

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRM-M No.56762 of 2023
Date of decision: 29th November, 2023

Raka Ghirra

... Petitioner

Versus

Central Bureau of Investigation & another

... Respondents

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present: Mr. Parvez Chaudhary and Ms. Hargun Sandhu,
Advocates for the petitioner.

Ms. Shubhra Singh, Advocate for the respondents/CBI.

MANJARI NEHRU KAUL, J.

1. The petitioner is seeking quashing of order dated 03.11.2023 (Annexure P-12) passed by the Court of learned Special Judge, CBI in case No.PC/86/2013 arising out of FIR No.RCCHG2011A0016 dated 24.07.2011 under Sections 7, 13(1)(d), 13(2) of the Prevention of Corruption Act, 1988 and Section 120-B IPC registered at Police Station CBI, ACB, Chandigarh.

2. During the course of Court proceedings, a request was received for hearing the case through Video Conferencing (VC), however, when the case was taken up, none appeared through the VC on behalf of the petitioner. Thereafter, when the case was again called, Mr. Parvez Chaudhary, Advocate put in appearance and prayed for adjournment as also for continuation of the interim order dated

14.11.2023. However, this Court declined the said prayer for extension of the interim order as it had been categorically observed on the previous date of hearing that the interim order shall operate only till today. Furthermore, the case had been adjourned for today for final arguments.

3. Learned counsel for the petitioner reiterated the contentions made on the last date of hearing. It has been inter alia contended that firstly the stance of the Court in the impugned order, on the face of it, is self-contradictory as on the one hand, it has acknowledged the previous order passed by the predecessor Court, dismissing similar application filed by the petitioner, and in the same breath, observed therein that an opportunity to raise all the pleas and grounds taken in the application would be available to her during the final arguments before the trial Court. Learned counsel appearing for the petitioner, has thus, vehemently asserted that this duality in the stance of the Court indicated that the Court had already made up its mind, albeit not explicitly stated in the impugned order, nonetheless making it seemingly inevitable. It has been further asserted by the learned counsel that the petitioner had been coerced into giving her voice samples while she was in police custody which was now being used against her, which could not be done, being inadmissible in evidence. While placing reliance upon '**Ritesh Sinha vs. State of Uttar Pradesh & another**' 2013(1) RCR (Criminal) 629, it has further been argued that the Hon'ble Supreme Court has highlighted that in the absence of any statutory provisions, only a Judicial Magistrate has the power to mandate a person to give his voice samples, however, in

the instant case, no such permission had been sought for by the investigating agency, much less granted by any Court of law. Additionally, learned counsel for the petitioner has argued that the order of dismissal of her application by the Court below on account of a purported five year delay was on the face of it erroneous; the counsel has submitted that it is a matter of record that during this period, the petitioner had been diligently pursuing her legal remedies and had even earlier approached this Court. A prayer has, therefore, been made for allowing the instant petition and issuing suitable directions to the learned CBI Court to exclude the entire evidence adduced by the respondent/CBI pertaining to the voice recordings of the petitioner as it is in blatant violation of the procedure prescribed by the law.

4. Per contra, learned counsel appearing on behalf of the respondent/CBI, while vehemently opposing the prayer and submissions made by the learned counsel for the petitioner, has submitted that no doubt there was no specific order of any Court of law directing the petitioner to give her voice samples, yet it is a matter of record that the petitioner had voluntarily agreed to and had provided her voice samples, that too, in the presence of an independent witness. Learned counsel for the respondent/CBI has further asserted that vide an earlier order of this Court, wherein the petitioner had raised similar pleas, this Court had granted her liberty to raise all her pleas at the stage of final arguments before the trial Court. Resultantly, she has asserted that no prejudice whatsoever, could be said to have been caused to the petitioner, even if

there was no judicial order directing the voice samples of the petitioner to be obtained or collected.

5. Learned counsel for the respondent/CBI has further contended that the law in this regard is no longer *res integra*, as the Hon'ble Supreme Court in **Ritesh Sinha's case (supra)** has held that providing voice samples to the investigating agency does not constitute self-incrimination. It has been submitted that in **Ritesh Sinha's case (supra)**, the Hon'ble Apex Court had affirmed the powers of Magistrate to compel an accused to furnish voice samples, while relying upon an earlier judgment passed in '**State of Bombay vs. Kathi Kalu Oghad**' **AIR 1961 SC 1808**.

6. It has been further submitted that the evidence, such as fingerprints and handwriting samples etc., given by an accused to the investigating agency cannot be deemed to be inadmissible in law. While again referring to **Ritesh Sinha's case (supra)**, learned counsel submits that giving voice samples could be equated with an accused giving samples for fingerprints/handwriting and would not therefore, be violative of Article 20(3) of the Constitution of India. It has been further argued by the learned counsel for the respondent/CBI that Section 311A Cr.P.C. is an enabling provision for an Investigating Officer to seek the intervention of a Court, if an accused refuses to provide his specimen signatures or voice samples. However, there is no legal requirement for the Investigating Agency to obtain the voice sample of an accused, more

so, when in the instant case the petitioner had herself volunteered to give them.

7. I have heard learned counsel for the parties and perused the relevant material on record.

8. Before proceeding further, it would be pertinent to note that previously, during the proceedings before the trial Court, the petitioner had submitted an application before it seeking exclusion of evidence pertaining to her voice samples. This application was subsequently dismissed by the trial Court vide order dated 02.08.2018. Dissatisfied with the order, the petitioner then approached this Court by way of CRM-M No.35065 of 2018, wherein an interim order was passed in favour of the petitioner. However, on 02.08.2023, this Court vacated the interim order and disposed of the petition as not pressed with liberty to the petitioner to raise all issues during trial. Subsequently, the petitioner filed a similar application before the trial Court, echoing the prayer identical to the one which was made by her in the earlier application. This subsequent application by the petitioner was once again dismissed by the trial Court vide order dated 03.11.2023 with the observations that the issues raised by the petitioner would be deliberated upon during final arguments.

9. Adverting to the instant case, the petitioner has put forth various contentions challenging the admissibility and the relevance of the voice recordings provided by the petitioner to the investigating agency in an ongoing trial.

10. The trial Court has a bounden duty and obligation to thoroughly evaluate the evidence and material on record, which need not be emphasized by this Court. It cannot be overemphasized that a trial Court diligently assesses all evidence which has been adduced before it prior to pronouncing the final verdict. The assertion of the learned counsel for the petitioner that the trial Court had already preconceived a decision/verdict and would thus, disregard their contentions at the time of final arguments, is presumptuous and totally unwarranted, more so, when the trial Court had not decided the application moved by the petitioner on merits. It goes without saying that the petitioner would retain the prerogative to raise all her pleas at the time of final arguments, which has also been observed by the trial Court in the impugned order. It is imperative to underscore that the evidentiary value of the evidence led by the parties, including the voice samples, would be duly scrutinized by the trial Court at the time of pronouncing the judgment.

11. In the circumstances as enumerated hereinabove, no interference is warranted by this Court in the impugned order. The petition stands dismissed.

(MANJARI NEHRU KAUL)
JUDGE

November 29, 2023
rps

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No