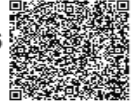




2025:PHHC:022976



**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

CRM-M-5959-2025

Reserved on : 13.02.2025

Pronounced on : 17.02.2025

Central Bureau of Investigation

.....Petitioner

Versus

Ravinder Singh @ Ravinder Singh Bhasin and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Argued by : Mr. Akashdeep Singh, Spl. Public Prosecutor, CBI.

Mr. G.C. Shahpuri, Advocate for respondent No.1.

Mr. Sangram S. Saron, Advocate and
Mr. Madhavrao Rajwade, Advocate for respondent No.3.Mr. S.K. Garg Narwana, Sr. Advocate with
Mr. Vishal Garg Narwana, Advocate for respondent No.4.

MANJARI NEHRU KAUL, J.

1. The petitioner is challenging the order dated 15.10.2022 (Annexure P-6) passed by learned Special Judge, CBI Court, Chandigarh, whereby its application under Section 311 Cr.P.c., seeking to examine 22 prosecution witnesses, was dismissed.

2. The case originates from an FIR initially registered by the Chandigarh Police on 16.08.2008, which reads as under:-

“Sir, it is submitted that I Amrik Singh, am working as Peon in Camp office of Justice Nirmaljeet Kaur. Yesterday i.e. on 13.08.2008 at around 08.30 pm at night, Guard Guruvinder Singh rang the bell and told that some person has come. I went to the gate and saw that one Munshi, Prakash, whom I know, was there. He was holding one plastic bag in his hand. He told me that the papers have come from Delhi which are to be delivered inside. Without checking the bag I came inside and told this to Madamji.



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Madamji asked me to check as to what were those papers. When I opened the bag I found currency notes in it. Then Madamji scolded me and asked me to catch the person who had come with that bag. I immediately ran and came outside and Madamji also accompanied me. I told Guard Guruvinder to catch hold of Prakash Munshi who was already held up by Gurvinder. Madamji told Guruvinder to call the police at 100 no. and get him apprehended. Then Guard Guruvinder made a phone call and after few minutes police arrived outside the kothi and took Prakash Munshi and currency notes along with them. I am giving you a written information about this incident. Sd/ Amrik Singh, Office Camp peon, H. No. 188, Sector 11. Chandigarh, dated 14.8.2008.”

3. Subsequently, the investigation was transferred to the Central Bureau of Investigation (CBI) by an order dated 26.08.2008 of Gen. (Retd.) S.F. Rodrigues, Government of Punjab and Administrator, Union Territory of Chandigarh, and upon completion of investigation, a charge sheet was filed on 18.04.2011. Learned Special Court framed charges against the accused vide order dated 18.01.2014.

4. Initially, the prosecution cited 84 witnesses, out of which only 69 witnesses were examined. During the trial, the prosecution moved two applications under Section 311 Cr.P.C., which were disposed of by the learned Trial Court vide order dated 01.12.2021.

5. The first application seeking permission to produce a certificate under Section 65-B of the Indian Evidence Act, 1872, was allowed. The second application seeking examination of the Judicial Magistrate concerned, to prove the statement of PW-33 Jai Parkash Rana, recorded under Section 164 Cr.P.C., was, however, rejected.

6. Thereafter, another application under Section 311 Cr.P.C. was filed by the prosecution, seeking re-examination of PW-43 Pankaj Bhardwaj on the ground that his statement made under Section 161



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Cr.P.C. was not put to him during his testimony. This application was dismissed vide order dated 18.05.2022. Thereafter, the prosecution evidence was formally closed on 07.09.2022.

7. Subsequently, on 27.09.2022, the prosecution moved the application in question under Section 311 Cr.P.C., seeking to examine 22 additional witnesses, which was dismissed by the learned Special Court vide impugned order dated 15.10.2022 (Annexure P-6). Aggrieved by this order, the CBI has approached this Court.

