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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 23.09.2020
PRONOUNCED ON : 08.06.2021

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.O.P.No.13526 of 2020, Crl.O.P.No.13886/2020,
Crl.O.P.No.14593 of 2020 and Crl.M.P.Nos.5338, 5339 of 2020 and
4970/2020

- 1.M.Thangavel ... Petitioner
in Crl.O.P.No.13526 of 2020
- 2.K.Mothish Kumar ... Petitioner
in Crl.O.P.No.13886 of 2020
- 3.M/s.Kalainithi Construction Pvt Ltd.,
SP-54, New No.25, 1st Sector 3rd Street,
KK Nagar, Chennai-78.
Rep. by its Director V.S.Paranthaman.
- 4.V.S.Paranthaman ... Petitioners
in Crl.O.P.No.14593 of 2020

Versus

- 1.State Rep. by,
Inspector of Police,
CBI/ACB/Chennai.
RC MA 1 2016. A 33, 34 & 37. ... Respondent
in Crl.O.P.No.13526 of 2020
- 2.State represented by,
Inspector of Police,
Central Bureau of Investigation, ACB,
3rd Floor, Shastri Bhavan,
Chennai-600 006. ... Respondent
in Crl.O.P.No.13886 of 2020
- 3.State represented by Inspector of Police,
CBI, ACB, Chennai. ... Respondent
in Crl.O.P.No.14593 of 2020

PRAYER in Crl.O.P.No.13526 of 2020: Criminal Original Petition
is filed under Section 482 of the Code of Criminal Procedure,
(a) to call for the original records from the Lower Court (b) to
set aside the order passed by the learned Principal Special
Judge for CBI Cases (VIII Addl. City Civil Court), Chennai in
Crl.M.P.No.7652/2019, dated 31.7.2020.



PRAYER in Crl.O.P.No.13886 of 2020: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to set-aside the order passed in Crl.M.P.No.7652/2019 in C.C.No.37/2017 dated 31.07.2020 on the file of the Principal special Judge for CBI cases (VIII Addl. Court) Chennai, on the grounds that the telephonic intercepts by the respondents are not in accordance to procedure established by law by exercising the inherent jurisdiction U/S.482 of the Criminal Procedure Code Court.

PRAYER in Crl.O.P.No.14593 of 2020: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the records of the order passed in Crl.M.P.No.7652 of 2019 in C.C.No.37 of 2017 dated 31.07.2020 by the Principal Special Judge for CBI Cases, VIII Additional City Civil Court, Chennai and to set aside the same.

For Petitioner in
Crl.O.P.No.13526 of 2020 : Mr.K.Shanker

For Petitioner in
Crl.O.P.No.13886 of 2020 : Mr.K.Jayasudha

For Petitioners in
Crl.O.P.No.14593 of 2020 : Mr.G.Muthukumar

For Respondent
in all cases : Mr.K.Srinivasan,
Special Public Prosecutor

COMMON ORDER

All three Criminal Original Petitions filed to set aside the order, dated 31.07.2020, made in Crl.M.P.No.7652 of 2019 in C.C.No.37 of 2017, passed by the learned Principal Special Judge for CBI Cases, Chennai, directing the petitioners to appear on the date, time and place to be specified in writing by the Investigating Officer and give voice samples as required for the purpose of further investigation of the case.

2.Since all the cases are arising out of the same order, this Court decides to dispose the above petitions by way of common order. For the sake of convenience and clarity, the petitioners are referred to as accused, as per their ranks, in the charge sheet.

3.The gist of the case is that A1 who was working as Senior Supervisor of Employees Provident Fund Organization (EPFO), Government of India, Regional Office, Chennai conspired with his



