

\$ 1 to 4

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

Decided on: 15th June, 2017

+ CRL.A. 955/2015

MOHD. MAQSOOD ALAM Appellant

Through: Mr. Wiqar Ahmed & Mr.
Naved Johar, Adv.

versus

THE STATE (NCT OF DELHI) Respondent

Through: Mr. Tarang Srivastava, APP for
State with SI Amrik Singh, PS
Special Cell, Lodhi Colony,
Delhi.

+ CRL.A. 991/2015

ANWAR ALI Appellant

Through: Mr. Dinesh Malik, Adv.

versus

STATE Respondent

Through: Mr. Tarang Srivastava, APP for
State with SI Amrik Singh, PS
Special Cell, Lodhi Colony,
Delhi.

+ CRL.A. 242/2016

RAZIA Appellant

Through: Appellant in person.

versus

STATE (NCT OF DELHI) Respondent
Through: Mr. Tarang Srivastava, APP for
State with SI Amrik Singh, PS
Special Cell, Lodhi Colony,
Delhi.

+ CRL.A. 68/2016

MOHD KAMIL Appellant
Through: Mr. Anil Dabas, Adv.

versus

THE STATE (NCT OF DELHI) Respondent
Through: Mr. Tarang Srivastava, APP for
State with SI Amrik Singh, PS
Special Cell, Lodhi Colony,
Delhi.

**CORAM:
HON'BLE MR. JUSTICE R.K.GAUBA**

JUDGMENT (ORAL)

1. These four appeals arise out of the same judgment dated 29.07.2015 and order on sentence dated 30.07.2015 of the Additional Sessions Judge-02, New Delhi in Sessions Case No. 170/2013 registered on the basis of reports under Section 173 of the Code of Criminal Procedure, 1973 (Cr.P.C.) submitted on the basis of evidence collected during investigation of first information report (FIR) No. 28/2013 under Sections 489B, 489C, 120B of Indian Penal Code, 1860 (IPC) of police station Special Cell, Delhi. The first three appellants were held guilty, as charged, for offences under Sections

489B, 489C and 120B IPC, the last mentioned appellant Mohd. Maqsood Alam having been convicted for the offence of criminal conspiracy under Section 120B IPC.

2. Though the appeals raise a number of contentions, the prime submission made on behalf of the first and second appellant (Mohd. Kamil and Anwar Ali respectively) with regard to denial of opportunity for cross-examination of two crucial witnesses for prosecution during the trial is found sufficient to set aside the impugned judgment, and the order on sentence, and to remit the case to the trial court for further proceedings in accordance with law and, for this reason, this Court would refrain from expressing any observations, vis-a-vis, the other contentions that have been urged. At the same time, it must be observed here itself that the role of the Bar in expeditious trial of criminal case through a fair procedure has come up, yet again, in the matter at hand as a serious cause for concern. This would need elaboration.

3. The case for the prosecution, briefly put, is that on the basis of some secret input, action was initiated on 24.06.2013 against the backdrop of DD No. 15 dated 24.06.2013 vide Ex.PW-17/A by sub-inspector Satish Rana (PW-17) of the special cell of Delhi police. In the proceedings that came to be conducted in the wake of such action, in the area of Inter State Bus Terminus (ISBT) at Kashmiri Gate, sometime after 6.30 p.m. on 24.06.2013, the first two appellants namely Mohd. Kamil (A-1) and Anwar Ali (A-2) were apprehended. The police team which participated in the said action had comprised, among others, head constable Ram Gopal (PW-3) and head constable

Ashok Kumar (PW-9). It is stated that the police officials saw A-2 receiving, from A-1, a wad of what appeared to be currency notes. After A-1 and A-2 had been apprehended, their searches were taken. It is alleged that A-1 was found having in his possession fake Indian currency notes (FICN) of purported denominations of Rs. 1,000/- and Rs. 500/- of the total face value of Rs. 3,50,000/- which were seized vide memo Ex.PW-3/B. Similarly, the search of A-2 is stated to have resulted in recovery of FICN of the purported denomination of Rs. 500/- of the total face value of Rs. 50,000/- which were seized vide memo Ex.PW-3/A. The recovered notes when sent to the forensic experts were confirmed to be fake.

