

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.237 OF 2023

Ashok Kumar Gupta .. Applicant

Versus

Central Bureau of Investigation & .. Respondents
Anr.

WITH

CRIMINAL APPLICATION NO.1430 OF 2022

Union of India through CBI, ACB, .. Applicant
Mumbai

Versus

Ashok Kumar Gupta & Anr. .. Respondents

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Mr.Vijay Aggarwal with Mr.Yash Agrawal, Mr.Rohit Kaul, Mr.Abhiraj Ray, Mr.Yashwardhan Tiwari and Mr.Yash Awalkanthé for the Applicant in APL/237/23 and for the Respondent No.1 in APL/1430/22.

Mr.H.S.Venegavkar with Mr.Aayush Kedia for the Respondent No.1 in APL/237/23 and for the Applicant in APL/1430/22.

Mr.Y.M.Nakhwa, A.P.P. for the State/Respondent.

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CORAM: BHARATI DANGRE, J.

RESERVED ON : 11th SEPTEMBER, 2023

PRONOUNCED ON : 08th JANUARY, 2024

JUDGMENT :-

1. Being aggrieved by the order dated 20/10/2022 passed by the Special Judge (CBI) for Greater Mumbai below Exhibit 15 in CBI Remand Application Nos.957 and 959 of 2022, two

proceedings are filed in this Court, the first being instituted by the Applicant-Ashok Kumar Gupta (A-1) and the second being filed by Union of India through C.B.I.

The order came to be passed by the Special Judge on an application filed on behalf of Ashok Kumar Gupta, seeking necessary orders and directions to CBI to supply relevant documents in terms/compliance of the Indian Telegraph Act, 1885 and Rule 419A(2) of the Telegraph(Amendment) Rules, 2007 in terms of interception of calls/messages.

The application is partly allowed, by directing CBI to supply to the Applicant the copies of the orders of the Competent Authority and as a consequence of which, the hearing of the application at Exh.11 was deferred.

The Applicant is aggrieved by not allowing the application in its entirety, whereas the CBI is aggrieved by the direction to supply the copies of the orders passed by the competent authority under the Telegraph(Amendment) Rules, 2007.

2. I have heard the learned counsel Mr.Vijay Aggarwal for the Applicant in APL/237/23, which is opposed by the learned counsel Mr.Hiten Venegavkar, representing the Union of India, who is also heard in support of APL/1430/22, filed by the Union of India through CBI.

3. Upon the source information received by the Additional Superintendent of Police, CBI, ACB, Mumbai, a case was registered on 24/09/2022 under Section 120-B of the Indian

Penal Code (for short, **“the IPC”**) alongwith Sections 7, 9, 10 and 11 of the Prevention of Corruption Act, 1988 (for short, **“the PC Act”**) against Ashok Kumar Gupta, the Principal Chief Mechanical Engineer, Central Railway, CSMT, Mumbai and two other entities as well as other unknown public servants/private persons.

The information disclosed that Ashok Kumar Gupta, occupying the above post since 2020, demanded bribe amount from the Contractors as well as their employees and is indulging in corrupt practices in collusion with Accused No.3, the partner of M/s Anand Sales Corporation and other unknown public servants/unknown persons in the matter of award/execution of Tenders and clearance of the bills due and payable to M/s Anand Sales Corporation, the Accused No.2 in respect of Mechanical Division of Central Railway, Mumbai.

It was alleged that the Mechanical Division of Central Railway, Mumbai is headed by Ashok Kumar Gupta and being in-charge, he is responsible for all the affairs carried out in the Division and, particularly, since he is in charge of approval of work orders, supply of materials, finalization of tenders, inspection of materials, passing of bills of vendors etc.

The source information revealed that Ashok Kumar Gupta entered into a criminal conspiracy with Accused No.2 through Accused No.3 and has demanded bribe and in furtherance of the criminal conspiracy, Accused No.3- Mr.Aditya Tibrewal, partner of M/s Anand Sales Corporation, had agreed to pay the bribe and it was likely to be delivered to the representative of Ashok Kumar Gupta in next two or three days after his confirmation.

In the wake of the interception, a trap was laid, which resulted in recovery of bribe amount of Rs.1,00,000/- and arrest of Ashok Kumar Gupta and his driver Abdul Kalam Shaikh. They were remanded to police custody till 06/10/2022.