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younger brother A2, the Managing Director of M/s.Efficient Management Consultants and some other private companies during the period 2014-2015 to cheat the EPFO by avoiding payments of contributions, other dues and penalties by way of dishonestly submitting bogus and fabricated provident fund returns in respect of the companies concerned. A1 entered into a criminal conspiracy with the companies concerned with the help of his brother/A2. Further, A1 for reducing EPF liability had created bogus and fabricated documents with the help of A2. In pursuant to it, A1 received illegal gratification for the said purpose through the consultancy of his brother/A2 and the amounts were received through the personal bank accounts of A1 and his wife/A3. A case was registered in the year 2016 and charge sheet came to be filed in the year 2017, which was taken on file in C.C.No.37 of 2017 by the trial Court. In this case, during trial, some of the accused have filed discharge petitions and the same were pending. The respondent Police filed a petition under Section 173(8) of Cr.P.C., for further investigation in Crl.M.P.No.2046 of 2018 and the same was allowed by order, dated 02.05.2018. Subsequently, another petition in Crl.M.P.No.7652 of 2019 was filed by the respondent Police to obtain voice samples of A1, A2, A4, A5, A7, A9 and A11. After detailed arguments on either side, the trial Court, by order, dated 31.07.2020 in Crl.M.P.No.7652 of 2019 in C.C.No.37 of 2017 permitted the respondent to take voice samples and directed the petitioners to appear before the Investigating Officer for giving their voice samples, against which the present Criminal Original Petitions have been filed.

4.The learned counsel for the petitioner/A1 in Crl.O.P.No.13526 of 2020 submitted that A1 was not arrested by the respondent at any point time during the course of the investigation in this case. On receipt of the summon, A1 appeared before the trial Court. The learned counsel further submitted that there is no provision either in the Code of Criminal Procedure, 1973 or in the Identification of the Prisoners Act, 1920, for recording the voice samples from the accused person or any other person. The trial Court failed to consider the difference between the arrested person and the person, who is in custody. It is an admitted fact that A1 was not arrested by the respondent at any point of time during the course of investigation. On receipt of summon, he appeared before the trial Court, surrendered, executed the bond and sureties. Further, as per Sections 311A and 53 of Cr.P.C., and Section 5 of the Identification of the Prisoners Act, 1920 "no order shall be made under this Section unless the person has sometime being arrested in connection with such investigation or proceedings." The Hon'ble Apex Court in the case of "Ritesh Sinha Versus State of Uttar Pradesh and Ors., reported in (2019) 8 SCC 1", empowered the Magistrate to order a person to give a



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sample of his voice for the purpose of investigation of a crime. In this case, on completion of investigation, charge sheet came to be filed in the year 2017 and thereafter, on the guise of further investigation, the above petition has been filed and what cannot be done directly, can be done indirectly.

5.The learned counsel for the petitioner/A1 further submitted that as per Section 5(2) of the Indian Telegraph Act, 1885, an agency can intercept and record any telephonic conversation, concerning "safety and security of nation". The above legal position is confirmed by the Hon'ble Apex Court in the case of "People's Union of Civil Liberties (PUCL) Versus Union of India (UOI) and Ors., reported in (1997) 1 SCC 301". In this case, the telephonic recordings produced by the respondent is for the reason that "Incitement to the commission of offence" which is not permitted in law. The trial Court followed the principles laid down in the case of "Muthukumar Versus Inspector of Police reported in CDJ 2018 MHC 7061" in which, it had held that "mere examination of the person and taking of blood sample in itself is not an incriminating circumstances and therefore, it cannot be said that by mere taking sample of blood a person is compelled to be a witness against himself for an accused person who was granted Anticipatory Bail during investigation", which is not proper. The learned counsel further submitted that in the charge sheet there is nothing to show that there was any recording of telephonic conversation of the accused by the respondent and also in the further investigation petition, which was filed on 05.04.2018, no such details revealed. Only when the petition for obtaining voice samples of the accused was filed on 13.08.2019, it was mentioned that there are recording of telephonic conversation during the period 2015-16 is available and only on 10.07.2020, the respondent produced the electronic records containing the alleged conversation of the accused, but the copy of the compact discs was not furnished to A1.

6.The learned counsel for the petitioner/A1 further submitted that in the orders issued by the Ministry of Home Affair (Government of India) directing to monitor the telephonic conversation, the dates are not mentioned, which creates apprehension that the authorization orders might have been issued in bulk and the respondent might have used it for its own convenience. Hence, the authorization orders have not come into existence as it is projected.

7.In order to substantiate his arguments, the learned counsel appearing for A1 relied upon the following citations:-

- "Niranjan Singh & Anr Versus Prabhakar Rajaram Kharote & Ors dated 10.03.1980", for the principle that the custody



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in the context of Sections 437, 438 and 439 of Cr.P.C.