4. It is alleged that, during the interrogation, A-1 had revealed the fourth appellant Mohd. Maqsood Alam (A-4) to be the source of fake currency and of he (A-1) having supplied such fake currency procured from Mohd. Maqsood Alam (A-4), amongst others, to the third appellant Razia (A-3). It is stated that the initial efforts to trace out Mohd. Maqsood Alam (A-4) and Razia (A-3), and the others named by A-1 in his disclosure statement, could not be successful. Later, on the basis of some secret information respecting Razia (A-3), she was apprehended in similar action at ISBT Anand Vihar sometime after 4.30 p.m. on 28.07.2013, her search having revealed she being in possession of FICN of the purported denomination of Rs. 1,000/- of the total face value of Rs. 1,00,000/- which were also seized vide Ex.PW-4/B.

5. It may be mentioned here that Mohd. Maqsood Alam (A-4) remained elusive for quite some time and his arrest could not be

affected. Against this backdrop, while a report under Section 173 Cr.P.C. (charge-sheet) against A-1, A-2 and A-3 had been filed, action was initiated against A-4, and others, under Sections 82 and 83 Cr.P.C. It is stated that it is at the time of execution of the said process under Sections 82 and 83 Cr.P.C. that, on 11.12.2013, Mohd. Maqsood Alam (A-4) was traced out, apprehended and arrested leading to further investigation against him. A supplementary charge-sheet on the basis of further evidence collected during such investigation, after the arrest of A-4, was eventually filed and came to be clubbed with the then ongoing trial in the court of Sessions against A-1, A-2 and A-3.

6. It may be noted here that the first charge-sheet against A-1, A-2 and A-3 had been submitted in the Court of Metropolitan Magistrate on 19.09.2013. The Magistrate took cognizance and issued process and after compliance with the provision of Section 207 Cr.P.C. committed the case to sessions by order dated 3.10.2013. All the said accused persons were in judicial custody at that stage.

7. The trial court record would show that Mr. Amardeep, Advocate (D-3568/2010) declaring his office addresses as 360A, IInd floor, Pocket 1, Sector 6, Rohini, Delhi and Chamber No. 110 D block, opposite DC Office Kanjhawala, Delhi-110081 had filed two *vakalatnamas*, both in respect of Anwar Ali (A-2) on 30.09.2013 (*vakalatnamas* are available at pages 1693 and 1695 of the trial court record). On the same date, the same advocate filed another *vakalatnama* in respect of Mohd. Kamil (A-1), (the said document being available at page 1699 of the trial court record). It is pertinent

to add here that in the said *vakalatnama* dated 30.09.2013 in respect of Mohd. Kamil, Mr. Amardeep, Advocate had disclosed his bar counsel registration No. to be D-3536/2010.

8. Before proceeding further, it may also be added here that, on 15.01.2014, another *vakalatnama* came on record, jointly in respect of both Mohd. Kamil (A-1) and Anwar Ali (A-2), it having been submitted by Mr. Divya Kant Ahlawat, Advocate, enrolment No. D/1100/92 declaring his address as chamber No. 589, Western Wing, Tis Hazari Courts, Delhi (this *vakalatnama* is available at page 1703 of the trial court record).

9. Subsequently, the trial court record shows, Mohd. Kamil (A-1) and Anwar Ali (A-2) engaged yet another advocate, he being Mr. Krishna Kant, Advocate giving his address as 141, Lawyers Chamber, Delhi High Court, New Delhi-110001 (Mobile No. 08882941995) and office telephone no. 01123388122, the *vakalatnama* in respect of the former (A-1) being undated but attested by Deputy Commissioner, Central Jail No.4, Tihar on 1.10.2014 and the one in favour of the other (A-2) bearing dated 7.10.2014 (these *vakalatanamas* of Mr. Krishna Kumar, Advocate are available at pages 1707 and 1709 of the trial court record).

