



IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLREV No. 440 of 2024

Shashi Kumar Unnikrishnan* *Petitioner(s)

Mr. A.K. Parija, Senior Advocate
along with Mr. I. Mohanty, Advocate

-versus-

***Republic of India, through* *Opposite Party (s)*
(Central Bureau of
*Investigation), Bhubaneswar***

Mr. Sarthak Nayak, Advocate

CORAM:

JUSTICE SIBO SANKAR MISHRA

ORDER

07.03.2025

Order No.

06. 1. Heard.

2. The petitioner is aggrieved by the order dated 24.07.2024 passed by the Special Judge, CBI-1, Bhubaneswar in T.R. No.07 of 2018, whereby the application moved by the prosecution dated 09.08.2022 to bring on record certain documents and materials which were inadvertently left out while filing charge sheet has been allowed. The application dated 09.08.2022 has been moved by the Sub-Inspector of Police, CBI, Bhubaneswar *inter alia* contending as under:-



“3. That during investigation of the instant case specimen voice samples of the accused persons including the accused petitioner have been taken in presence of independent witnesses on dated 12.01.2017 and 20.02.2017, and the same had been forwarded to CFSL, Delhi for obtaining expert opinion on the questioned voices of the accused persons.

4. That the sample voice of the accused petitioner taken vide exhibit VR-2 was informed to be blank and containing no audio file by CFSL, Delhi, subsequently another voice sample (VR-3) of the accused petitioner was taken in presence of independent witnesses on dated 14.12.2017 and forwarded to CFSL, Delhi based on which opinion has been formed and report dated 26.12.2017 has been submitted which is listed as documentary evidence in the charge sheet filed dated 28.03.2018.

5. That while filing charge sheet in the instant case, the sample voice collection and sealing memorandum dated 14.12.2017 which was drawn in presence of independent witnesses during sample voice collection of Shri Sashi Kumar Unnikrishan, exhibited as VR-3 and forwarded to CFSL vide covering letter no.6237 dated 18.12.2017 (copy enclosed), was inadvertently not incorporated in the list of documents in the charge sheet filed dated 26.03.2018.”

6. That the sample voice collection and sealing memorandum dated 14.12.2017 vide which sample voice (VR-3) of Sashi Kumar Unnikrishnan (accused petitioner) has been taken before independent witnesses and based on which opinion of CFSL on the questioned voice of the accused petitioner has been obtained vide report



dated 26.12.2017, may be taken into record as additional documentary evidence.”

3. On perusal of the contents of the application would reveals that exhibit VR-3 has been forwarded to CFSL and the CFSL report obtained thus has been left out inadvertently to form part of charge sheet. Therefore, the I.O. sought permission of the trial court to allow to bring on record those documents. The trial court while dealing with the said application has inter alia observed as under:-

“On perusal of the case record it is found that in this case the I.O submitted the charge sheet against the accused persons U/s. 120(B) & 109 IPC and Sec. 13(2) read with Sec.13(1)(d) of the P.C. Act, 1988 and cognizance has already been taken of the above offences. After submission of charge-sheet learned P.P., CBI filed two separate petitions seeking to add the sample voice collection and sealing memorandum dtd. 14.12.2017 and in the said petitions learned P.P. submitted that although the I.O. prepared the said memorandum during investigation of the case, but inadvertently did not attach the same with the list of documents along with the charge sheet. The non-submission of memorandum along with the charge sheet does not seem to be intentional or mala fide from the attending circumstances. Since, the voice sample recording and sealing memorandum is vital document for the purpose of this case, it may help to find out the truth of the matter.

Considering the facts and circumstances of the case, the petitions of the prosecution dtd. 9.8.2022 and 10.5.2022 filed by the learned P.P. are allowed. The sample voice collection and sealing memorandum dtd. 14.12.2017 is therefore, taken to the case record.”



4. Mr. A.K. Parija, learned Senior Advocate appearing along with Mr. I. Mohanty, for the petitioner has taken me to the charge sheet and submit that in the enclosed seizure list the documents sought to be introduced through the application was not mentioned, hence the IO is trying to place on record fresh documents to cover up the lacuna appears to have been discovered subsequently. He has also taken me to the order passed by the Coordinate Bench of this Court vide order dated 17.11.2022 in CRLREV No. 51 of 2022. He has emphatically relied upon paragraphs-7 and 8 of the said order, which reads as under:

“7. After considering the rival submissions, this Court finds that VR-3 is not on record as yet. An application to include the same with the record is pending before the court below. In the fitness of things learned court below should first dispose of the petition by passing a lawful order and thereafter should consider the application for discharge filed by the accused.

8. In such view of the matter, the impugned order is set aside. The matter is remitted to the court below to pass order on the discharge petition afresh after disposal of the petition dated 22.08.2022 filed by the CBI.”

The purport of the aforesaid order is that the trial court was directed by this court to hear the discharge application of the petitioner after hearing the application of the prosecution seeking to bring on record the left out documents in the charge sheet. Since by way



of the impugned order the prosecution's application has already been allowed and the prosecution is allowed to bring on record the left out documents and materials, as prayed by them, it is obligatory on the part of the prosecution agency to supply the entire documents as per the provisions contained under Section 207 Cr.P.C. Thereafter only the petitioner can file the discharge application.

5. Mr. Nayak, learned counsel for the C.B.I. while vehemently opposing the contention raised by Mr. Parija submits that the documents, which are now brought on record pursuant to the impugned order would be supplied in accordance with law, however, he sought some time to supply the same to the petitioner.

6. I am not inclined to delve upon the merits of the case at this stage, however, suffice it to say that contentions raised by Mr. Parija on the merit of the case shall be considered by the Trial court at appropriate stage. Accordingly, this Court directs the investigating agency to supply all the documents which has been brought on record pursuant to the impugned order dated 24.07.2024. In view of the order of this Court dated 17.11.2022, needless to say that after supply of the documents the petitioner may choose to move



application for discharge. If such application is moved, the same shall be considered in accordance with law.

7. With this observation, the CRLMC is disposed of.

(S.S. Mishra)
Judge

Ashok