IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRM-M-34834-2025
Date of Decision:- 29.07.2025

KARAM SINGH

.....Petitioner

VERSUS

STATE OF PUNJAB & ANOTHER

.....Respondents

CORAM:- HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present:- Mr. Japjit Singh Johal, Advocate
for the petitioner.

Mr. Harkanwar Jeet Singh, Asstt. A.G., Punjab.

None for respondent No.2.

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JASJIT SINGH BEDI, J.

The prayer in the present petition under Section 528 of BNSS, 2023 is for quashing of the order dated 27.05.2025 (Annexure P-8) passed by the Addl. Sessions Judge, Hoshiarpur whereby the application dated 10.01.2023 (Annexure P-6) filed by the prosecution for obtaining voice samples of the petitioner has been allowed.

2. The brief facts of the case are that an FIR No.11 dated 31.05.2019 under Section 7 of Prevention of Corruption Act, 1988 Police Station Vigilance Bureau Range, Range Jalandhar came to be registered against the petitioner (accused). He was granted the concession of bail. Subsequent thereto, the prosecution moved an application dated 23.07.2019 (Annexure P-2) before the Court of Addl. Sessions Judge, Hoshiarpur seeking permission to take the voice samples of the petitioner. The petitioner filed a reply (Annexure P-3) stating that he did not wish to give his voice

samples as the police had obtained his voice recordings by force.

3. The said application came to be disposed off and dismissed in view of the fact that the accused was not ready to give his voice samples vide order dated 20.11.2019 (Annexure P-5).

4. Thereafter, the prosecution filed another application dated 10.01.2023 with a similar prayer. In the said application, the Inspector of the Vigilance Bureau Unit, Hoshiarpur averred that as the challan was to be presented against the petitioner sanction was sought. The administrative department of the petitioner raised some objections one of which was that the petitioner had told the head of the administrative department that the application seeking his voice sample had been rejected by the Court of Addl. Sessions Judge, Hoshiarpur vide order dated 20.11.2019 whereas the petitioner himself had refused to give his voice sample. Therefore, in view of the judgment in ***Ritesh Sinha Versus State of Uttar Pradesh & another, 2019(3) RCR (Criminal) 952*** the Court could issue a direction to an accused person to give his voice sample. The copy of the said application dated 27.05.2025 is attached as Annexure P-6 to the instant petition.

5. The petitioner filed a reply stating that the first application had been dismissed on 20.11.2019 vide order (Annexure P-5) after the judgment in ***Ritesh Sinha*** (supra) had been passed on 02.08.2019. The sanction had been declined under Section 19 of the P.C. Act and therefore, as proceedings could not continue the said application was liable to be dismissed. The copy of the reply is attached as Annexure P-7 to the instant petition.

6. The Court of Addl. Sessions Judge, Hoshiarpur vide impugned order dated 27.05.2025 (Annexure P-8) allowed the prayer of the

prosecution for taking voice samples while relying on the judgment in ***Ritesh Sinha*** (supra).

7. The aforementioned order is under challenge in the present petition.

8. The learned counsel for the petitioner has raised one single argument that the impugned order could not have been passed in view of the bar contained under Section 362 Cr.P.C. as per which review or recalling of an order was impermissible. Reliance is placed on the judgment in ***Hari Singh Mann Versus Harbhajan Singh Bajwa, 2000(4) RCR (Criminal) 650***.

9. On the other hand, the learned State counsel contends that the order dated 20.11.2019 (Annexure P-5) only dismissed an interlocutory application seeking voice samples and the said order did not amount to either a judgment or a final order disposing off a case. Thus, the Court was well within its powers to direct the petitioner to give his voice samples.

10. I have heard the learned counsel for the parties.

11. In ***Ritesh Sinha*** (supra), the Hon'ble Supreme Court held as under:-

> *"5. Two principal questions arose for determination of the appeal which have been set out in the order of Justice Ranjana Prakash Desai dated 7th December, 2012 in the following terms.*
>
> *"(1) Whether Article 20(3) of the Constitution of India, which protects a person accused of an offence from being compelled to be a witness against himself, extends to protecting such an accused from being compelled to give his voice sample during the course of investigation into an offence?*
>
> *(2) Assuming that there is no violation of Article 20(3) of the*

Constitution of India, whether in the absence of any provision in the Code, can a Magistrate authorize the investigating agency to record the voice sample of the person accused of an offence?"