- "Ritesh Sinha Versus the State of Uttar Pradesh and Anr., dated 07.12.2012 in Special Leave Petition (Crl.) No.7259 of 2010", wherein divergent views were expressed and it was later referred to a Larger Bench. Finally, the Large Bench of the Hon'ble Apex Court on 02.08.2019, had conferred and empowered the Magistrate to direct a person to give samples of his voice for the purpose of investigation on a crime.
- "Union of Civil Liberties Versus Union of India (UOI) dated 18.12.1996", wherein the Hon'ble Apex Court had given certain guidelines to be followed in interception and taping of the voices under the Indian Telegraph Act, 1885.

8.The learned counsel for the petitioner/A11 in Crl.O.P.No.13886 of 2020 submitted the trial Court on a wrong appreciation of the Hon'ble Apex Court citation in the case of the "People's Union for Civil Liberties Versus Union of India & another reported in AIR 1997 SCC 301", had allowed the voice samples to be taken holding that ordering voice samples of the accused is not violative of Article 21 of the Constitution of India and failed to consider the ratio laid down by the Hon'ble Apex Court. The trial Court failed to consider that the telephonic interception order has to be in accordance with Section 5(2) of the Indian Telegraph Act, 1885 and the Relevant Rules introduced by G.S.R 193(4), dated 01.03.2007. The Constitutional Bench of the Hon'ble Apex Court in the case of "K.S.Puttasamy Versus Union of India reported in (2017) 10 SCC 1", had clearly reiterated and laid down the guidelines and principles. The trial Court failed to consider the settled preposition of the Hon'ble Apex Court and also failed to consider that the respondent has not sought the mandatory prior approval of the Review Committee under Rules 419(A) of the Indian Telegraph Rules, 1951. Thus, the entire interception of recording has to be discarded.

9.The learned counsel for the petitioner/A11 further submitted that the respondent produced nine orders of the Ministry of Home Affairs (Government of India), in two orders the dates are not mentioned and in the other orders, the date has been filled up, leading to the inference that the orders have been issued in entirety without the dates and thereby facilitating the respondent to fill up the date as per their convenience. Hence, the procedure as contemplated under the provisions of the Indian Telegraph Act, 1885 were not followed which are mandatory. The mandatory violation of the Indian Telegraph Act, 1885 would make the recordings inadmissible and the same is to be rejected. In view of the same, the recordings of voice samples of A11 is not necessary.



10. In order to substantiate his arguments, the learned counsel for the petitioner/A11 relied upon the following citations:-

- The Judgement of the Bombay High Court in the case of "Vinit Kumar Versus Central Bureau of Investigation and Ors., reported in MANU/MH/2931/2019 in W.P.No.2367 of 2019", for the principle that the safeguard given under the Article 20(3) of the Constitution of India and the guidelines issued by the Hon'ble Apex Court under Section 5 (2) of the Indian Telegraph Act, 1885 are to be followed.
- "Ritesh Sinha Versus State of Uttar Pradesh and Ors., reported in (2019) 8 SCC 1".
- "People's Union for Civil Liberties Versus Union of India & another reported in AIR 1997 SCC 301", wherein it had held with regard to the case of recording conversation in the tape and its relevancy.
- In the case of "K.S. Puttasamy Versus Union of India reported in (2017) 10 SCC 1", the Hon'ble Apex Court while dealing with Aadhar Card scheme in detail have analysed the invasion of privacy must be justified on the basis of law which stipulates a procedure which is fair, just and reasonable etc.
- "R.M. Malkani Versus State of Maharashtra reported in AIR 1973 SC 157".
- "Pooran Mal Versus Director of Inspection, Income-Tax, New Delhi & Ors., AIR 1974 SC 348".

