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

% ***Reserved on: 3rd November, 2025***
Pronounced on: 24th December, 2025

\+ **CRL.M.C. 2867/2021 & CRL.M.A. 18029/2021**

MOIN AKHTAR QURESHI
S/o. Abdul Majeed Qureshi
R/o. C-134 Defence Colony
New Delhi 110024 .....Petitioner

Through: Mr. R.K. Handoo, Mr. Yoginder Handoo and Mr. Gaurav Vishwakarma, Advocates

Versus

CENTRAL BUREAU OF INVESTIGATION
CBI Building,
Lodhi Road, New Delhi .....Respondent

Through: Mr. Ripudaman Bhardwaj, SPP with Mr. Amit Kumar Rana, Advocate

CORAM:
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J.

1. The present Petition has been preferred under Section 482 of the Code of Criminal Procedure, 1973 (Cr.P.C), for the quashing and setting aside of the Impugned Order dated 26.10.2021 passed by the Ld. Special Judge (PC Act) (CBI) in RC No. 224 2017 A0001/CBI/AC-VI/SIT, whereby the Petitioner is directed to provide his voice samples for verification and comparison with certain intercepted telephonic conversations.

2. ***Briefly stated,*** it is alleged that between the period of 25.10.2013 to 23.12.2013 and 06.01.2014 to 06.03.2014, the Income Tax Department intercepted telephonic conversations of Mobile Nos. 9810035614 and 9711305614, allegedly belonging to the Petitioner.

3. On 15.02.2014, the Income Tax Department conducted searches at the premises of the Petitioner. Subsequently, the Directorate of Enforcement (ED) filed a Complaint with the CBI on 31.08.2016, requesting the registration of an FIR based on the said intercepted telephone recordings and Blackberry Messenger (BBM) messages, alleging that the Petitioner was acting as a middleman for certain public servants.

4. Consequently, the CBI registered the subject FIR No. 224/2017 A001 on 16.02.2017 under Section 120-B IPC read with Sections 8, 9, and 13(2) read with 13(1)(d) of the Prevention of Corruption Act, 1988.

5. The Petitioner joined the investigation and appeared before the CBI on multiple occasions in 2018. In March 2021, the CBI filed an Application before the Ld. Special Judge seeking directions for the Petitioner to give voice samples for comparison by the Central Forensic Science Laboratory (CFSL) with the intercepted calls obtained from the Income Tax Department.

6. The Ld. Special Judge, *vide* the Impugned Order dated 26.10.2021, allowed the Application relying primarily on the judgment of the Apex Court in *Ritesh Sinha v. State of U.P.*, (2019) 8 SCC 1.

7. ***The Petitioner has assailed the Impugned Order*** on the grounds that while *Ritesh Sinha* (supra) empowers a Magistrate to order voice sampling, such power must be exercised strictly according to "*procedure established by law"* under Article 21. The Petitioner submits that there is no "*questioned*

voice" seized *from* the Petitioner during the current investigation, to serve as a basis for comparison.

8. The calls intercepted by the Income Tax Department in 2013-14 constitute "stale" material. Moreover, these intercepts were made without complying with the mandatory guidelines issued by the Apex Court in *People's Union for Civil Liberties (PUCL) v. Union of India*, (1997) 1 SCC 301, and Rule 419-A of the Indian Telegraph Rules. No order of the Review Committee validating the retention of these intercepts, has been produced.

9. Furthermore, the original recording devices or memory chips, have not been seized or produced. The material constitutes *secondary evidence* without a Certificate under Section 65-B Evidence Act, making it inherently inadmissible. Therefore, compelling a voice sample to compare with inadmissible material, is an abuse of process.

10. Further, directing voice samples to compare with unverified, potentially manipulated and illegally obtained intercepts, amounts to testimonial compulsion and a fishing expedition by the Agency, to create evidence where none exists.

11. The Petitioner contends that the *proviso to Section 311-A* CrPC requires the person to be arrested "*in connection with such investigation.*" Since no incriminating voice recording was seized from the Petitioner during the instant CBI investigation, the prerequisite for ordering a sample is absent.

