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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ CRL.M.C. 2242/2019, CRL.M.A. 8959/2019

OM PRAKASH

..... Petitioner

Through: Mr.Dinesh Garg, Advocate

versus

STATE

..... Respondent

Through: Mr.Raghvinder Verma, APP for the
State with Insp.Manjusha,
PS R.K.Puram.

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+ CRL.M.C. 5010/2019 & CRL.M.A. 37336/2019

SMT. PINKY

..... Petitioner

Through: Mr.Shantanu Bhardwaj, advocate

versus

STATE

..... Respondent

Through: Mr.Raghvinder Verma, APP for the
State with Insp.Manjusha,
PS R.K.Puram.

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Date of Decision: 14.12.2022

CORAM:

HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

J U D G M E N T

DINESH KUMAR SHARMA, J. (Oral)

1. Present petitions have been filed challenging the order dated 18.03.2019 by the learned trial court whereby the learned trial court *inter alia* directed that the CD Ex.PW-12/Article-1 and the Pen Drive

Kingston 8GB Ex.PW8/Article-1 be sent to the FSL Rohini (1) for comparison of the face of the complainant as well as for the face recognition of the accused (2) to compare the voice of the complainant with the questioned voice in CD Ex.PW-12/Article-1 as well as in Pen Drive Ex.PW-8/Article-1 (3) to compare the voice of the accused with the question voice in CD Ex.PW-12/Article-1 as well as in Pen Drive Ex.PW-8/Article-1.

2. Learned trial court further directed that the accused shall not be made to read any inculpatory statement or transcript of the conversation in question but shall be made to read out words and sentences which are not inculpatory and are not the exact reproduction of the transcript.
3. Learned counsel for the petitioner submits as far as these directions are concerned, he does not wish to challenge. Learned counsel submits that his grievance is that learned trial court directed SHO, PS R.K.Puram to appoint an officer, not below the rank of Inspector for compliance of the above order and to take steps to ensure the presence of the accused as well as complainant Ms.Pinki before the Director, FSL, Rohini for recording of their sample voice as well as for taking of their photographs for face recognition/comparison.
4. Learned counsel for the petitioner submits that the petitioner cannot be taken forcibly by a police official to the FSL for giving the sample voice as well as for giving his photographs for face recognition/comparison. Learned counsel submits that in case the petitioner does not comply with the directions of the court, an adverse inference, at the best, may be drawn.

5. Learned APP for the State has submitted that learned trial court has passed the reasoned order and there is no reason to interfere in the same.
6. In **Ashok Kumar vs. Raj Gupta & Ors.**, Civil Appeal No.6153/2021 vide order dated 01.10.2021 the Supreme Court has inter alia held as under:

“15. Having answered these questions, additional issue to be resolved is whether refusal to undergo DNA Testing amounts to 'other evidence' or in other words, can an adverse inference be drawn in such situation.

In Sharda vs. Dharmपाल a three judges bench in the opinion written by Justice S.B. Sinha rightly observed in paragraph 79 that "if despite an order passed by the court, a person refuses to submit himself to such medical examination, a strong case for drawing an adverse inference" can be made out against the person within the ambit of Section 114 of the Evidence Act. The plaintiff here has adduced his documentary evidence and is disinclined to produce further evidence. He is conscious of the adverse consequences of his refusal but is standing firm in refusing to undergo the DNA Test. His suit eventually will be decided on the nature and quality of the evidence adduced. The issue of drawing adverse inference may also arise based on the refusal. The Court is to weigh both side's evidence with all attendant circumstances and then reach a verdict in the Suit and this is not the kind of case Where a DNA test of the plaintiff is without exception.”

7. I consider that the petitioner cannot be compelled or be taken forcibly to the Director, FSL for giving voice sample or for giving his photographs. It goes without saying that if petitioner fails to give his voice sample or his photograph for comparison or the order dated 18.03.2019, certainly an adverse inference can be drawn against him.

The petitioner may choose not to comply with the order subject to having the risk of suffering an adverse inference.

8. The learned trial court may accordingly appreciate the evidence with all attendant circumstances in accordance with the law at the time of final adjudication of the matter in dispute.
9. The impugned order is modified to the extent that the police officer shall not forcibly take the petitioners to the FSL. However, the petitioners may on their own go to the Director, FSL in compliance of the order dated 18.03.2019 on or before 30.12.2022.
10. With the above observations both the petitions along with the pending applications stand disposed of.

DINESH KUMAR SHARMA, J

DECEMBER 14, 2022
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