Submissions on Behalf of the Petitioner (CBI)

8. Learned Special Public Prosecutor for the CBI made the following submissions:

8(i) that the witnesses sought to be examined under Section 311 Cr.P.C. who are crucial and necessary for the just decision of the case, are listed as follows along with the purpose for which they are required to be summoned under Section 311 Cr.P.C.

Sr. No.	Particulars	Documents to be proved and its relevancy
1.	Ms. Neela Gangadharan, IAS	The then Secretary, to prove the sanction order for prosecution of Justice Nirmal Yadav retired, since Sh. VP Gubrani, the then under Secretary to the Government of India, has expired.
2.	The Nodal Officer, Tata Teleservices Ltd., C-125, Industrial Area Phase-III, Mohali as the then Nodal Officer Sh. Rakesh Sharma has expired hence, documents to be proved by alternate witness	54, D-55, D-56 & D-58. (CDRs, CAF and certificate u/s 65-B Indian Evidence Act, 1872 sought to be produced). The documents which were to be proved by has already been supplied under Section 207 Cr.P.C.



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3.	Mr. Sushil Kumar Chopra, Nodal Officer, HPHP, Bharti Airtel Limited, C-25, Industrial Area Phase-II, Mohali	To prove D-83, D-85 & D-86 attested copies of subscribers enrolment forms etc. in respect of certain mobile numbers. Regarding the call detail recordings of the accused persons. Mainly 9872401283 in the name of Sanjeev Bansal along with the corporate plan. The documents are required to be proved to show the sequence of events of the crime. Since, the case was registered after few days by Chandigarh Police and subsequently by CBI hence the whole sequence is crucial.
4.	Mr. Sunil Rana, Nodal Officer, HPHP, Bharti Airtel Limited, C-25, Industrial Area Phase-II, Mohali	D-100, D-101 & D-102 (CDRs, CAF and certificate 65-B Indian Evidence Act) to prove the sequence of events and locations of the suspects. The documents were in regard to CAF of Gupta property Developers. The relevant mobile number is 9878511111 and other numbers linked with the same number.
5.	DE(CC) BSNL O/o CMTS Punjab Telecom Circle, 1 st Floor, Telephone Exchange Building, Sector-49C, Chandigarh	D-106 (CDRs, CAF and certificate under Section 65-B of the Indian Evidence Act, 1872) to prove the sequence of events and locations of the suspects.
6.	The then Valuation Officer, Income Tax Department, Aaykar Bhawan, Patiala	D-48 (Valuation Report), which was signed by the said officer pertaining to land in District Solan purchased by accused Justice Nirmal Yadav retd. at a lower cost.
7.	The then Divisional Forest Officer, Solan, Forest Division Solan	D-49 letter regarding valuation of trees in the private land of Rihun signed by the said officer.
8.	Tanmaya Behara, CBI Officer had recorded the statement of the witnesses u/s 161 Cr.P.C. and seized documents	D-102, documents seized during examination and the statement of some witnesses recorded by him.
9.	Vijay Bahadur	CBI official witness to seizure memo.
10.	SK Sharma, the then Inspector CBI, AC-II, New Delhi	D-18 & D-20 the telephone diary seized, containing phone/mobile numbers of accused persons