4. It is in this background, on 06/10/2022, the CBI, ACB, Mumbai filed an application, seeking permission for obtaining voice sample of the arrested accused person.

The Special Unit, CBI, Mumbai had intercepted the mobile phones of the accused with the approval of the competent authority and provided the relevant intercepted voice calls, which was included in the investigation. It is disclosed that there is evidence in form of recorded voice calls against the main accused-Ashok Kumar Gupta. However, for ascertaining its authenticity and to collect necessary evidence, it is necessary to obtain voice sample of Ashok Kumar Gupta while he is in police custody, but he has refused to do so.

It is in this background, an application is filed for seeking voice sample of Ashok Kumar Gupta, as it is not incriminating and, therefore, the following prayer is made :-

“It is, therefore, most humbly prayed that this Hon’ble Court may graciously be pleased to accord permission for obtaining the specimen voice samples of (i) Ashok Kumar Gupta, the then Principal Chief Mechanical Engineer, Central Railway, and (ii) direct him in this regard for just and fair investigation of the case and without prejudice against the accused person.”

5. Upon filing of this application, Applicant-Ashok Kumar Gupta also filed an application, seeking necessary orders and directions to the CBI to supply the relevant documents in

terms of the Indian Telegraph Act, 1885 and Rule 419A(2) of the Telegraph(Amendment) Rules, 2007, framed by the Central Government, introduced by G.S.R. 193(4) dated 01/03/2007 in terms of interception of calls/messages.

By making reference to Section 5 of the Act, it was contended that the illegal tapping of telephone conversation violates right to privacy and as it has been so held by Nine Judge Constitution Bench in the case of *K.S.Puttaswamy Vs. Union of India*¹, and right to privacy is protected by the Constitution, as an intrinsic part of the right to life and personal liberty under Article 21 of the Constitution of India and, hence, the Applicant sought direction for supplying the relevant documents. The prayer clause specifically sought the following reliefs :-

“B. Pass necessary orders and directions to CBI/Prosecution Agency for supply the entire record of Review Committee alongwith the following documents, i.e.

- Order of competent authority authorizing tapping and recording under Section 5(2) of the **The Indian Telegraph Act, 1885**,
- Copy of letters forwarded to review committee by the CBI in terms of Sub rule-2 of the Rule 419A of Telegraph Amendment Rules, 2007
- Copy of the Minutes of Review Committee proceedings and certified copy of order of the review committee passed in terms of Rule 419A(17) of The Telegraph (Amendment) Rules 2007.”

6. The application filed was opposed by the CBI, by submitting that the same is not maintainable in terms of Section 207 of the Criminal Procedure Code (for short, “**the Cr.P.C.**”)and the accused has no right to seek any document until police report is filed. It was also categorically stated that the mobile phones of the accused persons were intercepted

¹ (2017) 10 SCC 1

with the approval of the competent authority and the case diaries containing the relevant documents in this regard alongwith intercepted calls are already produced before the Court. It was reiterated that based on the legal interception, the calls relating to demand/acceptance of the bribe amount need a comparison with the sample voice of the accused for just and fair investigation and, therefore, the application was prayed to be rejected.

7. Mr.Aggarwal, while arguing the Application under Section 482 of the Cr.P.C., seek modification of the impugned order dated 20/10/2022 passed by the Special Judge, who had dismissed the prayer seeking copy of letters forwarded to Review Committee in terms of sub-rule (2) of Rule 419A of the Telegraph (Amendment) Rules, 2007 and he would submit that the learned Judge has fallen into an error in not supplying the necessary orders passed by the competent authority, authorizing the recording/interception of the telephone calls. He would submit that the copy of the Minutes of the Review Committee proceedings and the certified copy were also prayed for and the Applicant/Accused is entitled for the same, in the wake of the decision of the Apex Court in the case of ***Reliance Industries Limited Vs. Securities and Exchange Board of India & Ors.***²(Cri. Appeal No.1167 of 2022), wherein it is held that all the relevant documents must be supplied to the accused for the purpose of holding the fair trial and the contention that the documents cannot be supplied before the stage of Section 207 was specifically rejected.