11. The learned counsel for the petitioners/A6 & 7 in CrI.O.P.No.14593 of 2020 submitted that in this case, the charge sheet was filed in the year 2017. During the year 2018, the respondent filed a petition seeking further investigation under Section 173(8) of Cr.P.C., for the reason that the specimen signature of A4 and A5 are to be obtained, since their signatures were returned by the Hyderabad Forensic Lab. Hence, for limited purpose of getting fresh signatures of A4 and A5, the petition for further investigation was allowed on 02.05.2018. In the final report as well as in the further investigation petition, the respondent has not disclosed any such fact of availability of voice recordings of the accused. The learned counsel further submitted that one year after filing of charge sheet, the further investigation petition was filed and the same was allowed on 02.05.2018. Thereafter, the respondent filed the petition for obtaining voice samples on 10.09.2020. The trial Court failed to consider the elaborate submissions and citations relied by the counsel and allowed the petition by order, dated 30.07.2020, directing the petitioners to give voice samples.



12.The learned counsel for the petitioners/A6 & A7 further submitted that the trial Court in its order had given its own interpretation on the judgments of the Hon'ble Apex Court and on the Law Commission Report which is not permissible. The trial Court failed to consider that in this case, the telephonic conversation has been intercepted by the respondent as per Section 5(2) of the Indian Telegraph Act, 1885. From the orders of the Ministry of Home Affairs (Government of India), it is seen that the orders have not been properly authenticated and the interception itself is clouded with mystery. On the other hand, the trial Court had glossed over the violation of mandatory provision and had gone to the extent of ratifying the mandatory violations of the respondent.

13.This Court as well as the Hon'ble Apex Court have clearly held that if proper procedure has been prescribed, the same cannot be circumvented in any manner as per Section 5(2) of the Indian Telegraph Act, 1885. The Hon'ble Apex Court in the case of "K.S.Puttasamy Versus Union of India reported in (2017) 10 SCC 1", had held how the telegraphic recordings have to be made and what are the procedures to be followed. Further, the Hon'ble Apex Court issued guidelines on formation of the Review Committee to safeguard the personal information of the individual. Brushing aside these established principles, the trial Court on its own interpretation passed the order which is not sustainable. It is proved by the documents produced by the respondent that the interception orders were issued by the Ministry of Home Affairs (Government of India) in bulk, in which the dates are filled up later by the respondent. Hence, the veracity and genuineness of the orders have become questionable.

14.The trial Court had misconstrued the fact that in the case of "Ritesh Sinha Versus State of Uttar Pradesh and Ors., reported in (2019) 8 SCC 1", the Hon'ble Apex Court had given permission for obtaining voice samples for the purpose of investigation on a crime. In the above case, the investigation has been completed as early as in the year 2017. The trial Court failed to look into the fact that the respondent filed a petition for further investigation and not for reinvestigation. The Hon'ble Apex Court in the case "People's Union for Civil Liberties Versus Union of India & another reported in AIR 1997 SCC 301" had held that the telephone taping are permitted in case of public emergency or in the interest of public safety.

15.In order to substantiate his arguments, the learned counsel for the petitioners/A6 & A7 relied upon the following citations:-

- "Ritesh Sinha Versus State of Uttar Pradesh and Ors., reported in (2019) 8 SCC 1."



- "K.S.Puttasamy Versus Union of India reported in (2017) 10 SCC 1."

16.Mr.K.Srinivasan, learned Special Public Public Prosecutor for CBI Cases appearing on behalf of the respondents submitted that it is not in dispute that the investigation in this case was completed in the year 2017 and charge sheet filed. The accused have filed discharge petitions and the same are pending, during such period the respondent filed a petition for further investigation under Section 173(8) Cr.P.C., in Crl.M.P.No.2046 of 2018 and the same was allowed on 02.05.2018. During further investigation, it was found that the telephonic conversation which was intercepted and recorded were failed to be produced before the trial Court. Hence, the voice of the accused to be recorded and thereafter, the recorded telephonic conversation and the voice samples to be forwarded to the Forensic Lab for study for the purpose of investigation. The investigation is nothing but collection of evidence.

17.He further submitted that the petition in Crl.M.P.No.7652 of 2019 came to be filed on 13.08.2019 seeking voice samples of A1, A2, A4, A5, A7, A9 and A11. The petitioners herein filed their counter and made elaborate submissions. The accused questioned and disputed the recordings of the conversation. The respondent produced the orders from the competent authority for call interpretation of the mobile numbers 9382259316, 9444259316, 9282339049, 9443183741, 9445424072 and 9840662346 and also produced nine orders in proof of the same. Further, the respondent filed the electronic recordings (CD) containing the telephonic interception along with the certificate before the trial Court. Thus, the respondent had complied with the provision, rules and guidelines issued under the Indian Telegraphic Act, 1885.

