



\$~

\*

# IN THE HIGH COURT OF DELHI AT NEW DELHI

**Date of decision: 13th October, 2023**

+

CRL.REV.P. 472/2019 & CRL.M.A. 8424/2019 (Stay)

TARAK NATH GUPTA & ANR

..... Petitioners

Through: Mr. Kedar Yadav, Mr. Rahul Yadav  
and Ms. Nisha Singh, Advocates.

versus

STATE OF DELHI & ANR

..... Respondents

Through: Mr. Hitesh Vali, APP for the State.  
SI Sandeep, PS Malviya Nagar.  
Mr. Manoj Chaudhary and Mr. Vipul  
Chaudhary, Advocates for R-2.

**CORAM:**

**HON'BLE MR. JUSTICE AMIT SHARMA**

## **JUDGMENT**

### **AMIT SHARMA, J.**

1. The present petition under Section 397/401 of the Code of Criminal Procedure, 1973 ('CrPC') seeks the following prayers:

“(i) to call and examine the record of trial court and set-aside the impugned order dated 01.02.2019 passed by Shri Ajay Kumar Jain, Ld. A.S.J.-02, South District, Saket Court, New Delhi in the matter of State Versus Swatantra Kumar Jaysawal, bearing SC No. 49/2016, FIR No. 2038/15, U/S 498A/304B/306 IPC P.S. Malviya Nagar, New Delhi, OR  
(ii) any other relief which this Hon'ble court may deem fit and proper, in the interest of justice.”

2. The facts of the case are that FIR No. 2038/2015 was registered under Sections 498A/304B of the IPC at PS Malviya Nagar, at the instance of petitioner no. 1, Sh. Tarak Nath Gupta who stated that his daughter was



married to respondent no. 2, Sh. Swatantra Kumar Jaysawal in the year 2010. It was further alleged that thereafter, respondent no. 2 secured a good job in year 2012 and started harassing the complainant's daughter, as a result of which she committed suicide by hanging herself at Khirki Village on 25.10.2015.

3. During the course of trial of the aforesaid case, the petitioners, who are the parents of the deceased, during their cross-examination, were questioned about a telephonic conversation between them and their deceased daughter. The petitioners, in their examination before the learned Trial Court, denied to identify their voices. Subsequently an application was filed by respondent no. 2 under Section 91 of the CrPC seeking the following prayers:

- "i. to summon the concerned nodal officers from telecom service provider company along with call details record, location chart and application form for the mobile numbers mentioned the para No.3 of the application and/or
- ii. Voice sample of deceased and her parents be taken through I.O. and send to CFSL/FSL for voice authenticity/analysis test for editing/tempering if any and/or
- iii. Any other relief or order which the Hon'ble court may deem fit and proper in the facts and circumstances of the case may be granted."

4. After hearing the arguments, the learned Trial Court, *vide* the impugned order dated 01.02.2019, allowed the aforesaid application by observing as under:

"Heard. These witnesses are confronted with voice recordings and transcriptions, however denied their voices as per recordings. The plea as raised through these recordings appears essential for just decision of case and it is also the duty of the court that true facts should come on the surface. In this scenario, 10 is directed to collect CDRs and above mobile numbers, if available from concerned service providers and further directed to take voice samples of PW1 and PW3 and send the same to



CFSL/FSL with DVD on record, to analyse authenticity of the voices of PW1 and PW3.”

5. Learned counsel appearing on behalf of the petitioners submitted that under Section 91 of the CrPC, the scope of power of the Courts is limited to issuing summons, production of any document or other thing that is necessary or desirable for the purpose of any investigation and the said section does not entail a power to direct any witness to give their voice sample for examination. Reliance was placed on **Vinod Kumar and Ors. v. State, 19 (1981) DLT 390**.
6. It was further submitted that there are no rules framed with regard to power of a concerned Court for collecting voice samples, as observed by Hon'ble Supreme Court in **Pravinsinh Nrupatsinh Chauhan v. State of Gujarat, SLP (Crl.) No. 4693/2023 (judgment dated 15.05.2023)**. It was therefore submitted that the impugned order dated 01.02.2019 is not sustainable in law and liable to be set aside.
7. *Per contra* learned APP for the State, as well as counsel for the respondent no. 2 submitted that the impugned order does not suffer from any infirmity. It was further submitted that during cross-examination of the aforesaid petitioners, audio recorded conversations between the deceased and them were filed, duly supported with a certificate under Section 65B of the Indian Evidence act, 1872. It was pointed out that the said conversations were played during the cross-examination, but the same were denied by the petitioners. It was further pointed out that the conversations contradicted the evidence of the petitioners and proved the innocence of respondent no. 2. It was urged that once the said witnesses refused to identify their respective



voice, the only other way to prove the same was by doing a voice comparison, which could have been facilitated only by taking their voice samples.