² (2022) 10 SCC 181

Mr. Aggarwal has also placed reliance upon the decision of the Special Court at New Delhi in the case of ***CBI Vs. I.M. Quddusi & Ors. dated 23/03/2022***, where while exercising power under Section 91 of the Cr.P.C., the Special Court directed the Ministry of Home Affairs and Department of Telecommunication to produce the record relating to the compliance of provisions of Rule 419(A) of the Telegraph (Amendment) Rules, 2007 in respect of the orders passed by the Secretary, MHA and Department of Telecommunication to produce the complete records of the Review Committee alongwith the certified copies. He has also placed reliance upon the decision in the case of ***Vinit Kumar Vs. Central Bureau of Investigation & Ors. (Cri. Writ Petition No.2367 of 2019)*** as well as the decision of the Apex Court in the case of ***Shree Chamundi Mopels Ltd. Vs. Church of South India Trust Association CSI Cinod Secretariat, Madras***³ and also on the decision in the case of ***OPTO Circuit India Ltd. Vs. Axis Bank & Ors.***⁴, where it is held that if a statute provides for a thing to be done in a particular, then it shall be done only in that manner.

Mr. Aggarwal has assertively contended that the Applicant's voice sample cannot be obtained or he cannot be compelled to furnish his voice sample, without complying the requirement of supplying the relevant documents, as prayed by him in his application, which is partly allowed by the learned Judge.

Per contra, it is the argument of Mr. Venegavkar that since the source information is under investigation, the documents which are sought, cannot be supplied at this stage

³ AIR 1992 SC 1439

⁴ AIR 2021 SC 753

and, particularly, when the scope of the application, seeking voice sample, is for the purpose of collection of evidence, which is definitely not dependent upon the supply of the necessary documents. Mr.Venegavkar has placed reliance upon the decision of the Apex Court in the case of ***Union of India Vs. Prakash P. Hinduja & Anr.***⁵, by submitting that no Court can interfere with the investigation, when it is in progress till the submission of the report by the officer in-charge of a police station in the Court under Section 173(2) of Cr.P.C., as this field is exclusively reserved for the investigating agency. He has also placed reliance upon a latest decision of the Apex Court in the case of ***S.P.Velumani Vs. Arappor Iyakkam & Ors.***⁶ and also upon a decision of Rajasthan High Court in the case of ***State of Rajasthan Vs. Vikramjeet Singh @ Vika Virk***⁷, holding that the voice sample is not a substantive piece of evidence and, therefore, by giving it, the accused does not convey any information based upon his personal knowledge, which can incriminate him, as it can only be used for comparison with the recorded conversation and it cannot be treated as testimony at all. Another decision of the Punjab and Haryana High Court in the case of ***Kamal Pal & Anr. Vs. State of Punjab***⁸ is also pressed into service by Mr.Venegavkar.

8. The position as regards obtaining voice sample from a suspect/an accused is well settled by this time and the rhetoric argument that it would be in violation of Article 20(3) of the Constitution of India and would infringe the right of privacy

5 (2003) 6 SCC 195

6 (2022) 12 SCC 745

7 2018(2) RLW 1591

8 (2021) 3 PCR (Cri) 735

and, therefore, under Section 53 of the Cr.P.C., there can be no compulsion to obtain the voice sample has been dealt with repeatedly.

Article 20(3) of the Constitution, which provide that, ‘no person can be compelled to be a witness against himself’ was invoked while considering the power vested in the Magistrate to direct an accused to give the voice sample for the purpose of investigation of the crime, is exhaustively discussed by the Three Judge Bench of the Apex Court in ***Ritesh Sinha Vs. State of Uttar Pradesh & Anr.***⁹ Juxta-posing a judicial order compelling a person to give a sample of his voice against Article 20(3) and 21 of the Constitution of India, it is held that fundamental right to privacy cannot be construed as absolute right, but must bow down to compelling public interest.

The question which was referred for determination in the Appeal was formulated to the following effect :-

“3.1 Whether Article 20(3) of the Constitution of India, which protects a person accused of an offence from being compelled to be a witness against himself, extends to protecting such an accused from being compelled to give his voice sample during the course of investigation into an offence?

3.2 Assuming that there is no violation of Article 20(3) of the Constitution of India, whether *in the absence of any provision in the Code*, can a Magistrate authorise the investigating agency to record the voice sample of the person accused of an offence?”

