



**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**

S.B. Criminal Miscellaneous (Petition) No. 6518/2024

Badri Prasad Meena Son of Shri Moola Meena, Resident of Quarter No. C-1/1 Ajaymeru, P.C.D.A. Quarters, In front of Haldi Ghati Gate, Khatipura Jaipur (Rajasthan).

.....Accused Petitioner

Versus

Central Bureau of Investigation through PP

----Non petitioner

Connected With

S.B. Criminal Miscellaneous (Petition) No. 6519/2024

Manoj Kumar Meena Son of Shri Ram Prasad Meena, Resident of Meena Colony, Udai Mod, Gangapur City, District Gangapur City (Rajasthan), the then Senior Auditor, Office of A.O.G.E. (Airforce) Suratgarh (Rajasthan), Presently posted as L.A.O. Army, Jaisalmer (Rajasthan).

.....Accused Petitioner

Versus

Central Bureau of Investigation through PP

----Non petitioner

For Petitioner(s) : Mr. D.K. Garg
Mr. Rahul Sharma for
Mr. Rajneesh Gupta
For Respondent(s) : Mr. Shyam Singh Yadav, Spl. P.P.

HON'BLE MR. JUSTICE SAMEER JAIN

Judgment

REPORTABLE

Reserved on **10/10/2024**

Pronounced on **14/11/2024**

1. The present petition is filed under Section 528 of B.N.S.S. 2023, assailing the impugned order dated 04.09.2024 passed in Criminal Misc. Case No. 34/2024, arising out of FIR, qua which



directions were issued for recording of voice sample of the accused-petitioners by the learned Chief Metropolitan Magistrate, Jaipur Metropolitan-1 on 20.09.2024.

2. Bereft of elaborate details, the brief facts giving rise to the instant petition are that a complaint was registered with the Anti-Corruption Bureau (for short 'ACB') against the accused-petitioners wherein, allegations qua clearing bills of contractors for a consideration of one percent commission, which constitutes as illegal enrichment and gratifications. For the said allegation an FIR was made to be registered on 10.11.2022 for the offences under Section 120-B of IPC read with Section 7-A and 8 of the Prevention of Corruption Act 1988 (amended by 2018 Act). Thereafter, the Investigation Agency after thorough investigation has submitted a charge sheet against the accused-petitioners wherein, voice recording was collected by the investigating agency qua the exchange of communication between the employees and the contractor during a telephonic conversation. Subsequently, an application was filed by the learned Special Public Prosecutor before the Special Judge, CBI No.1, for collecting voice samples of the accused-petitioners.

3. At this juncture, the learned counsel appearing for the petitioners had submitted that the accused- petitioners were working as a Senior Auditor(s). It was further submitted that during the investigation an order was passed for recording of voice sample of the accused- petitioners.

4. Further, it was submitted that accused-petitioners had denied to provide the voice samples, however voice samples qua other person(s) are already sent to the Central Forensic Science



Laboratory, New Delhi. Moreover, an investigation is pending under Section 173(8) of Cr.P.C. qua contractors and other people till the report is received from the Central Forensic Science Laboratory (CFSL).

5. Furthermore, it was submitted that an application dated 24.04.2024 was filed by the learned Public Prosecutor before the Special Judge, C.B.I No. 1, Jaipur for collecting voice samples of the accused-petitioners and directions were sought to order the accused-petitioners to remain present before the Chief Metropolitan Magistrate, for the purpose of recording of voice sample moreover, qua the same, reliance was placed by the opposite side upon the judgments passed by Hon'ble Apex Court in **Ritesh Kumar vs. State of Uttar Pradesh** reported in **(2019) 8 SCC 1** and **Pravinsinh Nrupatisinh Chauhan vs. State of Gujrat** reported in **2023 LiveLaw (SC)463**, wherein, it was opined that the Court has the power to order for collections of voice sample for the purpose of investigation of a crime, however learned counsel had refuted the same and submitted that the Court cannot compel the accused to provide voice sample against his/her will.