8. It was further pointed out that Sections 155/157 of the Indian Evidence Act read with Section 311 of the CrPC give sufficient power to the concerned Court to obtain voice samples of the witnesses.

9. A preliminary objection was also raised with respect to the maintainability of the present petition on the ground that the impugned order is interlocutory in nature and therefore the present revision petition is not maintainable and liable to be dismissed.

10. Learned counsel for respondent no. 2 further placed reliance upon the following judgments:

- i. Lior AVI Ben Moyal v. Narcotics Control Bureau, Chandigarh, 2008 LawSuit (P&H) 1571.
- ii. Rup Chand v. Mahabir, (1955) 10 ILR 1351.
- iii. Vinod Kumar @ Vinod Kumar Handa v. State of NCT of Delhi, (2012) 130 DRJ 531.
- iv. Sethuraman v. Rajamanickam, (2009) 5 SCC 153.

11. Heard learned counsel for the parties and perused the record.

12. In **Vinod Kumar @ Vinod Kumar Handa (supra)** a learned Single Judge of this Court, was dealing with a similar situation wherein the prosecutrix had denied the voice recorded in a tape recorded conversation during her cross-examination and an application was moved on behalf of the accused under Section 45 of the Indian Evidence Act seeking direction to record the voice sample of prosecutrix for examination by the CFSL. In the said case, the learned Trial Court dismissed the said application. The learned



Single Judge set aside the order passed by the learned Trial Court by observing as under:

“9. Before proceeding further, it would be relevant to note the law laid down in regard to the admissibility of recorded conversation and allowing the application for taking voice samples of the parties. As early as 1956, in *Rup Chand v. Mahabir Prasad* AIR 1956 Punj. 173 it has been categorically held that a tape recorded version of a former statement of a witness is admissible in Evidence to shake the, credit of the witness. Hon’ble Supreme Court in *S. Pratap Singh v. State of Punjab*, AIR 1964 SC 72 held that the tape recorded version of a conversation was admissible in evidence to corroborate the evidence of witness who had stated that such a conversation had taken place.

In *R.M. Malkani v. State of Maharashtra*, AIR 1973 SC 157 their Lordships observed:

“23. Tape recorded conversation is admissible provided first the conversation is relevant to the matters in issue; secondly, there is identification of the voice; and, thirdly, the accuracy of the tape recorded conversation is proved by eliminating the possibility of erasing the tape-record. A contemporaneous tape-record of a relevant conversation is a relevant fact and is admissible under Section 8 of the Evidence Act. It is *res gestae*.

29. It was said that the admissibility of the tape recorded evidence offended Arts. 20(3) and 21 of the Constitution. The submission was that the manner of acquiring the tape recorded conversation was not procedure established by law and the appellant was incriminated. The appellant’s conversation was voluntary. There was no compulsion. The attaching of the tape recording instrument was unknown to the appellant. That fact does not render the evidence of conversation inadmissible. The appellant’s conversation was not extracted under duress or compulsion. If the conversation was recorded on the tape it was a mechanical contrivance to play the rule of an eavesdropper. In *R.V. Leatham*, (1861) 8 Cox C.C. 198 it was said “It matters not how you get it if you steal it even, it would be admissible in evidence” as long as it is not tainted by an inadmissible confession of guilt: evidence even if it is illegally obtained is admissible.”

**Thus, in view of the above discussion it is clear that if an, accurate tape-recorded version of the statement is produced in**



evidence, the same is relevant and admissible in evidence in case the recording is not tempered with and the voice is properly identified.

**10.** As the tape-recorded conversation is admissible under the law of evidence, the question before this Court is whether the Court can compel a person to give his/her voice samples for identification. Reliance on *Rakesh Bisht* (Supra) by the learned APP for State is misconceived, as in that case the application for taking voice samples for identification was allowed by the learned Trial Judge at the stage of investigation which is not the case in the present petition. The Petitioner's application was dismissed after recording of Prosecution evidence.

