

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

WRIT PETITION NO. 4325 OF 2018

Shri.Navin Laxman Tamboli

...Petitioner

Versus

The State of Maharashtra &Anr.

...Respondents

**WITH
WRIT PETITION NO. 4326 OF 2018**

Smt.Shailaj Madhukar Shetty

... Petitioner

Versus

The State of Maharashtra &Anr.

...Respondents

Mr.Raju M.Yamgar for the Petitioner in Writ Petition No. 4325 of 2018.

Mr.Raju M. Yamgar i/b Mr.Avinash M. Reddy for the Petitioner in Writ Petition No. 4326 of 2018.

Mr.A.R.Patil, APP for Respondent No.1-State in Writ Petition No. 4325 of 2018.

Mrs.Rutuja Ambekar, APP for Respondent No.1-State in Writ Petition No. 4326 of 2018.

Mr.H.S.Venegaokar for Respondent No.2/CBI.

CORAM : MRS. MRIDULA BHATKAR, J.

DATE : 31 OCTOBER 2018

P.C.:

1. Rule. Rule made returnable forthwith. By consent of the parties, these petitions are heard finally and disposed of at the stage of admission.

2. These petitions are directed against the order dated 8th August 2018 passed by the learned Special Judge (CBI), Court Room No. 53, Gr. Bombay thereby allowing the application below exhibit 111 in CBI Special Case No. 83 of 2012.

3. The prosecution has moved an application under Section 293 of the Code of Criminal Procedure, 1973 ("the Cr.P.C.) for exhibiting the report of CFSL without examining the forensic expert. The said application was opposed by the petitioners/accused on the ground that they are challenging the veracity in the said report and also the competence of the forensic expert and, therefore, they requested that the forensic expert is to be called as a witness and he is to be available for cross-examination. The learned Judge by order dated 8th August, 2018 allowed the application of prosecution and rejected the prayer of the petitioners/accused. Hence, these petitions.

4. The petitioners are facing trial mainly under the Prevention of Corruption Act, 1988. The conversation is disputed issue in the trial when voice sample was obtained by the prosecution and it was sent for expert's opinion to CFSL. CFSL has sent a report and the said report is taken on record under Section 293 of the Cr.P.C. The objection of the petitioners is that the said report is not to be exhibited when formal proof of examination of expert is not sustainable in view of under Section 293 of the Cr.P.C. Hence, a limited challenge in these petitions is

that the said expert whether to be called as a Court witness under Section 311 of the Cr.P.C. The report is exhibited by the trial Court.

5. Considering the nature of the offence, the petitioners/accused have raised objection and want to test the truthfulness and veracity of the said exhibited document i.e., report.

6. In all judicial terminology and considering the position of the law, it is necessary for the trial Court to call forensic expert as a Court witness under Section 311 of the Cr.P.C. enabling both the parties to cross-examine the witness.

7. With this, both the Writ Petitions are allowed.

(MRIDULA BHATKAR, J.)