6. Learned counsel appearing for the petitioners in support of the above said contention had placed reliance upon the judgment passed by the Co-ordinate Bench of this Court titled as **Omkar Sapre vs. State of Rajasthan** reported in **S.B. Criminal Misc. Petition No. 4474/2021**, and submitted that no person can be compelled for giving voice samples against himself and further stated that even learned Trial Court is not empowered to make



any observation qua drawing any adverse inference against the accused as a consequence of denial for providing voice sample.

7. It was further submitted that the above-mentioned application filed by the learned Public Prosecutor was duly replied to by the accused-petitioners.

8. In this background, learned counsel for the accused-petitioners had submitted that the said impugned order is illegal and prayed to set aside the same for the following reasons:

8.1 That compelling accused-petitioners to provide evidence against themselves is violative of provisions of Article 20 (3) of the Constitution of India, wherein it is stated that no person can be ordered to give evidence against himself.

8.2 That collecting voice samples against the wish of the accused-petitioners is violating the fundamental right to privacy, therefore the accused-petitioners can deny the same on account of privacy rights.

9. *Per contra*, learned counsel appearing for CBI had submitted that there are various incriminating conversations amongst accused-petitioners qua demand, negotiation and acceptance of bribe amount, therefore collection of voice sample qua accused-petitioners and their forensic comparison with alleged voices is crucial to conclude the investigation in fair and just manner.

10. Learned counsel had vehemently opposed the argument qua right to privacy and submitted that the said right cannot be constituted as an absolute right and for justified reasons permission qua recording of voice sample can be granted in the interest of the public.



11. Furthermore, learned counsel had placed reliance upon the ratio encapsulated in the Judgments passed by the Co-ordinate Bench of this Court in **S.B. Criminal Misc. Petition No. 81/2011** titled as **Fateh Singh Meena vs. CBI, Omkar Sapre vs. State of Rajasthan** reported in **S.B. Criminal Misc. Petition No. 4474/2021** and Judgments passed by Hon'ble Apex Court in **Pravin Singh Nrupat Singh Chauhan vs. State of Gujrat** reported in **2023 LiveLaw SC 463, Ritesh Kumar vs. State of Uttar Pradesh** reported in **(2019) 8 SCC 1** and provisions of Section 349 of B.N.S.S., 2023.

12. Heard and Considered the rival submissions, upon assiduous scanning of the material available on record and considering the Judgments cited at the Bar, this Court has noted the following material facts: -

12.1 That complaint was registered against the accused-petitioners with the ACB, alleging that the accused-petitioners were indulged in receiving/accepting undue advantage of one percent of the bill amount from contractors, and the same amounts to illegal enrichment and gratification and corrupt practices.

12.2 That the charge-sheet was filed under Sections 7-A and 8 of Prevention of Corruption Act, 1988 (as amended) read with Section 120-B of IPC.

12.3 That to conclude the investigation in a fair and just manner, an application was filed by the Public Prosecutor for collecting voice sample of the accused-petitioners.

12.4 That some of the voice samples qua other persons are already sent to CFSL.



13. This Court has analyzed that recording of voice sample for the purpose of investigation into the instant matter, that is Anti-Corruption, is required in public interest.

14. In this background, the question of law which calls for interference before this Court pertains to whether recording of voice sample violates the provisions of Article 20(3) of Constitution of India or any other rights of the accused-petitioners. Qua the same Hon'ble Apex Court in **Pravinsinh (supra)** has categorically held that collection of voice sample would not infringe upon the right to privacy, and the said inference was drawn upon while placing reliance upon in the Judgment cited in the said case titled as **Ritesh (supra)** wherein, it is held that the fundamental right to privacy cannot be construed as absolute and must bow down to compelling public interest.

15. In the facts and circumstances of the case, while interpreting the Article 20(3) of the Constitution of India, this Court has noted that the said Article does not state that an accused person shall not be compelled to be a witness. It only states that such a person shall not be compelled to be a witness against himself therefore, in the instant matter recording of voice sample does not, in and of itself, establish incrimination qua the accused-petitioners, and the result qua incrimination is contingent upon comparison of such recording with the record available. Moreover, the accused-petitioners can rebut the ultimate result, therefore, they will always have a right to defend themselves. The said Article is reproduced herein for convenience: -



"A No person accused of any offence shall be compelled to be a witness against himself."