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11.	S.S. Yadav (Insp.) ACU-II, New Delhi	CBI official witness to seizure memo.
12.	The concerned Ahlmad of the learned Trial Court to prove statement under Section 164 Cr.P.C. of Shri Prakash Ram and accused Nirmal Singh	To prove the statement under Section 164 Cr.P.C. recorded on 21.08.2008 of witnesses Shri Prakash Ram and on 24.08.2008 statement of accused Nirmal Singh.
13.	The then Sub-Registrar Chandigarh, who had verified/certified GPA dated 05.06.2007 between Anand Kumar Jain and Sh. Rajeev Gupta (co-accused) for plot No.601, Sector-6, Urban Estate, Panchkula.	To prove D-33, the GPA dated 05.06.2007.
14.	An officer from the office of the then Registrar General to certify his signatures on the letter or the then Registrar General, High Court of Punjab & Haryana, who has signed letter No.559RHC(1) dated 15.10.2008.	D-32, letter dated 15.10.2018, it will prove the personal details of allotment as to house allotted along with the landline allotted to accused Nirmal Yadav to prove approximately 60 calls within her and Ravinder Singh Bhasin near about the occurrence.
15.	Sh. H.C. Honappa Pujari, PW-32	The said witness was examined as PW-32 on 01.03.2019, who has resiled from his versions mentioned in the statement recorded on 30.09.2008 by CBI and was not declared hostile by then PP for CBI for the reasons best known to him. He is required to be re-examined.
16.	Sh. V.K. Gupta, PW-42	The said witness was examined as PW-42 on 21.09.2019 and exhibited document Ex.PW-42/1 (very crucial document regarding Air Tickets provided by accused Sanjeev Bansal to accused Nirmal Yadav) was sought to be proved by him but certificate u/s 65-B Evidence Act could not be produced. Hence, the witness may be allowed to be recalled and certificate u/s 65-B, Evidence Act may allowed to produce to prove Ex.PW42/1.



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17.	Smt. Sanjay Baweja, Pvt. Person	He is to prove the movement of accused Ravinder Singh after incident and use of his phone by Ravinder Singh.
18.	Shri Rajesh Kumar, Special Commissioner of Police, Delhi Police	He is prove facts that Shri Ravinder Singh called him to help in getting back Rs.15 lacs and that Shri Sanjiv Bansal also contacted
19.	Ashok Aggarwal, Senior Advocate, Punjab and Haryana Govt. Chandigarh	D-32, he will prove that RSA 550 was decided at the stage of motion itself.
20.	Mohinder Kaur	She was to prove that her husband Ravinder Singh gave Rs.15 lacs to Shri Sanjiv Bansal for Nirmal Yadav
21.	Rakesh Kumar	He is to prove that Rs.15 lac were given by Shri Ravinder Singh in a poly bag to Shri Sanjiv Bansal. The signature on sale deed of land at Solan are not of Ravinder.
22.	Mohan Joshi	He was proved that Sanjiv Bansal visited Hotel Ridge View, took lunch and a poly bag was kept in this car by him.

8(ii). that the power under Section 311 Cr.P.C. enables the Court to summon witnesses at any stage of the trial if their evidence is essential to the just decision of the case. The proposed witnesses are crucial to arriving at the truth of the matter and, therefore, ought to be examined.

8(iii). that the learned Trial Court erroneously rejected the application under Section 311 Cr.P.C. primarily on the ground of delay, despite the settled legal position that mere delay cannot be a ground to deny relief under Section 311 Cr.P.C. The application was moved before the recording of the statement of the accused under Section 313 Cr.P.C. and, therefore, was well within time.



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8(iv). that even if lapses occurred on the part of the prosecution, the Court cannot remain a passive spectator and must play an active role in discovering the truth. The learned Trial Court had erred in dismissing the application by observing that the prosecution was attempting to fill lacunae in its case. In support, reliance was placed on ***Varsha Varg Vs. State of Madhya Pradesh and others : 2022 LiveLaw (SC) 662*** and ***State of Karnataka Vs. T. Naseer @ Nasir @ Thandiantavida Naseer @ Umarhazi @ Hazi and others : 2023 LiveLaw (SC) 965***.

Submissions on behalf of the Respondents (Accused)

9. Learned counsel for the respondents strongly opposed the petition, by arguing as follows:

9(i) that this is the fourth application under Section 311 Cr.P.C., filed by the prosecution, wherein it is seeking to examine 22 additional witnesses at a highly belated stage, when the case is fixed for final arguments.

9(ii). that the application amounts to an abuse of process and is nothing but an attempt to conduct re-trial. The prosecution now seeks to re-examine witnesses who were already examined but were not declared hostile, for reasons best known to the prosecution.

9(iii). that several witnesses sought to be examined were earlier given up by the then Public Prosecutor. A mere change of Prosecutor, at this stage, cannot justify recalling such witnesses.