While the first question was answered in the negative by the Two-Judge Bench of the Apex Court, following the ratio of the law laid down in the case of ***State of Bombay Vs. Kathi Kalu Oghad***¹⁰, there was difference of opinion on the second question. In paragraph 9, the Apex Court held thus :-

9 (2019) 8 SCC 1
10 AIR 1961 SC 1808

“9. Despite unanimity amongst the learned Judges hearing the appeal on the first question in which the learned counsel for the appellant has also not laid much stress it would be appropriate to make the discussions complete to answer the question on the strength of the test laid down by this Court in *State of Bombay v. Kathi Kalu Oghad*. Speaking on behalf of the majority, the then learned Chief Justice B.P.Sinha was of the view that the prohibition contemplated by the constitutional provision contained in Article 20(3) would come in only in cases of testimony of an accused which are self-incriminatory or of a character which has the tendency of incriminating the accused himself. The issue in the case was with regard to specimen writings taken from the accused for comparison with other writings in order to determine the culpability of the accused and whether such a course of action was prohibited under Article 20(3) of the Constitution. The following observations of the then Chief Justice B.P.Sinha would be apt for recollection as the same conclusively determines the first question arising. The same, therefore, is extracted below : (AIR p.1815, paras 11-12)

“11. ... It is well established that clause (3) of Article 20 is directed against self-incrimination by an accused persons. 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 material for comparison in order to lend assurance to the court that its interference 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”.

(emphasis supplied)

9. Touching the second question, which arose for consideration, in absence of any authoritative pronouncement on the point, on a detailed discussion of the amendment in the Code of Criminal Procedure and considering the evidence in

form of voice record, the aspect of identification of voice was exhaustively dealt with and it was recorded that, there is no specific statutory provision in India which expressly gives power to a police officer or a court to require an accused person to furnish a specimen of his voice. In paragraph 15, the following observation is to be found :-

“15. The legislative response in remaining silent or acting at a “slow” pace can always be explained by legislative concerns and considerations of care and caution. It is in the aforesaid context and in the admitted absence of any clear statutory provision that the question arising has to be answered which is primarily one of the extent to which by a process of judicial interpretation a clear gap in the statute should be filled up pending a formal legislative exercise. It is the aforesaid question that we shall now turn to.”

Though agreeing on the aspect that the law on the point should emanate from the legislature and not from the court, it was held that the exercise of jurisdiction by constitutional courts must be guided by contemporaneous realities/existing realities on the ground and though 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 ejusdem generis but on the principle of imminent necessity with a call to the legislature to act promptly in the matter.

In paragraphs 26 and 27, the conclusion is worded to the following effect :-

“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 & Research Centre v. State of M.P.*, *Gobind v. State of*

M.P. and the nine-Judge Bench of this Court in K.S.Puttaswamy (Privacy-9J.) v. Union of India the fundamental right to privacy cannot be construed as absolute but must bow down to compelling public interest. We refrain from any further discussion and consider it appropriate not to record any further observations 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 disposed of the appeals in terms of the above.”

10. The above position of law is thereafter reiterated in the case of ***Pravinsinh Nrupatsinh Chauhan Vs. State of Gujarat***¹¹, where an order of the High Court directing an accused to provide voice sample was upheld, by recording that there is no infirmity in the Special Court ordering the accused to give his voice sample to facilitate investigation of the crime.

11. If the Investigating Officer is of the opinion that the voice sample shall be obtained as a part of evidence, since every person has a distinct voice and the evidence collected make it necessary to compare the voice with that of the accused, mere taking of voice sample would not amount to an evidence, but when a comparative analysis is carried out by adopting scientific technology and an inference is drawn that the voice in the evidence collected in form of any recorded conversation or otherwise matches with that of the sample of the accused, it would then amount to an evidence. The Law Commission of

11 2023 SCC OnLine SC 733

India in its 87th report dealt with the issue and the extract of the same records as under :-

“13. A voice print is a visual recording of voice. It mainly depends on the position of “formants”. These are concentrates of sound energy at a given frequency. It is stated that their position in the “frequency domain” is unique to each speaker. Voice prints resemble finger prints, in that each person has a distinctive voice with characteristic features dictated by vocal cavities and articulates.

Voice-print Identification seems to have a number of practical uses. In England, in November 1967, at the Winchester Magistrate’s Court, a man was accused of making malicious telephone calls. Voice-print Identification (spectograph) was used and the accused was found guilty.”