10. The case against the first three appellants, as committed to the court of magistrate, came up before the court of sessions on 9.10.2013. It is clear from the proceedings that each of the three persons facing the trial were duly represented by advocates engaged by them, Mr. Pradeep Sharma, Advocate being the counsel for Razia (A-3).

11. The question of charge was considered and formal charges framed by the trial court on 11.11.2013 against the first three appellants. Thereafter, the prosecution was called upon to adduce evidence. Midway the said stage, supplementary charge-sheet against the fourth appellant Mohd. Maqsood Alam (A-4) had also been submitted in the court of magistrate on 31.1.2014 and stood committed to the court of sessions by order dated 26.02.2014. It came up before the trial court on 6.3.2014 when it was directed to be taken up on 27.03.2014 with the case already pending. The charge against A-4 was considered and formally framed on 21.4.2014.

12. In the proceedings prior to the clubbing of the case against A-4 with that against the other three, the prosecution had examined four witnesses, they being ASI Krishan Pal (PW-1), head constable Sanjiv (PW-2), head constable Ram Gopal (PW-3) and SI Nirmala Kumar (PW-4). PW-1 and PW-2 were former witnesses they respectively being the duty officer who had registered the FIR and the *Moharrar (Malkhana)*, who had received and dealt with case property. PW-3, however, was a material witness who had participated in the police action and proceedings leading to arrest of A-1 and A-2 on 24.06.2013 wherein the fake currency notes are stated to have been recovered from their respective possession. PW-4, on the other hand, relates to the arrest of Razia (A-3) and recoveries made from her on 28.07.2013.

13. PW-3 and PW-4 were examined by the prosecution on 15.01.2014. On the request of the counsel for the accused persons, the cross-examination was deferred for 15.2.2014. It needs to be recalled that Mr. Divya Kant Ahlawat, Advocate is the counsel who was

representing the said appellants (accused persons) at that stage, he having filed a common *vakalatnama* on their behalf on the same date. It also needs to be mentioned that he would be replaced by Mr. Krishna Kant, Advocate on 7.10.2014.

14. On 15.2.2014, the trial court could not hold effective proceedings as Anwar Ali (A-2) was not produced from custody. The witnesses (PW-3 and PW-4) who were present were discharged with direction that they were to be summoned for the next date i.e. 27.03.2014. By that time, the charge-sheet against A-4 had also come up. The charge against A-4 having been framed on 21.04.2013, the case returned to the stage of prosecution evidence on 22.05.2014.

15. On 22.05.2014, when Mr. Divya Kant Ahlawat, Advocate was still responsible as the defence counsel for A-1 and A-2, he would not appear, PW-3 and PW-4 were present. They were tendered for cross-examination. Only the counsel for A-4 exercised the said right. It is clear that the evidence of those witnesses (PW-3 and PW-4) was, even otherwise, not relevant against him.

16. Pertinent to add here that even Mr. Pradeep Sharma, Advocate who was representing Razia (A-3) against whom the evidence of PW-4 was material was not present, he having filed *vakalatanama* on 02.08.2013 (page 1697 of the trial court record). But then, it must also be noted here that Razia (A-3) had engaged another counsel Ms. Sangita Bhayana, Advocate in December 2013, attested by the Deputy Superintendent, Central Jail No.6, Tihar on 6.12.2013 (at page 1701 of the trial court record). Pertinent to also note that Ms. Sangita Bhayana would not mention her full particulars in the said *vakalatnama*. Except

for her name, and status as an advocate, there is no indication of her bar council registration or address (office or otherwise).

