this duty was to be performed by learned Trial Court itself.

25. Thus, petitioner/CBI could not have been found to be at fault for delay in recording of statement of accused persons.

26. Since the petitioner/CBI also seeks expungement of certain remarks passed by the learned Trial Court against its functioning in the impugned orders, it will be appropriate to take note of the settled judicial principles in this regard.

27. Section 6 of Chapter 1, Part H ('The Judgment') of the Delhi High Court Rules for "Practice in the Trial of Criminal Cases" pertains to criticism on the conduct of Police and other officers and provides guidance in this regard. The same is reproduced as under:

"6. Criticism on the conduct of Police and other officers

— It is undesirable for Courts to make remarks censuring the action of police officers unless such remarks are strictly relevant of the case. It is to be observed that the Police have great difficulties to contend with in this country, chiefly because they receive little sympathy or assistance from the people in their efforts to detect crime. Nothing can be more disheartening to them than to find that, when they have worked up a case, they are regarded with distrust by the Courts; that the smallest irregularity is magnified into a

grave misconduct and that every allegation of ill-usage is readily accepted as true. That such allegations may sometimes be true it is impossible to deny but on a closer scrutiny they are generally found to be far more often false. There should not be an over-alacrity on the part of Judicial Officers to believe anything and everything against the police; but if it be proved that the police have manufactured evidence by extorting confessions or tutoring witnesses they can hardly be too severely punished. Whenever a Magistrate finds it necessary to make any criticism on the work and conduct of any Government servant, he should send a copy of his judgment to the District Magistrate who will forward a copy of it to the Registrar, High Court, accompanied by a covering letter giving reference to the Home Secretary's circular Letter No. 920-J-36/14753, dated the 15th April, 1936."

28. The Hon'ble Apex Court in *Dr. Dilip Kumar Deka and Anr. v. State of Assam and Anr.* (1996) 6 SCC 234, had elaborated upon the tests to be applied while deciding the question of expunction of disparaging remarks against authorities, and the relevant observations read as under:

"6. The tests to be applied while dealing with the question of expunction of disparaging remarks against a person or authorities whose conduct comes in for consideration before a court of law in cases to be decided by it were succinctly laid down by this Court in *State of U.P. v. Mohd. Naim* [AIR 1964 SC 703 : (1964) 1 Cri LJ 549 : (1964) 2 SCR 363] . Those tests are:

- (a) Whether the party whose conduct is in question is before the court or has an opportunity of explaining or defending himself;
- (b) Whether there is evidence on record bearing on that conduct justifying the remarks; and
- (c) Whether it is necessary for the decision of the case, as an integral part thereof, to animadvert on that conduct...."

29. This Bench in *Ajit Kumar v. State (NCT of Delhi) 2022 SCC OnLine Del 3945* had also issued directions for exercise of judicial restraint and had expressed that judicial officers should refrain from passing disparaging remarks against police officials and prosecuting agencies. The relevant portion of said judgment is reproduced as under:

“37. Every word forming part of a judicial order forms permanent record. Use of denigrating remarks against anyone, especially against police officials impeaching their credibility and questioning their sense of dedication towards duty, is not the best course adopted by a judicial officer, that too when the same is not required for the adjudication of the case before the Court. Such criticism may have a devastating effect on the professional career of an officer. It is also bound to have everlasting affect on the reputation of a person. This Court is conscious of the fact that police officers are expected to be at the desired place and desired time with utmost efficiency, both by the general public as well by the Courts. Though the police officers are duty bound to discharge their responsibilities with utmost conviction, the practical difficulties which are faced by them cannot be overlooked and disregarded by the Courts. At the same time, such regard by the courts can not by any stretch of imagination or interpretation be take to be lack of power of the court to pass order regarding the power to point out any irregularity omission or commission of any act as directed by the Court, or any disobedience to obey the directions of the Court. This Court rather vide this order wants to convey that judicial strictures against anyone need to be passed with utmost circumspection. The judicial power comes with utmost responsibility to exercise adjudicatory liberty to express oneself. Judicial strictures against a police officer to the extent as expressed in the present case are problematic though every disapproval expressed by exercise of adjudicatory liberty of expression may not fall in the realm of lack of judicial restraint.

39. This Court makes it clear once again that this order in no way undermines the majesty of the Court or the fact that the

judicial directions need to be obeyed by the police officials concerned and the power of the courts to pass orders pointing out their disobedience or point out any fault in investigation, etc, cannot be questioned, however, in this regard, Section 6 of Chapter 1, Part H ('The Judgment') of the Delhi High Court Rules for "Practice in the Trial of Criminal Cases" needs to be kept in mind and also the judicial precedents of the Hon'ble Apex Court and the High Court have to be kept in mind as guiding force while passing such remarks which amount to strictures.

