

GAHC010128362021



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

Case No. : Crl.Rev.P./181/2021

RAJEEV KUMAR KHANNA
S/O LATE SHRI LAJPAT RAI KHANNA
R/O HOUSE NO. 158, MAYUR BIHAR
SECTOR 48A, CHANDIGRH
P.O. CHANDIGARH, P.S. CHANDIGARH.

VERSUS

CENTRAL BUREAU OF INVESTIGATION
ACB, GUWAHATI

Advocate for the Petitioner : MR D NANDI

Advocate for the Respondent : MR HALOI, SC, CBI,

**BEFORE
HONOURABLE MRS. JUSTICE MITALI THAKURIA**

Date of hearing : 19.04.2024

Date of Judgment : 31.07 .2024

JUDGMENT & ORDER (CAV)

Heard Mr. D. Nandi, learned counsel for the petitioner. Also heard Mr. M. Haloi, learned Standing counsel, CBI for the respondent.

2. This application filed under Sections 397/401 of the Code of Criminal Procedure, 1973, praying for setting aside the impugned Order dated 03.08.2021 passed by the learned Special Judge, CBI, Guwahati in Misc. (CBI) Case No. 05/2020 arising out of Case No. RC 3(A)/2020-CBI-GWH.

3. The brief facts of the case is that; the present petitioner was posted as an EE, Assam Aviation Division CPWD, Guwahati at the time of alleged incident and at present he is posted at Chennai. On 18.03.2020, one Shri Rathin Talukdar contractor of CPWD and other Govt. agencies lodged a written complaint before the SP/Head of the Branch, CBI, ACB, Guwahati against the present petitioner alleging that he has recently completed a work c/o sentry post water supply and sanitary installation providing G.I. chain link fencing around T-V, T-III and T-II waters at Kendriya Vidyalaya campus, Tamulpur, Assam and a final bill amount to Rs.6,85,000/- (Rupees Six Lakhs Eighty-Five Thousand) only is pending. It is also alleged that another bill was pending amounting to Rs.4,50,000/- (Rupees Four Lakhs Fifty Thousand) only in the office of the petitioner. Further, the complainant has also alleged that the accused petitioner has sought upto 2% of the tender amount of every work and 1% of every bill for passing and payment as bribe. Thereafter, the complaint was registered bearing RC0172020A000 [RC

3(A)/2020-GWH/258(i)].

4. Further, it is contended by the accused/petitioner that the CBI on dated 20.03.2020 forced him to provide his voice sample and also procured his signature, while, he was in police custody. The petitioner apprehended that the voice sample which was collected illegally by the CBI while he was in the police custody will be misused and the same may be manipulated to create a positive opinion in the spectrographic test for which the accused/petitioner will be deprived from his legal remedies. Thereafter, the petitioner intimated the learned Trial Court about such forceful and illegal collection of voice sample vide petition No. 538/2020 on 23.03.2020 by the CBI personals while he was in the police custody and accordingly, he prayed before the said Court to take necessary action and/or pass any such order as the said Court may deem fit and proper. However, against the aforesaid petition dated 23.03.2020, the CBI did not file any objection before the Trial Court.

5. The petitioner states that vide petition No.556/2020 dated 22.05.2020, the CBI stated that on the basis of the complaint dated 18.03.2020, a trap proceeding was done in presence of 2(two) independent witnesses. It was also stated that during the trap laying proceedings on 18.03.2020, the conversation that took place between the complainant Shri Rathin Talukdar and the present petitioner was recorded in a newly purchased speed (High Speed Memory Card) of 4 GB micro SD memory card with the help of a Sony make recorder in presence of the shadow witness and the said memory card, after unmounting from the Sony make digital voice recorder was packed, sealed in an envelope and was signed by all concerned of the trap laying team on the spot. Accordingly, the CBI prayed before the learned Trial Court to allow the I.O. of

the case to obtain the voice sample of the accused/petitioner.

