

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 9232 OF 2016

Sarika Mahendra Sureka	..	Petitioner
VS.		
Mahendra Rajkumar Sureka	..	Respondent

Mr. Punit Chaturvedi i/b. Mr. Milind Deshmukh for Petitioner.

CORAM : M. S. SONAK, J.
DATE : 19 AUGUST 2016

P.C :

1] Heard Mr. Chaturvedi i/b. Mr. Deshmukh for the petitioner.

2] The challenge in this petition is to the order dated 26 July 2016, by which the Family Court No. 3, Mumbai, has ordered the following :

“ The application is allowed as under:

1) The disputed CDs, filed at Exh. H below list dated 08.06.2012 and the disputed letter filed at Exh. M(i) below said list by the petitioner, be referred to the forensic expert i.e. Helik for calling the opinion pertaining to the handwriting as well as voice.

2) The concerned Authority of Helik is requested to depute competent person for taking the handwriting and voice sample of the respondent and to complete other formalities as per their Rules.

3) Petitioner to bear the necessary charges.

4) Both parties and their advocates are directed to

remain present before the Registrar, Family Court, Bandra, Mumbai, on 08.08.2016 for collecting and seizing samples by the expert.

5) Issue letter to the Helik Advisory for deputing competent person in the Court on 08.08.2016.

6) In the circumstances, no order as to costs.”

3] Mr. Chaturvedi, the learned counsel for the petitioner has submitted that unless the disputed CDs are verified, there was no question of directing the petitioner to submit voice samples or comply with other formalities as per the rules. Mr. Chaturvedi further submitted that in any case, the Family Court has erred completely in referring the disputed CDs / letters to the forensic expert Helik, as, the name of such expert had been suggested by the respondent - husband. Instead, Mr. Chaturvedi submitted without prejudice, that the disputed CDs / letters could have been referred to the government forensic expert. Mr. Chaturvedi placed reliance upon the decisions of the Hon'ble Supreme Court in the case of ***Selvi & Ors. vs. State of Karnataka***¹ and ***Ritesh Sinha vs. State of Uttar Pradesh & Anr.***², in support of his contention that in a civil matter, ordinarily, no party should be compelled to give his or her voice samples. Reliance was also placed upon the decision of this court in the case of ***Shashikant Tulsidas Kamble***

1 2010 (7) SCC 263

2 2013 (2) SCC 357

& Anr. vs. State of Maharashtra³, primarily for reference to the rules in the Criminal Manual for production, use and recording of tape record evidence in the court. For all these reasons, Mr. Chaturvedi submitted that the impugned order is liable to be interfered with.

4] Having heard the learned counsel for the petitioner and perused the record, in my judgment, there is no case made out to interfere with the impugned order. The impugned order neither suffers from any jurisdictional error nor can it be said to have been vitiated by any perversity. Further, notwithstanding the impugned order, it is not as if the defences otherwise open to the petitioner in law have been shut out. Even after compliance with the impugned order all opportunities with regard to cross-examination of the expert or the objection to the very admissibility of the evidence which may be tendered by the expert will obviously remain open. Therefore, at this stage, there is no necessity to interfere with the impugned order. However, it is necessary to clarify that all the objections have been kept specifically open to be raised at the appropriate stage. If ultimately, the matter is decided against the petitioner, the petitioner in the substantive appeal which he may choose to institute will also have the liberty to raise all contentions as may be available under the law.

3 2013 All M.R. (Cri.) 3531

5] Another reason which prompts me not to interfere with the impugned order is the circumstance that the petitioner, in the course of her deposition, has herself stated that she will have no objection to offer herself for forensic voice analysis to compare her voice with the voice in the disputed CDs, in case, the court directs her to do so. In the context of such an answer in the course of her deposition, the respondent was constrained to make an application to the Family Court seeking directions. It is upon such an application that the impugned order has been made. At this stage, therefore, it is hardly permissible for the petitioner to question such an order, now that the court has in fact issued the directions, which, in any case, the petitioner had stated she was ready to comply with.

6] In so far as the decisions upon which reliance is being placed by Mr. Chaturvedi, it must be noted that two decisions of the Hon'ble Supreme Court were mainly in the context of the provisions contained in Article 20(3) of the Constitution of India, which provide an embargo upon self incrimination. The scope of civil and criminal proceedings is undoubtedly different. The decision in the case of *Selvi* (supra) was in the context of narco analysis and polygraph test. The decision in the case of *Ritesh Sinha* (supra) records divergent views expressed by the two learned Judges of the Hon'ble

Supreme Court, again, mainly in the context of the constitutional provisions contained in Article 20(3). The decision in the case of *Shashikant Kamble* (supra) also turns on its own facts and circumstances and is clearly not attracted to the issue involved in the present matter.

7] Mr. Chaturvedi states that during the pendency of the present petition, the petitioner's evidence has been shut out. Mr. Chaturvedi states that the petitioner was unwell and had been admitted in the hospital. This is not the issue in the present petition. However, in case the petitioner, within a period of one week applies for recall of the order closing the petitioner's evidence, there is no doubt that the family court will take into consideration the reason stated by the petitioner and upon due verification, make appropriate orders in interests of justice.

8] For the aforesaid reasons, there is no necessity to entertain the present petition. With liberty as indicated earlier, the present petition is dismissed. There shall however be no order as to costs.

(M. S. SONAK, J.)