

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO.1644 OF 2015**

The State of Maharashtra Petitioner

Vs.

Sheetalkumar Eknath Panasare Respondents
& Anr.

Mr. S.R. Agarkar, A.P.P. for the Petitioner- State.
Mr. Subodh Desai a/w Mr. Hrishikesh Chavan, Advocate for
Respondent no.1.
Mr. Nilesh V. Bhutekar, Advocate for Respondent no.2.

Coram : Smt. R.P. SondurBaldota, J.

Date : 13th February, 2017

P.C.

1). This petition is filed by the State to challenge the order dtd.5th December, 2014 passed by the Sessions Court, Pune in Criminal Revision No. 158 of 2014 setting aside the order dtd. 20th January, 2014 passed by the Judicial Magistrate First Class, Pune in Regular Criminal Case No.1620 of 2011. By that order, the trial Court had directed for the voice sample of respondent no.1 in the complaint filed under Section 498-A Indian Penal Code by respondent no.2.

2). The application had been filed more than two years after filing of the proceedings. The reason stated therein for the

voice sample was, that the police are investigating into the “emails, gmail, facebook and CD” of the communications between the parties. It seems that, respondent no.2 had made available emails and messages to the police. She also claimed to have recorded conversation over the mobile phone. The police desired to send the conversations over mobile for the expert's opinion, after taking voice sample of respondent no.1.

3). The application was opposed by respondent no.1, contending that, there is no specific provision in Criminal Procedure Code for giving voice sample. Besides, the order of giving sample would amount to violation of Article 20(3) of the Constitution of India. Next, the application contained no details of the conversations recorded and no explanation for not filing the electronic document of conversation at the time of filing of the charge-sheet. The application was also filed after delay of two years.

4). The trial court by it's order dtd. 20th January, 2014 allowed the application stating that the delay in submitting the documents cannot be a good ground for rejecting the application. As regards the violation of Article 20(3) of Constitution of India, the argument was rejected by placing reliance upon the decision of this Court in **Central Bureau of Investigation V/s. Abdul Karim Ladsab Telgi & Others. Reported in 2005 Cri.L.J. page 2868.** The trial Court,

noted that by the decision, it is held that recording of voice sample does not amount to testimonial compulsion but it is only material evidence. The trial Court, directed respondent no.1 to remain present before the expert and give his voice sample.

5). Being aggrieved by the order, respondent no.1 preferred Criminal Revision Application No. 158 of 2014 to the Sessions Court, Pune. By its order dtd. 5th December, 2014, the Sessions Court allowed the Revision Application and set aside the order of the trial Court. The reasons stated for setting aside the order at paras 6 and 7 read as under :

“6. Record and proceeding of the case was called for ascertaining the facts. The complaint was filed on 20.02.2011. After investigation charge-sheet came to be filed on 20.04.2011. At the time of filing of charge-sheet, investigation officer has not indicated about existence of such recorded conversation between the parties. The charge came to be framed on 09.06.2011 and thereafter matter was proceeded for recording evidence. Summons issued to the complainant has been refused by the father of the complainant. The complainant also not appeared before the Court, though summons was served. So, the accused filed application for taking action against the original complainant. The evidence of the prosecution witnesses is not recorded during span of three years. Thereafter application at Exh.55 came to be filed on 19.10.2013.

7 The accused filed detail say challenging the application. The complainant no where disclosed about recording conversation. The application Exh.55 is vague and no details about so called conversation are stated in the application.”

The Sessions Court, thereafter referred to the decision of the Apex Court in **Ritesh Sinha V/s. State of U.P. (Criminal Appeal No. 2003 of 2012)** to note that, the question as regards the power of the Court to send the accused for recording sample of his voice is referred to a Bench of three Judges. As such, the question is still open and not decided finally.

6). The facts relating to the application as noted by the Sessions Court are not disputed. Therefore, bare reading of the reasoning quoted above, is sufficient to hold that there is no infirmity with the impugned order. Besides, the police have not even looked into the various electronic communications relied upon by respondent no.2 to find out whether the same is relevant to the allegations made in the complaint. As regards the conversation over mobile, there would be independent evidence also available to the prosecution. No such evidence has been collected by the police as yet. In the absence of such preliminary preparation, there could not have been even a request for the voice sample. Consequently, at this stage and in this matter, it is not necessary to go into the larger question as

to whether voice sample of accused can be called for. Hence, the petition is dismissed.

(Smt. R.P. SondurBaldota, J.)