



**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

127

CRM-M-26935-2025

Date of decision: May 16th, 2025

Malkiat Singh

.....Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present: Mr. Sunil Chadha, Senior Advocate
with Ms. Devyani Sharma, Advocate
for the petitioner.

MANJARI NEHRU KAUL, J.

The instant petition under Section 528 of the BNSS has been filed for quashing of order dated 12.05.2025 (Annexure P-4) passed by learned Special Judge, Ludhiana, in FIR No.1 dated 19.01.2022 registered at Police Station Vigilance Bureau, Ludhiana, whereby the application filed by the prosecution seeking permission to obtain the specimen voice sample of the petitioner has been allowed.

2. Learned senior counsel for the petitioner has assailed the impugned order on multiple grounds. At the outset, it is contended that the direction to provide a voice sample at this belated stage of trial, when almost the entirety of the prosecution evidence has already been led-including the testimonies of PW-2 (the complainant) and PW-11 (trap officer)-is legally untenable. It is submitted that such a course of action virtually amounts to reopening the investigation and attempting to rectify deficiencies in the case of the prosecution, which is impermissible in law.

3. Learned senior counsel has laid a great deal of emphasis on the fact that the alleged recording contained in the CD, forming the basis for the request by the prosecution, was already annexed with the challan submitted on 30.08.2023. Despite the availability of this material from the inception, the prosecution did not seek voice sampling at the appropriate stage, and no cogent explanation has been offered for this inordinate delay. Thus, according to the learned senior counsel, allowing voice sampling now would prejudice the defence and compromise the fairness of the trial.

4. Learned senior counsel has also highlighted that the petitioner has consistently denied having engaged in the conversation allegedly recorded in the CD. It has been asserted by the learned senior counsel that the recording is a fabricated and manipulated piece of evidence. In support of his contentions, reliance is placed on the judgment of this Court in *CRM-M-47288-2019* titled as *State of Haryana Versus Mahender Singh* and *CRR-881-2021* titled as *State of Haryana Versus Mahender Singh*. It has been submitted that in these cases, under somewhat similar factual circumstances, this Court held that permitting the prosecution to collect a voice sample at the tail-end of trial, without having done so at the stage of investigation, despite the opportunity, would amount to filling *lacunae* in the evidence, which is not permissible.

5. On being specifically queried by this Court, learned senior counsel has clarified that the CD in question indeed forms part of the original challan submitted by the prosecution.

6. This Court has heard the learned senior counsel and has carefully perused the impugned order dated 12.05.2025 passed by the

learned trial Court.

7. It is evident that the learned Special Judge has not exceeded his jurisdiction or acted arbitrarily. The CD recording, which is the subject matter of the present controversy, was admittedly placed on record at the time of presentation of the challan. It has consistently formed part of the case record. During trial, the complainant (PW-2), while deposing on oath, identified the voices on the recording as his own and that of the petitioner. The defence, for its part, has contested this assertion and has alleged that the recording is fabricated.

8. In light of this dispute, the trial Court was justified in observing that the authenticity of the recorded conversation becomes a material issue that needs to be determined for just adjudication of the case. It is in this context that the prosecution sought the voice sample of the petitioner for the limited purpose of comparison by an expert with the voices in the CD. The direction of the learned trial Court merely facilitates such forensic comparison and cannot be equated with re-investigation or collection of new evidence .

9. The reliance placed by the learned by the petitioner on the judgment in *Mahender Singh (supra)* is misplaced. In that case, the prosecution had consciously and deliberately opted not to seek voice sampling at the stage of investigation, despite having the opportunity and having recorded internal notings to that effect. It was in those particular circumstances that this Court concluded that allowing such voice sampling at the fag end of the trial would amount to giving the prosecution a second opportunity to fill gaps in its case. The facts in the present case stand on a different footing. There is no material to indicate that the prosecution had, at any stage, consciously decided against

obtaining the voice sample of the petitioner. Rather, the omission appears to be inadvertent, not deliberate or strategic. Therefore, the ratio in *Mahender Singh (supra)* does not apply in its strict sense to the facts of the present case.

10. It is well-settled that the powers of the Court under Section 311 of the Cr.P.C. (now Section 348 of the BNSS) and Section 311A of the Cr.P.C. (now Section 349 of the BNSS) are wide and aimed at aiding the discovery of truth. The direction to provide a voice sample is not intended to bolster the case of the prosecution artificially or to overcome evidentiary lapses. Instead, it serves the limited and legitimate purpose of enabling the Court to verify the authenticity of a document already on record and under challenge from the defence. This process of verification cannot be construed as collection of fresh evidence or re-investigation.

11. Moreover, the petitioner retains the full right to challenge the evidentiary value of the CD recording as well as any expert opinion that may be obtained pursuant to the voice sampling. The direction for providing a voice sample does not, by itself, cause any prejudice to the defence of the petitioner nor does it tilt the balance of the proceedings unfairly in favor of the prosecution.

12. In view of the above discussion, this Court finds no error, legal or factual, in the impugned order dated 12.05.2025 (Annexure P-4) passed by learned Special Judge, Ludhiana. The impugned order, therefore, does not warrant any interference.

13. Accordingly, the instant petition stands dismissed.

14. However, it is made clear that anything observed hereinabove shall not be construed to be an expression of opinion on the merits of the case.

May 16th, 2025

Puneet

(MANJARI NEHRU KAUL)

JUDGE

Whether speaking/reasoned : Yes

Whether reportable : Yes