

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

CRIMINAL WRIT PETITION NO.858 OF 2019

Preetha Babukuttan

... Petitioner

Vs

Central Bureau of Investigation
ACB, Mumbai & anr

... Respondents

Mr.R.M. Yamgar with Meenal Waksey and Sachin Pinjari for the
Petitioner

Mr.H.S. Venegavkar for Respondent/CBI

Ms.Veera Shinde, APP, for the Respondent – State

CORAM: Mrs.MRIDULA BHATKAR, J.

DATED: MARCH 8, 2019

P.C.:

1. This petition is filed by the petitioner against the order dated 29.1.2019 passed by the learned Special Judge, CBI, ACB Mumbai, below exhibit 76 of Special CBI Case No.65/15.
2. The issue in this petition is very short and, therefore, it is being disposed of at the stage of admission, with the consent of both the parties.
3. Heard submissions of the learned Counsel for both the sides on the point of admission and exhibition of the report of the Central

Forensic Science Laboratory (CFSL) and the challenge given to it by the defence. Exhibit 76 is the application made by the learned Prosecutor for CBI under section 293 of the Code of Criminal Procedure for exhibiting two reports of the experts in respect of recorded conversation of both the accused and the complainant during the trap and the report of another expert in respect of examination of Articles / Exhibit mentioned in chemical examination report dated 13th April, 2015. The learned Judge called upon the defence to file say on 6.10.2018. The learned Prosecutor had made a prayer in the said application that those two reports are of the experts from CFSL department and hence, they are permissible under section 293 of the Code of Criminal Procedure and they should be admitted without calling those experts.

4. The petitioner/accused filed a written reply to this application on 15.1.2019. The defence pleaded that they do not admit this report because there are some infirmities and lacunae which the defence wants to bring on record if the experts are summoned to give evidence and, therefore, it was prayed that the application is to be rejected and the experts referred to are to be called for the

purpose of cross-examination. The learned Judge has rejected the prayer and exhibited the documents and has suggested that the defence may move application under section 311 of the Code of Criminal Procedure. The learned Judge has rejected the prayer made by the defence and allowed the said application.

5. There is some confusion in the mind of the learned Special Judge in respect of procedure laid down under sections 293, 292, 294 of the Code of Criminal Procedure. U/s 293, the reports of the scientific experts can be produced and used as evidence before the Courts during the trial and enquiry. If the Court thinks, it may summon the experts for examination and the said document can be proved. U/s 294, no formal proof of certain documents is required. Either the prosecution or the defence may move application under section 294 for calling upon the other party to admit or deny the documents and under section 294 (3), where the genuineness of any document is not disputed. Such document can be read in evidence, without proof of signature of the person to whom it purports to be signed. These two provisions are to curtail the time of the Court and enable the Court to take evidence of the experts on record, without the formal procedure laid down under

the Evidence Act. Certain reports filed by the experts like analysis of blood, opinion about the blood group or DNA reports are generally not challenged as the process is very scientific and there is no chance of error in arriving at the opinion. It can be also said about the report of fingerprints or ballistic experts' reports. However, some reports though submitted by the experts, there can be some place for the defence to falsify such report with the help of available material. Such report can be the report of the handwriting expert or of voice recording, as these areas have remained grey and the technology and science is also continuously developing.

6. Under such circumstances, if the opinion or the report is disputed by the defence, then, it is the duty of the Court to summon the said witness who has given the report or the representative of the said authority. The Court can summon the witnesses under sections 293 and 294 and the said witnesses can be crossexamined by the defence. There is no necessity for the defence to move application under section 311 after recording his statement under section 313 of the Code of Criminal Procedure. It is the duty of the Court to assure fair trial to the prosecution as well

as the accused and, therefore, the report of the expert if not admitted by the defence or even the prosecution under some circumstances, then that expert is to be called as a witness for the prosecution or as court witness. It is to be kept in mind that the report of the expert is the opinion which can be admitted under section 45 of the Evidence Act, which is helpful to the Court to decide the issue and disputed opinion is put to test, it may help more.

7. Hence, the petition is allowed. The two experts are to be called as witnesses for the prosecution if such opinion is disputed. The learned Judge to issue summons to the two experts and their evidence is to be recorded in a day. Both the parties to cooperate so that no inconvenience is caused to the expert.

8. Writ Petition is disposed of accordingly.

(MRIDULA BHATKAR, J.)