6. Thereafter, the petitioner filed a reply in opposition against the order dated 22.05.2020 stating that in the petition No.556/2020 filed by the respondent, there is no such mention under what statutory provision the IO has filed the petition praying for recording of voice sample of the accused/petitioner. Thus, on reading of the aforesaid petition No.556/2020, it appears that in spite of the Constitutional Right guaranteed under the Constitution of India, the CBI personal has filed the instant petition which infringe the protection guaranteed by the Law of Land. It is further stated that the process of taking the voice sample shall incorporate the standard precautions whereas in the instant case, the accused/petitioner has been made a scape goat as the CBI personals has carried out the investigation by violating the principles of fair investigation and trial. After, hearing both the parties and after perusal of records, the learned Special Judge CBI, Guwahati vide its Order dated 03.08.2021 allowed the CBI/respondent to collect the voice sample of the accused/petitioner for Forensic analysis and it was further observed that the concerned officials of the FSL shall make necessary arrangements for collecting such voice samples.

7. It is contended by the accused/petitioner that as the voice recording collected by the Investigation Agency was not in accordance with the procedure laid down by law as such allowing the prayer by the learned Trial Court for obtaining the voice sample would prejudice the accused/petitioner in this particular facts and circumstances of this case. The accused/petitioner has not voluntarily given any voice sample/recording to the CBI to incriminate himself and even if any recording procured it is clearly barred by the provisions of the Indian Evidence Act.

8. On being dissatisfied and aggrieved by the impugned Order dated 03.08.2021 passed by the learned Special Judge, CBI, Assam, Guwahati in Misc. (CBI) Case No.05/2020 arising out of Case No. RC 3(A)/2020-CBI, GWH, the petitioner preferred the instant revision petition praying for setting aside and quashing of the aforesaid impugned Order.

9. Mr. Nandi, learned counsel for the petitioner has submitted that the learned Trial Court did not consider that directing the petitioner for giving his voice sample to the Investigation Agency *prima facie* violates the basic provision of law as well as the said Trial Court did not consider that allowing the Investigation Agency to collect the voice sample will prejudice the petitioner and infringe the right guaranteed under the Constitution of India and as such the impugned order dated 03.08.2021 is liable to be set aside and quashed. He further submitted that the learned Trial Court failed to consider the fact that the Supreme Court reiterated that any statutory law or act passed by the legislature or any order/judgments passed against the constitutional safeguards of the petitioner is merely null and void and cannot be binding and even if, the petitioner refuses to provide the voice sample there is no provision in any statutory law or any other binding precedent which can be exercised for recording of the same.

10. He further submitted that the instant case is not that if the accused refused to give his voice sample that will violate the public interest rather allowing the investigating agency to collect voice sample from the accused will infringe the fundamental right to privacy of the petitioner. It is further submitted that the learned Trial Court did not consider that right to make decisions with respect to one's own body as an important facet to the right to privacy and as such the

coercion involved in taking voice samples would by itself infringe on the right of autonomy and bodily privacy and as such the impugned Order dated 03.08.2021 is liable to be set aside and quashed.

11. Mr. Nandi, learned counsel for the petitioner has submitted that the process of drawing samples must be fair, so as to be consistent with right of appellants under Article 21 of Constitution of India. In regards to this submission, he relies on the decision passed by the Supreme Court reported in ***AIR 2016 SC 3772 [Sudhir Chaudhary Etc. Etc. vs. State (NCT of Delhi)]*** and mainly stressed on paragraph Nos. 13 and 14 of the said judgment which read as under;

“13. We are of the view that the aforesaid directions which have been issued by this Court would allay the apprehension of the Appellants in regard to the fairness of the process involved in drawing the voice sample. Our directions ensure that the text which the Appellants would be called upon to read out for the purpose of drawing their voice samples will not have sentences from the inculpatory text. Similarly, permitting the text to contain words drawn from the disputed conversation would meet the legitimate concern of the investigating authorities for making a fair comparison.