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9. Despite unanimity amongst the learned Judges hearing the appeal on the first question on which the learned counsel for the appellant has also not laid much stress it would be appropriate to make the discussions complete to answer the question on the strength of the test laid down by this Court in State of Bombay v. Kathi Kalu Oghad (supra). Speaking on behalf of the majority the then learned Chief Justice B.P. Sinha was of the view that the prohibition contemplated by the constitutional provision contained in Article 20(3) would come in only in cases of testimony of an accused which are self-incriminatory or of a character which has the tendency of incriminating the accused himself. The issue in the case was with regard to specimen writings taken from the accused for comparison with other writings in order to determine the culpability of the accused and whether such a course of action was prohibited under Article 20(3) of the Constitution. The following observations of the then Chief Justice B.P. Sinha would be apt for recollection as the same conclusively determines the first question arising. The same, therefore, is extracted below:

"(11).....It is well-established that clause (3) of Article 20 is directed against self-incrimination by an accused person. Self-Incrimination must mean conveying information based upon the personal knowledge of the person giving the information and cannot include merely the mechanical process of producing documents in court which may throw a light on any of the points in controversy, but which do not contain any statement of the accused based on his personal knowledge.....…

(12) In order that a testimony by an accused person may be said to have been self-incriminatory, the compulsion of which comes within the prohibition of the constitutional provision, it must be

of such a character that by itself it should have the tendency of incriminating the accused, if not also of actually doing so. In other words, it should be a statement which makes the case against the accused person at least probable, considered by itself. A specimen handwriting or signature or finger impressions by themselves are no testimony at all, being wholly innocuous, because they are unchangeable; except, in rare cases where the ridges of the fingers or the style of writing have been tampered with. 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'.

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18. In the present case, the view that the law on the point should emanate from the Legislature and not from the Court, as expressed in the judgment of this Court from which the reference has emanated is founded on two main reasons, viz., (i) the compulsion to give voice sample does in some way involve an invasion of the rights of the individual and to bring it within the ambit of the existing law would require more than reasonable bending and stretching of the principles of interpretation and (ii) if the legislature, even while making amendments in the Criminal Procedure Code (Act No.25 of 2005), is oblivious and despite express reminders chooses not to include voice sample either in the newly introduced explanation to section 53 or in sections 53A and 311A of CR.P.C., 1973 then it may even be contended that in the larger scheme of things the legislature is able to see something which perhaps the Court is missing.

19. Insofar as the first reservation is concerned, the same would stand dispelled by one of the earlier pronouncements of this Court on the subject in State of Bombay v. Kathi Kalu Oghad (supra), relevant extracts of which judgment has already been set out. The following views in the concurring opinion of Justice K.C. Das Gupta in State of Bombay v. Kathi Kalu Oghad (supra) would

further strengthen the view of this Court to the contrary.

> *"(32) .....It has to be noticed that Article 20(3) of our Constitution does not say that an accused person shall not be compelled to be a witness. It says that such a person shall not be compelled to be a witness against himself. The question that arises therefore is: Is an accused person furnishing evidence against himself, when he gives his specimen handwriting, or impressions of his fingers, palm or foot? The answer to this must, in our opinion, be in the negative.*
>
> *(33) .....the evidence of specimen handwriting or the impressions of the accused person's fingers, palm or foot, will incriminate him, only if on comparison of these with certain other handwritings or certain other impressions, identity between the two sets is established. By themselves, these impressions or the handwritings do not incriminate the accused person, or even tend to do so. That is why it must be held that by giving these impressions or specimen handwriting, the accused person does not furnish evidence against himself. So, when an accused person is compelled to give a specimen handwriting or impressions of his finger, palm or foot, it may be said that he has been compelled to be a witness; it cannot however be said that he has been compelled to be a witness against himself."*

