

GAHC040000012023



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)
(ITANAGAR BENCH)

Case No. : Crl.Rev.P./1/2023

Likha Tara
Son of Late Likha Tatam,
R/o E Sector, Near Town Baptist Church, District Papum Pare, Arunachal Pradesh.

VERSUS

THE STATE OF AP
Represented by the Public Prosecutor.

Advocate for the Petitioner : Parswajyoti Das Nair, G Taloh

Advocate for the Respondent : P P of AP, Spl.PP (SIT)

BEFORE
HONOURABLE MR. JUSTICE PARTHIVJYOTI SAIKIA

ORDER

Date : 12-09-2024

Heard Mr. P. D. Nair, learned counsel for the petitioner. Also heard Mr. J. Tsering, learned Public Prosecutor for the State of Arunachal Pradesh.

2. This is an application filed under Sections 397 and 401 of the Code of Criminal Procedure, 1973, read with Section 482 of the said

Code challenging the orders dated 07.12.2022 and 16.12.2022 passed by the learned Judicial Magistrate First Class, Yupia in Crime Branch P.S. Case No. 07/2021 under Sections 420/468/471/34 of the IPC directing production of the present petitioner for collection of his voice sample.

3. Referring to the Section 311 A of the Code of Criminal Procedure, Mr. Nair learned counsel for the petitioner has submitted that the petitioner was never arrested in this case nor he has been charge sheeted, though 3(three) charge sheets have been filed in this case. Accordingly, Mr Nair submits that in order to collect the voice sample, a person has to be arrested or has to be made an accused in the charge sheet.

4. Mr. J. Tsering, learned Public Prosecutor also submits that in order to collect the voice samples, the person must have been arrested in the said case or he has been shown as an accused.

5. I have considered the submissions made by the learned counsel for both the sides.

6. In the Criminal Procedure Code, there is no provision for collecting the voice samples but in subsequent pronouncements by the Hon'ble Supreme Court, voice samples can be taken nowadays.

7. For applying the Section 311 A of the Code of Criminal Procedure for allowing collection of voice samples, the person must

be arrested by the police in the said case or he has to be shown as an accused in the charge sheet, however, the present petitioner was never arrested in this case nor he has been shown as accused in the charge sheet. Therefore, the learned Magistrate has no jurisdiction to apply the provision of law as laid down in Section 311 A of the Code of Criminal Procedure.

8. Accordingly, the impugned orders dated 07.12.2022 and 16.12.2022 passed by the learned Judicial Magistrate First Class, Yupia in Crime Branch P.S. Case No. 07/2021, are bad in law and stands set aside.

9. The present criminal revision petition stands disposed of, accordingly. The earlier stay order stands vacated.

10. The trial court shall proceed the trial of the case in accordance with the procedure as laid down by the law.

JUDGE

Comparing Assistant