

CC No. 29/20, CIS No. 20/2020
FIR No. RC-5(A)/2019/CBI-ACB
CBI Vs. Diganta Gogoi
U/s: 8 & 12 of PC Act (as amended
in 2018)

08.10.2020

Presence:

(Through CISCO Webex Meetings App)

Sh. Amit Kumar, Ld. Public Prosecutor for CBI.

Accused Diganta Gogoi in person on bail along with Ld.
Counsel Sh. Anil Kumar.

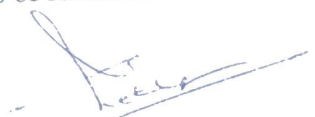
Ld. Public Prosecutor for CBI has submitted that IO is out of
station for a considerable time, therefore, he could not file requisite documents
in the court to be supplied to the accused, some time may be granted.

Heard. Request allowed.

IO is directed to file necessary documents to be supplied to the
accused on or prior to 31.10.2020. Ld. Defence counsel may collect the
documents from the Ahlmad of the court.

At the request of both the parties, put up for scrutiny of
documents/ supplying of deficient copies, if any/ arguments on the point of
charge on 17.11.2020.

A copy of this order is being sent through Whats App to Sh. Raj
Kumar, Reader of this court with a direction to get this order uploaded on the
official website of Delhi District Courts at the earliest through Computer
Branch, Rouse Avenue Courts Complex, New Delhi. He is also directed to
send a Whats App copy of the order to the respective counsels of the parties at
the earliest. A signed hard copy of the order shall be placed on record as soon
as work is resumed from the Court premises of Rouse Avenue District Courts,
New Delhi.


(CHANDRA SHEKHAR)
Special Judge, CBI-19 (PC Act)
Rouse Avenue District Courts, New
Delhi/8.10.2020

IN THE COURT OF SHRI CHANDRA SHEKHAR,
SPECIAL JUDGE CBI-19 (PC ACT), ROUSE AVENUE
DISTRICT COURTS, NEW DELHI

Ref. : RCAC-1, 2020A0004
registered U/s: 7A, 8, 9, 10 & 12
of PC Act, 1988, R/W Sec. 120-B
of IPC.
CBI Vs. N.M.P. Sinha & ors.

08.10.2020

Presence:

(Through CISCO Webex Meetings App)

Sh. Raman Kumar, Ld. Sr. Public Prosecutor for CBI and Sh.
M.K. Arya, Ld. Public Prosecutor along with IO Ravinder Kumar, Inspector of
Police, CBI, AC-1, New Delhi.

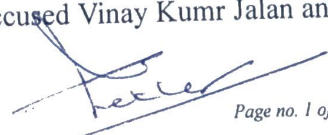
Ld. Defence Counsel Ms. Payal Jain, for accused N.M.P. Sinha.

ORDER ON THE APPLICATION OF CBI SEEKING PERMISSION TO
TAKE SAMPLE VOICE OF ACCUSED N.M.P. SINHA

An application was moved by CBI seeking permission to take
sample voice of accused N.M.P. Sinha before Ld. Principal District & Sessions
Judge-cum-Special Judge, CBI, Rouse Avenue District Courts, New Delhi,
who assigned the said application today to this court for hearing and disposal
of the same.

I have heard the submissions of Ld. Sr. Public Prosecutor for
CBI and Ld. Defence Counsel for the accused through CISCO Webex Meeting
App arranged by Sh. Raj Kumar, Reader of this court.

Ld. Public Prosecutor for CBI has submitted that the accused
N.M.P. Sinha and accused Vinay Kuamr Jalan are in police custody till
09.10.2020 at 2:00 p.m. vide order dated 03.10.2020 passed by this court. The
CBI for fair and proper investigation wants to record the voice sample of
accused N.M.P. Sinha to corroborate with the intercepted conversation which
took place in between the period 05.08.2020 to 02.10.2020 before registration
of this case amongst the accused N.M.P. Sinha, accused Vinay Kumr Jalan and

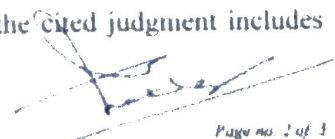


some other accused persons. The CBI is having witness(s) to identify the voice of the accused N.M.P. Sinha, the voice sample shall be taken as per prevailing rules and procedure and thereafter, the same shall be sent to CFSL for obtaining expert opinion. Therefore, in view of the case law titled as '*Ritesh Sinha Vs. State of Uttar Pradesh dated 02.08.2019*' passed by Hon'ble Supreme Court of India, necessary permission may be granted to CBI for taking voice sample of accused N.M.P. Sinha.