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24. Would a judicial order compelling a person to give a sample of his voice violate the fundamental right to privacy under Article 20(3) of the Constitution, is the next question. The issue is interesting and debatable but not having been argued before us it will suffice to note that in view of the opinion rendered by this Court in Modern Dental College and Research Centre and others v. State of Madhya Pradesh and others, 2016(3) S.C.T. 35 : (2016) 7 SCC 353, Gobind v. State of Madhya Pradesh and another, (1975) 2 SCC 148 and the Nine Judge's Bench of this Court in K.S. Puttaswamy and another v. Union of India and others, 2018(1) RCR (Civil) 398 : (2017) 10 SCC 1 the fundamental right to

privacy cannot be construed as absolute and but must bow down to compelling public interest. We refrain from any further discussion and consider it appropriate not to record any further observation on an issue not specifically raised before us.

25. In the light of the above discussions, 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. We order accordingly and consequently dispose the appeals in terms of the above."

(Emphasis supplied)

In ***Pravinsinh Nrupatsinh Chauhan Vs. State of Gujarat, 2023 SCC Online SC 733,*** the Hon'ble Supreme Court held as under:-

"2. In the above context, we have the benefit of reading the ratio in 'Ritesh Sinha v. State of Uttar Pradesh' reported in (2019) 8 SCC 1 where in the context of voice sample collected for the purpose of investigation, the three Judges Bench of this Court had held :-

"26. Would a judicial order compelling a person to give a sample of his voice violate the fundamental right to privacy under Article 20(3) of the Constitution, is the next question. The issue is interesting and debatable but not having been argued before us it will suffice to note that in view of the opinion rendered by this Court in Modern Dental College and Research Centre v. State of M.P., Gobind v. State of M. P. and another and the nine Judge's Bench of this Court in K.S. Puttaswamy(Privacy 9) v. Union of India the fundamental right to privacy cannot be construed as absolute and but must bow down to compelling public interest. We refrain from any further discussion and consider it appropriate not to record any further

observation on an issue not specifically raised before us.

27. In the light of the above discussions, 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. We order accordingly and consequently dispose the appeals in terms of the above."

3. The above would indicate that the Magistrate is given the power to order for collection of voice sample for the purpose of investigation of a crime until explicit provisions are engrafted in the CrPC by the Parliament. Such direction was issued by invoking powers under Article 142 of the Constitution of India.

4. Supported by the above ratio, we see no infirmity with the impugned judgment of the High Court as also of the Special Court ordering the accused to give his voice sample to facilitate investigation of the crime."

(Emphasis supplied)

12. As per Section 349 of BNSS, 2023 the Magistrate has the power to order any person to give specimen signatures or handwriting etc. The said provision is reproduced herein below:-

"349. Power of Magistrate to order person to give specimen signatures or handwriting, etc. If a Magistrate of the first class is satisfied that, for the purposes of any investigation or proceeding under this Sanhita, it is expedient to direct any person, including an accused person, to give specimen signatures or finger impressions or handwriting or voice sample, he may make an order to that effect and in that case the person to whom the order relates shall be produced or

> *shall attend at the time and place specified in such order and shall give his specimen signatures or finger impressions or handwriting or voice sample:*
>
> *Provided that no order shall be made under this section unless the person has at some time been arrested in connection with such investigation or proceeding:*
>
> *Provided further that the Magistrate may, for the reasons to be recorded in writing, order any person to give such specimen or sample without him being arrested."*

13. Thus, apparently, it is beyond any shadow of doubt that a Court can order a person to give a sample of his voice for the purposes of investigation.

14. As regards the contention of the counsel for the petitioner that the passing of the order dated 27.05.2025 (Annexure P-8) whereby the accused was directed to give his voice sample would amount to a review of the earlier order dated 20.11.2019 (Annexure P-5), it would be apposite to first examine Section 362 Cr.PC. and the same is reproduced herein below:-

> *"362. Court not to alter judgment.*
>
> *Save as otherwise provided by this Code or by any other law for the time being in force, no Court, when it has signed its judgment or final order disposing of a case, shall alter or review the same except to correct a clerical or arithmetical error."*

15. The aforementioned provision of law was deliberated upon in ***Hari Singh Mann*** (supra) and the relevant paragraphs of the said judgment are reproduced as under:-