12. ***The Respondent/CBI has contested the Petition*** **on the grounds** that the Application for voice sampling was strictly in accordance with the law laid down by the Apex Court in *Ritesh Sinha* (supra), which fills the legislative vacuum and empowers the Judicial Magistrate to order voice

samples for the purpose of investigation. The voice sample is sought for identification purposes, which does not amount to giving testimony against oneself. Thus, there is no violation of Article 20(3) of the Constitution, as settled in *State of Bombay v. Kathi Kalu Oghad*, AIR 1961 SC 1808.

13. The CBI asserts that the recordings were obtained officially from the Income Tax Department, which conducted the surveillance under authorization. The investigation is still ongoing. The authenticity, admissibility, and evidentiary value of the intercepted calls (source material) are matters of trial and cannot be prejudged at the stage of investigation, to deny the collection of evidence.

Submissions Heard and Record Perused.

14. The central legal issue before this Court is whether the Ld. Special Judge could *direct the Petitioner to give voice samples for comparison with intercepted telephonic conversations that are alleged to be old, the legality of which is challenged by the Petitioner*.

I. Procedural Laws and Constitutionality:

15. At the outset, it is pertinent to observe that the procedure is hand-made and not the mistress of justice and cannot be permitted to thwart the facts finding force in litigation, as was observed in the case of *Vatal Nagaraj vs. R. Dayanand Sagar*, AIR 1975 SC 349.

16. Hon'ble Mr. Justice V. R. Krishna Ayer, in the case of *Sushil Kumar Sen vs. State of Bihar*, 1975 (1) SCC 774, succinctly noted that the morality of justice at the hand of law, troubles the Judge's conscience and points an angry interrogation at the law reformer. 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 justiciae*, where the tragic sequel otherwise would be wholly inequitable. It was further observed as under:

> *"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 justiciae where the tragic sequel otherwise would be wholly inequitable. ....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. ……**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."***

17. Therefore, it needs no reiteration that procedural laws cannot be over-emphasized to defeat the substantive justice, as they are only intended as a path to reach the justice and not the result itself.

18. *Justice K. C. Dass Gupta* in a concurring opinion in the case of *Kathi Kalu Oghad*, (supra) observed that Article 20(3) of the Constitution of India says that a person shall not be compelled to be a witness against himself. The question which arises is: *"Is an accused person furnishing evidence against himself, when he gives his specimen handwriting or impressions of his fingers, palm or foot?" The answer to this must be in the negative.*

19. In the light of aforesaid principles, the present case may be considered.

II. Whether giving voice samples is self-incriminatory and violative of Article 20(3) of the Constitution of India:

20. *First challenge* to give voice samples is that it is *self-incriminatory and violative of Article 20(3) of the Constitution of India*.

21. In the case of *Kathi Kalu Oghad*, (supra) the issue was in regard to the specimen of writing taken of the accused for comparison with other writing to determine the culpability of the accused and whether such course of action was prohibited under Article 20(3) of the Constitution of India.

22. The then Hon'ble Chief Justice, S. P. Sinha, speaking of the majority, observed that the prohibition by the Constitutional provision under Article 20(3) of the Constitution of India would come into play only in cases of testimony of an accused, which is self-incriminatory or is of a character which has a tendency of incriminating the accused himself. It was further explained that self-incrimination means 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 and do not contain any statement of the accused based on his personal knowledge. It was observed as under:

> *"**(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 materials for comparison in order to lend assurance to the Court that its inference 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'."**

23. It was therefore, concluded that specimen through mechanical process, cannot be termed as a self-incriminatory attracting the prohibition of Article 20(3) of the Constitution of India. The contention raised on behalf of the Petitioner of the directions of the learned Trial Court being self-incriminatory, is not tenable.

III. Whether the Magistrate can direct Voice Sampling in the Absence of Specific Provision:

24. The **second aspect** for consideration is whether in the absence of any provision in Cr.P.C, the Court was competent to authorize Investigating Agency to record the voice samples of a person accused of an offence.

