dated 30th October, 2003 (Annexure P-3) to the passing of the impugned order, dated 24th January, 2006 (Annexure P-7). We have perused the instructions dated, 7th August, 1990 (Annexure R-1), relied upon by the respondent-Department. These instructions do not cover the case where major penalty of removal from service was awarded without issuing any show cause notice/charge sheet and the period intervening removal from service and reinstatement into service was about one year and eleven months, as in the present case.

(8) Consequently, this writ petition is allowed. The impugned order, dated 24th January, 2006 (Annexure P-7) is quashed. It is ordered that the intervening period between removal from service of the petitioner and taking him back on duty i.e. from 11th April, 1989 to 2nd April, 1991 shall be deemed to be as on duty period for all intents and purposes. There shall be no order as to costs.

R.N.R.

Before Mahesh Grover, J

SMT. NANDITA BAKSHI AND ANOTHER,—***Petitioners***

versus

CENTRAL BUREAU OF INVESTIGATION,—***Respondent***

Crl. Revision Petition No. 2353 of 2006 &
Crl. Misc. Petition No. 11278 of 2007
30th January, 2008

Code of Criminal Procedure, 1973—S. 233—Accused filing application for summoning defence witnesses—Trial Court restricting prayer of petitioners and confining it to a certain category of witnesses—Though order of trial Court notices no one is present for accused but subsequent proceedings negate and nullify plea of petitioners that no opportunity of hearing afforded before passing order—Trial Court also granting liberty to move a subsequent application for supplying names of witnesses and summoning them—No prejudice caused to petitioners in any manner whatsoever—Trial Court after going into legality, veracity and relevance of second

application dismissing the same by cogent reasons—Petitions dismissed.

Held, that the petitioners have not been prejudiced in any manner whatsoever and it cannot be said that they have not been heard in the case before passing order dated 11th October, 2006. Even if, it is assumed that the petitioners were not heard when the said order was passed, yet, the trial Court granted them liberty to move an application for supplying the names of the witnesses and summoning them, which they did on 23rd January, 2007. The trial Court tested this application, the list of the witnesses and their relevance and rejected the same by giving cogent reasons *vide* order dated 17th February, 2007. It has passed an elaborate order noticing the relevance of the witnesses who have been mentioned in the list and sought to be summoned by the petitioners in support of their defence. The power of the Court under Section 233 of the Cr.P.C. to reject any defence evidence by examining its contents and relevance has been exercised by the trial Court and also by noticing the fact that there is an attempt to delay the proceedings by the petitioners as the trial in this case has also been dragging on for quite a few years.

(Para 29)

Further held, that the evidence that the accused wishes to produce must have a relevant, proximate and probable nexus with the accusation and the consequent innocence which he or she wishes to establish. The Court is not obliged to delve into and embark upon a fishing enquiry and search for needles in a haystack, which the accused perceives, will establish his innocence.

(Para 32)

MAHESH GROVER, J.

(1) This judgment will dispose of the above mentioned Criminal Revision Petition and Criminal Miscellaneous Petition which have been filed, respectively, by the petitioners against orders dated 13th October, 2006 and 17th February, 2007, passed by the Special Judge, C.B.I. Court, Punjab, Patiala (hereinafter referred to as 'the trial Court') in case No. RC 18(A)/98-CHG dated 18th March, 1998, titled "C.B.I. versus R.K. Sharma and others".

(2) The petitioners along with others are facing crininal proceedings before the trial Court in the aforementioned case for having committed offences punishable under Section 120-B read with Sections 420, 467, 471 of the I.P.C. and Section 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988.

(3) The prosecution is said to have concluded its evidence and the petitioners were asked to produce their evidence in defence.

(4) In the first instance, the petitioners moved an application on 11th October, 2006 and in the body thereof, specially in para 4, they delineated the witnesses whom they proposed to examine in their defence. They also filed the list of the following witnesses along with that application :—

(1) Shri A. K. Purver, Ex-Chairman, State Bank of India, India Read Director, Nicholas, Primal Tower, Inside Peninsual, Commret Part, Janpat Roa, Padam Marg, Lower, Parel, Mumbai-13.

(2) Shri Verma, Ex-Chairman, State Bank of India, TRAI (Retd.), Phone No. 951244055364.