> *"8. We have noted with disgust that the impugned orders were passed completely ignoring the basic principles of criminal law. No review of an order is contemplated under the Code of Criminal Procedure. After the disposal of the main petition on 7.1.1999,*

there was no lis pending in the High Court wherein the respondent could have filed any miscellaneous petition. The filing of a miscellaneous petition not referable to any provision of Code of Criminal Procedure or the rules of the Court, cannot be resorted to as a substitute of fresh litigation. The record of the proceedings produced before us shows that directions in the case filed by the respondents were issued apparently without notice to any of the respondents in the petition. Merely because the respondent No. 1 was an Advocate, did not justify the issuance of directions at his request without notice of the other side. The impugned orders dated 30th April, 1999 and 21st July, 1999 could not have been passed by the High Court under its inherent power under Section 482 of the Code of Criminal Procedure. The practice of filing miscellaneous petitions after the disposal of the main case and issuance of fresh directions in such miscellaneous petitions by the High Court are unwarranted, not referable to any statutory provision and in substance the abuse of the process of the Court.

8A. There is no provision in the Code of Criminal Procedure authorising the High Court to review its judgment passed either in exercise of its appellate or revisional or original criminal jurisdiction. Such a power cannot be exercised with the aid or under the cloak of section 482 of the Code. This Court in State of Orissa v. Ram Chander Agarwala, AIR 1979 Supreme Court 87, held :

> *"Before concluding we will very briefly refer to cases of this Court cited by counsel on both sides. 1958 SCR 1226 : 1958 SC 376, relates to the power of the High Court to cancel bail. The High Court took the view that under Section 561A of the Code, it had inherent power to cancel the bail, and finding that on the material produced before the Court it would not be safe to permit the appellant to be at large cancelled the bail, distinguishing the decision in 72 Ind App 120 : AIR 1945 Privy Council 94 (supra) and stated that the Privy Council was not called upon to consider the question about the inherent power of the High Court to cancel bail under Section 561A.*

In Sankatha Singh v. State of U.P., 1962 Supp(2) SCR 871 , this Court held that Section 369 read with Section 424 of the Code of Criminal Procedure specifically prohibits the altering or reviewing of its order by a Court. The accused applied before a succeeding Sessions Judge for re-hearing of an appeal. The learned Judge was of the view that the appellate Court had no power to review or restore an appeal which has been disposed of. The Supreme Court agreed with the view that the appellate Court had no power to review or restore an appeal. This Court, expressing its opinion that the Sessions Court had no power to review or restore an appeal observed that a judgment, which does not comply with the requirements of Section 367 of the Code, may be liable to be set aside by a superior court but will not give the appellate court any power to set it aside itself and re-hear the appeal observing that "Section 369 read with Section 424 of the Code makes it clear that the appellate court is not to alter or review the judgment once signed, except for the purpose of correcting a clerical error." Reliance was placed on a decision of this Court in Supdt. and Remembrancer of Legal Affairs W.B. v. Mohan Singh, AIR 1975 Supreme Court 1002, by Mr. Patel, learned counsel for the respondent wherein it was held that rejection of a prior application for quashing is no bar for the High Court entertaining a subsequent application as quashing does not amount to review or revision. This decision instead of supporting the respondent clearly lays down, following Chopra's case, AIR 1955 Supreme Court 633 (supra) that once a judgment has been pronounced by a High Court either in exercise of its appellate or revisional jurisdiction, no review or revision can be entertained against that judgment as there is no provision in the Criminal Procedure Code which would enable the High Court to review the same or to exercise revisional jurisdiction. This Court entertained the application for quashing the proceedings on the ground that a subsequent application to quash would not amount to review or revise an