41. Judgments and orders passed by the courts are often permanent in nature, so is at times the stigma attached to a person suffered by virtue of an uncalled for remark unwarranted in the facts and circumstances of a particular case. As adjudicatory force of the country, judicial restraint as warranted by law and judicial proceedings is one of the qualities of a judicial officer..."

30. The remarks passed by the learned Trial Court against the working of CBI and its officials in order dated 05.03.2018 and the cost imposed upon it vide same order, primarily arise out of the fact that CBI had failed to submit the draft questions and incriminating evidence due to which the recording of statement of accused persons under Section 313 Cr.P.C. was getting delayed. However, as observed in preceding paragraphs, *firstly*, the learned Trial Court instead of seeking assistance or help in preparing relevant questions, had essentially abdicated its entire responsibility to the investigating agency which was not permissible in law even as per Section 313 Cr.P.C.; *secondly*, the investigating agency had submitted previously, around 104 draft questions which after consideration were supplied to the accused persons as well; *thirdly*, even though the investigating agency could not file the draft of entire questions before the hearing scheduled on

05.03.2018, the concerned Prosecutor on that day had offered to prepare the questions on the very same day itself, however, this request was also turned down by the learned Trial Court.

31. Further, the observations of the learned Trial Court in the order dated 31.03.2018, that the 26 draft questions were not framed in proper sentences so as to make out any meaning and thereafter directing that copy of the said draft be sent to concerned SP, concerned SP (SDOP), DOP as well as Joint Director for making assessment of work done by concerned functionaries of CBI regarding their capability to prepare such a draft of incriminating evidence in the span of two months and also asking them to take a stand before the Court as to whether this is going to be the quality and speed of work of CBI as well as observing that a responsible officer of CBI will appear and inform the Court about the assessment of capabilities of work being done by CBI officers, was not called for in the present circumstances. In this regard, it is to be noted that if the learned Trial Court did not find the draft questions to be framed in proper sentences, the learned Trial Court, who was to only take assistance of CBI for preparation of statement of accused, could at least have framed the sentences properly, according to its satisfaction. As already observed in preceding discussion, it is to be remembered that law only provides for taking assistance and not burdening the prosecution for preparation of the entire statement of accused or putting the questions to the accused. This is an important stage of trial and remains duty of the Court itself.

32. Moreover, to order for assessment of capability and working capacity of the officers concerned, who drafted such questions and

going to the extent of writing to the Joint Director and DOP to make assessment of capability and work of the officials concerned was totally unwarranted. In case, the sentences framed in the English language were found to be unsatisfactory, the Court should have noted that it is not the mother tongue of the officials drafting the questions and all may not be well-versed and proficient in written or spoken English as to match the expectations and level of those who have mastered the foreign language.

33. No doubt, English is language used in Delhi Courts, however, to castigate someone for improper framing of questions in language which the officer may not be proficient in, does not behold either a Court or any authority.

34. The importance of judicial conduct and restraint has been discussed and its significance has been highlighted in the past by the Hon'ble Apex Court well as this Court. Reputational concerns often due to castigating observations made against an officer or person in a judicial order which may not be the need of the case or situation.

35. To write to the disciplinary authority of an officer to evaluate a person's capability of working does not lie in the domain of judicial adjudication process where it is not in question. The need for judicial restraint should be exercised while passing such strictures and sending them to disciplinary authority as they may amount to doing injustice to a person who is not an offender but a defender before the Court, while being in process of doing justice to the alleged offender.

36. The justice required in this particular case or any case has to be based on judicial system supported by the law, and strictures have to be

passed in accordance with law and with caution and self-restraint. As this Court has observed, if the language used and formation of sentences which had been framed in English language were not acceptable or up to the expectation of the Court concerned, the learned Trial Court should have himself at least framed the sentences as the duty of the prosecution was to place before the learned Trial Court the incriminating evidence and that too, in the capacity of their role of assisting the Court only.

37. Thus, sending the denigrating remarks to the superiors/head of DOP and asking them to assess not only the persons concerned, but also their own department's capability of working in the Court, was uncalled for in the circumstances in which the impugned order was passed.

