IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE RAJA VIJAYARAGHAVAN

V

THURSDAY, THE 20TH DAY OF JULY 2023 / 29TH ASHADHA, 1945

CRL.MC NO. 5660 OF 2023

ORDER DATED 12.07.2023 IN CRL.M.P NO.1860/2023 OF THE JUDICIAL FIRST CLASS MAGISTRATE COURT, CHAVAKKAD

PETITIONER/ACCUSED:

FAIZAL K.V

BY ADVS.
M.P.SHAMEEM AHAMED
AKHIL PHILIP MANITHOTTIYIL

RESPONDENTS/RESPONDENT AND THE INVESTIGATION OFFICER:

1 STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM, PIN - 682031

2 THE ASST. COMMISSIONER OF POLICE
IN CHARGE - CRIME BRANCH,
THRISSUR CITY, PIN - 680020

SRI. VIPIN NARAYAN, SR. PUBLIC PROSECUTOR

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 20.07.2023, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

"CR"

ORDER

Being aggrieved by the order passed by the learned Magistrate ordering the petitioner to furnish his measurement (handwriting) by invoking the provisions of the Criminal Procedure (Identification) Act, 2022 ("Act, 2022" for the sake of brevity), the petitioner is before this Court.

2. The petitioner has been arrayed as the accused in Crime No.113/2022 of the Pavaratty Police Station registered under Sections 420, 406, 465, 468, and 471 of the IPC. The allegation is that the petitioner, without being adequately qualified, secured employment as a teacher in the Higher Secondary Department of Alimul Islam Aided School on the strength of forged certificates.

3. In the course of the investigation, the service book of the petitioner was seized. The investigating officer felt that the handwriting on the second page of the service book was not that of the petitioner. In order to compare the suspected handwriting with the genuine handwriting, an

application was filed seeking the issuance of directions to the petitioner to furnish his specimen handwriting impressions in the presence of the Court for forwarding the same to the handwriting expert.

4. Sri. Shameem Ahammed, the learned counsel appearing for the petitioner, submitted that the petitioner filed his objection, contending that immediately after the registration of the crime, the petitioner had approached the court and was granted anticipatory bail subject to conditions on March 22, 2022. According to the learned counsel, the petitioner then executed the bail bond on the cover of the order. As the petitioner was never arrested at any point in connection with Annexure-A1 crime either before or after the order passed by the court, the empowering provisions under Section 311A of the Cr.P.C. or Section 3 of the Identification Act, 2022 would not apply. It is contended that under both the above provisions, the accused must be arrested at some point in connection with the investigation or proceeding. Relying on the provisions of the Act, 2022, it is submitted that prior to making an order under Section 5 of the Identification of Prisoners Act, the Magistrate must be satisfied that it is expedient to direct any person to give measurements under the Act for the purpose of any investigation. In the case at hand, the scope of the investigation is whether

the accused fabricated the qualification certificates and nothing more. Therefore, the comparison with the entries in the service book has nothing to do with the investigation in the instant case. The learned counsel would refer to the observations in **Selvi and Ors. v. State of Karnataka**[1] and specifically to Paragraph No 145, and it is argued the Apex Court had observed that though acts such as compulsorily obtaining specimen signatures and handwriting samples are testimonial in nature, they are not incriminating by themselves if they are used for the purpose of identification or corroboration with facts or materials that the investigators are already acquainted with. In the case on hand, by no stretch of the imagination can it be held that obtaining handwriting samples had anything to do with securing a job by forging qualification certificates. It is submitted that the petitioner cannot, therefore, be forced to provide their measurements in the open court, which would amount to crippling the rights of the petitioner in the criminal proceeding in which he is an accused.