9(iv). that the prosecution has failed to establish the relevance of the proposed witnesses. All these witnesses were within its knowledge



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from the beginning, and no justifiable reason has been provided as to why they were not examined earlier. Permitting their examination at this stage would take the accused by surprise and cause prejudice to their defence.

9(v). that the power under Section 311 Cr.P.C. cannot be exercised to fill lacunae in the case of the prosecution. If the prosecution has failed to prove its case, the benefit must accrue to the accused. The repeated attempts by the prosecution to re-open evidence, amount to deliberate attempts to prolong the trial, which has already been underway for the past 11 years. In support, learned counsel have placed reliance on ***Girish Kumar Suneja Vs. CBI : 2017(4) SCC 809*** and ***Akil @ Javed Vs. State of NCT of Delhi : 2013(7) SCC 125***.

10. I have heard learned counsel for the parties and perused the relevant material on record.

Findings of the Court

11. The instant petition has been filed by the CBI seeking recalling and re-examination of certain witnesses as well as summoning additional witnessed to substantiate its case.

12. The prayer has been opposed by the accused/respondents on multiple grounds, including delay, alleged abuse of process, and an attempt by the prosecution to fill lacunae in its case at a highly belated stage.

13. In order to adjudicate upon the present matter, it is necessary to examine the scope of Section 311 Cr.P.C., the settled legal principles governing its exercise, and their application to the facts of



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the present case.

14. Before proceeding further, it would be apposite to reproduce Section 311 Cr.P.C., which reads as under:-

“311. Power to summon material witness, or examine person present.-Any Court may, at any stage of any inquiry, trial or other proceeding under this Code, summon any person in attendance, though not summoned as a witness, or recall and re-examine any person already examined; and the Court shall summon and examine or recall and re-examine any such person if his evidence appears to it to be essential to the just decision of the case.”

15. Section 311 Cr.P.C. confers broad discretionary powers upon the Court to summon or recall witnesses at any stage of the proceedings. The provision comprises two parts:

- The first part, which is discretionary, empowers the Court to summon any person as a witness, examine a person in attendance, who has not been summoned, or recall and re-examine any witness already examined, if the Court deems it necessary.
- The second part, which is mandatory, obligates the Court to summon examine or recall and re-examine any witness if the Court considers their evidence essential to the just decision of the case.

16. The over-arching objective of Section 311 Cr.P.C. is to ensure that no material evidence, which is necessary for determining the truth is left out due to inadvertence, oversight, or even a deliberate omission. The provision must be interpreted in a manner that furthers the cause of justice, ensuring that an innocent person is not wrongly



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convicted and that a guilty person does not escape punishment due to procedural or evidentiary gaps.

17. Hon'ble the Supreme Court has consistently held that the powers under Section 311 Cr.P.C. should be exercised judiciously, and not arbitrarily. In ***Zahira Habibulla H. Sheikh and another Vs. State of Gujarat and others : 2004(4) SCC 158***, the Apex Court emphasized that the Courts are not passive spectators in a trial and must play an active role to ensure that justice is done. Similarly, in ***Varsha Garg's case (supra)***, the Court re-affirmed that procedural technicalities must not be allowed to defeat substantive cause of justice.

18. It would be apposite to refer to the observations made by Apex Court in ***Zahira Habibulla H. Sheikh's case (supra)***, which are as follows:-

“44. The power of the Court under Section 165 of the Evidence Act is in a way complementary to its power under Section 311 of the Code. The section consists of two parts i.e (i) giving a discretion to the Court to examine the witness at any stage and (ii) the mandatory portion which compels the Court to examine a witness if his evidence appears to be essential to the just decision of the Court. Though the discretion given to the Court is very wide, the very width requires a corresponding caution. In Mohan Lal v. Union of India (1991 Supp (1) SCC 271) this Court has observed, while considering the scope and ambit of Section 311, that the very usage of the word such as, 'any Court' 'at any stage', or 'any enquiry or trial or other proceedings' 'any person' and 'any such person' clearly spells out that the Section has expressed in the widest possible terms and do not limit the discretion of the Court in any way. However, as noted above, the very width requires a corresponding caution that the discretionary powers should be invoked as the exigencies of justice require and exercised judicially with circumspection and consistently with the provisions of the Code. The second part of the section does not allow any discretion but obligates and binds the Court to take necessary steps if the fresh evidence to be obtained is essential to the just



