

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WP227 No. 760 of 2015

1. Sangya Agrawal W/o Shri Anand Agrawal, aged about 36 years, R/o Mitra Vihar Colony, Link Road, Bilaspur, District Bilaspur (Chhattisgarh).....Non-Applicant

---- Petitioner

Versus

1. Anand Agrawal S/o Shri K K Agrawal, aged about 34 years, R/o A /37 Wallfort City, Bhatagaon, Raipur, District Raipur (Chhattisgarh).....Applicant

---- Respondent

For Petitioner – Ms. Shailja Shukla, Advocate.
For Respondent – Mr. B.P.Singh, Advocate.

Hon'ble Shri Justice Chandra Bhushan Bajpai

Order on Board

23/02/2016

1. With the consent of the parties, the matter heard finally.
2. The facts in brief required for adjudication of the instant WP(227) is that before the Second Additional Principal Judge, Family Court Durg, C.G. the respondent had filed Case No.91A/12 (Anand Agrawal Vs. Sangya Agrawal) under Section 13 of the Hindu Marriage Act, 1955. During the trial an application dated 23-07-2012 was filed by the respondent for forensic analysis of the alleged audio CD, conversation between the petitioner and her mother and as the petitioner denied for her voice in the said CD and also during her evidence submitted no objection for the analysis of the said CD before the Court below, the petitioner had filed her reply therein she pleaded that she gave consent for the analysis of the said CD with the pressure of the lawyers, the Court below after hearing both the parties held that as the petitioner gave her consent for the analysis during evidence it demonstrates no any pressure and also as the said analysis of CD is required for the support of the respondent side, the Court below by allowing the the said application it is

ordered that the CD may be analyzed by some forensic science laboratory approved by the Government and the respondent shall bear all the expenses. Thereafter, proceeding regarding taking of the voice sample was initiated. Against the said order dated 11-05-2015 and the memo dated 17-07-2015 and the order dated 13-08-2015, the non-applicant/petitioner approached to this Court and prayed that by invoking jurisdiction under Article 227 of the Constitution of India as she cannot be compelled for her voice sample for any comparison in a family dispute, hence the aforementioned orders and the communication be set aside.

3. In the instant WP(227), it is submitted that the said CD is not admissible evidence, the said is accepted without complying with the provisions of Section 65B of the Evidence Act. The consent of any voice test was not sought for and the petitioner had not gave any consent for the said, hence the instant WP(227) may be allowed and the relief as sought may be given.

4. On behalf of the respondent, written response/objection has been filed wherein he denied for the grounds taken in the WP(227) and submitted that as the petitioner during evidence gave consent for the analysis of the said CD and after consent she cannot back out. Section 65B of the Evidence Act is duly complied. The said CD could be considered as an evidence after its due analysis. It is further submitted that the instant WP(227) is not having any substance and the same may be dismissed as not maintainable.

5. Heard both the parties.

6. It is submitted on behalf of the petitioner that during her evidence at para 29 she specifically stated that the said CD is fake and it does not contain her voice, though she gave no objection regarding forensic analysis of the said CD but she never gave her consent for taking voice sample. There is no any law in the above matrimonial matter wherein the voice sample can be taken under any of the compulsion, it is upto the parties to prove their case on the

basis of their pleading. As there is no any provision for taking voice sample of any party under any provision of law for the matrimonial matter, she never consented for the voice sample, the Court or any institution cannot take her voice sample forceably. Hence, the petition in question may be allowed and the aforesaid orders and the communication may be set aside. The trial Court be directed to proceed further as per provisions of law.

7. On behalf of the respondent, they have supported the written response/objection filed on behalf of the respondent and submitted that as in para 30 of cross-examination of the petitioner, she offered no objection regarding forensic analysis of the said CD and the forensic analysis can not be completed unless it is compared with the voice sample of the petitioner, hence thereby no objection offered on behalf of the petitioner includes consent for the said voice sample. Hence, it is submitted that the petition has no force and the same may be dismissed.

8. For appreciation of the arguments advanced in this behalf, I have perused the petition, its reply and the documents annexed, and other provisions of law.

9. From close scrutiny, it is apparent from para 29 and 30 of the examination-in-chief and cross-examination of the petitioner that she categorically denied that her voice is in the said CD and also she submitted no objection regarding forensic test of the said CD. It was not the case that the petitioner specifically consented for her voice sample. As per settled law, in the matrimonial matter, there is no any provision for voice sample despite objection for the same. As the petitioner never consented for her voice sample, no objection regarding forensic analysis of the said CD does not include consent for voice sample. Also during the hearing it is submitted on behalf of the petitioner that she gave consent for the analysis of the said CD in the pressure of the lawyers; if for the sake of argument, though not admitted, if the same

may be considered as it is, even then it does not reflect the consent of voice sample and as with the law prevailing for matrimonial matter, Court cannot take voice sample under compulsion.

10. From consideration of the entire matter, this Court is of the view that no objection regarding analysis of the said CD and consent for the sample of voice are two different things, both cannot be mixed together and when specifically the petitioner from day one, i.e., from 11-05-2015 is opposing the said application and in continuance of that stand the petitioner objected for her voice sample which goes to show that the petitioner is not a consenting party from the day one for her voice sample.

11. On due consideration, from perusal of the entire material orders passed by the Court below dated 11-05-2015 and 13-08-2015 and the communication dated 17-07-2015 require interference as they are not under proper application of the law. Hence, the petition filed on behalf of the petitioner is hereby allowed and the aforesaid orders passed by the Court below along with impugned memo are hereby set aside. It is held that the petitioner had not consented for her voice sample.

12. The Court below is directed to proceed further as per provisions of law as expeditiously as possible preferably within four months from the date of next hearing.

13. The parties are directed to cooperate with the proceeding. The parties may file copy of this order before the Court below for compliance.

14. Registrar (Judicial) is also directed to transmit copy of this order towards the trial Court through usual mode and fax mode for compliance.

15. The petition allowed.

16. No order as to cost.

Sd/-
(Chandra Bhushan Bajpai)
JUDGE