5. Sri. Vipin Narayan, the learned Public Prosecutor, submitted that the contentions advanced by the petitioner cannot be sustained under the law. He relied on **Selvi** (supra), and it was argued that obtaining

[1] (2010) 7 SCC 263

measurements with the aid of the relevant provisions of Act, 2022 cannot be regarded as incriminating. Insofar as the contention of the learned counsel that handwriting in the service records had nothing to do with the investigation of the crime is concerned, it is submitted that the manner and the method of conducting the investigation is the realm of the investigating officer, and this Court may not be justified in intermeddling with the same unless an exceptional cause is made out. To counter the submission of the learned counsel that the petitioner has not been arrested and, therefore, Section 311A or Section 3 of the Act, 2022 would not be attracted, reliance is placed on the law laid down in **State of Haryana and Others v. Dinesh Kumar**[2] and **State of Uttar Pradesh v. Deomen**[3]. It is argued that the Code of Criminal Procedure does not contemplate any formality before a person can be said to be taken in custody. Submission to custody by word of mouth or action by a person is sufficient, according to him. He placed reliance on the directions issued by the court in the Annexure-A2 order, which stated that the petitioner would be released on anticipatory bail in the event of arrest in Crime No. 113/2022. If that be the case, the contention that the petitioner was not arrested at any point in time cannot

[2] [(2008) 3 SCC 222]
[3] [AIR 1960 SC 1125]

be appreciated. The learned public prosecutor would highlight that the petitioner had surrendered before the jurisdictional court and he had executed the bail bond and in that view of the matter, he cannot now contend that he was not arrested. It is submitted that after having submitted himself to the jurisdiction of the court, the petitioner is not entitled to raise such a contention.

6. I have considered the submissions advanced and have gone through the records.

7. The only question is whether the order passed by the learned Magistrate ordering the petitioner to give his measurements/ specimen handwriting is vitiated by any jurisdictional error.

8. To appreciate the contentions of the petitioner, it would be apposite to understand the context in which Section 311A of the Code was brought into the statute book. The Hon'ble Supreme Court in **State of U.P. v. Ram Babu Misra,**[4] was confronted with the question as to whether a direction under Section 73 of the Evidence Act can be given to an accused person to give his specimen handwriting. It was held as follows in

[4] (1980) 2 SCC 343

paragraphs 7 and 8 of the judgment

> **7.** Section 73 of the Evidence Act was considered by us in *State (Delhi Administration)* v. *Pali Ram* [(1979) 2 SCC 158], where we held that a court holding an enquiry under the Criminal Procedure Code was entitled under Section 73 of the Evidence Act to direct an accused person appearing before it to give his specimen handwriting to enable the court by which he may be tried to compare it with disputed writings. The present question whether such a direction, under Section 73 of the Evidence Act, can be given when the matter is still under investigation and there is no proceeding before the court was expressly left open. The question was also not considered in *State of Bombay* v. *Kathi Kalu Oghad* [AIR 1961 SC 1808], where the question which was actually decided was that no testimonial compulsion under Article 20(3) of the Constitution was involved in a direction to give specimen signature and handwriting for the purpose of comparison.
>
> **8.** The view expressed by us in the earlier paragraphs on the construction of Section 73, Evidence Act was the view taken by the Madras High Court in *T. Subbiah* v. *S.K.D. Ramaswamy Nadar* [AIR 1970 Mad 85], the Calcutta High Court in *Farid Ahmed* v. *State* [AIR 1960 Cal 32] (Mitter, J., at p. 32), and *Priti Ranjan Ghosh* v. *State* [77 CWN 865], the High Court of Punjab and Haryana in *Dharamvir Singh* v. *State* [1975 Cri LJ 884], the High Court of Madhya Pradesh in *Brij Bhushan Raghunandan Prasad* v. *State* [AIR 1957 MP 106], the Orissa High Court in *Srikant Rout* v. *State of Orissa* [(1972) 2 Cut WR 1332], and the Allahabad High Court in the judgment under appeal. A contrary view was taken by the Patna High Court in *Gulzar Khan* v. *State* [AIR 1962 Pat 255], and the High Court of Andhra Pradesh in *B. Rami Reddy* v. *State of A.P.* [1971 Cri LJ 1591]. We do not agree with the latter view. We accordingly dismiss the appeal and while doing so we would suggest that suitable legislation may be made on the

> analogy of Section 5 of the Identification of Prisoners Act, to provide for the investiture of Magistrates with the power to issue directions to any person, including an accused person, to give specimen signatures and writings.

9. The Apex Court ordered that suitable legislation be made on the analogy of Section 5 of the Identification of Prisoners Act to provide for the investiture of Magistrates with the power to issue directions to any person, including an accused person, to give specimen signatures and writings. It is in pursuance to the said directions that Section 311A was incorporated. The said provision reads thus:

> Section 311A: Power of Magistrate to order the person to give specimen signatures or handwriting
>
> If a Magistrate of the first class is satisfied that, for the purposes of any investigation or proceeding under this Code, it is expedient to direct any person, including an accused person, to give specimen signatures or handwriting, 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 handwriting:
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> 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.

