

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 03.09.2019

Pronounced on : 17.10.2019

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.O.P.Nos.2580 & 2510 of 2019 and 21653 of 2018

1.Kumaresan ... Petitioner in Crl.O.P.No.2580 of 2019(A3)
2.A.K.Yadav ... Petitioner in Crl.O.P.No.2510 of 2019(A1)
3.P.Manickam
4.N.Sathyanarayana
5.A.Maharajan Petitioners in Crl.O.P.No.21653 of 2018
(A1 to A3)

Vs.

The State,
Rep.by Inspector of Police,
Central Bureau of Investigation,
Anti-Corruption Branch,
Chennai-600 006.
(Ref:Crime No.RC MA1 2018 A 0008)
... Respondent in Crl.O.P.No.2580 of 2019
(Complainant)

The Inspector of Police,
Central Bureau of Investigation,
Anti-Corruption Bureau,
Chennai-600 006.
... Respondent in Crl.O.P.No.2510 of 2019
(Complainant)

State By:
The Inspector of Police,
SPE/CBI/ACB, Chennai.
... Respondent in Crl.O.P.No.21653 of 2018
(Complainant)

PRAYER in Crl.O.P.No.2580 of 2019: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to set-aside the order made in Crl.M.P.No.4773 of 2018 in RC/MA1-2018-A-0008 on the file of the learned Principal Special Judge for CBI Cases, VIII Additional City Civil Court, Chennai dated 25.01.2019 on the petition filed under 311-A of Code of Criminal Procedure by the respondent/petitioner/complainant.

PRAYER in Crl.O.P.No.2510 of 2019: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to set aside the order dated 25.01.2019 passed by the learned Principal Special Judge for CBI Cases, VIII Additional City Civil Court, Chennai in Crl.M.P.No.4773 of 2018 in RCMA1 2018 A 0008 allowing the petition filed by the respondent under Section 311-A of Cr.P.C for obtaining voice samples of the accused person, send the same along with the voice recorded during the interceptions of calls to Central Forensic Science Laboratory (CFSL) for expert opinion through voice spectrograph testand.

PRAYER in Crl.O.P.No.21653 of 2018: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the records pertaining to the order dated 12.03.2018 passed in Crl.M.P.No.5849 of 2017 in RC MA1 2017 A 0009 (On the file of the Principal Special Judge for CBI Cases, VIII Additional City Civil Court, Chennai) and set-aside the same.

For Petitioners: M/s.G.R.Hari in Crl.O.P.No.2510 of 2019
M/s.B.Satish Sundar in
Crl.O.P.No.21653 of 2018
M/s.Swami Subramanian in
Crl.O.P.No.2580 of 2019

For Respondent : Mr.K.Srinivasan,
Special Public Prosecutor
(CBI Cases) in all Crl.O.Ps

ORDER

The petitioners in Crl.O.P.No.21653 of 2018 are the accused Nos.1 to 3 in RC MA1 2017 A0009 for the offence under Sections 120B of IPC r/w Section 7, 8 and 9 and Section 13(2) r/w 13(1)(a) and (d) of the Prevention of Corruption Act, 1988, filed this petition to set-aside the order dated 12.03.2018, passed by the learned Principal Special Judge for CBI Cases, VIII Additional City Civil Court, Chennai in Crl.M.P.No.5849 of 2017.

2.The petitioners in Crl.O.P.Nos.2580 & 2510 of 2019 are accused Nos.1 & 3 in RC MA1 2018 A0008, for the offence under Sections 120B of IPC and Sections 7, 8 and 12 of the Prevention of Corruption Act, 1988 filed this petition to set-aside the order dated 25.01.2019, passed by the learned Principal Special Judge for CBI Cases, VIII Additional City Civil Court, Chennai in Crl.M.P.No.4773 of 2018.

3.Since the issues involved in all the above three cases are common, this Court takes up for consideration and disposal by common order.

4.The respondent/the Inspector of Police, Central Bureau of Investigation, Anti-Corruption Branch, Chennai has filed a petition under Section 311-A of Cr.P.C before the learned Principal Special Judge for CBI Cases, VIII Additional City Civil court, Chennai to direct the petitioners in the said crime to give specimen voice.

