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**IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR**

**BEFORE
HON'BLE SHRI JUSTICE SHEEL NAGU
ON THE 3rd OF FEBRUARY, 2023**

MISC. CRIMINAL CASE No. 102 of 2023

BETWEEN:-

SMT. SARITA MEWADA W/O SACHIN MEWADA, AGED ABOUT 22 YEARS, OCCUPATION: HOUSEWIFE VILLAGE DEHARIYA KALA POLICE STATION KHAJURI SADAK BHOPAL AT PRESENT R/O C/O MAKHAN MEWADA VILLAGE PATANIYA POLICE STATION KHAJURI SADAK BHOPAL (MADHYA PRADESH)

.....APPLICANT

(BY SHRI UMESH TRIPATHI, ADVOCATE)

AND

- 1. THE STATE OF MADHYA PRADESH THROUGH POLICE STATION KHAJURI SADAK DISTRICT BHOPAL (MADHYA PRADESH)**
- 2. SACHIN MEWADA S/O RAMCHARAN MEWADA, AGED ABOUT 24 YEARS, R/O VILLAGE DEHARIYA KALA POLICE STATION KHAJURI SADAK BHOPAL (MADHYA PRADESH)**

.....RESPONDENTS

(BY SHRI PIYUSH JAIN & SHRI PRAMOD PANDEY, GOVT. ADVOCATES)

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This application coming on for admission this day, the court passed the following:

ORDER

The inherent powers of this Court under Section 482 of the Cr.P.C. are invoked to assail interlocutory order passed by the learned trial judge on 1.11.2022 whereby an application was preferred by the petitioner (wife of Sachin Mewada, PW-5) who was an accused in the trial for offences punishable under Section 302 of the IPC, seeking direction from trial court to obtain voice

sample of her husband, Sachin Mewada (P.W. 5 in trial), has been declined.

2. The reasons assigned by the learned trial judge for doing so is that since the said witness (husband of the petitioner) has declined to give his voice sample, he cannot be forced to do so, therefore, the application preferred by the petitioner/accused, suffered dismissal.

3. Learned counsel for the petitioner by referring to Section 132 of the Evidence Act urges that since no witness can be excused from answering a question of a matter which is relevant to the issue involved in the criminal trial, the learned trial judge ought to have allowed the said application for obtaining voice sample of the husband of the petitioner.

3.1 The objection of the prosecution to the said application preferred by the petitioner as is evident from the reading of the impugned order was that in the absence of compliance of the pre requisites of Section 65 (B) of the Evidence Act, the application for obtaining voice sample cannot be allowed.

4. After having heard learned counsel for the rival parties, this Court is of the considered view that the present petition deserves to be dismissed for the grounds infra:-

4.1 Reliance placed on Section 132 of Evidence Act by learned counsel for the petitioner appears to be misplaced. The protection given to a witness against incrimination or penalty or forfeiture of any kind under Section 132 while making a statement is to ensure that the truth comes out and the court is assisted in rendering justice. For ready reference and convenience, Section 132 of the Evidence Act is reproduced below:

"132. Witness not excused from answering on ground that answer will criminate. A witness shall not be excused from answering any question as to any matter relevant to the matter in

issue in any suit or in any civil or criminal proceeding, upon the ground that the answer to such question will criminate, or may tend directly or indirectly to criminate, such witness, or that it will expose, or tend directly or indirectly to expose, such witness to a penalty or forfeiture of any kind:

(Proviso) "Provided that no such answer, which a witness shall be compelled to give, shall subject him to any arrest or prosecution, or be proved against him in any criminal proceeding, except a prosecution for giving false evidence by such answer."

5. A bare perusal of the aforesaid provision reveals that in view of the immunity available to a witness under Section 132, it is incumbent upon the witness to answer any question raised which is relevant to the case. Thus, the immunity is available statutorily in respect of an answer given by a witness to a question in the trial in his capacity as a witness.

5.1 The aforesaid immunity or the provision cannot be stretched to include the obtaining a voice sample from a witness.

6. True it is that a three judges Bench in the case of *Ritesh Sinha Vs. State of Uttar Pradesh (2019) 8 SCC 1* held that till express provision is made for obtaining voice sample of an accused, such a sample can be obtained only on judicial direction but not by the police alone. To the extent of so holding, the said decision in *Ritish Sinha (supra)* has diluted the concept of fundamental right of privacy so far as it relates to an accused, but the Apex Court while doing so was careful enough to restrict its findings and ratio, only to the accused, which is evident from the reading of paragraph 26 of the said judgment which is reproduced below:

"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 vs. State of Madhya Pradesh*, *Gobind vs. State of Madhya Pradesh* and the nine Judge Bench of this Court in *K.S. Puttaswamy and another vs. Union of India* and others the fundamental right to privacy cannot be construed as absolute and 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."

7. Per contra, learned counsel for the State has relied on a Single Bench decision rendered on 20.12.2007 by the Andhra Pradesh High Court in *Smt. Rayala M. Bhuvaneshwari Vs. Nagaphanender Rayala, 2007 SCC online AP 892* and an Apex Court decision in *People's Union For Civil Liberties (PUCL) Vs. Union of India & Another, (1997) 1 SCC 301*.

8. Learned counsel for the petitioner has also placed reliance on a decision rendered in the case of *R. Dineshkumar @ Deena Vs. State, (2015) 7 SCC 497* where the provisions of Article 20, Clause 3 of the Constitution and Section 132 of the Evidence Act were discussed. This decision in the considered opinion of this Court may not be of any assistance to the petitioner since the question which was being considered and which was answered is as follows:

"43. Section 132 existed on the statute book from 1872 i.e. for 78 years prior to the advent of the guarantee under Article 20 of the Constitution of India. As pointed out by Muttusami Ayyar, J. in *Gopal Doss* [ILR (1881) 3 Mad 271], the policy under Section 132 appears to be to secure the evidence from whatever sources it is available for doing justice in a case brought before the court. In the process of securing such evidence, if a witness who is under obligation to state the truth because of the oath taken by him makes any statement which will criminate or tend to expose such a

witness to a "penalty or forfeiture of any kind, etc.", the proviso grants immunity to such a witness by declaring that "no such answer given by the witness shall subject him to any arrest or prosecution or be proved against him in any criminal proceeding". We are in complete agreement with the view of Ayyar, J. on the interpretation of Section 132 of the Evidence Act.

44. The proviso to Section 132 of the Evidence Act is a facet of the rule against self-incrimination and the same is a statutory immunity against self-incrimination which deserves the most liberal construction. Therefore, no prosecution can be launched against the maker of a statement falling within the sweep of Section 132 of the Evidence Act on the basis of the "answer" given by a person while deposing as a "witness" before a court." Â

9. Thus, the aforesaid decisions relied upon by the petitioner are not sufficient to answer the question involved herein, as to whether a witness can be compelled to give voice sample.

10. If a witness is compelled to give his voice sample then the issue of intrusion of his right to privacy would arise and further whether the said right is available to him to an extent of granting immunity from giving voice sample, is another question which needs to be answered.

11. However, this Court may not indulge in a deep probe into the said question since the reliance placed squarely on Section 132 is misplaced as the same protects a witness from answering certain questions put to him/her but does not in the least relate to requiring a witness to give voice sample.

12. In view of the above, though for reasons different than the one assigned by the trial court in the impugned order, this Court is of the view no fault can be found with the rejection of the application of accused/petitioner seeking obtaining of voice sample of her husband.

This petition under Section 482 of the Cr.P.C. thus stands **dismissed** sans cost.

(SHEEL NAGU)
JUDGE

P/-