25. This aspect was considered by the Apex Court in *Ritesh Sinha v. State of U.P.*, (2019) 8 SCC 1, wherein a reference was made to 87th Report dated 29.08.1980 of Law Commission of India, which had recommended that a suitable legislation, which could be in the form of amendment to Section 5 of *The Identification of Prisoners Act, 1920*, would be appropriate so as to specifically empower a Judicial Magistrate to compel an accused person to give the sample of his voice.

26. In the case of *Ritesh Sinha* (supra), Apex Court observed that *objections to giving of a voice sample may be found on two reasons*, viz. (i)

the compulsion to give voice sample, does in some way involved an invasion of the right of an individual and to bring it within the ambit of existing law, would require more than reasonable bending and stretching of the principles of interpretation; *and (ii)* if the legislature, even while making amendments in Cr.P.C. (Act No.25 of 2005), is oblivious and despite expresses reminders chooses not to include voice sample either in the newly introduced Sections, explanation to Sections 53, 53A or 311A Cr.P.C., then it may be contended that in the larger scheme of things, the Legislature is able to see something which perhaps the Court is missing.

27. Insofar as, the first contention is concerned, the Apex Court in *Kathi Kalu Oghad* dispelled it (supra) wherein it was observed that the Article 20(3) of the Constitution does not say that an Accused shall not be compelled to be a witness against himself. When an Accused is directed to furnish his handwriting specimen or impression of his fingers, palm or foot, he has been held to be not furnishing evidence against himself.

28. The second concern was answered in *Ritesh Sinha* (supra) by observing that when there is a yawning gap in a Statute, temporary patchwork of filling up to make the Statute effective and workable and to sub-serve societal interests in a process of judicial interpretation would become inevitable. The aforesaid two concerns were accordingly answered by the Apex Court in the Case of *Ritesh Sinha* (supra).

29. Thus, the Apex Court in *Ritesh Sinha,* (supra), invoked Article 142 to fill the legislative gap in the CrPC. It was observed as under: -

> *"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."*

30. This position of law has been reaffirmed and expanded in the recent judgment of the Apex Court in *Rahul Agarwal v. The State of West Bengal & Anr.*, 2025 LiveLaw (SC) 1002. The Supreme Court held that despite the absence of explicit provisions in the Cr.P.C, a Judicial Magistrate must be given the power to order a person to give a sample of his voice for the purpose of investigation of a crime. The Court further clarified that in the **Bhartiya Nagarik Suraksha Sanhita (BNSS), 2023**, Section 349 has been specifically incorporated this power of the Courts to direct voice sampling. The Supreme Court further clarified the power extends to "*any person,"* encompassing not just an accused but also witnesses, to provide voice samples. It held that whether the Cr.P.C or BNSS is applicable to the proceedings, the Magistrate is fully empowered to pass such an order. It observed as under: -

> *"We need not hence consider the question as to whether it is the Cr.P.C. or the BNSS which would be applicable to the present case. If it is the Cr.P.C., the three Judge Bench decision in* ***Ritesh Sinha*** *permits the same on the identical principle adopted by this Court in* ***Kathi Kalu Oghad*** *to permit furnishing of handwriting, signature and finger impressions. The said sampling is similar to voice sampling, as now possible by reason of the advancing technology. If it is the BNSS that is applicable, then there is a specific provision enabling such sampling. The reasoning was also that mere furnishing of a sample of the fingerprint, signature or handwriting would not incriminate the person as such.* ***It would have to be compared with the material***

discovered on investigation, which alone could incriminate the person giving the sample, which would not fall under a testimonial compulsion, thus not falling foul of the rule against self-incrimination."