5.The sum and substances of the case is that the petitioners are the accused in the respective crime numbers. The interception of telephonic conversation between the accused persons revealed the conspiracy hatched between them in respect of demand and acceptance of bribe. Hence, it was necessary to take voice samples of the accused persons to be tested scientifically for the prosecution to compare with the voice record during interception of the calls. Hence, the petition under Section 311-A of Cr.P.C was filed by the respondent. The lower Court after considering the facts and circumstances of the case, allowed the petition. Against which the present Criminal Original Petitions.

6.The contention of the learned counsel for the petitioner is that there is no specific provision incorporated in Section 311-A of Cr.P.C, directing the petitioners to give voice samples to the investigation officer. Without any specific provision of law, directing the accused to give voice samples for spectrograph test is not proper. The respondent have no right to seek voice samples from the accused persons. He further contented that there is no power under Section 311-A, empowering the respondent to take voice samples and there is no accessory or incidental or even inherent powers available with the trial Court to direct giving of voice samples of the accused.

7.The learned counsel for the petitioner further contended that a false case has been foisted by the respondent without conducting proper enquiry and to strengthen the case, the respondent has chosen to file a petition to obtain the voice sample of the accused, which is illegal and arbitrary. After registering the case, to rectify their blunder the investigating officer has filed this petition which affects the fundamental rights of the petitioners guaranteed by the constitution. Any direction may be ordered t the state of trial only by the trial Court and not during the investigation. He further submitted that collecting voice samples have been referred to larger bench of Supreme of Court of India and the same is pending.

8.The applications filed by the respondent before the trial Court are without any material and facts to make such a request. It is important that the prosecution must exhibit how the collection of voice samples advance the case of the prosecution. In the absence of factual details merely filing

the application seeking for voice sample test cannot be entertained. The reason for seeking the voice sample cannot be a matter of speculation. In the absence of such facts, the accused persons cannot be compelled to give their voice sample.

9. Further the learned counsel for the petitioner relied upon the Judgment of the apex Court in the case of "Kathi David Raju Versus State of Andhra Pradesh and another reported in 2019 SCC Online SC 966", which is not applicable to the facts and circumstances of this case.

10. The learned Special Public Prosecutor (CBI Cases) appearing for the respondent would submit that the certain case of the prosecution is the interception of telephonic conversation between the accused revealed the conspiracy hatched between them in respect of demand, acceptance of bribe. Based on which, the accused persons were intercepted huge cash, were seized from them and from their personal baggage and other incriminating materials were also seized. He further submitted that it is necessary to take sample voice of the accused persons to be tested scientifically for the prosecution to compare with the voice record during interception of calls. Further the recorded telephonic conversation is a vital piece of evidence and the prosecution would be deprived of a fair chance to prove their case against the accused persons.

11. Further, the Hon'ble Apex Court in the case of "Ritesh Sinha Versus State of Uttar Pradesh and another" had empowered the Magistrate to order a person to give a sample of his voice for the purpose of the investigation of a crime. Hence, he prayed for dismissal of all the petitions.

12. This Court considered the rival submissions and perused the materials available on record.

13. The Hon'ble Apex Court in the case of "Sudhir Chaudhary and others Versus State (NCT of Delhi) reported in (2016) 8 SCC 307", ensured the underlying process for drawing the voice samples is fair and reasonable.

14. This Court in the case of "P. Kishore Versus State reported in MANU/TN/3830/2017 decided on 16.11.2017" has held as follows:-

"Precisely, that is the reason why this Court is of the firm opinion that the person accused cannot refuse to give his voice sample for comparison on the ground that he is protected under constitution to keep silence. When his "voice" itself become subject matter for trial, "silence" cannot be a shield. More so when drawing voice sample is only a physical examination without exerting any external force. Therefore,

this Court holds that there is no merit in this petition. Hence the petition is liable to be dismissed."

