IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
WRIT PETITION NO.3354 OF 2019

Preetha Babukuttan
Aged – 49 years, Occupation – Nil,
R/o B-106, Safal Residency, Sector 25,
Near Sterling College, Nerul,
Navi Mumbai – 400 706 … PETITIONER

versus

1. The Central Bureau of Investigation,
ACB, Mumbai, Having Office at
8th Floor, Plot No.C-35,
G-Block, Bandra Kurla Complex,
Bandra-East, Mumbai – 400 051.

2. The State of Maharashtra … RESPONDENTS

Ms. Anjali Navle, for Petitioner.
Mr. Siddhant Rai i/by Mr. Hiten Venegaonkar, for CBI/ACB.
Mr. A.R.Patil, APP, for State.

CORAM : N.J.JAMADAR, J.

RESERVED ON : 25th APRIL, 2022
PRONOUNCED ON : 6th JUNE, 2022

JUDGMENT :

1. Rule.

2. Rule made returnable forthwith. With the consent of the learned Counsel for the parties, heard finally at the stage of admission.

3. The legality, propriety and correctness of an order dated

3rd June, 2019 passed by the Special Judge, CBI, Greater Mumbai, on an Application (Exhibit 95) in CBI Special Case No.65 of 2015, rejecting the Application preferred by the Petitioner-accused, seeking direction to the prosecution (CBI) to supply auditory, phonetic and spectrography report, before the expert is examined as prosecution witness, is assailed in this Petition.

4. Shorn of superfluities, the background facts leading to this Petition can be stated as under :

a) The Petitioner is facing prosecution for the offences punishable under Section 7, 13(2) and 13(1)(d) of Prevention of Corruption Act, 1988 for allegedly accepting a sum of Rs.75,000/- as an illegal gratification, whilst the Petitioner was discharging his duties as an Income Tax Officer.

b) The prosecution filed an Application under Section 293 of the Code of Criminal Procedure, 1973 (‘the Code’) to mark in evidence the voice examination report submitted by an expert. The learned Special Judge by an order dated 29th January, 2019 exhibited the report (Exhibit 81), overruling the objection of the Petitioner to call the voice expert as a witness opining, inter alia, that the said witness could be summoned by invoking the power under Section 311 of the Code. Being aggrieved, the Petitioner had preferred Criminal Writ Petition No.858 of 2019. By an order dated 8th March, 2019, this Court allowed the Petition and directed that the voice expert be called and examined as a prosecution witness.

c) On 29th May, 2019, the Petitioner preferred an Application (Exhibit 95) asserting, inter alia, that the voice expert report (Exhibit 81) tendered by the prosecution, is not supported by auditory, phonetic and spectrographic worksheet, on the basis of which the said report appeared to have been prepared by the expert – Mr. Deepak Kumar Tanwar, who had been summoned as a prosecution witness to appear before the Court on 11th June, 2019. Those reports were necessary for an effective cross-examination. Therefore, the prosecution be directed to supply the auditory, phonetic report with spectrographic worksheet, well in advance. The prosecution resisted the Application.

d) By the impugned Order dated 3rd June, 2019, the learned Special Judge rejected the Application holding, inter alia, that in view of the provisions contained in Section 292 of the Code, there was an embargo against the summoning of an expert to produce any record on which the report is based and to compel the expert to disclose the nature and particulars of any test applied by him in the course of examination of the matter therein.

e) Being further aggrieved, the Petitioner has again invoked the writ jurisdiction of this Court.

5. I have heard Ms. Navle, learned Advocate for the Petitioner and Mr. Siddhant Rai, Counsel for the CBI. With the assistance of the learned Counsel, I have perused the material on record.

5A. Ms. Navle submitted that the learned Special Judge committed a grave error in recording a finding that the voice expert report fell within the provisions of Section 292 of the Code. Secondly, the learned Special Judge, according to Ms. Navle, completely misconstrued the scope of the provisions contained in Section 292 (2) and (3) of the Code. It was strenuously submitted that a bare report without supporting auditory, phonetic report and spectrographic worksheet, was of no assistance in determining the fact in issue. Those reports were necessary not only for an effective cross-examination but also to equip the Court in forming an opinion about the reliability and credibility of the expert opinion. In such circumstances, the learned Special Judge (CBI), could not have rejected the Application, submitted Ms. Navle.