(3) Concerned Official of the State Bank of India responsible for issuance of duplicate Foreign Currency Non Resident (Bank Scheme) Special Term Deposit Receipt (FCNR) against the original FCNR bearing No. 025010 dated 9th September, 1997 for US $ 2,99,985 and bearing No. 025012 dated 19th September, 1997 for US $ 10,00,000 both issued in favour of Shri Parasram S. Daryani, Mrs. Neelam P. Daryani and Shri Vikas P. Daryani along with all records pertaining thereto.

(4) Concerned official of the State Bank of India Responsible for release of amount due against the original FCNR bearing No. 025010 dated bearing No. 0-25012 dated 19th September, 1997 for US $ 10,00,000 both issued in favour of Shri Parasram S. Daryani, Mrs. Neelam P. Daryani and Shri Vikas P. Daryani along with all records pertaining thereto.

(5) Manager, State Bank of India, Rajpura Branch, District Patiala-along with all records pertaining to current Account No. 6/1057 and current Account No. 6/1060 standing in the names of Shri Vijay Kumar Jha and Ms. Nandita Bakshi.

(6) Concerned official of the Debt Recovery Tribunal, Chandigarh, along with all records pertaining to Original Application No. 661/2001 (Old No. 258/1998) titled "State Bank of India versus Vijay Kumar Jha" and Original Application No. 259/1998 titled as "State Bank of India versus Nandita Bakshi."

(7) Ms. Neelam P. Daryani wife of Shri Paras Ram Daryani, P.O. 15668, Dubai.

(8) Shri Sunil Gandhi, the Financial Advisor of Shri Paras Ram Daryani.

(9) Shri Alpesh Mehta.

(10) Shri P.C. Sharma, Ex-Director, Central Bureau of Investivation, resident of H. No. 8, Lodhi Estate, New Delhi, office at National Human Rights Commission, Faridkot House, Copernicus Marg, New Delhi.

(5) By order dated 13th October, 2006, the trial Court partly accepted the said application of the petitioners and the witnesses mentioned at S. Nos. 3, 4 and 5 were permitted to be examined, while the prayer for summoning the rest of the witnesses was declined for the reasons that have been given therein.

(6) The trial thereafter progressed and three witnesses on behalf of the petitioners were examined. The petitioners are also said to have made a statement before the trial Court which is reflected in order dated 11th January, 2007 that they would be satisfied if the evidence is recorded in the presence of their counsel and in their absence as they have fully briefed him.

(7) It is also pertinent to mention here that Shri R.M. Singh (Manager, State Bank of India, Rajpura Branch) and Shri K.P. Vij, two of the witnesses, who were allowed to be examined in defence,—*vide* order dated

13th October, 2006, had already been examined by the prosecution and, therefore, they were allowed to be cross-examined by the petitioners. The other witnesses, who was identified on the oral request of the petitioners, as Shri C.L. Sethi, was examined on 11th January, 2007 as defence witness and, thus, order dated 13th October, 2006 stood fully satisfied.

(8) At this stage, the petitioners through their counsel, raised an objection on 11th January, 2007 that order dated 13th October, 2006 was not fully satisfied, in-as-much as, Shri C.L. Sethi and Shri K.P. Vij coul dnot have been said to be the persons responsible for issuance of duplicate F.C.N.Rs. or responsible for release of the amount against the original F.C.N.Rs. as mentioned in application dated 11th October, 2006.

(9) Thereupon, the trial Court once again entered into the contents of application dated 11th October, 2006 and the list of witnesses and after noticing what had been stated at S. Nos. 3 and 4 of the list of witnesses, concluded that the request of the petitioners to examine the witnesses at S. Nos. 3 and 4 stood satisfied with the examination of three witnesses, specially Shri C. L. Sethi and Shri K. P. Vij.

(10) The trial Court also noticed that the request of the petitioners for summoning of the two of the previous Ex-Chairmen of the State Bank of India had already been declined,—*vide* order dated 13th October, 2006 and concluded that their prayer stood fully satisfied as per the permissible limits set by it in order dated 13th October, 2006.

(11) Thereafter, the trial Court adjourned the matter to the next date and while doing so, observed as under :—

> "No other DW in respect of any other accused is present. All the accused are directed to take effective steps for producing defence evidence expeditiously, failing which their evidence may be closed by order. If desired, the accused may apply for issuance of dasti summons or service of summons through special messenger, in addition to service through ordinary process for effecting service on DWs.
>
> At this stage, Shri P. B. A. Srinivasan, Advocate, counsel for accused No. 2 and 3, has submitted that he intends to file a

fresh application seeking summoning of more DWs. The accused may file any such application, if so advised, under provisions of law."