**11.** The Hon'ble Supreme Court in *Vikas Kumar Roorkeewal v. State of Uttarakhand*, 2011 (2) SCC 178 has held:

"22. The necessity of fair trial hardly needs emphasis. The State has a definite rule to play in protecting the witnesses, to start with at least in sensitive cases. The learned Judge has failed to take participatory rule in the trial. He was not expected to act like a mere tape recorder to record whatever has been stated by the witnesses. Section 311 of the Code and Section 165 of the Evidence Act confers vast and wide powers on Court to elicit all necessary materials by playing an active rule in the evidence collecting process. However, the record does not indicate that the learned Judge presiding the trial had exercised powers under Section 165 of the Evidence Act which is in a way complimentary to his other powers."

**12.** Section 165 of the Evidence Act reads as under:

**"165. Judge's power to put questions or order production.**

The Judge may, in order to discover or to obtain proper proof of relevant facts, ask any question he pleases, in any form at any time, of any witness, or of the parties about any fact relevant or irrelevant; and may order the production of any document or thing; and neither the parties nor their agents shall be entitled to make any objection to any such question or order, nor, without the leave of the Court. The Orient Tavern cross-examine any witness upon any answer given in reply to any such question.

Provided that the judgment must be based upon facts declared by this Act to be relevant, and duly proved.

Provided also that this Section shall not authorize an Judge to compel any witness to answer any question or produce any document which such witness would be entitled to refuse to answer or produce under Sections 121 to 131, both inclusive, if the questions were asked or the documents



were called for by the adverse party; nor shall the Judge ask any question which it would be improper for any other person to ask under Section 148 or 149; nor shall he dispense with primary evidence of any document, except in the cases herein before excepted.”

XXX

14. The Hon’ble Supreme Court in *Zahira Habibulla H. Sheikh v. State of Gujarat*, 2004 (4) SCC 158 observed:

“43. The Courts have to take a participatory rule in a trial. They are not expected to be tape recorders to record whatever is being stated by the witnesses. Section 311 of the Code and Section 165 of the Evidence Act confer vast and wide powers on Presiding Officers of Court to elicit all necessary materials by playing an active rule in the evidence collecting process. They have to monitor the proceedings in aid of justice in a manner that something, which is not relevant, is not unnecessarily brought into record. Even if the prosecutor is remiss in some ways, it can control the proceedings effectively so that ultimate objective i.e. truth is arrived at. This becomes more necessary the Court has reasons to believe that the prosecuting agency or the prosecutor is not acting in the requisite manner. The Court cannot afford to be wishfully or pretend to be blissfully ignorant or oblivious to such serious pitfalls or dereliction of duty on the part of the prosecuting agency. The prosecutor who does not act fairly and acts more like a counsel for the defence is a liability to the fair judicial system, and Courts could not also play into the hands of such prosecuting agency showing indifference or adopting an attitude of total aloofness.

44. The power of the Court under Section 165 of the Evidence Act is in a way complementary to its power under Section 311 of the Code. The section consists of two parts i.e. (i) giving a discretion to the Court to examine the witness at any stage and (ii) the mandatory portion which compels the Courts to examine a witness if his evidence appears to be essential to the just decision of the Court. Though the discretion given to the Court is very wide, the very width requires a corresponding caution. In *Mohan Lal v. Union of India* this Court has observed, while considering the scope and ambit of Section 311, that the very usage of the word such as, “any Court” “at any stage”, or “any enquiry or trial or other proceedings” “any person” and “any such person” clearly spells out that the Section has expressed in the widest possible terms and do not limit the discretion of the Court in any way. However, as noted above, the very width requires a corresponding caution that the discretionary



powers should be invoked as the exigencies of justice require and exercised judicially with circumspection and consistently with the provisions of the Code. The second part of the section does not allow any discretion but obligates and binds the Court to take necessary steps if the fresh evidence to be obtained is essential to the just decision of the case 'essential', to an active and alert mind and not to one which is bent to abandon or abdicate. Object of the Section is to enable the court to arrive at the truth irrespective of the fact that the prosecution or the defence has failed to produce some evidence which is necessary for a just and proper disposal of the case. The power is exercised and the evidence is examined neither to help the prosecution nor the defence, if the Court feels that there is necessity to act in terms of Section 311 but only to subserve the cause of justice and public interest. It is done with an object of getting the evidence in aid of a just decision and to uphold the truth.