6. Placing reliance on a three Judge Bench judgment of the Supreme Court in the case of *Ritesh Sinha V/s. State of Uttar*

Pradesh & Anr.[1] wherein the Supreme Court considered the question as to whether, in the absence of any provision in the Code, a Magistrate can authorize the investigating agency to record the voice sample of the person accused of an offence, Ms. Navle submitted that in the absence of the supporting documents, the guilt of an accused cannot be determined on an untested voice examination report.

7. At this stage itself, it would be necessary to note that in the case of *Ritesh Sinha (supra)*, the Supreme Court did not advert to the aspect of the proof of voice expert's report and/or its utility. The Supreme Court answered the aforesaid question by postulating that "until explicit provisions are engrafted in the Code 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". Evidently, the Supreme Court examined the question of jurisdictional competence of a Magistrate to direct an accused to furnish the voice sample.

8. In the case at hand, the controversy revolves around the desirability and justifiability of directing the prosecution to place on record the documents/reports which are generated by the voice

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expert to form and record the opinion. Relevant part of Section 292 of the Code reads thus :

> "292. Evidence of officers of the Mint. - (1) Any document purporting to be a report under the hand of any such gazetted officer of the Mint [officer of any Mint or of any Note Printing Press or of any Security Printing Press (including the officer of the Controller of Stamps and Stationery) or of any Forensic Department or Division of Forensic Science Laboratory or any Government Examiner of Questioned Documents or any State Examiner of Questioned Documents, as the case may be,] as the Central Government may, by notification, specify in this behalf, upon any matter or thing duly submitted to him for examination and report in the course of any proceeding under this Code, may be used as evidence in any inquiry, trial or other proceeding under this Code, although such officer is not called as a witness.
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> (2) The Court may, if it thinks fit, summon and examine any such Officer as to the subject matter of this report :
>
> Provided that no such officer shall be summoned to produce any records on which the report is based.
>
> (3) Without prejudice to the provisions of Sections 123 and 124 of the Indian Evidence Act, 1872 (1 of 1872) no such officer shall, [except with the permission of the General Manager or any officer in charge of any Mint or of any Note Printing Press or of any Security Printing Press or of any Forensic Department or any officer in charge of the Forensic Science Science Laboratory or of the Government Examiner of Questioned Documents Organization or of the State Examiner of Questioned Documents Organization, as the case may be, be permitted -
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> (a) to give any evidence deprived from any

unpublished official records on which the report is based; or

(b) to disclose the nature or particulars of any test applied by him in the course of the examination of the matter or thing.”

9. On a plain reading of sub-section (1) of Section 292 of the Code, it becomes abundantly clear that it provides for reading in evidence certain documents purported to be reports prepared by specified experts. Its avowed purpose seems to be to avoid needless examination of experts, unless the Court finds it expedient for the ends of justice. Undoubtedly, it applies to the reports submitted by specified experts.

10. The first submission on behalf of the Petitioner that Section 292(1) of the Code would not cover the case of a voice expert, does not appear to be well founded. Apart from the named officers of the Mint, Note or Security Printing Press, sub-Section (1) covers any report prepared by the officer of any forensic department or division of forensic laboratory or any government Examiner of Questioned Documents or any State Examiner of Questioned Documents.

11. The endeavour on the part of the Petitioner to demonstrate that a voice expert would not fall within the ambit of

the expression “of an officer of any forensic department or division of forensic science laboratory” cannot be readily acceded to.