18.The Hon'ble Apex Court in the case of "Ritesh Sinha Versus State of Uttar Pradesh and Ors., reported in (2019) 8 SCC 1", with regard to obtaining of voice samples had held that the Magistrate is empowered to direct the person concerned to give voice samples. Following, the Hon'ble Apex Court Judgment, the trial Court had directed the petitioner to give voice samples which is legally permissible. The petitioners are making mountain out of molehill suspecting the nine orders issued by the Ministry of Home (Government of India) that in two orders, the dates are not mentioned and in other orders the dates are clearly mentioned. Further, in the telephone number the period of interception are clearly given. The telegraph interception, authorization and permission to intercept the telegraphic conversation are during the relevant period which have been properly recorded and produced before the trial Court. After



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getting the voice samples of the petitioners, recordings as well as the voice samples would be sent to the forensic lab for comparative study and thereafter, the same to be furnished to accused along with the forensic report, telegraphic conversation, their voice in print both in physical and in compact disc, which are normally furnished in such type of cases. After receipt of forensic report, the same shall be done.

19.It is not new that the interception of phone calls are made after getting proper and appropriate orders from the concerned. In many number of cases, the same have been used as material evidence in prosecuting the concerned person before the Court of law. In this case, the telephonic conversation of the accused persons have been recorded, since the accused had conspired together in a case of corruption, which is a national menace and has to be put down with iron hand. The petitioners are taking technical plea forgetting that this Court as well as the Hon'ble Apex Court in number of cases had clearly held "procedure is the hand maid, not the mistress of justice and cannot be permitted to thwart the fact-finding course in litigation.

20.Further, the points raised by the petitioners are the matter of fact which ought to be decided only during the trial and not in the above petitions.

21.The learned Special Public Prosecutor in support of his contention relied upon the citation of the Hon'ble Apex Court in the case of "Ritesh Sinha Versus State of Uttar Pradesh and Ors., reported in (2019) 8 SCC 1" the Hon'ble Apex Court had empowered the Magistrate to order a person to give a sample of his voice for the purpose of investigation of a crime. In the case of "State of Maharashtra Versus Vikram Anantrai Doshi reported (2014) 15 SCC 29" had held that "the offences are certainly more serious; they are not private in nature. The charge of conspiracy is to commit offences under the Prevention of Corroborated Act".

22.Following the same, the trial Court had passed the order in proper which need not be interfered with. Hence, the above petitions are liable to be dismissed.

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

24.The primary contention of the learned counsel for the petitioners is that the case has been registered in the year 2016 and on completion of investigation, charge sheet came to be filed in the year 2017. In the year 2018, petition for further



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investigation under Section 173(8) of Cr.P.C., has been filed for the purpose of obtaining the signatures of A4 and A5, since the Forensic Lab, Hyderabad needed the same. For this limited purpose only, the further investigation was ordered by the trial Court. Using the same, in the year 2019, the respondent referring the case of "Ritesh Sinha Versus State of Uttar Pradesh and Ors., reported in (2019) 8 SCC 1", had filed the petition for recording the voice samples of the petitioners.

25.The other ground on which the objection of the petitioners is that the order of the Ministry of Home Affairs (Government of India) granted permission to intercept the phone calls of the petitioners did not come into existence on the days mentioned. There are nine orders. All the orders are issued in one go, that is the reason the dates are filled up in hand and in some of the orders, the dates are not mentioned. On close scrutiny of the nine orders, it is found that the first order for the mobile number 9382259316 was issued on 04.09.2015 for a period of two months and it expired on 03.11.2015. The second order for the same mobile number was issued on 16.10.2015 with effect from 03.11.2015 and the third order for the same mobile number was issued on 01.01.2016 with effect from 02.01.2016. Likewise, for mobile phone 9444259316, the order was issued with effect from 03.11.2015, which is undated. For the mobile number 9282339049, the first order issued with effect from 03.11.2015, which is undated and the second order for extension for the same mobile number was issued on 01.01.2016 with effect from 02.01.2016. For mobile number 9443183741, the order was issued on 01.01.2016 with effect from 02.01.2016. For mobile number 9445424072, the order was issued on 14.01.2016 with effect from 16.01.2016. For mobile number 9840662346, the order was issued on 14.01.2016 with effect from 16.01.2016. In two orders, the date of issuance of order is not found. In other orders, the date on which the orders will come into effect and its period are clearly mentioned. On scrutiny of the same, this Court finds prima facie that the orders are proper. Further, as per Section 5(2) of the Indian Telegraph Act, the Investigating Agencies are authorized and empowered to intercept the Telephonic conversation in cases involving "for preventing incitement to commission of an offence."