> *order made by the Court. The decision clearly lays down that a judgment of the High Court on appeal or revision cannot be reviewed or revised except in accordance with the provisions of the Criminal Procedure Code. The provisions of Section 561A of the Code cannot be invoked for exercise of a power which is specifically prohibited by the Code."*
>
> *9. Section 362 of the Code mandates that no Court, when it has signed its judgment or final order disposing of a case shall alter or review the same except to correct a clerical or arithmetical error. The Section is based on an acknowledged principle of law that once a matter is finally disposed of by a Court, the said Court in the absence of a specifically statutory provision becomes functus officio and disentitled to entertain a fresh prayer for the same relief unless the former order of final disposal is set aside by a court of competent jurisdiction in a manner prescribed by law. The Court becomes functus officio the moment the official order disposing of a case is signed. Such an order cannot be altered except to the extent of correcting a clerical or arithmetical error. The reliance of the respondent on Talab Haji Hussain's case (supra) is misconceived. Even in that case it was pointed that inherent power conferred on High Court under Section 561A (Section 482 of the new Code) has to be exercised sparingly, carefully and with caution and only where such exercise is justified by the tests specifically laid down in the section itself. It is not disputed that the petition filed under section 482 of the Code had been finally disposed of by the High Court on 7.1.1999. The new Section 362 of the Code which was drafted keeping in view the recommendations of the 41st Report of the Law Commission and the Joint Select Committees appointed for the purpose, has extended the bar of review not only to the judgment but also to the final orders other than the judgment."*
>
> (Emphasis supplied)

16. An examination of Section 362 Cr.PC. as well as its interpretation in the case of ***Hari Singh Mann*** (supra) would show that what

is prohibited is reviewing of a judgment disposing of a case or a final order disposing of a case. In the instant case, the Court vide order dated 20.11.2019 (Annexure P-5) dismissed the earlier application of the petitioner which order in no way amounts to either a judgment or a final order disposing of a case. Therefore, the subsequent impugned order dated 27.05.2025 (Annexure P-8) cannot be said to be hit by Section 362 Cr.P.C. Interestingly, the petitioner first refused to give his voice samples, then informed his department during proceedings seeking sanction for his prosecution that the earlier application had been dismissed despite the fact that it was disposed and dismissed not on merits but only on his refusal to give his voice samples.

17. In somewhat similar circumstances in the case of ***Sahdeo Tanti Versus Bipti Pasin & another, 1969 AIR Patna 415,*** an application was moved to cross-examine a witness which was declined. A fresh application was moved thereafter which was allowed. The Patna High Court held that the first order declining the prayer of the prosecution to cross-examine a witness would not amount to a judgment within the meaning of Section 369 Cr.P.C. (now 362 Cr.P.C.) and therefore, the subsequent application was maintainable. The relevant paragraphs of the said judgment is as under:-

> *"3. At the trial before the Assistant Sessions Judge, Jadu Pasi (P. W. 10) was tendered on behalf of the prosecution and was cross-examined on behalf of the petitioner on the 19th December, 1967. The prayer of the prosecution to cross-examine this witness was, however, rejected. Subsequently, a petition was filed on behalf of the prosecution by the Assistant District Prosecutor on the 20th December, 1967, for permission to cross-examine P. W. 10, which has been allowed by the order giving rise to the present*

application.

4. Mr. Parmeshwar Prasad Sinha, on behalf of the petitioner, has urged that the learned Assistant Sessions Judge, having rejected the prayer for cross-examination of P. W. 10 on the 19th December, 1967, should not have allowed the same prayer on the 13th January, 1968, on the same set of facts. It is true that the learned Assistant Sessions Judge rejected the prosecution prayer for cross-examining P. W. 10 on the 19th December, 1967, which he has allowed on the 13th January 1968, for the reasons stated in the order. The order passed by the Assistant Sessions Judge on the 19th December, 1967, not being a judgment within the meaning of section 369 of the Code of Criminal Procedure no error seems to have been committed by the learned Assistant Sessions Judge in ordering for recall of the witness for his cross-examination. After all, the earlier order being in the nature of an interlocutory order it was open to the court below, in the ends of justice, to order for cross-examination of P. W. 10."

(Emphasis supplied)

18. The upshot of the aforementioned discussion is that the impugned order dated 27.05.2025 (Annexure P-8) cannot be said to be a review of the earlier order dated 20.11.2019 (Annexure P-5) and therefore, finding no merit in the present petition and the same stands dismissed.

(JASJIT SINGH BEDI)
JUDGE

29.07.2025
JITESH

Whether speaking/reasoned	***Yes/No***
Whether reportable	***Yes/No***