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“Often, it becomes desirable to have an accused person speak for the purposes of giving to the police an opportunity to hear his voice and try to identify it as that of the criminal offender. A comparison may even be desired between the voice of an accused person and the recorded voice of a criminal which has been obtained by, say, telephone tapping. To facilitate proof of the crime the police may like that the accused should be compelled to speak, and even that his voice as recorded may be converted into a “voice print”

.....

.....

However, if the accused refuses to furnish such voice, there is no legal sanction for compelling him to do so, and the use of force for that purpose would be illegal.”

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“The scope of Section 5 needs to be expanded in another aspect. The general power of investigation given to the police under the Criminal Procedure Code may not imply the power to require the accused to furnish a specimen of his voice. Cases in which the voice of the accused was obtained for comparison with the voice of the criminal offender are known but the question whether the accused can be compelled to do so does not seem to have been debated so far in India.

There is no specific statutory provision in India which expressly gives power to a police officer or a court to require an accused person to furnish a specimen of his voice.”

12. The position of law being very clear on the aspect, that the samples collected are not evidence by itself and rather would become an evidence on comparing the voice sample collected and the voice in question, I do not find substance in

the submission of Mr. Aggarwal that the application before the Magistrate for permission to obtain voice sample would itself be an invasion of his privacy. In any case, the Magistrate shall be guided by the law laid down by the Apex Court on this aspect.

13. As regards the application preferred by the Accused/Applicant for obtaining certain documents, the impugned order passed by the Special Judge has rightly relied upon the decision of the Apex Court in the case of ***Reliance Industries Limited*** (supra). The documents were sought by the Applicant in the wake of the provisions of the Telegraph Act and Rules and it is the case of the CBI that certain calls were intercepted by adopting telephone tapping and the accused attempted to stall the process of obtaining the voice sample, by seeking these documents on the pretext that it goes to the root of the matter.

The application was vehemently opposed by the CBI, by placing reliance on Section 207 of Cr.P.C., by submitting that though certain telephone conversations were intercepted with the approval of the competent authority, the case diaries containing relevant documents alongwith intercepted calls are produced before the Court.

14. The Special Judge referred to Rule 419A(1) of the Telegraph (Amendment) Rules 2007 framed by the Central Government regarding directions for interception of any messages or calls of messages under sub-section (2) of Section

5 of the Indian Telegraph Act, which contemplate that such an action may not be allowed, except by an order made by the Secretary to the Government of India and by the Secretary to the State government in-charge of the Home Department in the case of a State Government. In unavoidable circumstances, such order may be made by an officer, not below the rank of a Joint Secretary to the Government of India, who has been duly authorised by the Union Home Secretary or the State Home Secretary.

Sub-section (2) makes it imperative that the order of the competent authority passed under sub-rule (1) shall contain reasons for such direction and a copy of such order shall be forwarded to the concerned Review Committee with a period of seven working days. Sub-rule 17 and 18 read thus :-

“17... The Review Committee shall meet at least once in two months and record its findings whether the directions issued under sub-rule (1) are in accordance with the provisions of sub-section (2) of Section 5 of the said Act. When the Review Committee is of the opinion that the directions are not in accordance with the provisions referred to above it may set aside the directions and orders for destruction of the copies of the intercepted message or class of messages.

18...Records pertaining to such directions for interception and of intercepted messages shall be destroyed by the relevant competent authority and the authorized security and Law Enforcement Agencies every six months unless there are, or likely to be, required for functional requirements.”

15. In the wake of the aforesaid provisions, the request of the Applicant seeking direction to the investigating agency to supply him the following documents came to be forwarded :-

“(a) Order of competent authority authorizing tapping and recording under Section 5(2) of the Indian Telegraph Act, 1885.

(b) Copy of letters forwarded to Review Committee by the CBI in terms of Sub-Rule 2 of the Rule 419A of the Telegraph Amendment Rules, 2007.

(c) Copy of the Minutes of Review Committee proceedings and certified copy of order of the Review Committee passed in terms of Rule 419A(17) of the Telegraph (Amendment) Rules 2007.”

16. Determining the question whether the documents deserve to be provided, the Special Judge record that the question arose whether the documents sought by the Applicant/Accused are in power and possession of the investigating agency at the stage of investigation, as the CBI in its reply has contended that the phone calls of the accused were intercepted with the approval of the competent authority as contemplated under Rule 419A(1) of the Telegraph (Amendment) Rules, 2007 and the copies of the orders form part of the case diary.