26.The Hon'ble Apex Court in the case of "People's Union of Civil Liberties (PUCL) Versus Union of India (UOI) and Ors., reported in (1997) 1 SCC 301" clearly laid down the guidelines which is confirmed in the case of "K.S.Pattasamy Versus Union of India reported in (2017) 10 SCC 1" which are as follows:-

"35.....

5. The order under Section 5(2) of the Act shall, unless renewed, cease to have effect at the end of the period of two months from the date of issue. The



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authority which issued the order may, at. any time before the end of two month period renew the order if it considers that it is necessary to continue the order in terms of Section 5(2) of the Act. The total period for the operation of the order shall not exceed six months.

6. The authority which issued the order shall maintain the following records:

- (a) the intercepted communications,
- (b) the extent to which the material is disclosed,
- (c) the number of persons and their identity to whom any of the material is disclosed.
- (d) the extent to which the material is copied and
- (e) the number of copies made of any of the material.

7. The use of the intercepted material shall be limited to the minimum that is necessary in terms of Section 5(2) of the Act.

8. Each copy made of any of the intercepted material shall be destroyed as soon as its retention is no longer necessary in terms of Section 5(2) of the Act.

9. There shall be a Review Committee consisting of Cabinet Secretary, the Law Secretary and the Secretary, Telecommunication at the level of the Central Government. The Review Committee at the State level shall consist of Chief Secretary, Law Secretary and another member, other than the Home Secretary, appointed by the State Government.

(a) The Committee shall on its own, within two months of the passing of the order by the authority concerned, investigate whether there is or has been a relevant order under Section 5(2) of the Act. Where there is or has been an order whether there has been any contravention of the provisions of Section 5(2) of the Act.

(b) If on an investigation the Committee concludes that there has been a contravention of the provisions of Section 5(2) of the Act, it shall set aside the order under scrutiny of the Committee. It shall further direct the destruction of the copies of the intercepted material.



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(c) If on investigation, the Committee comes to the conclusion that there has been no contravention of the provisions of Section 5(2) of the Act, it shall record the finding to that effect.

36. The writ petition is disposed of. No costs."

27. The above judgment has been confirmed by the Hon'ble Apex Court in the case of "K.S. Puttasamy Versus Union of India reported in (2017) 10 SCC 1". Further, the apprehension of the petitioners is that the guidelines issued in the Government of India, G.S.R 193(4), dated 01.03.2007 has not been followed, no Review Committee was constituted and the interception messages and orders were not placed before the Review Committee, which are to be agitated and decided during the trial.

28. The Hon'ble Apex Court in the case of "Ritesh Sinha Versus State of Uttar Pradesh and Ors., reported in (2019) 8 SCC 1 by judgment dated 02.08.2019" had clearly held as follows:-

"9.

(11).....It is well-established that cl. (3) of Art. 20 is directed against self-incrimination by an accused person. Self-Incrimination must mean conveying information based upon the personal knowledge of the person giving the information and cannot include merely the mechanical process of producing documents in court which may throw a light on any of the points in controversy, but which do not contain any statement of the accused based on his personal knowledge.....

