

IN THE SPECIAL COURT FOR THE TRIAL OF NIA CASES, ERNAKULAM
Present: Sri. Anil.K.Bhaskar, Judge for NIA Cases

Wednesday the 5th day of August, 2020/ 14th Sravana, 1942

Cri.MP No.33/2020 in SC No.01/2020/NIA

Petitioner/Complainant:

Union of India represented by National Investigation Agency, Kochi.

By Adv. Sri. Arjun Ambalappatta
Public Prosecutor, NIA

Respondents/Accused:

- 1 Allan Shuaib @ Mamu @ Mammu @ Vivek, aged 20 years, S/o.Muhammed Shuaib, Manipuri House, Palat Nagar, Thiruvannur, Kozhikode (A1)
- 2 Thwaha Fasal @ Thaha @ Fasal @ Kishan, aged 24 years, S/o. Aboobacker, Kottummal House, Palangattu Parambu, Moorkanad, Pantheerankavu, Kozhikode (A2)
- 3 C.P.Usman @ Mahesh, Aged 40 years, S/o.Aboobacker, House No.8/226 A, Melethil House, Odompatta, Chembarassery, Pandikkad, Malappuram (A3)

A1 by Adv. Sri. Issac Sanjay

A2 by Adv. Sri. Thushar Nirmal Sarathy

This Criminal M.P coming on for hearing before me on 29.07.2020 and the Court on 05.08.2020 passed the following:

ORDER

1. This application is put in by the Investigating Officer seeking an order for recording the sample voice of Thwaha Fasal @ Thaha @ Fasal @ Kishan who is the second accused in the above crime, from the court hall, with

the help of technical experts of CDAC, Thiruvananthapuram, for the purpose of sending the voice sample for expert opinion.

2. The second accused in the above crime face indictment for the offences punishable under Section 120B IPC and Sections 13, 38 and 39 of UA(P) Act.

3. This application was filed on 27.04.2020 and on the same day itself the investigating officer filed final report before this court. Acting upon the said final report this court took cognizance of the offence and the case was taken on file as SC No.1/2020 against three accused named in the final report including the second accused Thwaha Fasal. The third accused Usman is absconding and the accused one and two are in judicial custody. They had entered appearance through counsel. Pending this petition, investigating officer filed Crl.M.P.No.37/2020 on 04.05.2020 and obtained formal permission from this court under Section 173(8) of Cr.P.C for further investigation. Now further investigation is going on.

4. Notice in the above petition was served to the second accused. His counsel filed written objection.

5. The prosecution allegation is that all the accused are strong cadres of the banned terrorist organization CPI(Maoist) and had conspired together with intention to further its activities. The prosecution would allege that umpteen number of material objects were seized from their possession which will prove

their culpability. As far as the second accused is concerned it is further stated that while conducting the search of the house of the second accused in his presence on 02.11.2019, the second accused shouted slogans supporting CPI (Maoist) and Maoism and the same were videographed by the Inspector of Police, Pantheerankavu Police Station by using his mobile phone and the said video clip has been seized and produced before this court as a material object. To substantiate proof for the voice recorded in the video clip, it become necessary to draw sample voice print of the second accused and then to sent it with the disputed voice clip for scientific comparison by an expert. The above application desires to accomplish the said requirement.

6. The objection taken up by the defence counsel is two fold. Firstly the incident itself is denied. Secondly no useful purpose will be served in identifying the voice in the video clip since none of the slogans alleged to be raised by the second accused were in support of any terrorist organization nor are they tending to propagate their ideology.

7. The objections run to the merits of the case. At this stage we need not go into the merits.

8. A voice print is a visual recording of voice. Many a time, to facilitate proof of the crime, the police have to compel the accused to speak and to record his voice, collect it as a voice print for scientific comparison. It is a better option that can be made use of to the case in hand. Right now, there is no

explicit statutory provision enabling the police to record the voice sample of the accused for investigation purpose. Considering the yawning gap in the statute, for temporary patchwork of filling up to make the statute effective and workable and to sub serve societal interest, three judge bench of the Hon'ble Supreme Court in Ritesh Sinha v. State of Uttar Pradesh and another (AIR 2019 SC 3592), in exercise of its jurisdiction vested under Article 142 of the Constitution of India, conferred on a Judicial Magistrate (contextually the Special Judge), the power to order a person to give a sample of his voice for the purpose of investigation of a crime until explicit provisions are engrafted in the Code of Criminal Procedure by Parliament.

9. In the above judgment Hon'ble Apex Court further made it clear that the privilege under Article 20(3) of the Constitution of India which protect a person accused of an offence from being compelled to be a witness against himself, will not extend to protecting an accused person from being compelled to give his voice sample during the course of investigation into an offence. In fact 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".

10. In a case of drawing voice sample of the accused especially for comparison with a disputed voice clip, definitely two competing interests will

emerge for consideration. Accused would contend that it will not be fair and proper to ask him to read out the inculpatory text for the purpose of drawing his voice sample. On the other hand the investigating authorities would submit that for making a fair comparison, the text required to be read out by the accused shall contain the words appearing in the disputed conversation.

11. Resolution of competing rights is a matter of judicial adjudication. Hon'ble Supreme Court in Sudhir Chaudhary v. State (NCT of Delhi) (AIR 2016 SC 3772), had balanced these rights and directed the investigating officer to file a transcript of the disputed conversation in a sealed cover and the Director of CFSL, was called upon to file in a sealed cover, a proposed passage of a written text which the accused shall be required to read out for the purpose of giving their voice sample **using words, but not the sentences, appearing in the disputed conversation** in such number as the Director/Scientific officer may consider necessary for the purpose of comparison (emphasis supplied).

12. The above directions given by the Apex Court is of universal application. This can be treated as guidelines to ensure the fairness of the process involved in drawing the voice sample. The said guidelines are to be followed while drawing voice sample of the second accused herein.

In the result, the above petition is allowed in the following terms:-

- (1) The Investigating Agency is granted permission to take/record the sample voice of second accused for the purpose of

identifying the voice appearing in the disputed video clip produced before the court.

- (2) The sample voice shall be collected from the court hall of this court on 26.08.2020, as and when the accused is produced before the court for extension of remand.
- (3) The sample shall be drawn and recorded by Director, C-DAC, Thiruvananthapuram or any other expert of C-DAC authorised by him.
- (4) The investigating officer shall hand over in advance the transcript of the disputed voice clip to the Director CDAC, and a copy of the same shall be produced before the court in a sealed cover.
- (5) Director CDAC shall prepare the written text which the second accused shall be required to read out for the purpose of giving his voice sample using words but not the sentences, appearing in the transcript, in accordance with the guidelines given by the Hon'ble Apex Court in the decision referred above.
- (6) The expert shall forward to this court the written text prepared, in a sealed cover and get a formal approval from the court.
- (7) The expert shall bring all the necessary equipments to record the voice.

- (8) Issue a copy of this order with a letter to the Director, CDAC, Thiruvananthapuram.
- (9) Give intimation to the Jail Superintendent, High Security Prison, Viyyoor.

Dictated to the Confidential Asst., transcribed and typewritten by her, corrected and pronounced by me in open court on this the 5th day of August, 2020.

Sd/-

Anil.K.Bhaskar
Judge, Special Court for NIA Cases

Appendix: Nil

Id/-

Judge, Special Court for NIA Cases
(By Order)

Sd/-

Sheristadar

Typed by: Sindhu.S.T.
Comp.by:

Order in Crl.MP No.33/2020
in
SC No.01/2020/NIA/KOC
Dated: 05.08.2020