(12) The petitioners then filed application dated 23rd January, 2007 in which the details of the evidence and the witnesses sought to be examined were given out in paragraphs 14 16, 17 and 18, which read as under :—

"14. That it is pertinent to mention here that till date, the following informations and documents are not produced before this Hon'ble Court :—

(i) Original FCNRs issued in the month of January, 1998;

(ii) Original FCNRs issued on 16th September, 1998;

(iii) Original request letters issued by the depositors to SBI to issue the duplicate FCNRs;

(iv) Original request letters issued by the depositors to SBI to release the amount due under the FCNRs;

(v) The officials of SBI responsible for issuance of FCNRs dated January, 1998 and 16th September, 1998;

(vi) The officials of SBI responsible for release of proceed against the FCNRs both dated 16th September, 1998;

(vii) The guideline/instruction of the bank and issued by the RBI regarding the issuance of the duplicate FCNRs, their renewal and release of the proceeds thereunder;

(viii) The formalities necessary to be complied with to issue duplicate FCNRs, their renewal and release of the proceeds thereunder;

(ix) Register showing formalities complied by SBI to issue duplicate FCNRs, their renewal and release of the proceeds thereunder.

16. That in the premises, the following witnesses are necessary and vital to the case of the accused No. 2 and 3 to set up their defence, to be in consonance with the order, 13th October,

2006 of this Hon'ble Court and also to bring the true facts before this Hon'ble Court;

(i) Shri J. M. Chadha, the then Chief Manager (187-1-199 June, 1999), SBI, Rajpura;

(ii) Shri S.P. Garg, the then Manager Credit (September, 1999), SBI, Rajpura;

(iii) Shri Vineet Koura, the then Branch Manage (July 1999 to September, 1999), SBI, Rajpura;

(iv) Shri G. G. Vaidya, Official, SBI.

17. That it is submitted that the witnesses mentioned at serial No. 1 and 2 are sought to be summoned with the following relevant record :

(i) Original FCNRs issued in the month of January, 1998;

(ii) Original FCNRs No. 025019 for USD 3,17,735.62, dated 16th September, 1998 issued in favour of Shri Parasram S. Daryani, Mrs. Neelam P. Daryani and Shri Vikas P. Daryani;

(iii) Original FCNR No. 0-25020 for USD 10,59,171.75, dated 16th September, 1998 issued in favour of Shri Parasram S. Daryani, Mrs. Neelam P. Daryani and Shri Vikas P. Daryani;

(iv) Original request letters issued by the depositors to SBI to issue the duplicate FCNRs;

(v) Bank Manual and instructions by the RBI regarding the issuance of the duplicate FCNRs, and their renewal;

(vi) The formalities necessary to be complied with to issue duplicate FCNRs, and their renewal;

(vii) Register showing formalities complied by SBI to issue duplicate FCNRs and their renewal;

(viii) Letters issued by CBI to SBI to freeze the amount under the FCNRs.

18. That it is submitted that the witnesses mentioned at serial No. 3, 4 and 5 are sought to be summoned with the following relevant record :

(i) Original request letters issued by the depositors to SBI to release the amount due under the FCNRs;

(ii) The official of SBI responsible for release of proceed against the FCNRs both dated 16th September, 1998;

(iii) Bank manual and instruction by the RBI regarding the release of the proceeds due under the FCNRs;

(iv) The formalities necessary to be complied with to release of the proceeds due under the FCNRs;

(v) Register showing formalities complied by the SBI to release the proceeds due under the FCNRs;

(vi) Letter issued by CBI to SBI to release the amount under the FCNRs."

(13) The trial Court dismissed the aforesaid application,—*vide* order dated 17th February, 2007.

