

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

+ **Crl. Rev. P. No. 482/2009**

Reserved on : 04.09.2009
Date of Decision : 21.10.2009

Ac. Sudevananda Avadhuta **.....Petitioner**
Through: Mr. Arvind Kumar, Adv.

Versus

Central Bureau of Investigation **..... Respondent**
Through: Mr. Vikas Pahwa,
Standing Counsel for CBI

CORAM :
HON'BLE MR. JUSTICE V.K. SHALI

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| 1. | Whether Reporters of local papers can be allowed to see the judgment? | NO |
| 2. | To be referred to the Reporter or not ? | NO |
| 3. | Whether the judgment should be reported in the Digest ? | NO |

V.K. SHALI, J.

1. This is a revision petition filed by the petitioner against the order dated 18th July, 2009 passed by Sh. A. K. Chawla, the learned Additional District & Sessions Judge, Karkardooma Courts, Delhi. By virtue of the said order the learned Additional District & Sessions Judge has disposed of the two applications dated 21st January, 2008 and 11th July, 2009 filed on behalf of the petitioner/accused praying therein that voice sample of CW-9 Arun Kumar Mishra be recorded and secondly his voice be transferred from the cassette to the CD form.
2. Briefly stated the facts leading to the filing of the present revision petition are that on 2nd January, 1975, it is alleged

that a bomb was hurled and blasted at a public meeting addressed by the then Union Railway Minister late Sh. Lalit Narain Mishra who was injured and later on succumbed to these injuries. The charge sheet was filed by the CBI on 12th November, 1975 under Sections 120B/302/307/324/326/34 IPC read with sections 4/5 of Indian Explosive Substance Act.

3. The prosecution is alleged to have concluded its evidence on 16th April, 1986. An application was filed by the petitioner under Section 311 Cr.P.C. for the purpose of recalling/ re-examining PWs-1, 2, 4 to 7, 14, 15, 24, 29 and 11 directing witnesses to be produced as Court witnesses. It may be pertinent here to mention that the prosecution has examined more than 100 witnesses and closed its evidence on 16th April, 1986. The learned Sessions Judge disallowed the application of the petitioner for summoning the aforesaid witnesses as Court witnesses apart from two persons Mr.Arun Kumar Mishra and Mr. Arun Kumar Thakur.
4. The petitioner feeling aggrieved by the impugned order preferred a revision petition before this Court against the order of the learned Trial Court. The said revision petition was disposed of by the High Court on 26th February, 1992 setting aside the impugned order dated 21st August, 1986 by observing that the request of the petitioner shall be

considered and decided after recording the statements of the petitioner and other accused persons under 313 Cr.P.C. The petitioner and the other accused persons will have a right to adduce evidence in their defence.

5. The petitioner still feeling aggrieved by the said order preferred a petition under Section 482 Cr.P.C. before the High Court which was disposed of vide order dated 17th November, 1992 wherein the said petition was partly allowed by directing the learned Additional Sessions Judge to decide as to whether he would like to examine all or any of the persons as Court witnesses at any stage after the statements of the accused persons under 313 Cr.P.C. are recorded.
6. The statements of the accused persons were recorded from 10th January, 1994 to 17th December, 2004 that is almost for a decade. Vide order dated 13th May, 2005 the then learned Additional Sessions Judge Sh. S. N. Dhingra summoned the prosecution witnesses 3,5,12,14,15, 16,31,34,75 and 114. After recording of the statements of these witnesses as Court witnesses the petitioner adduced his defence and examined as many as 35 defence witnesses.
7. It is after examination of these 35 defence witnesses that these two applications were filed. One application was for taking voice sample of CW-9 Arun Kumar Mishra and the

other was for transferring the so called recording of CW-9 with the Jailor from audio tape to CD.

8. So far as the voice sample of CW-9 Arun Kumar Mishra is concerned, it is alleged that it has become necessary to obtain his voice sample as he has given a contrary statement while being examined as a witness with regard to his voice in the tape recorded conversation between him and the Jailor. The learned Additional Sessions Judge agreed that there are variations/improvements and contradiction in the testimony of CW-9 but as regard the value to be attached to the testimony of CW-9, the Court observed that the question of appreciation of evidence will be decided at an appropriate stage. Accordingly, the learned Additional Sessions Judge observed that as the matter is more than 34 years old, therefore, there was no ground for re-summoning of CW-9 for the purpose of further cross-examination. Even otherwise on merits it was contended that the recording of conversation between CW-9 and Jailor could not be held to be conclusive proof and the present applications have been filed only to delay the disposal of the trial which is already pending for the last 34 years.
9. I have heard the learned counsel for the parties and perused the record.

10. The question which arises for consideration in the instant case is the two fold request made by the petitioners in the two separate applications. In the first application dated 21st January, 2008 the petitioner seeks recording of voice of CW-9 Arun Kumar Mishra. The learned counsel for the petitioner has cited **Central Bureau of Investigation Vs. Abdul Karim Ladsab Telgi & Ors.** 2005 Cri.L.J. 2868 to urge that the recording of the evidence of a person by way of audio recording or asking him to furnish his voice sample could not be deemed to be violative of constitutional guarantee under Article 20 (3) of the Constitution of India. It has been observed that this could not be treated as testimonial compulsion.
11. This would be applicable only in a case when offence is alleged to have been committed by the accused. This is a protection granted to an accused but not to a witness. In the instant case, voice sample of CW-9 Arun Kumar Mishra is sought, who is a witness and therefore, this judgment is not applicable.
12. The question involved in the instant case is what is the purpose of obtaining the voice sample of the petitioner today when the trial is pending for the last more than 34 years. Even if the voice sample of CW-9 is obtained it cannot be fruitfully compared with the voice of the witness namely Arun Kumar Mishra as by sheer lapse of time there

is bound to be changes in the voice which was recorded earlier and the voice which is sought to be recorded now. This seems to be only a ploy which is sought to be resorted by the petitioner with a view to delay the disposal of the trial which admittedly is pending for the last more than 34 years, therefore, the petitioner cannot be permitted to obtain the voice sample of CW-9 Arun Kumar Mishra. Similarly, the prayer of the petitioner to have voice recording of CW-9 Arun Kumar Mishra transferred to the CD is also bereft of any merit. This Court fails to appreciate as to how the transfer of the voice from the tape to the CD is going to help the petitioner when much of the case will have based on the ocular or circumstantial evidence.

13. I am of the considered opinion that the present application is actuated only to delay the disposal of the trial which is pending for the last 34 years. The learned Trial Judge has very elaborately and analytically considered the submissions of the petitioner and passed a reasoned order. I do not find any illegality, impropriety or incorrectness in the order of the learned Additional Sessions Judge and accordingly the application is rejected.

V.K. SHALI, J.

October 21, 2009
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