15.The larger bench of the Hon'ble Apex Court in the case of "Ritesh Sinha Versus State of Uttar Pradesh and another" by Judgment dated 02.08.2019 had answered the point of reference as follows:-

"25. In the light of the above discussions, we unhesitatingly take the view that until explicit provisions are engrafted in the Code of Criminal Procedure by Parliament, a Judicial Magistrate must be conceded the power to order a person to give a sample of his voice for the purpose of investigation of a crime. Such power has to be conferred on a Magistrate by a process of judicial interpretation and in exercise of jurisdiction vested in this Court under Article 142 of the Constitution of India. We order accordingly and consequently dispose the appeals in terms of the above."

16.Thus, the apex Court has now empowered the Magistrate with the power to order a person to give a sample of his voice for the purpose of investigation of a crime. The respondent to ensure that the text, which the petitioners would be called upon to read out for the purpose of drawing their voice samples will not have sentences from the inculpatory text. Similarly, permitting the text to contain words drawn from the disputed conversation would meet the legitimate concern of the investigating authorities for making a fair comparison.

17.In view of the above, Criminal Original Petitions stand dismissed, by confirming the order of the trial Court, directing the petitioners to give their voice samples for Spectrograph Test.

-s/d-

Assistant Registrar (CS-IV)

True Copy

Sub-Assistant Registrar

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To

1.The Principal Special Judge for CBI Cases,
VIII Additional City Civil Court,
Chennai.

2.The Inspector of Police,
Central Bureau of Investigation,
Anti-Corruption Branch,
Chennai-600 006.

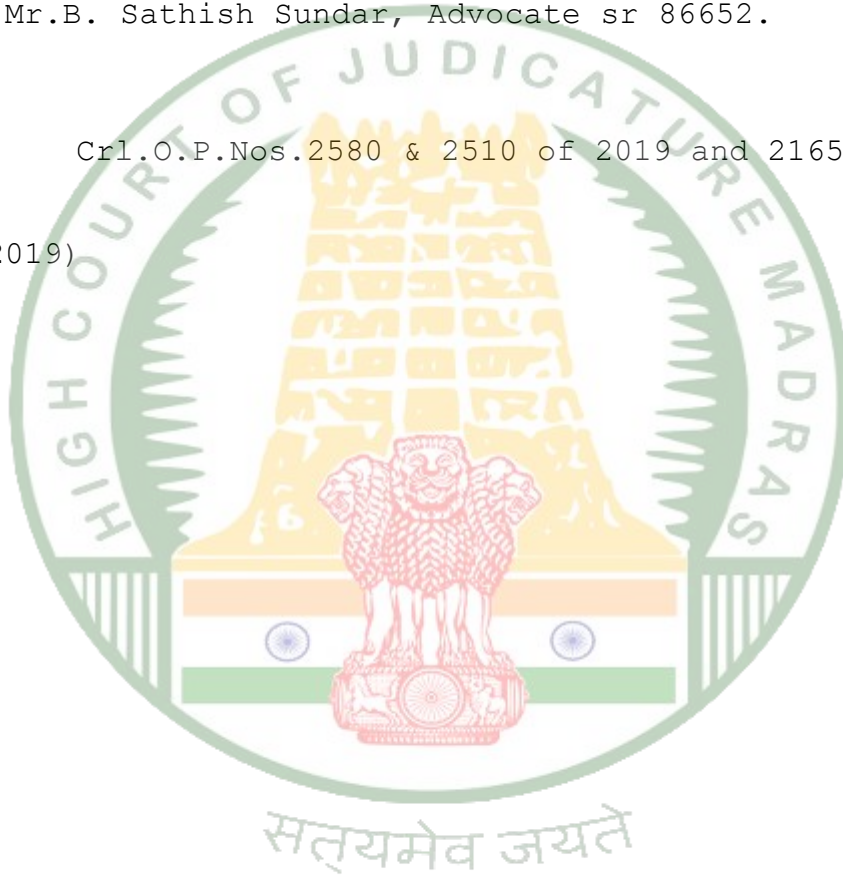
3.The Inspector of Police
SPE/CBI/ACB

4.The Public Prosecutor,
High Court Madras.

+2 Ccs to Mr.B. Sathish Sundar, Advocate sr 86652.

Crl.O.P.Nos.2580 & 2510 of 2019 and 21653 of 2018

SJ(CO)
SP(13/11/2019)



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