16. This Court has further opined that recording a voice sample in the present case is necessary to facilitate a fair, independent, and impartial investigation. Like other methods of identification—such as fingerprints, blood samples, and DNA tests—voice is a unique personal trait that can aid in verifying identity through scientific means, essential for the admissibility of evidence. Importantly, the accused-petitioners are not required to provide any additional self-incriminatory information but are only asked to furnish a voice sample, akin to providing a blood sample. This voice recording by the investigating agency cannot be equated with a statement by the accused and should not relate to the crime's subject matter. In interpreting this, reliance is placed on the Co-ordinate Bench judgment in **Fateh Singh vs. CBI (supra)**, which reiterates the lawful and procedural validity of such scientific methods in evidence collection, relevant portions of the same are reiterated as under: -

"8. जहां तक विद्वान अधिवक्ता अभियुक्त द्वारा प्रस्तुत माननीय उच्चतम न्यायालय के विनिर्णय श्रीमती सेलवी एवं अन्य बनाम कर्नाटक राज्य 2010 (2) **W.L.C.** 99 का प्रश्न है इसमें अन्वेषण के दौरान नारको एनेलिसिस पॉलीग्राफ और ब्रेन इलेक्ट्रिकल एक्टिवेशन प्रोफाइल तीनों वैज्ञानिक तकनीक एवं पद्धति को अमानवीय होना निर्धारित करते हुए असंवैधानिक करार दिया गया है। इस विनिर्णय में इस स्थिति का भी विवेचन किया गया है कि ऐसी तकनीक के द्वारा परीक्षण के फलस्वरूप व्यक्ति को शारीरिक क्षति भी पहुंच सकती है क्योंकि इसके लिये दवा पिलाने बारम्बार जांच करने एवं कई तकनीकों का अभियुक्त पर प्रयोग किया जाना आवश्यक हो जाता है। इसमें यह भी प्रतिपादित किया गया है कि किसी भी व्यक्ति पर उसकी इच्छा के बिना ऐसी तकनीक का प्रयोग उसकी गोपनीयता एवं एकान्तता का अतिक्रमण करता है जो संविधान द्वारा प्रदत्त उसके बहुमूल्य अधिकार हैं। इन तकनीकों को प्रयोग अभियुक्त के प्रति अमानवीय, अपमानजनक एवं क्रूर है और इस कारण जघन्य अपराधों के अनुसंधान में भी इन्हें स्वीकार करने या व्यवहार में लाने की अनुमति का कोई न्यायसंगत आधार नहीं है। इसका तात्पर्य तो एक प्रकार से अभियुक्त को अपने विरुद्ध साक्ष्य देने के लिये बाध्य करना हो जायेगा। इसमें अन्वेषण के दौरान झूठ परिमापक यन्त्र का प्रयोग भी केवल अभियुक्त की



सहमति से ही किये जा सकने का दिशा निर्देश प्रदान किया गया है। इस प्रकार यह विधि दृष्टान्त हमें यही मार्गदर्शन प्रदान करता है कि किसी भी आपराधिक मामले के अन्वेषण में नारको एनेलिसिस, पॉलीग्राफ और ब्रेन इलेक्ट्रिकल एक्टिवेशन प्रोफाईल जैसी तीनों तकनीकों का प्रयोग भारतीय संविधान के अनुच्छेद 20 (3) एवं 21 का उल्लंघन है। इस विनिर्णय का मैंने ध्यानपूर्वक अवलोकन किया। इसमें आवाज के नमूने के संबंध में कहीं भी विचार किया जाना प्रकट नहीं होता है और इस प्रकार माननीय उच्चतम न्यायालय का यह विधि दृष्टान्त हस्तगत मामले में प्रार्थी को कोई सहायता प्रदान नहीं करता।