10. Under the above provision, the Magistrate of the First Class is

empowered to may order a person, including an accused person, to give specimen signatures or handwriting if the Magistrate is satisfied that it is expedient to do so for the purposes of any investigation or proceeding under the Code of Criminal Procedure. The person to whom the order is made must be produced or attend at the time and place specified in the order and give their specimen signatures or handwriting. No order may be made under this section unless the person has at some time been arrested in connection with the investigation or proceeding.

11. The Act, 2022 was enacted to authorize for taking measurements of convicts and other persons for the purposes of identification and investigation in criminal matters and to preserve records and for matters connected with an incidental thereto. Section 2 (b) defines measurements. The said provision reads thus:

> 2(b) measurements.
> "measurements" includes finger-impressions, palm-print impressions, foot-print impressions, photographs, iris and retina scan, physical, biological samples and their analysis, behavioral attributes including signatures, handwriting or any other examination referred to in section 53 or section 53A of the Code of Criminal Procedure, 1973;

12. The Act 2022 speaks about the powers of the police officer or a

prison officer to request a person covered under the provision to permit the taking of measurements. Section 3 reads as under:

> **3: Taking of measurement.- Any person, who has been,-**
> (a) convicted of an offence punishable under any law for the time being in force; or
> (b) ordered to give security for his good behaviour or maintaining peace under section 117 of the Code of Criminal Procedure, 1973 (2 of 1974) for a proceeding under section 107 or section 108 or section 109 or section 110 of the said Code; or
> (c) arrested in connection with an offence punishable under any law for the time being in force or detained under any preventive detention law,
> shall, if so required, allow his measurement to be taken by a police officer or a prison officer in such manner as may be prescribed by the Central Government or the State Government:
> Provided that any person arrested for an offence committed under any law for the time being in force (except for an offence committed against a woman or a child or for any offence punishable with imprisonment for a period not less than seven years) may not be obliged to allow taking of his biological samples under the provisions of this section.

The provision states that a person who has been convicted of a punishable offense, ordered to give security for good behavior, or arrested in connection with a punishable offense or under preventive detention law must allow their measurements to be taken by a police or prison officer in

the manner as prescribed by the Central or State Government. However, there is an exception for persons arrested for certain offenses, excluding those committed against women or children or punishable with imprisonment for at least seven years, who are not obligated to allow the taking of their biological samples under this section.

13. The power of the Magistrate to direct a person to give measurements is provided in Section 5. The said provision reads thus:

> **5. Power of Magistrate to direct a person to give measurements.-**
>
> Where the Magistrate is satisfied that, for the purpose of any investigation or proceeding under the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force, it is expedient to direct any person to give measurements under this Act, the Magistrate may make an order to that effect and in that case, the person to whom the order relates shall allow the measurements to be taken in conformity with such directions.

14. If a Magistrate believes it is necessary for any investigation or legal proceeding under the Code of Criminal Procedure or any other law, the Magistrate can issue an order directing a person to provide measurements under this Act. The person must comply with the order and allow the measurements to be taken according to the specified directions.

15. The first contention of the petitioner is that in view of the fact that the petitioner has not been arrested formally, the Magistrate was not competent to pass an order invoking Section 311A of the Code or under Section 3 of the Act, 2022. It has to be immediately noticed that the learned Magistrate has exercised the powers under **Section 5 of the Act, 2022** while ordering the taking of measurements. Section 5 of the Act enables the learned Magistrate to issue directions to any person and the said provision does not stipulate that directions can be issued only to a person arrested in connection with an offence punishable under any law for the time being in force. Even otherwise the above contention cannot be sustained in view of the law laid down in **Dinesh**. The Apex Court relying on the law laid down in **Niranjan Singh v. Prabhakar Rajaram Kharote[5],** had observed as follows in **Dinesh Kumar**:

> 23. We are unable to appreciate the views of the Full Bench of the Madras High Court and reiterate the decision of this Court in Niranjan Singh case [(1980) 2 SCC 559]. In our view, the law relating to the concept of "arrest" or "custody" has been correctly stated in Niranjan Singh case [(1980) 2 SCC 559. Paras 7, 8 and the relevant portion of para 9 of the decision in the said case state as follows : (SCC pp. 562-63)

[5] (1980) 2 SCC 559

"7. When is a person in custody, within the meaning of Section 439 CrPC? When he is in duress either because he is held by the investigating agency or other police or allied authority or is under the control of the court having been remanded by judicial order, or having offered himself to the court's jurisdiction and submitted to its orders by physical presence. No lexical dexterity nor precedential profusion is needed to come to the realistic conclusion that he who is under the control of the court or is in the physical hold of an officer with coercive power is in custody for the purpose of Section 439. This word is of elastic semantics but its core meaning is that the law has taken control of the person. The equivocatory quibblings and hide-and-seek niceties sometimes heard in court that the police have taken a man into informal custody but not arrested him, have detained him for interrogation but not taken him into formal custody and other like terminological dubieties are unfair evasions of the straightforwardness of the law. We need not dilate on this shady facet here because we are satisfied that the accused did physically submit before the Sessions Judge and the jurisdiction to grant bail thus arose.

8. Custody, in the context of Section 439, (we are not, be it noted, dealing with anticipatory bail under Section 438) is physical control or at least physical presence of the accused in court coupled with submission to the jurisdiction and orders of the court.

9. He can be in custody not merely when the police arrests him, produces him before a Magistrate and gets a remand to judicial or other custody. He can be stated to be in judicial custody when he surrenders before the court and submits to its directions."

16. It was explained and held that the accused can be stated to be

in judicial custody even when he surrenders before the court and submits to its directions.

17. The next question is with regard to testimonial compulsion. The said issue is no longer integra, It would be apposite to refer to the observations made by the Apex Court in **Dara Singh v. Republic of India,**[6] wherein it was held as follows in paragraph 75, which reads as under:

> 75. Another question which we have to consider is whether the police (CBI) had the power under CrPC to take specimen signature and writing of A-3 for examination by the expert. It was pointed out that during the investigation, even the Magistrate cannot direct the accused to give his specimen signature on the asking of the police and only after the amendment of CrPC in 2005, power has been given to the Magistrate to direct any person including the accused to give his specimen signature for the purpose of investigation. Hence, it was pointed out that taking of his signature/writings being per se illegal, the report of the expert cannot be used as evidence against him.

18. After referring to the law laid down by the Eleven Judge Bench decision of the Apex Court in **State of Bombay v. Kathi Kalu Oghad**[7], the following questions formulated by the larger Bench were noticed in

[6] (2011) 2 SCC 490]
[7] AIR 1961 SC 1808

paragraph No. 77 of the judgment.

77. After adverting to various factual aspects, the larger Bench formulated the following questions for consideration : (*Kathi Kalu Oghad case* [AIR 1961 SC 1808 : (1961) 2 Cri LJ 856 : (1962) 3 SCR 10] , AIR pp. 1810 & 1812, paras 2 & 4)

"*2*. … On these facts, the only questions of constitutional importance that this Bench has to determine are; (*1*) whether by the production of the specimen handwritings, Exts. 27, 28 and 29, the accused could be said to have been 'a witness against himself' within the meaning of Article 20(3) of the Constitution; and (*2*) whether the mere fact that when those specimen handwritings had been given, the accused person was in police custody could, by itself, amount to compulsion, apart from any other circumstances which could be urged as vitiating the consent of the accused in giving those specimen handwritings. …

*** *** ***

4. … The main question which arises for determination in this appeal is whether a direction given by a court to an accused person present in court to give his specimen writing and signature for the purpose of comparison under the provisions of Section 73 of the Evidence Act infringes the fundamental right enshrined in Article 20(3) of the Constitution."

