

2.12.19  
Ct. 14  
Sl. 18  
Sp.

**C.R.A.N. No. 4702 of 2019**  
**In**  
**C.R.R. 825 of 2019**

Mukul Roy  
-Versus-  
The State of West Bengal

Mr. Subashish Dasgupta,  
Mr. Mayukh Mukherjee,  
Mr. Samarjit Ghoshal,  
Mr. M. Mondal,  
Ms. Koel Dasgupta

...for the petitioner

Mr. Saswata Gopal Mukherjee, Ld. P.P.  
Mr. Rudradipta Nandy

...for the State

**In re: CRAN 4702 of 2019**

Sufficient grounds have been made out for recall of the order dated December 2, 2019. The revisional application is restored to its original file and number.

Accordingly, CRAN 4702 of 2019 is allowed and disposed of.

Affidavit-of-service filed by the learned counsel for the petitioner is taken on record.

The short question raised in the revisional application is with regard to the order no. 37 dated February 4, 2019 passed by the learned 2<sup>nd</sup> Special Court at Calcutta in Special Case No. 3 of 2018. The petitioner has thirty cases pending against him for investigation.

By the impugned order, the learned Magistrate has directed the petitioner to appear before the Court below and provide a voice sample before an F.S.L. expert.

In the instant case, the Investigating Officer has prayed for a voice sample of the petitioner to enable FSL expert to compare the same with certain evidence that the IO already has in his custody against the accused persons. The petitioner is not a named accused in the FIR and the investigation still on.

The learned counsel for the petitioner has challenged the order, inter alia, on the ground that

Section 311A of the Code of Criminal Procedure prescribes that any person including an accused person can be compelled to attend investigation and 'only' provide his specimen signature or handwriting. The same has been interpreted to include the finger prints and foot prints samples in the decision of various High Courts including the Hon'ble Supreme Court.

The petitioner would argue that in terms of the provisions of Section 311A read with Section 5 of the Identification of Prisoners Act, 1920 as also Section 53 and 53A of the Cr.P.C., do not contemplate that a witness can be compelled to give a voice sample.

Per contra, the learned counsel for the State would rely upon the decision of the Hon'ble Supreme Court in the case of ***Ritesh Sinha vs. State of U.P.*** reported in ***(2019) 3 SCC (Cri) 252***. In the said case it was an "accused" who was asked to give voice

sample and the Hon'ble Apex Court held that the same does not in any way infringe upon his fundamental right in the context the basic principle of law that a person cannot be compelled to give evidence against himself. The State would submit that if an accused as held in the ***Ritesh Sinha vs. State of U.P. (supra)*** can be compelled to give voice samples, a witness who is not an accused, at an investigation stage, can definitely be asked to give voice samples.

The Hon'ble Supreme Court in the said ***Ritesh Sinha vs. State of U.P. (supra)*** went on to reiterate the age-old principle that while a person cannot be compelled to give evidence against himself, a person can indeed be compelled to be a witness in course of trial against other accused.

The following questions emerge, which this Court is of the view, is required to be settled by an appropriate larger bench.

- (a) Whether Section 311A read with Sections 53 and 53A of Cr.P.C. along with Section 5 of the Identification of Prisoners Act, 1920, empowers a Magistrate to compel a witness in course of investigation into an FIR, to give voice sample in the aid of such investigation.
- (a) Can the principle laid down by the Hon'ble Supreme Court in the ***Ritesh Sinha vs. State of U.P. (supra)*** be applied also to witnesses in course of investigation.
- (a) Whether a witness even in course of an investigation can be compelled to give evidence, that could subsequently emerge as a ground for including him as an accused in the final investigation report.

Let this matter be placed before the Hon'ble Chief Justice for reference to an appropriate bench.

In the meantime, however, the petitioner shall give voice sample to the Investigating Officer in presence of the FSL expert that shall be kept sealed and unopened and abide by the result of the reference proposed herein above.

It is also made clear that the question as to whether the said voice sample can be used in any other investigation may also abide by the decision of the appropriate bench.

The Court records the petitioner's consent to give voice sample, to the limited extent indicated herein above, on the 10<sup>th</sup> of January, 2020 at a time that may be mutually agreed upon by the petitioner and the Investigating Officer.

Urgent photostat certified copy of this order, if applied for, be given to the parties.

**(Rajasekhar Mantha, J.)**

