

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE R. NARAYANA PISHARADI

TUESDAY, THE 30TH DAY OF NOVEMBER 2021 / 9TH AGRAHAYANA, 1943

CRL.MC NO. 3358 OF 2021

VC 3/2021/TSR OF THE VIGILANCE & ANTI-CORRUPTION BUREAU,

THRISSUR UNIT.

PETITIONER/2ND ACCUSED:

MAHESH LAL N.Y

AGED 46 YEARS

S/O. YATHEENDRAN, NELLIPARAMBIL HOUSE,
PERAMANGALAM, THRISSUR 680 545

BY ADVS.

SHABU SREEDHARAN

MEENU THAMPI

AMAL STANLY

SHYAM KUMAR M.P

ANISA ANDREWS

RESPONDENT/COMPLAINANT:

STATE OF KERALA

REPRESENTED BY THE SPECIAL PUBLIC PROSECUTOR,
VACB, HIGH COURT OF KERALA, ERNAKULAM 682 031.

BY SMT.REKHA.S, SR.PUBLIC PROSECUTOR

SRI.A.RAJESH, SR.PUBLIC PROSECUTOR, VACB

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 26.11.2021, THE COURT ON 30.11.2021 PASSED THE FOLLOWING:

"CR"

R. NARAYANA PISHARADI, J

Crl.M.C.No.3358 of 2021

Dated this the 30th day of November, 2021

ORDER

The petitioner is the second accused in the case registered as V.C.No.3/2021/TSR by the Vigilance and Anti-Corruption Bureau (VACB), Thrissur.

2. The petitioner was employed as an Overseer in the Choondal Grama Panchayat.

3. The prosecution case, in short, is as follows: The first accused is a contractor. He demanded money from the de facto complainant for payment of the same to the second accused and other officials of the Choondal Grama Panchayat to induce them to grant completion certificate in respect of the new building which was constructed by the brother-in-law of the de facto complainant. On 16.02.2021, at about 17:00 hours, the first accused met the de facto complainant at the parking area of Sankara Shopping Complex at the place Kecheri in Thrissur and he obtained/accepted

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from the de facto complainant an amount of Rs.25,000/-. Thus, the first accused committed the offence punishable under Section 7A of the Prevention of Corruption Act, 1988 (for short 'the Act') read with Section 120B of the Indian Penal Code and the second accused committed the offence punishable under Section 7(a) of the Act read with Section 120B of the Indian Penal Code.

4. During the investigation of the case, Annexure-2 notice issued from the Court of the Enquiry Commissioner and Special Judge (Vigilance), Thrissur, directing the petitioner to appear at the Chithranjali Studio in Thrikkakara, for recording samples of his voice, was served on him. The direction given to the petitioner was to appear at 09.00 hours on 27.07.2021 in that studio.

5. This petition under Section 482 of the Code of Criminal Procedure, 1973 is filed for quashing Annexure-2 notice issued to the petitioner and all further proceedings based on it.

6. Heard the learned counsel for the petitioner and the learned Public Prosecutor.

7. At the time of hearing, learned counsel for the petitioner has challenged Annexure-2 notice only on two grounds: (1) The order compelling the petitioner to give voice sample violates the protection guaranteed under Article 20(3) of the Constitution of

India. (2) The order directing the petitioner to give voice sample was passed by the Special Court without granting him an opportunity of being heard.

8. Article 20(3) of the Constitution provides that, "no person accused of any offence shall be compelled to be a witness against himself".

9. The answer to the question, whether a direction given to an accused to give sample of his voice for comparison would violate Article 20(3) of the Constitution, is no longer *res integra*. In **Ritesh Sinha v. State of Uttar Pradesh [AIR 2019 SC 3592 : (2019) 8 SCC 1]**, the Supreme Court has held that direction to an accused to give voice sample does not infringe Article 20(3) of the Constitution of India. The Apex Court has also held as follows:

"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".

10. The other contention of the petitioner is that the Special Court should have granted him an opportunity of being heard before passing any such order. The question of granting opportunity of being heard to an accused before passing an order for taking voice sample would arise only if his consent is required for taking such sample. Since the direction given by a court to an accused to give voice sample for the purpose of comparison does not violate Article 20(3) of the Constitution, his consent is not required for that purpose. The accused has no right of option in the matter.

11. The same view has been taken by this Court in **Daisy v. State of Kerala [2020 (3) KHC 115 : 2020 (2) KLT 639]**, in which it has been observed as follows:

"The next contention of the learned Senior Counsel for the petitioner was that notice was not issued to the petitioner before directing her to furnish the voice sample. Since the direction of the court below was on a request made by the investigating agency in the course of investigation and in the absence of any legal bar, the Court below was not expected to issue notice to the petitioner."

12. The prayer for quashing Annexure-2 notice cannot be allowed for another reason also. Annexure-2 notice was issued by

the office of the Special Court. The basis of Annexure-2 notice is the order dated 22.07.2021 of the Special Court which is referred to in it. The petitioner has not cared to produce the copy of the aforesaid order of the Special Court and to challenge it. In the statement filed by the investigating officer, it is mentioned that the Special Court had earlier issued direction to the petitioner to appear at Chitranjali Studio on 22.04.2021 at 08:45 hours and thereafter the petitioner had approached the Special Court with the petition Crl.M.P.75/2021 with a prayer for granting him time to appear at the studio and that the order dated 22.07.2021 was passed by the Special Court in that petition. Learned counsel for the petitioner has not refuted the correctness of the above factual aspects. It means that the petitioner was very well aware of the orders dated 22.04.2021 and 22.07.2021 passed by the Special Court.

13. It is mentioned in the statement filed by the investigating officer that the mobile phone seized during the investigation of the case contains details of the conversation between the petitioner and the de facto complainant with regard to the demand for bribe and voice analysis of both accused and the de facto complainant is essential to prove the demand made. Therefore, taking voice

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samples of the petitioner is very essential for an effective investigation of the case.

14. The investigating agency has to adopt advanced scientific technology and methods of investigation to solve crimes [See **Rajendra Pralhadrao Wasnik v. State of Maharashtra : (2019) 12 SCC 460 : AIR 2019 SC 1**].

15. In the aforesaid circumstances, the challenge made to Annexure-2 notice fails. The petition is dismissed.

**Sd/-R. NARAYANA PISHARADI
JUDGE**

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APPENDIX OF CRL.MC 3358/2021

PETITIONER'S ANNEXURE

Annexure 1 THE TRUE COPY OF THE ORDER OF THE ENQUIRY
COMMISSIONER AND SPECIAL JUDGE'S COURT,
THRISSUR IN CRL MP NO. 28/2021 IN VC
3/2021/TSR DATED 2-3-2021

Annexure 2 THE TRUE COPY OF THE NOTICE ISSUED BY THE
MANAGER OF THE OFFICE OF THE ENQUIRY
COMMISSIONER AND SPECIAL JUDGE
(VIGILANCE) THRISSUR DATED 23-07-2021.

RESPONDENTS' EXHIBITS: NIL

TRUE COPY

P.A TO JUDGE

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