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

+ CRL.REV.P. 491/2017

VIKAS

..... Petitioner

Through: Mr.Bhairav Dass & Mr.Yogesh Dass,
Advocates.

versus

GNCT OF DELHI

..... Respondent

Through: Mr.Kewal Singh Ahuja, APP for the
State with W/SI Ekta Yadav, PS
Nangloi

CORAM:

HON'BLE MS. JUSTICE PRATIBHA RANI

ORDER

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14.07.2017

CrI.M.A.10959/2017

1. For the reasons stated in the application, the delay of 37 days in filing the petition is condoned.
2. The application is disposed of.

CrI.M.A.10960/2017

1. Exemption allowed, subject to all just exceptions.
2. The application is disposed of.

CRL.REV.P. 491/2017

1. The petitioner has invoked the revisional jurisdiction of this Court under Section 401 read with Section 482 of Code of Criminal Procedure,

1973 impugning the order dated 28th February, 2017 whereby the petitioner has been directed to give his voice sample before the FSL, Rohini for the reason that when the petitioner was allegedly preparing the MMS of the prosecutrix he uttered something and the learned ASJ was of the view that in view of the nature of the offence i.e. under Sections 376/328 IPC and Section 4 POCSO Act, in order to decide the authenticity of the voice in the MMS and for fair investigation, voice sample of the petitioner/accused needs to be taken to match it with the voice in the MMS found in the pen drive.

2. Learned counsel for the petitioner has submitted that learned ASJ could not have directed to petitioner to give his voice sample as the voice contained in the MMS is not that of the petitioner/accused. The reasons given by the learned ASJ for allowing the prayer of the State for giving directions to the petitioner/accused to give his voice sample are contained in paras 7 to 10 of the impugned order which reads as under:

“7. Since, in the case in hand, the prosecutrix has levelled categorical allegation against this accused that on dated 17.04.2014, this accused had administered cold drink to this prosecutrix & on consuming thereof, she lost her consciousness and on regaining of her consciousness, this accused had shown her clips and on showing the same, this accused is alleged to have threatened to the prosecutrix to leak her such MMS and he is alleged to have repeatedly raped to the prosecutrix at different places and after putting her in such fear, the accused had also solemnized marriage with her. Since, the prosecutrix has alleged that in view of preparing of her nude MMS, this accused had blackmailed & threatened to leak nude MMS of the prosecutrix and repeatedly raped her and after putting to the prosecutrix under such fear, this accused is also alleged to have solemnized marriage with the prosecutrix

and when this accused was alleged to have prepared such MMS of the prosecutrix, this accused is also alleged to have uttered something and in the considered opinion of this Court, since, during the investigation, Sec.376/328 IPC & Sec. 4 of POCSO Act have also been added and in the given circumstances, in order to decide the authenticity of the voice of this accused and for fair investigation, it is essential to take the samples of voice of the accused, so that the same may be matched with the voice in the MMS found in the pen drive.

8. Since, the investigation is still going on and during the investigation, the prosecutrix has handed over a pen drive to the Investigating officer (IO), wherein, the said MMS of the prosecutrix is also there, which is alleged to have been prepared by the accused. Investigation Officer (IO) of the case has told to this Court that this is the nude clip of the prosecutrix, which is prepared by this accused and at the time of preparing such nude clip of the prosecutrix, this accused had uttered something and in order to match the said voice of the accused, it is essential to take the samples of voice of this accused. This Court has perused the file of the IO. In view of above said facts & circumstances and in order to search the truth in the allegation of the prosecutrix and for fair & proper investigation of the serious allegation levelled by the prosecutrix against this accused, it appears to be essential to take the samples of voice of this accused. The Ld. Counsel for accused has failed to show any sound ground for opposing this application.

9. Since, this Court is of the considered opinion that by way of allowing this application, no rights of the accused are going to be affected and in the considered opinion of this Court, if the accused pleads innocence, he should cooperate in the investigation, so that the fair & comprehensive investigation may be done by the Investigating Officer.

10. Since, their Lordships of the Supreme Court in case ion an earlier decision passed in case 'R.M.Malkani Vs. State of Maharashtra', (1973) 1 Supreme Court Cases 157 was pleaded

to hold that tape recorded conversation is admissible, provided that the conversation is relevant to the matter in issue, there is identification of the voice and accuracy of tape recorded conversation is proved and. Coming to the case in hand the issue of identification of voice of this accused may be solved only by taking samples of voice of this accused. And in case, 'Ziyuaddin Bufanuddin Bukhari Vs. Brij Mohan Ramdass Mehra & Ors.', (1975) Supreme Court Cases 1788, it was held that tape recording is primary evidence and it is document within the meaning of Sec.3 of the Indian Evidence Act. And in view of dissimilarities of the facts & circumstances of the judgments passed by their lordships of the High Court of Delhi in case 'Rakesh Bisht Vs.CBI' have no help for accused. And, in the considered opinion of this Court, IO has rightly filled this application during investigation, so that the investigation into the allegation levelled may be done fairly & comprehensively. In the above said circumstances, this Court allows this application filed by the IO. It is directed that the accused shall accompany to the IO in the FSL, Rohini, as & when the IO would ask him to go there, so that his samples of his voice may be recorded by some Scientific Officer in the FSL, and the same may be compared with the voice in the clip of prosecutrix found in the pen drive.

In the above said terms, the application filed by the IO is disposed of. “

3. During the course of hearing of this revision petition, learned counsel for the petitioner/accused has submitted that the petitioner does not want to give his voice sample as the voice in the MMS is not that of the petitioner and the Court could not have called upon the petitioner/accused to given his voice sample for the purpose of investigation/comparison by the FSL, Rohini as to whether voice therein is of the petitioner/accused or not.

4. While passing the impugned order, learned ASJ distinguished the facts of the instant case with that of **Rakesh Bisht vs. CBI** (Crl.Rev.P.

No. 461/2006) case, which is a decision rendered by the Division Bench of this Court. The impugned order has been passed by relying upon the decision of the Hon'ble Supreme Court in *R.M.Malkhani vs. State of Maharashtra* (1973) 1 SCC 157 and *Ziyuaddin Bufanuddin Bukhari vs. Brij Mohan Ramdass Mehra & Ors.* (1975) SCC 1788.

5. The petitioner has invoked the revisional jurisdiction of this Court which cannot be exercised in routine and casual manner. Since the learned counsel for the petitioner has failed to point out any jurisdictional error or error of law in the order impugned, the revision petition is dismissed.

PRATIBHA RANI, J.

JULY 14, 2017

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