17. It needs be noted here that Razia (A-3) informed the Additional Sessions Judge on 26.08.2014 that she had no counsel. It is clear from the proceedings that the counsel engaged by her was not taking any interest in discharging the responsibilities entrusted by the *vakalatnama*. On her request, by order dated 26.08.2014, the Additional Sessions Judge made a request to Secretary of the District Legal Services Authority. The proceedings of the next date (17.09.2014) reveal that Legal Services Authority appointed Mr. R.S. Bhoria as the counsel to appear for Razia (A-3). But, the record further reveals, that Razia (A-3) later abandoned the request and engaged a private counsel on her own arrangement, he being again Mr. Krishna Kant Advocate, as had been engaged by A-1 and A-2. The *vakalatnama* of Mr. Krishna Kant, Advocate whose particulars have been mentioned earlier, bearing attestation dated 7.10.2014 by the Additional Sessions Judge is available at the trial court record at page 1705.

18. Thus, from 7.10.2014 onwards, Mr. Krishna Kant, Advocate had taken over the responsibility to represent A-1, A-2 and A-3 in the proceedings arising out of the case. He appeared for Razia (A-3) on 20.10.2014 only in the context of her bail application and for A-1, A-2 and A-3 at the stage of evidence on 20.11.2014, on which date two other witnesses (Dr. D.R. Handa and head constable Gyanender) were examined as PW-7 and PW-8 respectively.

19. In the course of above-noted proceedings, when the matter had come up at the stage of prosecution evidence before the trial court on 22.05.2014, PW-3 and PW-4 were present for cross-examination. The opportunity given, as noted earlier, was availed only on behalf of A-4. There was no counsel present for A-1, A-2 and A-3 and the trial judge only noted that he had given opportunity which had not been availed and consequently the two witnesses stood discharged.

20. The turn of Head Constable Ashok Kumar, besides other, for giving evidence, came on 05.01.2015. Noticeably, Mr. Krishna Kant, Advocate was present but his presence was recorded only for Razia (A-3). Though his *yakalatnama* was there on record, for reasons that cannot be comprehended, the said fact was not brought to the notice of court even by Mr. Krishna Kant, Advocate. PW-9 was examined, his evidence being crucial against A-1 and A-2. But, the opportunity for cross-examination was availed only by the counsel for A-4. Mr. Krishna Kant, Advocate, seeking to represent only Razia (A-3), declined to cross-examine the witness on her behalf. The presiding judge noted that he had given opportunity for cross-examination to other accused (A-1 and A-2) which had not been availed and thus, discharged the witness.

21. After examining the witnesses who were present (that includes PW-9) in the court on 05.01.2015, the presiding judge in the corresponding order-sheet noted the submission of A-1 and A-2 that they did not have any counsel and were praying for necessary provision. The court, thereafter, proceeded to appoint Mr. Krishna Kant, Advocate as the *Amicus Curiae* for A-2 and Mr. Hamid Khan,

Advocate as the *Amicus Curiae* for A-1. Mr. Krishna Kant, Advocate did not inform the court any reasons why he did not continue to be responsible for A-1 and A-2 on the basis of *vakalatnamas* that he had earlier filed. He did not make any request for opportunity to cross-examine any of the witnesses who were present, particularly PW-9, on behalf of A-2 for whom he had been appointed as *Amicus Curiae*.

22. The trial continued and eventually reached the stage of final arguments. The case was listed before the trial court for pronouncement of judgment on 10.07.2015. Mr. Krishna Kant, Advocate was present as the counsel for A-3 and as *Amicus Curiae* for A-2 while Mr. Hamid Khan, Advocate was present as the counsel for A-4 and the *Amicus Curiae* for A-1. The trial judge noted deficiency in the matter of cross-examination. The lawyers responded by stating that they did not wish recall of witnesses for such purposes. The case ultimately resulted in judgment and order on sentence which have been impugned by the appeals at hand.