(12) In order that a testimony by an accused person may be said to have been self-incriminatory, the compulsion of which comes within the prohibition of the constitutional provision, it must be of such a character that by itself it should have the tendency of incriminating the accused, if not also of actually doing so. In other words, it should be a statement which makes the case against the accused person at least probable, considered by itself. A specimen handwriting or signature or finger impressions by themselves are no testimony at all, being wholly innocuous, because they are unchangeable; except, in rare cases where the ridges of the fingers or the style of writing have been tampered with. They are only materials for comparison in order to lend assurance to the Court that its inference based on other pieces of evidence is reliable. They are neither oral nor documentary evidence but belong to the third category of material evidence which is outside the limit of 'testimony'."



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29.Thus, giving of voice samples is only for comparison with the already available intercepted voice recordings obtained after following the due process to lend assurance to the Court, which is outside the limit of the testimony. Further, it had held as follows:-

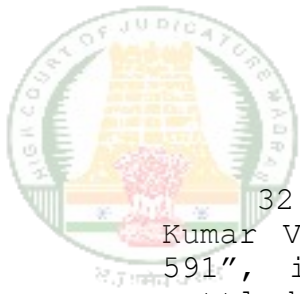
“16.Procedure is the handmaid, not the mistress, of justice and cannot be permitted to thwart the fact-finding course in litigation.....”

20.So far as the second basis for the view taken is concerned, we have already expressed an opinion that what may appear to be legislative inaction to fill in the gaps in the Statute could be on account of justified legislative concern and exercise of care and caution. However, when a yawning gap in the Statute, in the considered view of the Court, calls for temporary patchwork of filling up to make the Statute effective and workable and to sub-serve societal interests a process of judicial interpretation would become inevitable.

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.

30.In view of the above, this Court finds that there is no illegality or infirmity in the order of the trial Court dated 31.07.2020, made in CrI.M.P.No.7652 of 2019 in C.C.No.37 of 2017, directing the petitioners to give voice samples for the purpose of further investigation of the case and the same is hereby confirmed.

31.The finding of the trial Court in its order in paragraph Nos.23 and 24 is unwarranted. Section 166A has not been incorporated, came into force and not included in the Indian Evidence Act, 1872, it was only a recommendation by the Law Commission which is not in effect. When such is the case, it is not proper to hold that the principles have been followed.



32.Likewise the trial Court referred the case of "Umesh Kumar Versus State of Andhra Pradesh and another (2013) 10 SCC 591", in paragraph No.25, wherein it is held that "it is a settled legal position that even if a document is procured by improper or illegal means, there is no bar to its admissibility if it is relevant and its genuineness is proved is completely on a different context which cannot be considered on the facts and circumstances of this case". In this case, it is the interception of the telephone messages, for which, the specific act i.e., the Indian Telegraph Act is in force and guidelines were issued to that effect. When the law requires collection of materials more specifically interception of telephonic conversation of messages, the specific procedures prescribed to be followed and the same cannot be circumvented. Finding of the trial Court with regard to the same would amount to making the Indian Telegraph Act a nugatory. The tape recordings and photographs are different from the interception of phone calls, which the trial Court had lost sight of. In view of the same and on the facts of the above case, Umesh Kumar Versus State of Andhra Pradesh and another (2013) 10 SCC 591 will not be applicable to this case.

33.The submission of the learned Special Public Prosecutor is that the objections of the petitioners are factual in nature. The specific plea of the petitioners is that the orders have been issued in bulk and the same was not placed before the Review Committee as per the orders of the Hon'ble Apex Court and the guidelines of the Government of India in G.S.R 193(4), dated 01.03.2007. These facts have to be decided only during the trial and the right of the petitioner to question the same is available. This objection will not affect the respondent to summon the petitioners for the purpose of giving voice samples which are to be forwarded to the Forensic Lab to compare with the recorded telephonic conversation available in aid of its investigation to collect evidence.

34.In the result, all the three Criminal Original Petitions stand dismissed. Consequently, the connected Criminal Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS V)

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Sub Assistant Registrar



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- 1.The Principal Special Judge for CBI Cases,
VIII Additional City Civil Court,
Chennai.
- 2.The Inspector of Police,
Central Bureau of Investigation, ACB,
3rd Floor, Shastri Bhavan,
Chennai-600 006.
- 3.The Public Prosecutor,
High Court, Madras.

+2cc to M/s.K.Jayasudha, Advocate Sr.27625

Cr1.O.P.Nos.13526, 13886 & 14593 of 2020

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srg 27/07/2021