12. Even otherwise, the controversy at hand, is required to be appreciated in the context of the stage of the proceedings and the prayer of the Petitioner in the instant Application (Exhibit 95). Indisputably, the voice expert Mr. Deepak Kumar Tanwar (P.W.13) was examined in chief on 5th July, 2019. The expert deposed to the tests which he had performed to arrive at the opinion incorporated in the report (Exhibit 81). The following paragraphs from the examination-in-chief appear to be contextually relevant :

> “8. Some common clue sentences/words were selected from specimen voice of Mrs. Preetha Babu Kuttan for voice examination. All these sentences/words are mentioned in my report.
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> 9. The auditory examination of questioned voices marked Exh.A(P) and Exh.G(P) and the specimen voice of Mrs. Preetha Babu Kuttan Marked Exh.X(P) revealed that they are similar in respect of their linguistic and phonetic features. The subsequent voice spectrography examination of common clue sentences/words selected from questioned and specimen voice of Mrs. Preetha Babu Kuttan revealed that they are similar in respect of their formant frequencies distribution, intonation pattern, number of formants and other general visual features in their voice gram.
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> 10. On the basis of both examination, I concluded that questioned voices marked Exh.A(P) and Exh.G(P) are probable voice of person Mrs. Preetha Babu Kuttan whose specimen

voice is marked Exh.X(P).”

13. In view of the aforesaid deposition, in my considered view, the proper course for the Petitioner-accused is to cross-examine the expert in the light of the tests which the expert claimed to have performed in arriving at the conclusion. Whether auditory and phonetic report and spectrographic work-sheet were prepared and whether the report (Exhibit 81) is based on those reports, are essentially the questions which the expert can be called upon to answer. If the expert answers the questions in the affirmative, further question as to whether the expert is willing to place those reports on the record of the Court, would follow. If the expert declines or expresses his inability to place on record those reports, then the weight to be attached to the testimony of the expert and inferences to be drawn for non-production of those reports, would be the matters within the province of the trial court.

14. In the case at hand, the Petitioner sought directions to CBI to produce those report even before the expert was put in the witness box. The Respondent-CBI, it appears, was in the custody of the report (Exhibit 81) submitted by the voice expert and Senior Scientific Officer, Grade I Cum Asstt. Chemical Examiner to the

Government of India, CFSL, New Delhi. From the perusal of the report, it does not appear that the auditory and phonetic report and spectrographic worksheet were annexed to the said report (Exhibit 81). In this view of the matter, the prayer to direct the CBI to place on record those reports which expert had presumably generated before recording the final opinion (Exhibit 81), appeared to be misdirected. As indicated above, the proper course for the Petitioner-accused would be to confront the expert with the questions on the aforesaid issues of the auditory and phonetic report and spectrographic worksheet.

15. In view of the deposition of the expert Mr. Deepak Kumar Tanwar (P.W.13), extracted above, the said expert can legitimately be confronted with the preparation of the aforesaid report and reliance thereon, if any, in forming the opinion as reflected in the final report (Exhibit 81).

16. From this standpoint, the claim of the Petitioner-accused that he be provided with the copies of the supporting documents/reports even before the expert was put into the witness box, does not appear sustainable. I am, therefore, not persuaded to accede to the submission on behalf of the Petitioner that those reports ought to have been furnished in advance. The Petition

therefore, deserves to be dismissed, subject to the aforesaid clarification. Hence, the following order :

: ORDER :

(i) The Writ Petition stands dismissed.

(ii) The Petitioner-accused is, however, at liberty to confront the expert Mr. Deepak Kumar Tanwar (P.W.13) during the course of cross-examiantion with regard to the preparation of auditory and phonetic reports and spectrographic worksheet and reliance upon those reports, if any, in preparing the final report (Exhibit 81). It is further clarified that in the event of non-existence, refusal or inability to place on record the auditory and phonetic reports and spectrographic worksheet, the trial court may draw such inferences as are permissible in law.

(iii) Rule is accordingly discharged.

(N.J.JAMADAR, J.)

At this stage, the learned Counsel for the Petitioner seeks stay to this order.

In the backdrop of the nature of the controversy and the fact that the Petitioner will have an effective opportunity of cross-examining the the expert witness, the prayer for stay stands rejected.

(N.J.JAMADAR, J.)