The Special Judge perused the same and categorically recorded as under :-

“13. Having held so, important question arises for consideration is that whether the documents sought for by the applicant/accused are in power and possession of the Investigating Agency at this stage of the investigation of the FIR. The CBI in its reply has contended that the mobile phones of the accused persons were intercepted with the approval of the competent authority as mandated under Rule 419A(1) of the Telegraph (Amendment) Rules 2007 and copies of the orders are included in the case diary. The Court may peruse the same. I have perused the case diary and copies of the orders are as under :-

"1. Copy of Order No. 14/3/97-T(2022)/CBI-18 dated 30.08.2022 issued by the Union Home Secretary, Ministry of Home Affairs, Govt. of India, in respect of mobile number 88281-10400.

2. Copy of Order No. 14/3/97-T(2022)/CBI-19 dated 30.08.2022 issued by the Union Home Secretary, Ministry of Home Affairs, Govt. of India, in respect of mobile number 98196-59608.

3. Copy of Order No.SU/MUM/TS(13)/2022-3 dated 15.09.2022 issued by the Director, Central Bureau of Investigation, New Delhi, in respect of mobile number 98311-58041.

4. Copy of Order No.14/3/97-T(2022)/CBI-3 dated 19.09.2022 issued by the Union Home Secretary, Ministry of Home Affairs, Govt. of India, in respect of mobile number 98311-58041."

17. However, recording that the relevant documents such as copy of letter forwarded to Review Committee, copy of the mandates of the Review Committee proceedings and the copy of order of Review Committee are not in possession of the CBI, in paragraph 15, the Special Judge recorded thus :-

“15. Admittedly, the relevant documents such as copy of letter forwarded to Review Committee, copy of the mandates of the Review Committee proceedings, copy of order of Review Committee passed in terms of Rule 419A(1) of the Telegraph (Amendment) Rules 2007, are not in power and possession of the CBI as of now. As such, the CBI cannot be directed to supply the copies of the documents referred to above except orders of the competent authority authorizing tapping and recording under Section 5(2) of the Telegraph Act. In the result, the application is liable to be partly allowed.”

18. I do not find any fault with the said order, as what is recorded is that some of the documents, which are sought for by the Accused are not with the CBI and they are with the Review Committee and, therefore, the CBI cannot be directed to produce these documents.

19. Though the CBI is aggrieved by the direction issued to it to supply the copies of the four orders, issued by the Ministry of Home Affairs, I do not think that there is any legal infirmity in directing so. It is the duty of the investigating authority to act fairly, while conducting proceedings or initiating any action against the parties and it cannot circumvent the rule of law for getting successful convictions and in observing so, I draw strength from the decision of the Apex Court in the case of ***Reliance Industries Limited*** (supra), where it is categorically held that SEBI a regulator and being a quasi-judicial body, was expected to act fairly and was duty bound to show fairness, in the form of public co-operation and

deference. The approach of SEBI in failing to disclose the documents was specifically tested, with concern of transparency and fair trial and the relevant observations of the Apex Court read thus :-

“46. The approach of SEBI, in failing to disclose the documents also raises concerns of transparency and fair trial. Opaqueness only propagates prejudice and partiality. Opaqueness is antithetical to transparency. It is of utmost importance that in a country grounded in the Rule of Law, institutions ought to adopt procedures that further the democratic principles of transparency and accountability. Principles of fairness and transparency of adjudicatory proceedings are the cornerstone of the principles of open justice.”

20. In the wake of the above, finding no legal infirmity in the impugned order, the same is upheld. Resultantly, Cri. Application No.1430 of 2022, filed by the Union of India does not deserve to be entertained and it is dismissed.

21. Upon the aforesaid documents being supplied, I find no reservation in permitting to obtain the voice sample of the Applicant/Accused. The submission of Mr.Aggarwal that till the necessary documents which are sought by the Applicant/Accused are furnished, he cannot be compelled to give his voice sample, fail to convince me and, it is rejected.

Resultantly, Cri.Application No.237 of 2023 also stands dismissed.

It is open for the Magistrate to pass appropriate order on the application filed by the Applicant/Accused within a period of four weeks from the date of receipt of this order, if not yet decided.

(SMT. BHARATI DANGRE, J.)