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decision of the case - 'essential', to an active and alert mind and not to one which is bent to abandon or abdicate. Object of the Section is to enable the Court to arrive at the truth irrespective of the fact that the prosecution or the defence has failed to produce some evidence which is necessary for a just and proper disposal of the case. The power is exercised and the evidence is examined neither to help the prosecution nor the defence, if the Court feels that there is necessity to act in terms of Section 311 but only to subserve the cause of justice and public interest. It is done with an object of getting the evidence in aid of a just decision and to uphold the truth."

19. However, while the powers of the Court under Section 319 Cr.P.C. are wide, they are not unfettered. Hon'ble the Supreme Court has repeatedly cautioned that Section 311 Cr.P.C. cannot be misused to fill up inherent lacunae in the case of the prosecution. Therefore, a balance must be struck between the necessity of summoning additional witnesses for their evidence and the need to prevent undue prejudice to the accused.

20. Furthermore, no doubt that significant weight is attached to the accused's fundamental right to speedy trial under Article 21 of the Constitution of India, however, equal importance must be given to fundamental right of a person (including complainant) to a fair trial. Both these principles of speedy and fair trial protected in the Constitution must be given their due weight and one cannot be sacrificed for the other. Therefore, merely because allowing the application under Section 311 Cr.P.C. may delay the conclusion of trial, it cannot be a ground to deprive the complainant of its right to a fair trial. The Court must, while striking a balance between the two, apply its mind to the necessity of the evidence to be led under Section 311



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Cr.P.C. in order to arrive at a just decision in the case.

21. The prosecution has sought the summoning and re-examination of 22 witnesses, asserting that their testimonies are vital for the just adjudication of the case. The primary justifications advanced by the prosecution are :

- some material witnesses, including those responsible for granting sanction for prosecution, could not be examined earlier due to inadvertence;
- certain witnesses need to be re-examined to clarify contradictions and ambiguities in their previous depositions; and
- some official witnesses, such as Nodal Officers of telecom companies, are required to authenticate documentary evidence already on record.

22. The respondents have objected to the prayer of the prosecution mainly on the following grounds:

- this is the fourth application under Section 311 Cr.P.C. by the prosecution, indicating an abuse of process; and
- the prosecution is trying to fill the lacunae in its case, which is impermissible in law.

23. Learned counsel for the respondents strenuously argued that repeated applications under Section 311 Cr.P.C., especially at a stage when final arguments are due, amount to an abuse of process.

24. While it is true that repeated applications under Section 311 Cr.P.C. should not be entertained as a matter of routine, the mere



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fact that this is the fourth such application does not *ipso facto* render it untenable. Each application must be examined on its own merits to determine whether the evidence sought to be introduced is essential to the just decision of the case.

25. It has been contended by the learned counsel for the respondents that the prosecution is trying to cover gaps in its case. However, this Court must distinguish between a “lacuna” in the case of the prosecution and a “legitimate requirement” of further evidence to arrive at the truth. Hon'ble the Supreme Court in ***Rajaram Prasad Yadav Vs. State of Bihar and another : 2013(14) SCC 461***, clarified that a “lacuna” is a inherent defect in the case of the prosecution, whereas a “legitimate requirement” to bring relevant evidence on record, cannot be equated with filling a lacuna.

26. In the present case, certain witnesses sought to be examined, such as the officer responsible for granting sanction for prosecution and the Nodal Officers to authenticate telecom records, are not being introduced to cure a defect but to prove facts that go to the root of the case of the prosecution. Hence, the request for their examination cannot be rejected solely on the ground of purportedly filling lacunae.

