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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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+ CRL.M.C 148/2017

RAJINDER PRASAD GUPTA

....Petitioner

Through: Mr. Sudhir Nandrajog, Senior Advocate
with Mr. Kuljeet Rawat, Advocate.

versus

STATE (NCT OF DELHI)

....Respondent

Through: Mr. Mukesh Kumar, APP for the State with
Inspector Shailendra Singh.

Mr. Ashish Pratap Singh with Mr. Akshay
Dhawan, Advocates for complainant.

CORAM:

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

ORDER

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13.09.2017

1. The present petition has been filed under Section 482 of the Code of Criminal Procedure for setting aside of order dated 26.11.2016 passed by Additional Sessions Judge, Karkardooma Courts, Delhi and consequentially also setting aside the order dated 22.07.2016 passed by the CMM/East Delhi.

2. The case of the prosecution is as under:

“The present case was registered and the complaint of Sh. Vikash Tyagi, authorized representative of complaint company, M/s Good Luck Traders (Unit of Good Luck Pvt. Ltd.) having their registered office at 5/102, Sikka Complex, Community Centre, Preet Vihar, Vikas Marg, Delhi against the alleged persons namely Vikas Gupta (Managing Director), Mr. Akash Gupta (Director), Mr. Ramesh Mehta (Director)

and the petitioner Mr. Rajinder Prasad Gupta who was termed as person-in-charge of M/s Shivom Minerals Limited, having their office at P-25, Civil Township, Rourkela, Odisha, alleging them of cheating, misappropriation and criminal breach of trust during the course of their business.

The complainant company i.e. M/s Good Luck Traders (Unit of Good Luck Capital Pvt. Ltd.) claimed to be one of the leading suppliers of wide range of stainless Steel, Sponge Iron and Steel Scraps etc. Above mentioned alleged person namely Vikash Gupta and Akash Gupta approached Mr. Sunil Kumar Garg, Director of Complainant Company representing themselves to be big broke, supplier and purchasers of steel scraps in and around Orissa state. Alleged persons induced the complainant to work with them and further asked to supply the raw material for iron ore and steel items to M/s Shivom Minerals Limited. The accused persons assured that they will give very good profitable business to the complainant company. Both the companies entered into an MoU called as 'Tentative Terms for supply/sale' in November, 2012¹ followed by a 'Final proposal for Trading'. The complainant company having been induced by alleged person transferred an amount to the tune of Rs.41.41 Crores through RTGS and cheques in the account of alleged company i.e. M/s Shivom Minerals Limited till September-2013. During the said period, the complainant company is stated to have done business with the alleged person/company as well as dozens of other companies situated in Rourkela. However during the course of their business, complainant company allegedly noticed some malpractice being adopted by the alleged person/company and decided to sever their business ties, closed down their account with the complainant and agreed to pay Rs.12 Crores and issued cheques to that effect to the effect to the complainant however, the same were dishonored/bounced on presentation and it was alleged that the signatures on cheques were also forged. The case FIR No. 451/14 dated 23.7.2014 was registered in P.S. Preet Vihar and

initial investigation was carried out by the local Police of Preet Vihar and later on the investigation was transferred to EOW and the matter is still under investigation.”

3. During the course of investigation, the complainant provided a CD containing a conversation dated 16.10.2013 between Sunil Kumar Garg and the petitioner wherein it has been claimed by the complainant that the petitioner admitted of having owed Rs. 12 Crores to Sunil Garg. The CD was seized and sent to FSL, Rohini for examination. In the forwarding letter, it was specifically requested to verify whether the CD was tampered with. As per the FSL report, it was opined that ‘there was no indication of any form of alteration’ done with the contents of the CD. In order to procure the voice sample of the petitioner for the purpose of comparing the same with the one contained in the CD, Investigating Officer moved an application before the Trial Court which was disposed of vide order dated 22.07.2016 holding that :