14. In pursuance of the directions issued by this Court the Investigating officer has filed in sealed cover: (i) transcripts of the disputed conversations; and (ii) a proposed passage of a written text required to be read out by the Appellants for the purpose of giving their voice samples. The passage contains words but not the sentences appearing in the disputed conversation. Having perused the contents of the sealed covers, we are satisfied that the Investigating officer has complied with our directions. We order accordingly.”

12. He further relies on another decision passed by the Supreme Court reported in ***(2019) 8 SCC 1 [Ritesh Sinha vs. State of Uttar Pradesh & Anr.]***, wherein, it has been expressed that the fundamental right to privacy cannot be construed as absolute but must bow down to compelling public interest. It is stated that the Law Commission of India, in its 87th Report dated

29.08.1980 had specifically stated in paragraph 3.16 that “to facilitate proof of the crime the police may like that the accused should be compelled to speak and even that his voice as recorded may be converted into ‘voice print’. However, if the accused refuses to furnish such voice, there is no legal sanction for compelling him to do so, and the use of force for that purpose would be illegal.”

13. On the contrary, Mr. Haloi, learned Standing Counsel, CBI submits that the accused/petitioner was caught red-handed by laying a trap and arrested by the CBI on 18.03.2020, while demanding illegal bribe money and acceptance of the same bribe money from the complainant. It is submitted that the trap proceeding was initiated in presence of the 2(two) independent witnesses and after investigation of this case, the CBI also filed the charge-sheet on 16.12.2020 along with the relied documents. He further submitted that during his custody with CBI, the accused/petitioner was asked to give his voice sample by the then I.O. in presence of the independent witnesses to which he gave consent voluntarily as per the records available. Also, the accused/petitioner was never forced to provide his voice sample and it was taken with a view of fair and just investigation of the case. Further, the memorandum was prepared during taking the voice sample of accused/petitioner on 20.03.2020 which shows that the accused/petitioner was asked whether he was willing to give his voice sample voluntarily or not to which he gave consent and agreed to give his voice sample. Accordingly, after hearing the parties, the learned Special Judge, CBI passed the impugned order dated 03.08.2021 allowing the Investigation Agency (CBI) to collect the voice sample of the accused/petitioner.

14. He further submitted that the learned Special Judge, CBI, Guwahati was

pleased to direct the investigation agency to record/obtain the voice sample following the case the ***Ritesh Sinha*** (*Supra*), wherein, it has been held that;

24. Would a judicial order compelling a person to give a sample of his voice violate the fundamental right to privacy under [Article 20\(3\)](#) of the Constitution, is the next question. The issue is interesting and debatable but not having been argued before us it will suffice to note that in view of the opinion rendered by this Court in *Modern Dental College and Research Centre and others vs. State of Madhya Pradesh and others*¹¹, [Gobind vs. State of Madhya Pradesh](#) and another¹² and the Nine Judge's Bench of this Court in [K.S. Puttaswamy and another vs. Union of India](#) and others¹³ the fundamental right to privacy cannot be construed as absolute and but must bow down to compelling public interest. We refrain from any further discussion and consider it appropriate not to record any further observation on an issue not specifically raised before us.

15. Mr. Haloi, learned Standing counsel, CBI further submitted that Supreme Court of India, keeping in view the 87th Report of the Law Commission, held the following;

“18. The Supreme Court in exercising the powers under Article 142 of the Constitution of India till there is a specific provision in the Cr.P.C. for taking voice samples conceded powers to the judicial Magistrate to order giving of voice samples. The relevant portion is quotes below.

“25. In the light of the above discussions, we unhesitatingly take the view that until explicit provisions are engrafted in the [Code of Criminal Procedure](#) by Parliament, a Judicial Magistrate must be conceded the power to order a person to give a sample of his voice for the purpose of investigation of a crime. Such power has to be conferred on a Magistrate by a process of judicial interpretation and in exercise of jurisdiction vested in this Court under [Article 142](#) of the Constitution of India. We order accordingly and consequently dispose the appeals in terms of the above.”

16. Mr. Haloi, learned Standing counsel, CBI submits that the learned Special Judge, CBI, Guwahati has committed no error or mistake while allowing the investigating agency to record the voice sample of the accused/petitioner. The said Trial Court has passed the order considering the view of the Supreme Court

passed in ***Ritesh Sinha*** (*Supra*) case.

