

Special Case No. 36/2016
CNR No. MHRT010009912016

The State

Prosecution

Vs.

Gurunath Ramchandra Hunnare

Accused

Order below Exh. 144.
(Date 15.11.2024)

1. This application is filed by the applicant/accused for deexhibiting the document marked at Exh. 132 i.e. report dated 15.04.2017 of Scientific Expert of Forensic Science Laboratory, State of Maharashtra, Home Department, Vidyanagari Kalina, Santacruz regarding voice sample of accused.

2. The brief facts giving rise to this case are as under;

Accused is a public servant. He is facing trial for commission offence punishable under Section 7 of Prevention of Corruption Act. During the course of trial while recording the evidence of P.W. 8 Investigation Officer Mr. Gurav in examination-in-chief above referred CA report was given exhibit number 132. Advocate for accused raised objection that the said witness is neither author of that document nor he has any concern with it. Prosecution has not examined said Scientific Expert. Therefore, it can not be exhibited from that witness. It is not an empty formality. Therefore, said document may be deexhibited. No opportunity was given to the accused at the stage of admission/denial of documents under Section 294 of Cr.P.C. to put his say on this document.

3. Ld. APP in his argument pointed out that report under Section 294 of Cr.P.C. was came to be filed on 10.01.2017. At the relevant time, this document was not received from FSL. Therefore, it was not included in that report in the list of documents to be admitted. That FSL report received later on, on 15.04.2017. He further submitted that provisions of Section 293 of Cr. P.C. allows the use of documents received from government scientific experts as evidence in legal proceedings. That section lays down

what is admissible.

- 1) Any document that appears to be a report from a government scientific expert can be used as evidence.
- 2) The report must be on matter that was submitted to the expert for examination or analysis.
- 3) Who is included the section applies to government scientific experts such as Chemical Analyzer, Inspector of explosive, Director of Finger Print Bureau and Director of CFSL.

4. Sub-Section 4 lays down ,”the list of government scientific experts to whom that section is applies”. Sub-clause G of that list lays down that, “any other government scientific expert, specified by notification by the Central Government for this purpose may fall under that category”.

5. Ld. APP pointed out that as per order of Home Department dated 14.06.2018 tape authentication and speaker identification of FSL is also included in the list of scientific Officer of FSL. The post of Asst. Director and Scientific Officer being the same. Government has declared that the post of the Scientific Officer shall be the ex-officio Asst. Director for the purposes under Section 293 of Cr.P.C. Therefore, according to him the then

Scientific Officer of FSL Mumbai Kum. K.P. Gholap is a ex-officio Asst. Director. Consequently, her report dated 15.04.2017 can be directly given exhibit number and it is not necessary to examine any witness to prove the contents of that document filed at Exh. 132.

6. He further stated that if this Court would consider the special circumstances of laying of trap during which that report was prepared is not an empty formality as alleged by the accused. At the time of recording of evidence of P.W. 8 when exhibit number was given to said document objection was not raised. Consequently, that document which was already exhibited as Exh. 132 can not be deexhibited. Hence, therefore this application may be rejected.

7. In this context he reliance is placed on following citations.

1) **Bipin Shantilal Panchal Vs. State of Gujarat & Anr., reported in 2001(1) B.Cr.C. 750 (SC).**

2) **Judgment of Hon'ble Bombay High Court in Writ Petition No. 8569 of 2016 Sultan Suleman Qureshi Vs. Mrs. Anisa Rafiq Charolia.**

8. In light of these facts following points arise for my determination and I have recorded my findings thereon as below for the reasons stated hereinafter :

<u>POINTS</u>	<u>FINDINGS</u>
1. Whether report of Scientific Officer, FSL Mumbai dated 15.04.2017 marked as Exh. 132 can be deexhibited?	No.
2. What order ?	As per final order.

REASONS

9. Section 293 is another special rule of evidence and makes any document, purporting to be a report under the hand of government Scientific Expert to whom this section applies, upon any matter or thing duly submitted to him for examination and report, admissible in evidence without calling such expert as a witness. Sub-Section 4 lays down the list of Government Scientific Expert to whom that section is applies. Sub-Clause G of that list says that “any other Government Scientific Expert, specified by notification by the Central Government for this purpose may fall under that category”. Prosecution has produced order of Home Department dated 14.06.2018 that the Scientific officer of FSL who has done examination or analysis of speaker identification is also equivalent to the post of Asst. Director, for the purpose of Section 293 of Cr.P.C. As per Clause E of Sub-Section 4 of Section 293 lays down that, the report of the Asst. Director, State Forensic Science Laboratory is admissible in evidence without calling him as a witness. Therefore, above stated report about voice sample was exhibited at the time of recording evidence of Investigation Officer. At the time of giving exhibit number to that document objection was not raised by the accused. Therefore, at this stage that document can not be deexhibited.

10. It is settled position of law that, expert opinions should be used with caution and a conviction should not be based solely on expert opinion without corroboration. In this case, to prove that alleged recorded conversations took place between informant and accused prosecution has examined some witnesses including informant and panch witness Ganesh Salgar.

11. The Ld. Advocate for accused in his oral argument sought permission to examine the said Scientific Expert of prosecution as its defence witness, but in this case yet statement under Section 313 of accused is not recorded and case has not reached to the stage of recording of defence evidence. Therefore, his said oral request is premature. Hence, can not be considered at this stage.

12. In view of above stated evidence, procedure and the legal principle laid down in the above stated citations there is no merit in the application of applicant and hence, the application deserves to be rejected. While deciding the matter finally this Court will decide evidentiary value of that document. Therefore, I pass following order.

ORDER

Application (Exh.144) is rejected.

Date : 15.11.2024

(S. S. Gosavi)
Sessions Judge, Ratnagiri.