9. विद्वान अधिवक्ता प्रत्यर्थी की ओर से प्रस्तुत विनिर्णय केन्द्रीय जांच ब्यूरो, नई दिल्ली बनाम अब्दुल करीम लाडसाब तेलगी एवं अन्य 2005 Cr. L.J. 2868 (मुम्बई उच्च न्यायालय) का मैंने अवलोकन किया जिसमें अभियुक्त को अपनी आवाज का नमूना रिकॉर्ड करवाने के आदेश को भारतीय संविधान के अनुच्छेद 20 (3) का उल्लंघन नहीं माना अपितु यह निर्धारित किया गया कि इसके माध्यम से तो केवल इस सत्य निष्कर्ष पर पहुंचने में सहायता मिलती है कि दूरभाष से टेप की गयी आवाज अभियुक्त की है या नहीं। यदि यह आवाज अभियुक्त की नमूना आवाज से मेल नहीं खाती है तो अभियुक्त के विरुद्ध कोई अपराध बनना नहीं पाया जायेगा और यदि यह आवाज अभियुक्त की होना पायी जाती है तो भी इस नमूने की आवाज को उसके विरुद्ध साक्ष्य मानकर नहीं पढा जायेगा। इससे तो पुलिस को अनुसंधान के दौरान सत्य वस्तुस्थिति पर पहुंचने में सहायता मिलती है। यह स्थिति किसी भी पक्ष विशेष के विरुद्ध नहीं है अपितु वास्तविक स्थिति एवं सत्य निष्कर्ष पर पहुंचने में सहायक है। इस विनिर्णय के पैरा संख्या 11, 12 एवं 13 हस्तगत मामले में सुसंगत हैं जिन्हें यथावत नीचे उद्धृत किया जा रहा है:- "

17. This Court qua the issue whether magistrate can order a person to give sample, has stated that while interpreting the precedent set in **Omkar Sapre (supra)** it is observed that the Trial Court retains exclusive authority to address matters regarding an accused's refusal to provide a voice sample, with the directive that no adverse inference should arise solely from such refusal. This judgment underscores the competency of the Magistrate to adjudicate applications for obtaining voice samples. Moreover, considering the authoritative guidance provided by the Hon'ble Supreme Court in **Pravin Sinh (supra)** and **Ritesh (supra)**, and with the codification of **Section 349 under the Bharatiya Nagarik Suraksha Sanhita (B.N.S.S.), 2023**, this Court interprets that the legislature has explicitly empowered First-Class Magistrates to direct individuals, including the accused,



to furnish voice samples or other specimen samples deemed necessary for the purpose of investigation. Section 349 clarifies that such an order may be issued if the individual has been previously arrested in connection with the investigation, although this requirement may be waived at the Magistrate's discretion, provided the reasons are recorded in writing. The said section is reiterated as follows: -

"349. Power of Magistrate to order person to give specimen signatures or handwriting, etc.—

If a Magistrate of the first class is satisfied that, for the purposes of any investigation or proceeding under this Sanhita, it is expedient to direct any person, including an accused person, to give specimen signatures or finger impressions or handwriting or voice sample, he may make an order to that effect and in that case the person to whom the order relates shall be produced or shall attend at the time and place specified in such order and shall give his specimen signatures or finger impressions or handwriting or voice sample:

Provided that no order shall be made under this section unless the person has at some time been arrested in connection with such investigation or proceeding:

Provided further that the Magistrate may, for the reasons to be recorded in writing, order any person to give such specimen or sample without him being arrested."

18. This provision, as construed by this Court, carefully balances investigative needs with constitutional safeguards, ensuring that the requirement to provide a voice sample does not violate Article 20(3) of the Constitution, which protects against self-incrimination. The legislative framework thus enables a lawful and structured approach for collecting voice samples, upholding the





procedural and constitutional propriety of such investigative measures.

19. In summation, this Court is of the opinion that the directions issued in the impugned order by the learned Magistrate considering the above stated observation and, in the facts and circumstances of the instant matter, are appropriate, therefore this Court is not inclined to interfere.

20. Accordingly, the present petition is dismissed. Pending application(s), if any, stands disposed of.

(SAMEER JAIN),J

JKP/s-14-15