23. With his appeal (Crl. Appeal No. 68/2016) appellant Mohd. Kamil (A-1) has filed an application (Crl.MA. 1004/2016) under Section 311 read with Section 391 Cr.P.C. and Section 482 Cr.P.C. seeking recall of head constable Ram Gopal (PW-3) and Ashok Kumar (PW-9) for their respective cross-examination. It is the submission of the counsel representing him in the appeal that the cross-examination of the said witnesses on his behalf was essential and, in the interest of justice, for the just decision of the case and that absence of such effort had caused miscarriage of justice. His lament is that due to poverty he could not engage any counsel on his own. This

apparently is incorrect inasmuch he had actually engaged a counsel of his own and had replaced him by others as noted earlier. The request for fresh opportunity for cross-examination of the said two witnesses is also made by counsel for appellant Anwar Ali (A-2).

24. Cross-examination of witnesses for the prosecution on criminal charge is an important tool in the hands of the defense to bring out the truth to be contrary. Effective legal aid and assistance, particularly in a criminal case, is a fundamental right of every person. It is primarily the responsibility of the court that no person remains undefended or deprived of effective legal assistance. Denial of such effective legal assistance, it is trite, vitiates the end result.

25. At the same time, however, the right to legal aid cannot be misused to turn the trial into mockery or a game of wits, or hide and seek, particularly by the advocate who is engaged by a person facing criminal charge. A person enrolled by the Bar Council of the State is entitled, under the law, to practice as an Advocate before the court of law. By filing *vakalatnama* (power of attorney) he engages himself in a contract, an arrangement of responsibility. The code of discipline by which the advocates are bound demands that the counsel who has been engaged, one who has taken over the responsibility by filing the *vakalatnama*, conducts himself responsibly, and with accountability, not only to the person who has engaged him (this on account of contractual obligation) but also, and more importantly, to the court where he is entitled to appear and has on his own appeared (this because he is foremost an officer of the court). Having filed the *vakalatnama*, it is not a matter of whim or fancy or caprice of the

advocate to appear or not to appear. By filing *vakalatnama* he has taken a bounden duty to appear. If for some reasons, he is unable to continue with the said responsibility, or seeks to recuse himself, he must appear and seek a discharge from the court. He cannot act unilaterally. It is not a revolving door where he can enter any time or exit it at his own choice or fancy at any time. He must inform the reasons to the court for his disinclination to continue and seek to be relieved – this he can do only after showing to the satisfaction of the court he having so communicated to the client, or the client already having so desired or being incommunicado.

26. The manner in which several advocates were engaged, one after the other, by A-1 and A-2, they filing *vakalatnamas* on their behalf, clearly shows these persons had the capacity to engage a counsel on their own. The manner in which the counsel became elusive, to be replaced by another counsel, however, also shows that A-1 and A-2 either had no control over the conduct of the counsel engaged by them or the evasive conduct was part of the joint strategy to delay or frustrate the judicial process. This indeed is a disturbing facet of the practice often seen in the courts in the present times.

27. The trial judge did not check the status from record before appointing *amicus curiae*. Mr. Krishna Kant, Advocate who was the final choice of A-1, A-2 and A-3 as the private counsel did not even have the courtesy to tell the court that though he had been engaged privately by A-1 and A-2, for some reasons, he was unable to continue with such arrangement. He was a silent spectator when the requests of A-1 and A-2 were recorded for services of *amicus curiae* to be

provided to them on 05.01.2015. The fact that he opted to serve in the capacity of *amicus curiae* for A-2, instead of discharging his duty as a counsel privately engaged, failing to cross-examine crucial witnesses (even when pointed out), is reflective of his priorities being other than cause of justice. This is totally unacceptable, it being also an abuse of the provision of legal aid.

28. There is one more facet which needs to be touched upon. As mentioned earlier, A-4 had been arrested later and the case against him came to be clubbed with that against the others, after the supplementary charge-sheet had been filed. He had moved an application for release on bail in this Court, it having come up as bail application no. 819/2014. The application was dismissed as withdrawn on 22.07.2014 by a learned single judge of this Court. But, taking note of the fact that the trial was held up, directions were given for the case to be made over to another court and for endeavour to be made to decide it expeditiously within an outer limit of six months from the date of the said order (22.07.2014). It appears that on the request of the trial court, by subsequent order dated 27.01.2015, the said period was extended by four months for disposal of the case. These directions for time-bound decision of the case were noted by the learned trial judge more than once in the proceedings, drawing the attention of the defence counsel as well. Yet, the defence counsel would take no interest. Can it be said that the advocates had no duty to discharge in the face of directions of this Court? Can it be said that they could conduct themselves as they pleased and with impunity even if the effect was to frustrate the directions of this Court?