“ On a court query, the IO already informed that the accused has not yet been arrested in this case since he has been granted anticipatory bail. Accordingly, the present application is disposed of with the liberty to the IO to exercise his own power of investigation if desired and for the purpose of taking voice sample, he can direct the accused to join the investigation. If the accused does not appear to him, he may take steps as per law but if he appears and voluntarily gives his consent for undergoing such tests, the needful can be done but if he voluntarily refuses to give his consent for taking voice sample, the IO will record the statement of accused in this regard and the adverse inference, if any, may be drawn as per law

depending upon the overall evidence at the appropriate stage of the case. Case of this order be given dasti.”

4. Petitioner filed a revision petition against the aforesaid order which was dismissed vide order dated 26.11.2016 wherein it was held:

“As far as adverse inference is concerned, once it is held that providing of voice sample is not violative of Art.20(3) of the Constitution of India, then not providing voice sample without any just and reasonable excuse will lead to drawing adverse inference. This is similar to situation where an accused refuses to join judicial test identification parade without any justification. In such a situation, adverse inference is usually drawn against him. Therefore, in the present case also, adverse inference will be drawn against the petitioner if refusal on his part is without any justification.

Thus this court does not find any error or infirmity in the impugned order...”

5. Adversely affected by these orders the present petition has been filed.

6. Mr. Sudhir Nandrajog, learned senior counsel for the petitioner contended that that directing the petitioner to give his voice sample is completely violative of his fundamental right of protection from self-incrimination as guaranteed under Article 20 (3) of the Constitution, hence, no adverse inference can be drawn against him for not providing the voice sample; that there is no statutory regime compelling the accused to give his voice sample during the course of investigation and reliance has been placed upon ***Rakesh Bisht Vs. CBI reported in 2007 Vol. 2 Apex Decision 23***; that the legislature on its own wisdom only included specimen signature and handwriting and not voice sample under Section 311A Cr.PC;

that the Trial Court had erred in relying upon judgment passed by this Court in *Crl. M. C. 3904/2014* titled as *Samir Ahluwalia Vs. State*; that the application of the Investigating Officer for seeking direction against the petitioner to give his voice sample at the first instance is not maintainable;

7. Per contra, Mr. Mukesh Kumar, learned APP for the State contended that if an accused is directed to give his voice sample during the course of investigation, there is no violation of his right under Article 20(3) of the constitution as voice sample is like a specimen handwriting, signature or finger print impression of an accused and reliance has been placed upon *Ritesh Sinha Vs. The State of Uttar Pradesh and Anr.* reported in (2013) 2 SCC 357; that by comparing the voice of petitioner with the conversation contained in the CD, the investigator may be able to draw his conclusion and unearth the truth; that providing of voice sample is merely for the purpose of identification and not in the nature of personal testimony.

8. I have heard the learned counsel for the parties and perused the material available on record.

9. Perusal of the record shows that it is in the course of investigation that the IO had moved an application before the Ld. Trial Court seeking voice sample of the petitioner for comparison with the voice already available with the IO whereas in the present case the petitioner has refused to lend his voice sample right from the initial stage.

10. As far as Section 311 A of CrPC as amended is concerned, it permits the court to direct taking of handwriting samples or specimen signature for the purposes of any investigation or proceeding under the Code. This section

does not talk of taking voice samples. Had it been the intention of the legislature to include voice sample in addition to the above samples it would have been expressly stated in the concerned section. In the absence of any provision in the Code, the accused cannot be compelled to give voice sample, the same can be taken only when he furnishes his consent. Having said this, it is pertinent to state herein that if an observation is made by the Trial Court stating that an adverse inference is drawn against the petitioner the same amounts to compelling him to submit his voice sample and the section 311-A Cr.PC does not permit the same.

11. In view of the aforesaid discussion the present petition stands disposed of.

SANGITA DHINGRA SEHGAL, J.

SEPTEMBER 13, 2017

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