(14) While assailing the impugned orders, learned counsel for the petitioners contended that at the time order dated 13th October, 2006 was passed, he was not heard which is reflected from the order itself where his presence is not noted and which, according to him, has resulted in substantial mis-carriage of justice. He further contended that pursuant to the provisions of Section 233 of the Cr.P.C., the petitioners were entitled to examine the witnesses in defence and denial of that opportunity has resulted in the mis-carriage of justice as they have been deprived the benefit of examining the witnesses whom they had chosen in support of their defence. In support of his contentions, he relied upon **Ronald Wood Mathams and others** *versus* **State of West Bengal (1) Kalyani Baskar** *versus* **M.S. Sampoornam (2) and Dineshbhai Harishbhai Sonkusare and others** *versus* **State of Gujarat (3).**

(1) AIR 1954 S.C. 455
(2) I(2007) CCR 203 (SC)
(3) 2005(30) AIC 828 (Guj. HC)

(15) On the other hand, learned counsel for the Central Bureau of Investigation contended that the petitioners could not claim, as a matter of right, that the witnesses as per the list which they submitted before the trial Court should have been summoned because it was their duty to satisfy the said Court regarding the relevance of such witnesses before their summoning and the power of the Court is not restricted in any manner to accept or reject a request in that regard. He further contended that order dated 13th October, 2006 had been accepted by the petitioners, who had acted upon the same by summoning few witnesses and once they had accepted that order, the sunsequent plea that they were not heard before passing the same, is meaningless. He submitted that in this eventuality, subsequent application dated 23rd January, 2007, which was declined by the trial Court,—*vide* order dated 17th February, 2007 in fact, was not maintainable and was an abuse of the process of law as the petitioners had already availed of thir right to seek permission of the Court for leading their defence evidence and the same was granted to them,—*vide* order dated 13th October, 2006. In support of his contentions, he placed reliance on **State of M. P.** *versus* **Badri Yadav and another (4).**

(16) I have heard the learned counsel for the parties at some length and have perused the record.

(17) The provisions of Section 233 of the Cr.P.C. are an essential feature of the criminal dispensation of justice in criminal jurisprudence. It gives a valuable right to the accused to produce evidence in order to prove his innocence and to off-set the case of the prosecution whose endeavour is to prove him guilty. The power of the Court under Section 233 of the Cr.P.C. is not sub-servient to anything except to the reasons which it has to record while delining the prayer of the accused, who prays for production of certain evidence during the course of trial.

(18) Needless to say that such an application which is mandated by the provision of law shall ordinarily be acted upon affirmatively unless for the reasons to be recorded by the Court when the same is refused on the ground that it has been made for the purpose of vexation or delay or defeating the ends of justice.

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(4) (2006)9 S.C.C. 549

(19) In **State of M.P.** *versus* **Badri Yadav and another** *(supra)*, their Lordships of the Supreme Court observed as under :—

> "Section 233 itself deals with entering upon defence by the accused. The application for recalling and re-examining persons already examined, as provided under Section 311 Cr.P.C., was already rejected. The power to summon any person as a witness or recall or re-examine any person already examined is the discretionary power of the court in case such evidence appears to it to be essential for a just decision of the case. Under Section 233 Cr.P.C. The accused can enter upon defence and he can apply for the issue of any process for compelling the attendance of any witness in his defence. The provisions of sub-section (3) of Section 233 cannot be understood as compelling the attendance of any prosecution witness examined, cross-examined and discharged to be juxtaposed as DWs. In the present case PW8 and PW9 were juxtaposed as DW1 and DW2. This situation is not one what was contemplated by sub-section (3) of Section 233 Cr.P.C. When such frivolous and rexations petitions are filed, a judge is not powerless. He should have used his discretionary power and should have refused relief on the ground that is made for the purpose of vexation or delay or for defeating the ends of justice."

(20) The aforementioned was a case wherein the High Court had relied upon the testimony of two defence witnesses, who were earlier examined as eye witnesses by the prosecution and acquitted the respondents by reversing the well-merited judgment of the trial court,—*vide* which they were convicted. These witnesses were summoned on the application of the accused persons. Their Lordships of the Apex Court found the order of the High Court to be perverse and set aside the same by making the above extracted observations.

(21) In the instant case, an application having been moved by the petitioners in the first instance on 11th October, 2006, resulted in the passing of order dated 13th October, 2006 which restricted their prayer and

confined it to a certain category of witnesses who were detailed in the list of witnesses which was submitted before the trial Court. That application was purported to have been moved under Section 233 of the Cr.P.C. as the application itself is silent on the provision of law which was sought to be invoked before the trial Court.

(22) Indeed, order dated 13th October, 2006 notices that no one is present for the accused, but in the body of the order, the trial Court mentions that the learned counsel for the applicants as well as learned Public Prosecutor had been heard.

