

**(2005) 04 AHC CK 0130**

**Allahabad High Court**

**Case No:** Criminal Miscellaneous Application No. 1244 of 2005

Pradeep Kumar Kedia

APPELLANT

Vs

The State of U.P. and Central  
Bureau of Investigation/CIU-III

RESPONDENT

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**Date of Decision:** April 21, 2005

**Hon'ble Judges:** Ravindra Singh, J

**Bench:** Single Bench

**Advocate:** A.P. Tiwari and S.S. Tripathi, for the Appellant; G.S. Hajela and A.G.A., for the Respondent

**Final Decision:** Dismissed

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### **Judgement**

Ravindra Singh, J.

Heard Sri S.S. Tripathi and Sri A.P. Tewari, learned counsel for the applicant, Sri G.S. Hajela learned counsel for the C.B.I. Opp.Party No. 2 and the learned A.G.A.

2. This application has been filed against the order dated 15.12.2004, passed by the learned Spl. Judge Anti Corruption (West), Lucknow in Crl. Case No. 2 of 1981 (R.C. No. 3 of 1980 ) State v. Bijendra Singh and Ors., whereby the applications dated 15.2.2004 filed by the applicants were rejected.

3. It is contended by the learned counsel for the applicant that the applicant is facing, the trial in Crl. Case No. 2/ 81 ( R.C. No. 3 of 1980 ), pending in the Court of learned Special Judge, Anti Corruption (West) , Lucknow.

4. In the present case, the first information report was registered with the C.B.I. C.I.U. New Delhi on written complaint of Sri S.D. Mehta, the General Manager, Central Ware Housing Corporation, New Delhi. The investigation was clone by the C.B.I./SPE/C.I.U. (III) and filed a charge-sheet in the Court of Spl. Judge, Anti corruption (West), Lucknow against the applicant and other co-accused persons. During the investigation of the case, certain documents/ registration/ Bills/ Gate Passes were seized by the C.B.I. vide receipt memo dated 14.12.1980.

5. In the present case, all the witnesses have been examined from the prosecution side and the defence evidence was also closed on 26.10.2004 at the statement of Sri Nandit Srivastava Advocate appearing on behalf of the applicant and other co-accused persons that he did not want to adduce any other evidence in the defence, subsequently, the matter was fixed for the argument. First of all, on 15.12.2004, 2 application were moved on he half of the applicants in which the first application was with the prayer that the C.B.I. may be directed to return all looks / documents/ papers as mentioned in the receipt memo dated 14.12.1980, to the applicant in the interest of justice and the second application was with the prayer that the original documents annexed with the list and mentioned in the application for return of documents, may kindly be brought on record so as to meet the ends of justice. Both these applications were rejected by a common order dated 15.12.2004 by the learned Special Judge, Anti Corruption (West) Lucknow. It is contended by the learned counsel for the applicant that during the preparation of arguments, it was revealed that all the documents i.e. registers, bills and gate passes etc. which were seized by the C.B.I. on 14.12.1980 are very important and necessary documents to establish the innocence of the applicant as an accused. If these documents are not brought on the record, the applicant being the accused will suffer irreparable loss. The above mentioned documents were deliberately retained by the C.B.I. for the last two decades be cause those documents were contrary to the prosecution case. If the alleged documents are not returned to the applicant and are not brought on the record of the case, the fair hearing of the trial will not be done and the applicant will not be able to establish his innocence but the learned Special. Judge without applying his judicial mind, rejected the application dated 15.12.2004. So the impugned order dated 15.12.2004 is illegal. It is liable to be set aside. By setting aside the impugned order, the C.B.I. may be directed to return the alleged document to the applicant and the same may be brought on the record of the case.

6. Sri G.S. Hajela, learned counsel for the C.B.I. Opp. Party No. 2 opposed the contention of the applicant by submitting that the applicant moved an application on 15.12.2004 with a prayer that during the investigation, the C.B.I. has seized some documents on 14.12.1980 vide receipt memo dated 14.12.1980. This application was moved after 24 years from the date of the seizure and prior to that, the applicant has not moved any application before any authority of the C.B.I. or the court to return the same document. The applicant has moved an application to return those documents which are not part of the record available in the Court and thus, the application was moved after great thought and consultation and for the purposes of lingering the trial and it was moved when the counsel for the applicant himself stated that he did not want to adduce any other evidence in defence. Therefore, the defence evidence was closed and the matter was fixed for the arguments. This matter is too old. Unfortunately, the trial could not be concluded, so this court has given a direction to the trial court in Crl. Misc. Application No. 3573 of 2001 to expedite the trial and proceed further in the case and also submit periodical reports

about the progress of the case. It is further submitted that there is no illegality in the impugned order dated 15.12.2004. It is a perfect and well reasoned order. It has been passed after considering all the facts and circumstances of this case. It requires no interference by this Court.

7. From the perusal of the record and the impugned order dated 15.12.2004, it reveals that this case is too old in which the prosecution evidence as well as the defence evidence has been closed in the trial and the matter was fixed for the arguments. At this stage, two applications dated 15.12.2004 were moved. The prayer for directing the C.B.I. to return the certain documents as mentioned in the application was made after 24 years from the date of the seizure and those the documents are not the part of the record present in the Court and the applicant has not moved any application before any authority of the C.B.I. It also reveals that the learned trial court has recorded its finding with that the trial is too much delayed and the Hon"ble High Court has given a direction for expeditious trial and the applications were moved by the applicant at the stage of the arguments only for the purposes of delaying the trial. In the application dated 15.12.2004, it was mentioned that the C.B.I. has seized certain documents on 14.12.1980. It may be a disputed fact as to whether the documents were seized by the C.B.I. or not, so it cannot be decided by the court because it is not the part of the record of the court and in such circumstances, no direction can be given to C.B.I. to return these documents. The proper forum for the applicant was to approach the authorities of the C.B.I. concerned which has not been availed of by the applicant, as such, the applications moved by the applicant were rightly rejected by the trial court. It is a well reasoned order and it requires no interference and it does not suffer from any illegality or irregularity.

8. In view of the facts and circumstances of the case and the submissions made by the learned counsel for the applicant as well as learned counsel for the Opp.party No. 2, the impugned order dated 15.12.2004 passed by the learned Special Judge, Anti Corruption (West) in Case No. 2 of 1981 (R.C. No. 3 of 1980) is confirmed and the prayer for quashing the impugned order dated 15.12.2004, is refused.

9. Accordingly this petition is dismissed.