38. Though, it may be true that the judiciary should not refrain from passing orders for fear of the same being considered unpopular, at the same time, the broader question of whether a judge should comment on capability of the officers of prosecution appearing before it regarding their ability to assist the Court and thereafter asking them to appear before the Court and inform it as to whether they have assessed the capability of such officers, will put the department as well as the official concerned in a difficult situation. The assessment of annual confidential reports and capability of officers of any department has to be left to the superiors and the concerned authorities of the said department. And any gross misconduct can be brought to the notice of the concerned authorities in the given circumstances, if the circumstances so demand, but to completely undermine ability of the prosecutor and state that they are unable to assist in judicial decision-

making process is something that is worrying. The judicial sensitivity and respect for parties appearing before it is a part of judicial decision making process. In such circumstances, the Court could have expressed its displeasure over the slow progress of the case, however, to have commented on the capability and capacity of the entire institution of CBI and how its officers work, and to appear in the Court and take a stand as to whether CBI will work in this fashion was neither the institutional nor administrative work of the concerned Trial Court.

39. It will be irresponsible for a Court to pass remarks remaining oblivious to the ground realities that everyone may not be super-efficient in English language. The prime duty of judges is to do justice in individual cases, and the privilege and immunity enjoyed by a judicial officer while adjudicating cases carries with it an enormous responsibility to exercise the same with utmost circumspection. This order, in any manner, does not undermine the majesty or the power of the Courts, but only aims to reiterate, as already reiterated on multiple occasions by the Hon'ble Apex Court, the need to exercise judicial restraint.

40. In such circumstances, this Court is of the opinion that the competence, expertise or legitimacy of a person's capability of appearing in the Court and his capability to assist or work in the institution for which he works should not be taken upon itself by the Court, and the displeasure and disagreement, if any, must be expressed in respectful, restrained and courteous way. The impact of public insult and disrespect by way of a publically available judicial order is tremendous on a person's self-esteem and his reputation in the society.

The Court must have an eye to the after effects of such strictures and the consequences of such observations.

41. Further, sweeping remarks passed by the learned Trial Court in order dated 05.03.2018 that a warning was being recorded for the prosecuting agency that if a similar situation would arise in future in any of the cases pending before itself, the Court shall be compelled to think of issuing show cause notice for making reference for contempt of Court, have been taken note of by this Court. The learned Trial Court passed these remarks apropos all the cases pending before it and gave a forewarning that it will be issuing a contempt notice to the prosecuting agency in case of any such delay or any kind of default on their behalf. This Court is at a loss to understand as to how such a warning in the nature of threat could have been made part of a judicial order. Every judicial order, including a contempt order which is a serious matter for any person or agency, has to be passed with utmost circumspection after individually examining the facts and conduct of the person or agency concerned. Therefore, this Court is also inclined to expunge the said remarks contained in the impugned order dated 05.03.2018.

42. Thus, in view of the foregoing discussion, this Court is of the opinion that it was uncalled for the learned Trial Court to have passed remarks against the petitioner/CBI in the impugned orders, as reproduced and emphasized in paragraph 6 and 7 of this judgment, and accordingly, the same are deleted/expunged from the record.

43. Further, the order dated 05.03.2018 insofar as it relates to imposition of a total cost of Rs.16,600/- upon the petitioner/CBI, on ground that CBI was responsible for the delay in recording of statement

of accused under Section 313 Cr.P.C. and their irresponsible conduct being the reason for adjournment granted on that day, is also set aside for the reasons stated in preceding paragraphs.

44. This Court has not expunged the displeasure expressed by the learned Trial Court regarding delay in preparation of the questions as the Court could have done so in its judicial domain, however, the irregularity and illegality regarding putting the entire burden of the same on the prosecution which is not permissible under the law has been discussed in the judgment separately and adjudicated upon. Also, this Court being guided by the principles of judicial restraint as laid down by the Hon'ble Apex Court, does not deem it fit to pass any order against the concerned judicial officer, but by way of this judgment, only reiterates and emphasizes upon the need to exercise utmost restraint while passing judicial strictures and remarks unnecessary and uncalled for in given circumstances of a case against any officer or authority. This Bench in *Ajit Kumar v. State (supra)* has pointed out the procedure which a judge may adopt in case the misconduct, etc. of an officer, etc. is to be conveyed to its superiors as laid down under the relevant rules of Delhi High Court.

45. Accordingly, the present petition, along with pending application, if any, stands disposed of in above terms.

46. The judgment be uploaded on the website forthwith.

SWARANA KANTA SHARMA, J

APRIL 18, 2023/kss