(23) Apparently, this has resulted in the confusion on the basis of which the learned counsel for the petitioners propounded the plea that the petitioners had not been afforded an opportunity of being heard. There was nothing apart from this order which could throw light on this aspect of the matter as the only record is the order itself which is at variance in so far as this aspect of the matter is concerned.

(24) Ordinarily, this should have been sufficient to set aside order dated 13th October, 2006 for the reason that it violated the basic tenet of fair trial as it sought to seriously prejudice the right of the petitioners which had been jeopardized as a result of an order coming into existence in which they were denied an opportunity to substantiate their plea.

(25) But, the subsequent proceedings negate and nullify this contention and erase any prejudice that would have been caused to the petitioners.

(26) On 11th January, 2007, the trial Court, while examining the witnesses in defence, whom the petitioners had sought to examine pursuant to order, dated 13th October, 2006, had observed that since no other DW in respect of any of the accused was present, they were directed to take effective steps for producing defence evidence expeditiously, failing which the evidence was to be closed by order and if so desired, they may apply for issuance of dasti summones or service of summones through special messenger, in addition to service through ordinary process for effecting

service on DWs. At that stage, the counsel for the petitioners expressed his intention to move a fresh application seeking summoning of more DWs and the trial Court observed that the accused may file any such application, if so advised, under provisions of law.

(27) This had resulted in the filing of subsequent application, dated 23rd January, 2007 on behalf of the petitioners, which was declined by the trial Court,—*vide* order, dated 17th February, 2007.

(28) This Court, while examining the controversy, pointedly asked the learned counsel for the petitioners that application, dated 11th October, 2006 seemed quite vague as the details of the witnesses had not been given therein, which was subsequently sought to be made up by the list of witnesses supplied to the trial Court. In this context, a query was also put, (especially when the learned counsel for the Central Bureau of Investigation objected to the moving of the subsequent application) as to whether the names of the witnesses which were given out in the subsequent application, dated 23rd January 2007 were the intended witnesses in the earlier application, dated 11th October, 2006 or not and the learned counsel for the petitioners replied in the affirmative to say that it was merely a continuation of the earlier application which was promoted by order, dated 11th January, 2007 of the trial Court and they, indeed, were the intended witnesses in the previous application implying thereby that the subsequent application and the details were merely clarificatory in nature.

(29) When the matter is examined in this context of the contention of the learned counsel for the petitioners, then it becomes clear that the petitioners have not prejudiced in any manner whatsoever and it cannot be said that they have not been heard in the case before passing order dated 11th October, 2006. Even if, it is assumed that the petitioners were not heard when the said order was passed, yet, the trial Court granted them liberty to move an application for supplying the names of the witnesses and summoning them, which they did on 23rd January, 2007. The trial Court tested this application, the list of the witnesses and their relevance and

rejected the same by giving congent reasons,—*vide* order dated 17th February, 2007. It has passed an elaborate order noticing the relevance of the witnesses who have been mentioned in the list and sought to be summoned by the petitioners in support of their defence. The power of the Court under Section 233 of the Cr. P.C. to reject any defence evidence by examining its contents and relevance has been exercised by the trial Court and also by noticing the fact that there is an attempt to delay the proceedings by the petitioners as the trial in this case has also been dragging on for quite a few years.

(30) Learned counsel for the petitioners was unable to show any perversity in the impugned orders except for the plea that order, dated 13th October, 2006 was passed without hearing the petitioners, which fact, as noticed above, has been negated by the subsequent proceedings and the latter application which they moved and the legality, veracity and the relevance of which has been gone into by the trial Court resulting in order, dated 17th February, 2007, which, not only erased the aberration that had crept in order, dated 13th October, 2006, but has amply met the requirement of law.

(31) Further, the case against the petitioners is that they had forged the documents in order to obtain a loan against the FNCR belonging to its holder, namely, one Mr. Daryani.

(32) The evidence that the accused wishes to produce must have a relevant, proximate and probale nexus with the accusation and the consequent innocence which he or she wishes to establish. The Court is not obliged to delve into and embark upon a fishing enquiry and search for needles in a haystack, which the accused perceives, will establish his innocence.

(33) Consequently, there is no merit in the instant Criminal Revision and the Criminal Miscellaneous Petition and both of them are dismissed.

R.N.R.