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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **CRL.M.C. 2809/2010**

% *Judgment delivered on: 5th March, 2012*

STATE(GOVT. OF NCT OF DELHI) Petitioner
Through: Mr. S.K. Saxena, Spl. PP

Versus

SANDEEP TYAGI & ANR. Respondents
Through : Mr. K.K. Manan, Mr. Nipun Bhardwaj
and Mr. Vishal Sangwan, Advs.

CORAM:
HON'BLE MR. JUSTICE SURESH KAIT

SURESH KAIT, J. (Oral)

1. The instant petition is being filed while assailing the order dated 24.05.2010, whereby the learned Trial Judge dismissed the application of the State filed under Section 138 of the Evidence Act for re-examination of the two witnesses.

2. Ld. Spl. Public Prosecutor appearing on behalf of the petitioner/State submits that after the dismissal of the aforesaid application, a petition under Section 408 of the Cr.PC was filed before the District Judge, Tis Hazari Courts, Delhi for transferring the trial of the case from the Court of A.S.J., Dwarka, New Delhi to any other Sessions Court, and the same was allowed.

3. Vide the aforesaid application filed by the State under Section 138 of the Evidence Act, it is stated that PW-14 has produced the mini digital video cassettes and two CDs before the IO, who after preparing

the transcripts, seized the same. The fact regarding the handing over of the two copies of the CDs is also required to be asked from him.

4. It is further stated that PW-15 Sushil Kumar recorded the conversations between the kidnapers and the family members of the deceased in a mobile phone. The said instrument along with the memory card and charger were seized by the police on 24.10.2008. The witness during the course of examinations in the Court stated that he can identify the voice of the kidnaper and the family members of the deceased, if the memory card is allowed to be played. The memory card through the instrument in question could not be played, as according to this witness the lock has become loose and could be played by putting a chip/sim-card in the same.

5. I note vide order dated 30.03.2010, the Id. Trial Court has recorded that the prosecution has relied upon a memory card but copy of the same has not been supplied to the accused persons. Eeven Id.Special PP submitted that it may be that the transcript filed is not a complete transcript. As such the said memory card is opened in the court sealed with the seal of CFSL and IO was directed that a CD of the same be prepared and handed over to the counsels for accused persons.

6. By the impugned order it is also recorded that no such application in respect of Sonu was moved on the date, the witness was cross-examined. Therefore, learned Judge was of the opinion that the application in respect of PW-14 Sonu, not maintainable.

7. Even otherwise so far as Sonu is concerned, he stated that he had seen the face of accused Sandeep Tyagi only after recording and he has

not deposed about the contents of the CD. Also has specifically stated that he can tell about the contents only after the video is played.

8. It is also recorded by the Id. Trial Court that so far as PW-15 is concerned, entire examination in chief of his identification of voice etc. and the recordings have been confronted from his statement Ex. PW15/DA, where it is simply stated that he had recorded the voices without reference to the kidnappers or the nature of voice or to the contents stated that the mobile and the charger were handed over to the Police.

9. It is further recorded that nothing beyond has been stated by him in his statement under Section 161 Cr.PC. It is thus clear that the statement of others is being tried to be put through this witness after the witness is tutored on those aspects and the re-examination is sought to play the same, is basically a review in the shape of re-examination, as the witness after wasting about one hour of the court was not been able to play the mobile or the memory card, at all, which was seized by the police.

10. As submitted by Id. Special Public Prosecutor that if those CDs be allowed to be played, he can identify the voice of the kidnappers as well as of the family members.

11. I am of the opinion that by hearing the recorded voice it cannot exactly be established whether this voice pertains to a certain person. For this purpose a scientific test is required for matching the voice of that person otherwise there is no such system by which recorded voice can be identified specifically by any person, who admittedly seen the face of accused Sandeep Tyagi, only after recording.

12. I also note that the report of the expert on the voice has not been filed by the petitioner. Moreso, in para 6 of the petition it is mentioned that the specimen voice of accused-Sandeep Tyagi S/o Sh. Chand Singh was got recorded by the PW-14 Sonu through a videography on 26.10.2008 in PS Chhawla, New Delhi. The said PW Sonu later on converted the voice contained into the video in two CDs and handed over the same to the police on 11.12.2008. The specimen voice of accused-Sandeep Tyagi and the voice of the kidnapper contained in the memory card recorded by the PW-15 Sushil Kumar were sent for comparison to the expert. The expert after examination confirmed that both the voice are of the same person.

13. I find no discrepancy in the impugned order dated 24.05.2010 passed by the learned ASJ, Dwarka. Accordingly, the CrI. M.C.2809/2010 is dismissed.

14. No order as to costs.

15. At this stage, Id. Spl. Public Prosecutor for the State submits that he could have liberty to adduce evidence to prove the specimen voice and the record before the Trial Court.

16. I make it here clear that this liberty is always available with the petitioner, which fact is not disputed by the Id. Counsel for the respondent.

17. CrI. M.C. No.2809/2010 stands disposed of in above terms.

SURESH KAIT, J

MARCH 5, 2012
RS