17. So from the entire discussions made above, it is seen that it was a trap proceeding when the accused/petitioner was caught red handed as per allegation of the CBI while he was demanding bribe to the complainant and the said trap proceeding was initiated in presence of the 2(two) independent witnesses. It is also an admitted fact that the investigating agency prayed for police custody for 5 (five) days of the accused/petitioner and during his police custody, the CBI asked the accused/petitioner to give his voice sample in presence of the independent witnesses and as per the CBI, the accused/petitioner gave his consent voluntarily and accordingly his voice sample was collected. It is the allegation of the petitioner that he was forced to give his voice sample, while he was in police custody, But, from the memorandum prepared during taking the voice sample, it is seen that in presence of independent witnesses, the accused/petitioner gave his voice sample voluntarily and same was recorded on 20.03.2020.

18. From the submissions made by the learned counsels for both sides and from the case record, it is seen that the conversation between the complainant and the accused/petitioner was recorded on the day of trap proceeding and it was recorded in a newly purchased 4 GB micro SD memory card with the help of Sony make digital voice recorder which was packed, sealed in an envelope and was signed by all concerned of the trap laying team on the spot. Thus, it is seen that the prayer made by the CBI agency before the learned Special Judge for comparison of the voice sample which was recorded during the trap proceeding i.e on 18.03.2020 and not prayed for comparison of the voice sample which was recorded on 20.03.2020 when he was in police custody.

Thus, even if, it is considered that he was forced to give his voice sample on 20.03.2020 in the police custody, but, the fact is that the CBI investigating agency had prayed for comparison of the voice sample which was recorded on 18.03.2020 during the trap proceeding in presence of the independent witnesses where the conversation between the accused/petitioner and the complainant was recorded.

19. From the order passed by the learned Special Judge, CBI, it is seen that the said Trial Court had passed the order after hearing the submissions made by both the parties, whereby, the prayer made by the respondent/CBI was allowed considering the fact that the voice sample of the accused/petitioner was required to be examine through the Forensic expert for the purpose of the investigation. In paragraph No.10 of the impugned order dated 03.08.2021, the learned Trial Court had discussed in regards to statutory right of self-incrimination, which read as under;

“10. If an accused is compelled to say something which incriminates him in an offence that would be violative of his fundamental and statutory rights against self-incrimination. However, a mere giving of the voice sample for the purpose of forensic analysis cannot be said to be violative of the principal of self-incrimination. In any case, the rights of the accused could be subjected to reasonable restrictions in the interest of effective investigation, failing which the efficacy of the criminal justice system might be weakened.”

20. So considering the entire discussions made above, it is seen that the prayer was made before the learned Special Judge by the investigation agency, CBI only to examine the voice sample of the accused/petitioner which was recorded during the trap proceeding on 18.03.2020 where he was having conversation with the complainant and the voice sample was recorded during

the trap proceeding in presence of the two independent witnesses. For the interest of the proper investigation, the comparison of the voice sample of the accused/petitioner may be required for the purpose of the investigation.

21. Accordingly, it is rightly held by the learned Special Judge, CBI that giving the voice sample only for the purpose of the forensic analysis cannot be said to be the violative of the principle of self-incrimination to cause prejudice to the accused/petitioner nor it can be held in violation of right to guaranteed under Article 21 of the Constitution of India.

22. Considering all the facts and circumstances of the case, I do not find any illegality or irregularity committed by the learned Special Judge, CBI, Assam, Guwahati whereby allowing the Investigating Agency to collect the voice sample of the accused/petitioner. Thus, there is no reason to make any interference in the impugned Order dated 03.08.2021 passed by the learned Special Judge, CBI, Assam, Guwahati in Misc.(CBI) Case No.05/2020. In the result, I find no merit in this revision petition and accordingly, the same stands dismissed.

23. With above observations, this criminal revision petition stands disposed of.

JUDGE

Comparing Assistant