

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO. 3631 OF 2017**

Satish Madhukar Chikhalikar,
Age: 50 years, Occu: Public Service,
Resident of 32-Janki Ashok Nagar,
Near Hanuman Mandir, Nanded,
Dist. Nanded

...Petitioner

Versus

The State of Maharashtra
(At the instance of the
Anti Corruption Bureau, Nashik)

...Respondent

Mr. Harshawardhan Salgaonkar for the Petitioner

Mr. H. J. Dedhia, A.P.P for the Respondent-State

CORAM : REVATI MOHITE DERE, J.
FRIDAY, 5th JANUARY, 2018

ORAL ORDER :

1 Heard learned counsel for the parties.

2 Rule. Learned A.P.P waives service on behalf of the
respondent-State.

3 Rule is made returnable forthwith, by consent of the parties and is taken up for final disposal at the stage of admission.

4 By this petition, the petitioner has impugned the order dated 29th August, 2017 passed by the learned Additional Sessions Judge, Nashik in Special Case No. 11 of 2014, by which, the learned Judge was pleased to allow the application preferred by the respondent-State and a direction was given to the petitioner to attend the office of the Anti Corruption Bureau, Nashik, to provide his voice sample.

5 Learned counsel for the petitioner submitted that the learned Special Judge had clearly erred in law by directing the petitioner to give his voice sample to the Anti Corruption Bureau, Nashik. He submitted that the trial had commenced, inasmuch as, one witness was examined and the second prosecution witness was in the witness box facing cross-examination. He submitted that the application was preferred by the State in March, 2016 and that the same was decided only on 29th August, 2017. He submitted that in the fact and circumstances, the direction given by the learned Special Judge to give his voice sample to the Anti Corruption

Bureau, was in violation of the petitioner's fundamental right guaranteed to him under Article 20(3) of the Constitution of India. He submitted that the Forensic Science Laboratory (FSL) had informed the Investigating Officer on 11th July, 2014, that the specimen voice sample of the applicant which was provided, was found to be blank, however, no steps were taken by the State soon thereafter, and that it was only in March, 2016 that the State filed an application and sought the specimen voice sample of the petitioner. He submitted that the direction given to the petitioner by the learned Special Judge to provide his voice sample to the Anti Corruption Bureau, was clearly impermissible.

6 Learned A.P.P opposed the application. He submitted that since the Deputy Superintendent of Police, Anti Corruption Bureau, received a letter on 11th July, 2017 informing that at the time of analysis, the voice sample sent by the police was found to be blank and were requested to provide specimen voice sample of the petitioner along with the transcript at the earliest, the Anti Corruption Bureau, preferred an application in March, 2016. According to the learned A.P.P, no interference is warranted in the impugned order.

7 Perused the papers. The petitioner is facing prosecution for the alleged offences punishable under Sections 7, 12, 13(1)(D) r/w 13(2) of the Prevention of Corruption Act. According to the prosecution, a trap was laid on 30th April, 2013 and that in the trap, the entire conversation that took place between the complainant and the petitioner with regard to demand and acceptance of illegal gratification was recorded and accordingly, a panchanama was drawn. During investigation, the police took the specimen voice sample of the petitioner and sent the same for analysis. After investigation, charge-sheet was filed as against the petitioner. On 11th July, 2014, the Deputy Superintendent of Police, Anti Corruption Bureau, Nashik, received a letter stating as under :

“With reference to the above case this is to inform you that, at the time of analysis EX-3 was found blank. Please provide the specimen voice sample of the accused Shri.Satish Madhukar Chikhalikar and Jagdish Magan Wagh (Exhibit marked Memory Card C-3) along with the transcript as earliest.”

8 Pursuant thereto, the prosecution filed an application on 14th March, 2016 and placed on record the letter dated 11th July, 2014 and

sought directions from the learned Special Judge that the petitioner be directed to give his voice sample. The said application was resisted by the petitioner. The learned Special Judge, after hearing the parties, was pleased to direct the petitioner to attend the office of the ACB, Nashik and to provide his voice sample on or before 15th September, 2017. Admittedly, the trial has commenced and evidence of one witness is over and the second witness is in the witness box. Admittedly, specimen voice sample of the petitioner taken during investigation, was sent to the Forensic Science Laboratory on 27th June, 2013. Despite the fact, that the Deputy Superintendent of Police, Anti Corruption Bureau, Nashik, received a letter on 11th July, 2014 instructing them that the voice sample provided by them was found to be blank and for providing for specimen voice sample again, no steps were taken by the Anti Corruption Bureau, Nashik till March, 2016. As noted earlier, trial has already commenced and it would be improper to again direct the petitioner to give his voice sample.

9 Considering the aforesaid and in the facts and circumstances of the case, the impugned order dated 29th August, 2017 passed by the learned Additional Sessions Judge, Nashik in Special Case No. 11 of 2014,

directing the petitioner to provide his voice sample, is quashed and set-aside. Rule is made absolute on the aforesaid terms.

10 Petition is accordingly disposed of.

11 All concerned to act on the authenticated copy of this order.

REVATI MOHITE DERE, J.