The following conclusion/answers are relevant : (AIR pp. 1814-17, paras 10-12 & 16)

"*10*. … 'Furnishing evidence' in the latter sense could not have been within the contemplation of the Constitution-makers for the simple reason that—though they may have intended to protect an accused person from the hazards of self-incrimination, in the light of the English law on the subject—they could not have intended to put obstacles in the way of

efficient and effective investigation into crime and of bringing criminals to justice. The taking of impressions of parts of the body of an accused person very often becomes necessary to help the investigation of a crime. It is as much necessary to protect an accused person against being compelled to incriminate himself, as to arm the agents of law and the law courts with legitimate powers to bring offenders to justice. …

11. … When an accused person is called upon by the court or any other authority holding an investigation to give his finger impression or signature or a specimen of his handwriting, he is not giving any testimony of the nature of a 'personal testimony'. The giving of a 'personal testimony' must depend upon his volition. He can make any kind of statement or may refuse to make any statement. But his finger impressions or his handwriting, in spite of efforts at concealing the true nature of it by dissimulation cannot change their intrinsic character. Thus, the giving of finger impressions or of specimen writing or of signatures by an accused person, though it may amount to furnishing evidence in the larger sense, is not included within the expression 'to be a witness'.

12. … 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'.

*** *** ***

16. In view of these considerations, we have come to the following conclusions—

(*1*) An accused person cannot be said to have been compelled to be a

witness against himself simply because he made a statement while in police custody, without anything more. In other words, the mere fact of being in police custody at the time when the statement in question was made would not, by itself, as a proposition of law, lend itself to the inference that the accused was compelled to make the statement, though that fact, in conjunction with other circumstances disclosed in evidence in a particular case, would be a relevant consideration in an enquiry whether or not the accused person had been compelled to make the impugned statement.

(*2*) The mere questioning of an accused person by a police officer, resulting in a voluntary statement, which may ultimately turn out to be incriminatory, is not 'compulsion'.

(*3*) 'To be a witness' is not equivalent to 'furnishing evidence' in its widest significance; that is to say, as including not merely making of oral or written statements but also production of documents or giving materials which may be relevant at a trial to determine the guilt or innocence of the accused.

(*4*) Giving thumb impressions or impressions of foot or palm or fingers or specimen writings or showing parts of the body by way of identification are not included in the expression 'to be a witness'.

(*5*) 'To be a witness' means imparting knowledge in respect of relevant facts by an oral statement or a statement in writing, made or given in court or otherwise.

(*6*) 'To be a witness' in its ordinary grammatical sense means giving oral testimony in court. Case law has gone beyond this strict literal interpretation of the expression which may now bear a wider meaning, namely, bearing testimony in court or out of court by a person accused of an offence, orally or in writing.

(*7*) To bring the statement in question within the prohibition of Article 20(3), the person accused must have stood in the character of an accused person at the time he made the statement. It is not enough that he should

become an accused, any time after the statement has been made." (emphasis supplied)

19. It was held that when an accused person is called upon by the court or any other authority holding an investigation to give his finger impression or signature or a specimen of his handwriting, he is not giving any testimony of the nature of a 'personal testimony'. The giving of finger impressions or of specimen writing or of signatures by an accused person, though it may amount to furnishing evidence in the larger sense, is not included within the expression 'to be a witness giving thumb impressions or impressions of foot or palm or fingers or specimen writings or showing parts of the body by way of identification are not included in the expression 'to be a witness'. It would be pertinent to note that the above observations were made prior to the incorporation of **Section 311A and Section 5 of the Act 2022** in the Statute Book.

20. In **Ritesh Sinha v. State of U.P and Another**[8], the question was whether a judicial order compelling a person to give a sample of his voice violates the fundamental right to privacy under Article 20(3) of the Constitution. In the said case, the Chief Judicial Magistrate, Saharanpur,

[8] (2019) 8 SCC 1

issued directions to Ritesh Sinha to appear before the investigating officer and give his voice sample. The matter was heard and disposed of by a split verdict of a two-judge Bench of the Apex Court, and the matter was referred to a larger Bench. The question referred to the three-judge Bench has been articulated in paragraph No. 5 of the judgment.

> 5. Two principal questions arose for determination of the appeal which have been set out in the order of Ranjana Prakash Desai, J. dated 7-12-2012 [Ritesh Sinha v. State of U.P., (2013) 2 SCC 357] in the following terms:
>
> "3.1. 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?
>
> 3.2. 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 authorise the investigating agency to record the voice sample of the person accused of an offence?"