Ld. Defence counsel has opposed the request of Ld. Sr. Public Prosecutor for CBI stressing that the Hon'ble Supreme Court of India in last paragraph of the cited judgment has not used the word 'accused' but 'person', therefore, the voice sample of accused cannot not be taken; the CBI has not obtained the permission from the competent authority to intercept the mobile phone of accused N.M.P. Sinha; therefore, request of CBI for taking voice sample of the accused N.M.P. Sinha may not be allowed and even if the permission is to be granted to CBI to take voice sample of accused N.M.P. Sinha, the CBI may be directed to take the same in the presence of some responsible officer.

Ld. Sr. Public Prosecutor for CBI has rebutted the submissions of Ld. Defence counsel stating that as per the aforesaid judgment sample voice of accused may be taken even if the word accused is not mentioned in the said judgment; the permission to intercept the mobile phones of accused Vinay Kumar Jalan was taken from competent authority, the accused N.M.P. Sinha was having telephonic conversation with accused Vinay Kumar Jalan, therefore his voice was recorded; the voice sample of the accused shall be taken in the presence of public servant as per rules, if the application is allowed.


I have considered the submissions of both the parties and perused the judicial record, a perusal of the cited judgment shows that the judgment was delivered by Hon'ble Supreme Court, keeping in view Article 20 (3) of the Constitution of India, which protects the rights of accused, therefore, the word 'person' used in last para of the cited judgment includes



accused also in its ambit; the Ld. Sr. Public Prosecutor for CBI has clarified that the CBI had taken the permission from competent authority to intercept the mobile phone calls of accused Vinay Kumar Jalan and accused N.M.P. Sinha was talking to him, therefore, the conversation of the accused N.M.P. Sinha was recorded, in these circumstance, it seems separate permission to intercept the conversation of accused N.M.P.Sinha was not required; the Ld. Sr. Public Prosecutor has submitted that voice sample shall be taken in the presence of public servant, who is not stock witness, therefore it seems no direction in this regard is required to be given to CBI. The CBI is having recoding of intercepted conversation of the persons, with whom accused Vinay Kumar Jalan had talked during 05.08.2020 to 02.10.2020 prior to registration of the case, the accused N.M.P. Sinha is stated to be having conversation with accused Vinay Kumar Jalan, therefore, it is relevant to take the voice sample of accused N.M.P. Sinha for fair and proper investigation of the case. Accordingly, in view of judgment of Hon'ble Supreme Court cited by CBI and aforesaid facts, the application moved by CBI is allowed, CBI may take the sample voice of accused N.M.P. Sinha as per rules, the application is disposed of accordingly. The CBI is directed to supply a copy of this order to the accused N.M.P.Sinha.

A copy of this order is being sent through Whats App to Sh. Raj Kumar, Reader of this court with a direction to get this order uploaded on the official website of Delhi District Courts at the earliest through Computer Branch, Rouse Avenue Courts Complex, New Delhi. He is also directed to send a Whats App copy of the order to the respective counsels of the parties at the earliest. A signed hard copy of the order shall be placed on record as soon as work is resumed from the Court premises of Rouse Avenue District Courts, New Delhi.




 श्री चन्द्र शेखर
 Sh. Chandra Shekhar
 विशेष न्यायाधीश, प्रदावार निवारण अधिनियम (सी.पी.एक्ट)-19
 Special Judge PC Act (CBI)-19
 कमरा नं. 404, चौधी मंजिल
 Room No 404, 4th Floor
 Rouse Avenue Court Complex
 रोसेन्यू न्यायालय परिसर
 नई दिल्ली
 New Delhi
 CHANDRA SHEKHAR
 Special Judge, CBI-19 (PC Act)
 Rouse Avenue Courts, New Delhi
 08.10.2020