45. It is not that in every case where the witness who had given evidence before Court wants to change his mind and is prepared to speak differently, that the Court concerned should readily accede to such request by lending its assistance. If the witness who deposed one way earlier comes before the appellate Court with a prayer that he is prepared to give evidence which is materially different from what he has given earlier at the trial with the reasons for the earlier lapse, the Court can consider the genuineness of the prayer in the context as to whether the party concerned had a fair opportunity, to speak the truth earlier and in an appropriate case accept it. It is not that the power is to be exercised in a routine manner, but being an exception to the ordinary rule of disposal of appeal on the basis of records received in exceptional cases or extraordinary situation the Court can neither feel powerless nor abdicate its duty to arrive at the truth and satisfy the ends of justice. The Court can certainly be guided by the metaphor, separate the grain from the chaff, and in a case which has telltale imprint of reasonableness and genuineness in the prayer, the same has to be accepted, at least to consider the worth, credibility and the acceptability of the same on merits of the material sought to be brought in.

**15. An accused has an indefeasible right to a fair trial and equal opportunity to prove his innocence. It is settled law that the right of accused to adduce defence evidence is not a mere formality but an essential part of a criminal trial where every opportunity must be given to the accused to adduce his defence.**

**16. Hon'ble Supreme Court in *Kalyani Baskar (Mrs.) v. M.S. Sampooram (Mrs.)*, (2007) 2 SCC 258 has held as under:—**



“12....The appellant cannot be convicted without an opportunity being given to her to present her evidence and if it is denied to her, there is no fair trial. “Fair trial” includes fair and proper opportunities allowed by law to prove her innocence. Adducing evidence in support of the defence is a valuable right. Denial of that right means denial of fair trial. It is essential that rules of procedure designed to ensure justice should be scrupulously followed, and the courts should be jealous in seeing that there is no breach of them....”

(emphasis supplied)

**13.** Learned counsel for the petitioners also relied upon order dated 15.05.2023 passed in **Special Leave to Appeal (Crl.) No. 4693/2023** titled **‘Pravisinh Nrupatsinh Chauhan v. State of Gujarat’**, in context of taking of voice samples. The Hon’ble Supreme Court held as under:

“Heard Mr. Tejas Barot, learned counsel appearing for the petitioner. The primary grievance of the petitioner is that his voice sample is ordered to be collected for the purpose of comparison with the incriminatory voice sample available with the police. According to the counsel, unless rules are framed and appropriate standard operating system is notified under the provisions of the Criminal Procedure (Identification) Act, 2022 read with the Rules 2022, the collection of voice sample would impeach on the right of privacy of the accused.

2. In the above context, we have the benefit of reading the ratio in ‘Ritesh Sinha Vs. State of Uttar Pradesh’ reported in (2019) 8 SCC 1 where in the context of voice sample collected for the purpose of investigation, the three Judges Bench of this Court had held :-

“26. Would a judicial order compelling a person to give a sample of his voice violate the fundamental right to privacy under Article 20(3) of the Constitution, is the next question. The issue is interesting and debatable but not having been argued before us it will suffice to note that in view of the opinion rendered by this Court in *Modern Dental College and Research Centre v. State of M.P.*, *Gobind v. State of M. P.* and another and the nine Judge’s Bench of this Court in *K.S. Puttaswamy(Privacy 9) v. Union of India* the fundamental right to privacy cannot be construed as absolute and but must bow down to compelling public



interest. We refrain from any further discussion and consider it appropriate not to record any further observation on an issue not specifically raised before us.

27. 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.”

3. The above would indicate that the Magistrate is given the power to order for collection of voice sample for the purpose of investigation of a crime until explicit provisions are engrafted in the CrPC by the Parliament. Such direction was issued by invoking powers under Article 142 of the Constitution of India.”

**14. In Ritesh Sinha v. State of Uttar Pradesh, (2019) 8 SCC 1**, a full bench of the Hon’ble Supreme Court disposed of an appeal which was referred to the said bench after a split verdict was delivered by a division bench with respect to the same appeal. The difference of opinion between the two Hon’ble Judges was on account of an issue as to whether in the absence of a specific provision in the CrPC, can a Magistrate authorize an investigating agency to record the voice sample of an accused person? The final operative part of the judgment has been reproduced in **Pravisinh Nrupatsinh Chauhan (supra)** as pointed out hereinabove, however, the following observations made in **Ritesh Sinha (supra)** would be relevant for the purpose of present petition:

“**14.** Section 5 of the Identification of Prisoners Act, 1920 coincidentally empowers the Magistrate to order/direct any person to allow his measurements or photographs to be taken for the purposes



of any investigation or proceeding. It may be significant to note that the amendments in CrPC, noticed above, could very well have been a sequel to the recommendation of the Law Commission in its Report dated 29-8-1980 though the said recommendation was in slightly narrower terms i.e. in the context of Section 5 of the Identification of Prisoners Act, 1920. In this regard, it may also be usefully noticed that though this Court in *State of U.P. v. Ram Babu Misra* [*State of U.P. v. Ram Babu Misra*, (1980) 2 SCC 343 : 1980 SCC (Cri) 444 : AIR 1980 SC 791] after holding that a Judicial Magistrate has no power to direct an accused to give his specimen writing for the purposes of investigation had suggested to Parliament that a suitable legislation be made on the analogy of Section 5 of the Identification of Prisoners Act, 1920 so as to invest a Magistrate with the power to issue directions to any person including an accused person to give specimen signatures and writings. The consequential amendment, instead, came by way of insertion of Section 311-A in CrPC by the Code of Criminal Procedure (Amendment) Act, 2005 (Act 25 of 2005) with effect from 23-6-2006.”

At this stage, it is pertinent to note that both Section 5 of the Identification of Prisoners Act and Section 311A of the CrPC do not restrict the power of a Magistrate to give directions to an accused person only.

**15.** Thereafter, in **Ritesh Sinha** (*supra*), the Hon’ble Supreme Court proceeded to examine the issue in view of the admitted position with regard to absence of statutory provisions and answered the reference by observing as under:

“**16.**”12. ... *procedure is the handmaid, not the mistress, of justice and cannot be permitted to thwart the fact-finding course in litigation*” [*Vatal Nagaraj v. R. Dayanand Sagar*, (1975) 4 SCC 127 : AIR 1975 SC 349] (emphasis supplied) (SCC p. 131, para 12). We would like to proceed in the matter keeping the above view of this Court in the backdrop.

**17.** A detailed reference to the facts of a case decided by this Court in *Sushil Kumar Sen v. State of Bihar* [*Sushil Kumar*



*Sen v. State of Bihar*, (1975) 1 SCC 774] is deemed appropriate. The appellant in the above case was the owner of a plot of land measuring about 3.30 ac located in the district of Purnea in Bihar. The said parcel of land was acquired under the provisions of the Land Acquisition Act, 1894. The Land Acquisition Officer by order/award dated 12-10-1957 awarded compensation to the appellant(s) therein at the rate of Rs 14 per katha. The learned Additional District Judge, Purnea while hearing the reference under Section 18 of the Land Acquisition Act, 1894 enhanced the compensation to Rs 200 per katha. This was by order dated 18-8-1961. The State of Bihar sought a review of the aforesaid order dated 18-8-1961 which was allowed on 26-9-1961 scaling down the compensation to Rs 75 per katha. Not satisfied, the State of Bihar preferred an appeal before the High Court against the order dated 26-9-1961 passed in the review application granting compensation at the rate of Rs 75 per katha. No appeal was, however, filed by the State of Bihar against the original order dated 18-8-1961 awarding compensation at the rate of Rs 200 per katha. Cross-appeal(s) before the High Court against the order dated 26-9-1961 passed in the review application was filed by the appellant landowner. The High Court by its order dated 16-2-1968 held the review application of the State of Bihar, in which the order dated 26-9-1961 was passed, to be not maintainable. However, the High Court adjudicated the case on merits and awarded compensation to the landowner(s) at the rate of Rs 75 per katha. Aggrieved, the landowner Sushil Kumar Sen approached this Court.

**18.** K.K. Mathew, J. who delivered the lead judgment in the case took the view that the original decree/award of the Reference Court dated 18-8-1961 stood superseded by the decree/award dated 26-9-1961 passed in the review application. However, once the said decree/award dated 26-9-1961 was set aside in the cross-appeal filed by the landowner(s) the earlier decree/award dated 18-8-1961 stood revived. As there was no appeal against the said decree/award dated 18-8-1961 the landowner(s) would be entitled to compensation in terms of the said original decree/award dated 18-8-1961.