27. The prosecution has sought to re-examine PW-42 V.K. Gupta to produce a certificate under Section 65-B of the Indian Evidence Act, 1872. The respondents argued that such a certificate should have been obtained earlier. It would therefore be relevant to refer to the following observations made by the Apex Court in ***T.***



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Naseer's case (supra):-

“11. Coming to the issue as to the stage of production of the certificate under Section 65-B of the Act is concerned, this Court in Arjun Panditrao Khotkar’s case (supra) held that the certificate under 65-B of the Act can be produced at any stage if the trial is not over. Relevant paragraphs are extracted below:

“56. Therefore, in terms of general procedure, the prosecution is obligated to supply all documents upon which reliance may be placed to an accused before commencement of the trial. Thus, the exercise of power by the courts in criminal trials in permitting evidence to be filed at a later stage should not result in serious or irreversible prejudice to the accused. A balancing exercise in respect of the rights of parties has to be carried out by the court, in examining any application by the prosecution under Sections 91 or 311 CrPC or Section 165 of the Evidence Act. Depending on the facts of each case, and the court exercising discretion after seeing that the accused is not prejudiced by want of a fair trial, the court may in appropriate cases allow the prosecution to produce such certificate at a later point in time. If it is the accused who desires to produce the requisite certificate as part of his defence, this again will depend upon the justice of the case — discretion to be exercised by the court in accordance with law.

59. Subject to the caveat laid down in paras 52 and 56 above, the law laid down by these two High Courts has our concurrence. So long as the hearing in a trial is not yet over, the requisite certificate can be directed to be produced by the learned Judge at any stage, so that information contained in electronic record form can then be admitted and relied upon in evidence.” (Emphasis added)

12. The courts below had gone on a wrong premise to opine that there was delay of six years in producing the certificate whereas there was none. The matter was still pending when the application to resummon M. Krishna (PW-189) and produce the certificate under Section 65-B of the Act was filed under Section 311 of the Cr.P.C.”

28. After careful consideration of the submissions and settled principles of law, this Court finds that the following witnesses are



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necessary for just adjudication of the case coupled with the fact that no prejudice would be caused to the accused as the defence would get opportunity to rebut the evidence led by the witnesses summoned under Section 311 Cr.P.C.:

(i) **Neela Gangadharan, IAS**, to prove sanction for prosecution.

(ii) Nodal Officer, Tata Teleservices Ltd., C-125, Industrial Area Phase-III, Mohali; Sushil Kumar Chopra and Sunil Rana, Nodal Officers, HPHP, Bharti Airtel Limited, C-25, Industrial Area Phase-II, Mohali; and DE(CC) BSNL O/o GM CMTS Punjab Telecom Circle, 1st Floor, Telephone Exchange Building, Sector-49C, Chandigarh, to authenticate call detail records and tower locations of the accused persons.

(iii) **V.K. Gupta, PW-42**, for production of a certificate under Section 65-B of the Indian Evidence Act, 1872.

(iv) **CBI Officers Tanmaya Behara and S.K. Sharma**, to authenticate seizure memos. Furthermore, **Vijay Bahadur and S.S. Yadav**, who are official witnesses to the seizure memos, and are also relevant to prove the seizure memos.

(v) **Rajesh Kumar, Special Commissioner of Police, Delhi Police**, to clarify ambiguity in his previous deposition which arose on account of him identifying the accused as “Nirmaljit”.

(vi) **An Officer from the Registrar General Office** of this Court would be necessary to prove D-32, letter dated 15.10.2018 containing the personal details of allotment of house as well as the



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landline phone number allowed to accused Nirmal Yadav and also to further prove the calls between her and co-accused Ravinder Singh Bhasin.

29. The CBI/prosecution is directed to examine the above witnesses within four weeks from the date of this order. The learned Trial Court shall ensure that no unnecessary adjournments are granted; the defence shall also cooperate with the learned Trial Court in the expeditious conclusion of the trial.

30. As regards the remaining witnesses, the prosecution has failed to establish their relevance or the necessity of their re-examination. Hence, the instant petition is partially allowed, permitting examination of only the above listed witnesses.

31. The instant petition stands disposed of accordingly.

17.02.2025

Vinay

(MANJARI NEHRU KAUL)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No