31. Therefore, the Petitioner's technical objection that there is no statutory provision authorizing taking of voice sample especially when his status as an accused or the specifics of his arrest under Section 311-A Cr.P.C, are not even clear, is without merit in light of the aforesaid discussion**.**

IV. Whether compelling a voice sample from the accused violates the protection against self-incrimination under Article 20(3) Constitution of India:

32. The Petitioner has raised a contention that compelling a voice sample from the accused, *violates the protection against self-incrimination afforded under Article 20(3) and is legally unsustainable.*

33. This aspect was specifically dealt in the case of *Rahul Agarwal* (supra) wherein relying on the Constitution Bench judgment in *State of Bombay v. Kathi Kalu Oghad*, AIR 1961 SC 1808 and *Ritesh Sinha*, (supra), it was reaffirmed that compelling a person to give a specimen handwriting, signature, finger impression, or a voice sample does not amount to *'testimonial compulsion'*.

34. Such samples are considered "material evidence" for comparison. They are not oral or documentary testimony that by itself, tends to incriminate the accused. The voice sample itself is innocuous; it is the comparison with the material discovered during investigation, i.e. the intercepts, that may incriminate, which does not fall under *testimonial compulsion.*

35. In view of the foregoing analysis and the binding law laid down by the Supreme Court in *Rahul Agarwal v. The State of West Bengal & Anr.* **(2025), t**he Ld. Special Judge was fully empowered to pass the Impugned Order. The power to direct voice sampling exists with the investigating Agency under the Cr.P.C through judicial interpretations especially in *Ritesh Sinha* (supra) and is now explicitly codified in Section 349 of the BNSS.

36. The direction to provide a voice sample does not violate Article 20(3) of the Constitution as it does not constitute testimonial compulsion. The only caution is to provide the safeguards, which have been ensured by the Ld. Special Judge.

37. ***Another contention*** raised by the Petitioner is the ***violation of privacy.*** While the Right to Privacy is a fundamental right, it is not absolute and must yield to legitimate State interests, such as the prevention and investigation of crime. The procedure adopted by the Ld. Special Judge in the Impugned Order, included these safeguards. The Court had directed that the text to be read by the Petitioner for the sample, shall not contain inculpatory sentences from the disputed conversation, but only words necessary for spectrographic comparison.

38. *Thus, this plea of the Petitioner is untenable.*

V. Evidentiary value of the Intercepts:

39. ***The Petitioner has challenged the evidentiary value*** of the intercepts of the year 2013-14 alleging that these are inadmissible being in non-compliance with *PUCL* guidelines; not being supported by Section 65-B Certificate etc. and is premature and these aspects can be considered during the trial.

40. Accepting the Petitioner's argument would amount to conducting a mini-trial on the admissibility of the electronic evidence before the investigation is even complete. As held by the Supreme Court in *State of Karnataka v. M.R. Hiremath* **(2019)**, the issue of a Section 65-B Certificate arises when the electronic record is sought to be produced in evidence at the trial, not necessarily at the stage of investigation or even filing of the Charge Sheet.

41. In the present case, the investigation is in progress to establish the identity of the speakers. Merely because the intercepts were made 7-8 years ago, does not inherently, invalidate them for the purpose of investigation.

42. The stage of investigation focuses on the collection of evidence. The admissibility, authenticity, and evidentiary value of the intercepts, are matters to be agitated and determined at the stage of trial. Pre-judging the validity of the source material to deny the collection of comparison samples, would amount to a mini-trial at the investigation stage, which is impermissible.

43. As held in *Rahul Agarwal*, (supra) the Magistrate's power to order sampling is necessary for the purpose of investigation. The investigating agency has the prerogative to scientifically verify if the voice in the material available with them, matches with that of the Petitioner.

Conclusion:

44. Accordingly, this Court finds no illegality, perversity, or abuse of process in the impugned Order dated 26.10.2021 of the Ld. Special Judge.

45. The Petition is devoid of merit and is hereby, **dismissed**.

46. The interim order, if any, stands vacated. The Petitioner is directed to comply with the directions of the Ld. Special Judge and present himself for giving voice samples as per the schedule to be fixed by the Trial Court/Investigating Officer.

47. Pending Applications, if any, are also disposed of.

(NEENA BANSAL KRISHNA)
JUDGE

DECEMBER 24, 2025/R