**19.** Krishna Iyer, J. delivered a concurring opinion agreeing with the aforesaid conclusions but expressing a thought process which would be of significant relevance to the issue in hand. The position can be best explained by extracting the following observations from the opinion rendered by Krishna Iyer, J. in *Sushil Kumar Sen v. State*



of Bihar [Sushil Kumar Sen v. State of Bihar, (1975) 1 SCC 774] :  
(SCC p. 777, paras 5-6)

“5. I concur regretfully with the result reached by the infallible logic of the law set out by my learned Brother Mathew, J. *The mortality of justice at the hands of law troubles a Judge’s conscience and points an angry interrogation at the law reformer.*

6. *The processual law so dominates in certain systems as to overpower substantive rights and substantial justice. The humanist rule that procedure should be the handmaid, not the mistress, of legal justice compels consideration of vesting a residuary power in Judges to act ex debito justitiae where the tragic sequel otherwise would be wholly inequitable.* In the present case, almost every step a reasonable litigant could take was taken by the State to challenge the extraordinary increase in the rate of compensation awarded by the civil court. And, by hindsight, one finds that the very success, in the review application, and at the appellate stage has proved a disaster to the party. May be, the Government might have successfully attacked the increase awarded in appeal, producing the additional evidence there. But *maybes have no place in the merciless consequence of vital procedural flaws.* Parliament, I hope, will consider the wisdom of making the Judge the ultimate guardian of justice by a comprehensive, though guardedly worded, provision where the hindrance to rightful relief relates to infirmities, even serious, sounding in procedural law. *Justice is the goal of jurisprudence — processual, as much as substantive. While this appeal has to be allowed, for reasons set out impeccably by my learned Brother, I must sound a pessimistic note that it is too puritanical for a legal system to sacrifice the end product of equity and good conscience at the altar of processual punctiliousness and it is not too radical to avert a breakdown of obvious justice by bending sharply, if need be, the prescriptions of procedure. The wages of procedural sin should never be the death of rights.”*

(emphasis supplied)

XXX



**20.2.** If the legislature, even while making amendments in the Criminal Procedure Code (Act 25 of 2005), is oblivious and despite express reminders chooses not to include voice sample either in the newly introduced Explanation to Section 53 or in Sections 53-A and 311-A CrPC, then it may even be contended that in the larger scheme of things the legislature is able to see something which perhaps the court is missing.

XXX

**23.** The exercise of jurisdiction by constitutional courts must be guided by contemporaneous realities/existing realities on the ground. Judicial power should not be allowed to be entrapped within inflexible parameters or guided by rigid principles. True, the judicial function is not to legislate but in a situation where the call of justice and that too of a large number who are not parties to the lis before the Court, demands expression of an opinion on a silent aspect of the statute, such void must be filled up not only on the principle of *eiusdem generis* but on the principle of imminent necessity with a call to the legislature to act promptly in the matter.”

**16.** Learned APP for the State, during the course of the arguments submitted that the aforesaid direction in **Ritesh Singh (*supra*)** was issued by the Hon’ble Supreme Court invoking its power under Article 142 of the Constitution of India and therefore, there is no infirmity in the order passed by the learned Trial Court in the present case.

**17.** In the present case, as pointed out hereinbefore, the voice sample was sought not from accused during the course of investigation, but from the witnesses, who during the course of examination, had denied their voices. As duly noted by the Hon’ble Supreme Court in **Ritesh Sinha (*supra*)**, the power of the Magistrate to direct recording of voice samples has been conferred by the process of judicial interpretation based on the principles of *eiusdem generis* and also on the principle that the fundamental right to privacy must



bow down to compelling public interest. As already noted above, a learned Single Judge of this Court in **Vinod kumar @ Vinod Kumar Handa** (*supra*), after examining the judicial precedents has held that the right of accused to fair trial is a fundamental right and is incumbent upon the Courts to protect the same. Reliance is also placed on the following observation from the decision in **Vatal Nagraj v. R. Dayanand Sagar, (1975) 4 SCC 127**, which has been noted in **Ritesh Sinha** (*supra*):

“12....Litigation is no hide and seek game but a search for truth and parties must place their cards on the table. And procedure is the handmaid, not the mistress, of justice and cannot be permitted to thwart the fact-finding course....”

18. In view of the aforesaid discussion, this Court finds no infirmity or illegality in the impugned order. Impugned order dated 01.02.2019 passed by the learned Additional Sessions Judge-02 (South), New Delhi in Sessions Case No. 49/16 arising out of FIR No. 2038/15 under Sections 498A/304B/306 of the IPC registered at PS Malviya Nagar, is upheld.

19. The petition is dismissed and disposed of accordingly.

20. Pending applications, if any, also stand disposed of.

21. Judgment be communicated to the concerned learned Trial Court for necessary information and compliance.

22. Judgment be uploaded on the website of this Court, *forthwith*.

**AMIT SHARMA**  
**JUDGE**

**OCTOBER 13, 2023/bsr**