29. Though the proceedings recorded by the trial court on 10.07.2015 do seem to indicate that the opportunity for cross-examination of PW-3 and PW-9 was consciously not availed, given the conduct of the counsel, as noted in the above narration, it is clear this was for reasons of utter neglect on the part of advocates in discharge of their contractual and legal responsibilities. Given the consequences that flow for A-1 and A-2 from such neglect, however, it may be too harsh a view to take to deny the request pressed through the application under Section 391 Cr.P.C. presented before this Court.

30. The impugned judgment and order on sentence are set aside. The case is remitted to the trial court with directions to recall such witnesses as are sought to be subjected to cross-examination and in whose respect the right of cross-examination was not exercised earlier, list whereof shall be submitted by the defence on the very first date of next appearance being hereinafter fixed,, it being presumed in case of default of submission of such a list that the defence does not wish to direct any cross-examination against the witnesses for prosecution. The case shall be taken up on day-to-day basis till conclusion of the trial. Each appellant (accused) would be entitled to engage counsel of his own choice or make a suitable prayer for advocate to be provided from legal aid panel. Appropriate arrangements shall be overseen by the learned trial judge on the very first date for such purposes. It shall be the responsibility of all concerned, including the advocates, so engaged or deputed, to ensure that effective proceedings take place.

31. The accused persons shall appear or be produced, as the case may be, before the trial court on 17th July, 2017.

32. Criminal trials cannot be allowed to turn into a mockery, not the least by advocates practicing in the criminal courts. A sense of discipline has to be restored. Some better system for regulating their conduct, holding them also accountable to the cause of justice will have to be worked out. Failure on the part of the advocates, of the kind mentioned above, are coming to the notice of this Court too frequently. Under the existing dispensation, it is the responsibility of the Bar Council to bring in accountability. It is time, the Bar Council rises to the occasion and takes effective action - lest the people at large lose faith in the judicial process, in general, and the credibility of the advocates as an institution, in particular.

33. The presiding judge of the criminal court is not an idle spectator. He has a duty to ensure the judicial process runs smoothly. He holds the scales of justice in his hands and must do so taking care it is never skewed. His responsibility for fair trial is not meant only for one side. He must also insulate the witnesses from harassment or intimidatory tactics.

34. In *Zahira Habibullah Sheikh vs. State of Gujarat & Ors.* (2006) 3 SCC 374, the Supreme Court observed:

“35. This Court has often emphasised that in a criminal case the fate of the proceedings cannot always be left entirely in the hands of the parties, crime being public wrong in breach and violation of public rights and duties, which affect the whole community as a community and are harmful to the society in general. The concept of fair trial entails familiar triangulation of interests of the

accused, the victim and the society and it is the community that acts through the State and prosecuting agencies. Interests of society is not to be treated completely with disdain and as persona non grata. Courts have always been considered to have an overriding duty to maintain public confidence in the administration of justice - often referred to as the duty to vindicate and uphold the 'majesty of the law'. Due administration of justice has always been viewed as a continuous process, not confined to determination of the particular case, protecting its ability to function as a Court of law in the future as in the case before it. If a criminal Court is to be an effective instrument in dispensing justice, the Presiding Judge must cease to be a spectator and a mere recording machine by becoming a participant in the trial evincing intelligence, active interest and elicit all relevant materials necessary for reaching the correct conclusion, to find out the truth, and administer justice with fairness and impartiality both to the parties and to the community it serves. Courts administering criminal justice cannot turn a blind eye to vexatious or oppressive conduct that has occurred in relation to proceedings, even if a fair trial is still possible, except at the risk of undermining the fair name and standing of the judges as impartial and independent adjudicators.