21. After referring to the law and the observations in **Modern Dental College & Research Centre v. State of M.P.**[9], **Gobind v. State**

[9] (2016) 7 SCC 353],

of M.P.[10], and the nine-Judge Bench of this Court in **K.S. Puttaswamy (Privacy-9J.) v. Union of India**[11], the question was answered on the following lines:

> 14. Section 5 of the Identification of Prisoners Act, 1920 coincidentally empowers the Magistrate to order/direct any person to allow his measurements or photographs to be taken for the purposes of any investigation or proceeding. It may be significant to note that the amendments in CrPC, noticed above, could very well have been a sequel to the recommendation of the Law Commission in its Report dated 29-8-1980 though the said recommendation was in slightly narrower terms i.e. in the context of Section 5 of the Identification of Prisoners Act, 1920. In this regard, it may also be usefully noticed that though this Court in *State of U.P.* v. *Ram Babu Misra*, (1980) 2 SCC 343] after holding that a Judicial Magistrate has no power to direct an accused to give his specimen writing for the purposes of investigation had suggested to Parliament that a suitable legislation be made on the analogy of Section 5 of the Identification of Prisoners Act, 1920 so as to invest a Magistrate with the power to issue directions to any person including an accused person to give specimen signatures and writings. The consequential amendment, instead, came by way of insertion of Section 311-A in CrPC by the Code of Criminal Procedure (Amendment) Act, 2005 (Act 25 of 2005) with effect from 23-6-2006.
>
> **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

[10] (1975) 2 SCC 148]

[11] (2017) 10 SCC 1

> 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 & Research Centre v. State of M.P., (2016) 7 SCC 353], Gobind v. State of M.P., [(1975) 2 SCC 148] and the nine-Judge Bench of this Court in K.S. Puttaswamy (Privacy-9J.) v. Union of India, (2017) 10 SCC 1] the fundamental right to privacy cannot be construed as absolute 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 of the appeals in terms of the above.

22. In a recent order passed by the Apex Court in **Pravinsinh Nrupatsinh Chauhan v. State of Gujarat**[12], the very same question had cropped up for consideration. It was contended that unless Rules are framed under the Act 2022, the collection of voice samples cannot be insisted upon as it would violate the rights of privacy of the accused.

[12] 2023 SCC OnLine SC 733

Heard Mr. Tejas Barot, learned counsel appearing for the petitioner. The primary grievance of the petitioner is that his voice sample is ordered to be collected for the purpose of comparison with the incriminatory voice sample available with the police. According to the counsel, unless rules are framed and appropriate standard operating system is notified under the provisions of the Criminal Procedure (Identification) Act, 2022 read with the Rules, 2022, the collection of voice sample would impeach on the right of privacy of the accused.

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 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.

23. The Supreme Court has held that the fundamental right to privacy is not absolute but must give way to the compelling public interest. The Court also held that the power to collect voice samples from accused persons can be conferred on magistrates through judicial interpretation and the exercise of the Supreme Court's jurisdiction under Article 142 of the Constitution of India. The Court rejected the contention that the collection of voice samples would violate the right to privacy of accused persons unless rules are framed and an appropriate standard operating system is notified under the provisions of the Criminal Procedure (Identification) Act,

2022. The above principles would apply to the facts of the instant case as well.

In view of the discussion above, I am of the considered opinion that the order passed by the learned Magistrate is unexceptionable and warrants no interference.

This petition will stand dismissed.

Sd/-

RAJA VIJAYARAGHAVAN V,
JUDGE

IAP

APPENDIX OF CRL.MC 5660/2023

PETITIONER'S ANNEXURES:

Annexure A1	COPY OF THE FIR IN CRIME NO. 113/2022 OF PAVARATTY POLICE STATION
Annexure A2	COPY OF HIGH COURT ORDER DATED 22.03.2022 IN B.A 1080/2022
Annexure A3	COPY OF THE CRL. M.P 1860/2023 FILED BY THE 2ND RESPONDENT
Annexure A4	COPY OF THE OBJECTIONS DATED 5TH JULY 2023 FILED BY THE PETITIONER IN CRL. M.P 1860/2023
Annexure A5	ORIGINAL COPY OF THE ORDER DATED 12.07.2023 PASSED BY JFCM COURT, CHAVAKKAD IN CRL.MP 1860 /2023
Annexure A6	COPY OF THE CRIMINAL PROCEDURE (IDENTIFICATION) ACT 2022