40. Witnesses" as Bentham said: are the eyes and ears of justice. Hence, the importance and primary of the quality of trial process. If the witness himself is incapacitated from acting as eyes and ears of justice, the trial gets putrefied and paralysed, and it no longer can constitute a fair trial. The incapacitation may be due to several factors, like the witness being not in a position for reasons beyond control to speak the truth in the Court or due to negligence or ignorance or some corrupt collusion. Time has become ripe to act on account of numerous experiences faced by Courts on account of frequent turning of witnesses as hostile, either due to

threats, coercion, lures and monetary considerations at the instance of those in power, their henchmen and hirelings, political clouts and patronage and innumerable other corrupt practices ingeniously adopted to smother and stifle truth and realities coming out to surface rendering truth and justice, to become ultimate casualties. Broader public and societal interests require that the victims of the crime who are not ordinarily parties to prosecution and the interests of State represented by their prosecuting agencies do not suffer even in slow process but irreversibly and irretrievably, which if allowed would undermine and destroy public confidence in the administration of justice, which may ultimately pave way for anarchy, oppression and injustice resulting in complete breakdown and collapse of the edifice of rule of law, enshrined and jealously guarded and protected by the Constitution. There comes the need for protecting the witness. Time has come when serious and undiluted thoughts are to be bestowed for protecting witnesses so that ultimate truth is presented before the Court and justice triumphs and that the trial is not reduced to a mockery..”

(Emphasis supplied)

35. It was held thus:

“33. The principle of fair trial now informs and energizes many areas of the law. It is reflected in numerous rules and practices. It is a constant, ongoing development process continually adapted to new and changing circumstances, and exigencies of the situation - peculiar at times and related to the nature of crime, persons involved - directly or operating behind, social impart and societal needs and even so many powerful balancing factors which may come in the way of administration of criminal justice system”.

(Emphasis supplied)

36. In the present case, the two witnesses whose credibility remained untested due to absence of cross-examination are police officials. It would not be much of a difficulty to secure their presence again for completion of the process. But, it is often seen that similar tactics as were employed here are used to vitiate the process concerning material public witnesses in grave crimes, the design obviously being to delay so that evidence can be influenced. Lack of vigil by the trial judge results in technical lacunae which are presented in appeal as prime grounds leading to remit orders. This is not a healthy trend. An over burdened judicial institution cannot afford this.

37. In order that better sense of discipline is restored and the trial courts exercise effective control and initiative over the proceedings, it is directed that in addition to the Index of papers included in a judicial record, a separate Index showing the particulars of the advocate(s) engaged by each party with reference to the *vakalatnama(s)* filed, or authorization submitted, on record shall be maintained in chronological order at the beginning of file of each case. Such Index shall be suitably updated/amended upon change, if any, of counsel. The advocate whose *vakalatnama(s)* have come on record shall continue to be responsible and accountable to the party in question, and to the court, till he is formally relieved or discharged of such duty by the court, or till he is replaced upon another counsel filing *vakalatnama* (authorization). The court must always insist on full particulars of the Advocate to be mentioned in the *vakalatnama* and, if deemed necessary, in order to confirm identity, may require copy of the Identity Card issued by the Bar Council to be also attached to

vakalatnama. While making a request to Legal Services Authority for provision of legal aid counsel for any party, the court would also inform it if the party had earlier engaged an advocate on its own so that change of circumstances, if any, necessitating such provision can be properly inquired into and borne in mind.

38. A copy of this order shall be sent to Secretary, Bar Council of Delhi, for appropriate inquiry and action *vis-à-vis* the advocates whose role and conduct has been noted above, for such action as may be deemed necessary under the law.

39. A copy hereof shall be circulated amongst all judicial officers through respective District and Session Judges and Delhi Judicial Academy.

R.K.GAUBA, J.

JUNE 15, 2017

nk

