

GAHC010086192020



2024:GAU-AS:10584

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : Crl.Rev.P./145/2020

1. Central Bureau of Investigation,

Through its Head of Branch,
CBI/Anti Corruption Branch,
Opposite Balaji Temple, Betkuchi,
Guwahati-35, Assam.

...PETITIONER

-VERSUS-

1. Dr. Swetabh Suman, CIT (Appeal),

S/o- Lt. B. K. Singh,
R/o- C-10, Sec 50, Noida,
PIN- 201301 (UP)

2. Shri Pratap Das,

S/o- Lt. Subodh Ranjan Das,
Krishnanagar, Sani Bari Road,
Near Lakshmi Narayan Temple
Hojai, PIN- 782435

3. Shri Ramesh Goenka,

S/o- Lt. Hanuman Prasad Goenka,
Resident of Pratishtha 30, Bishnupur,
Main Road, Bishnupur,
Guwahati-16.

4. Shri Amti Goenka,
S/o- Shri Ramesh Goenka,
R/o- Pratishtha 30, Bishnupur,
Main Road, Bishnupur,
Guwahati-16.

5. Shri Suresh Kumar Agarwalla,
S/o- Late Madan Lal Agarwalla,
Resident of United Hardware & Electricals,
Raja Maidan Road,
P.O. Jorhat, Distt- Jorhat, Assam,
Director of M/s-Win Power Infra Pvt. Limited.

6. Shri Pranjal Sarmah,
S/o- Late Horen Sarmah,
Resident of Village-Karanga,
P.O & P.S. Cinnamara, Distt-Jorhat,
Assam.

7. Shri Balraj Dayma,
S/o- Late Bhagawati Prasad,
Permanent address Sector- 5,
Plot No. 76, Vidyadhar Nagar, Jaipur,
Rajastha, Pin- 302023.
Present address C/o- Dr. Pankaj Bhardwaj,
House No. 12, A.M. Road Rehabari, Guwahati.

...OPPOSITE PARTIES

Advocates for the petitioner : Mr. M. Haloi, Spl. PP, CBI

Advocates for the respondents : Mr. S. K. Srivastava assisted by
Mr. N. Z. Lotha, R-1
Mr. B. K. Mahajan, Sr. Adv. assisted
by Mr. D. Bora, R-2
Mr. K. Agarwal, Sr. Adv
Assisted by Mr. B. K. Singh, R-
3 & 4.
Mr. M. Kumar, R- 5 & 6
Mr. A. K. Das, R- 7

**BEFORE
HONOURABLE MRS. JUSTICE MITALI THAKURIA**

Date of hearing : 30.05.2024

Date of Judgment & Order : 29.10.2024

JUDGMENT & ORDER (CAV)

Heard Mr. M. Haloi, Special Public Prosecutor, CBI for the petitioner. Also heard Mr. S. K. Srivastava, learned counsel assisted by Mr. N. Z. Lotha, learned counsel for the respondent No.1; Mr. B. K. Mahajan, learned Senior Counsel assisted by Mr. D. Bora, learned counsel for the respondent No. 2; Mr. K. Agarwal, learned Senior Counsel assisted by Mr. B. K. Singh, learned counsel for the respondent Nos. 3 & 4; Ms. M. Kumari, learned counsel for the respondent Nos. 5 & 6; and Mr. A. K. Das, learned counsel for the respondent No. 7.

2. This is an application under Section 482 *read with* Section 397/401 of Code of Criminal Procedure, 1973, against the order dated 28.02.2020 passed by the learned Special Judge, CBI, Guwahati, Assam in CBI Case No. RC-05(A)/2018/CBI/ACB /Guwahati, whereby, the learned Special Judge rejected the prayer of the prosecution to take voice samples of the accused persons, i.e. respondent Nos. 1, 2, 3 & 6.

3. It is stated that the CBI, Anti-Corruption Branch (ACB), Guwahati registered an FIR No. 05(A)/2018 on 11.04.2018 under Section 7, 11, 12 & 13(2) *read with* Section 13(1)(d) of Prevention of Corruption Act, 1988 and *read with* Section 120B of the Indian Penal Code against Shri Swetabh Suman, CIT (Appeal); Shri Pratap Das, Income Tax Officer (Audit), Guwahati; Shri Ramesh Goenka, Advocate; Shri Amit Goenka; Shri Suresh Kumar Agarwala, Director of M/s Win Power Infra Pvt. Ltd.; and some unknown others on the allegation of taking illegal gratification and criminal misconduct. Accordingly, on 17.04.2018, a prayer was made before the Court of learned Special Judge, CBI for permission to obtain voice samples of the accused persons, namely, Shri Swetabh Suman, Shri Ramesh Goenka, Shri Pranjal Sarmah and Pratap Das and vide order dated on 19.04.2018, the prayer of the CBI was rejected for recording voice samples of the accused persons for spectrograph tests.

4. On being aggrieved by the Order passed by the learned Special Judge, CBI, one criminal revision petition No. 195/2018 was filed before this Court against the said impugned order. During the pendency of the said revision petition before this Court, the Hon'ble Supreme Court passed an order in

Ritesh Sinha vs. State of Uttar Pradesh & Anr. (Criminal Appeal No. 2003 of 2012), wherein the Apex Court mentioned that the Magistrate has the power to pass the order directing the accused to give voice samples.

5. Accordingly, in view of the light of the legal development before the full bench of Hon'ble Apex Court, CBI filed a fresh application before the learned Special Judge on 15.10.2019 with a prayer for recording the voice samples of the accused persons along with 2(two) other remaining accused persons, namely, Balraj Dayma and Pranjal Sarmah whose culpability surfaced during the investigation. Thereafter, the criminal revision petition pending before this Court was withdrawn on 07.11.2019 and the application was made before the learned Special Judge for permission to obtain the voice samples of the accused persons.

6. However, the learned Special Judge, after hearing both sides, dismissed the petition vide impugned judgment and order dated 28.02.2020 citing the reason that prosecution/CBI failed the test to ascertain that the interceptions of Tele-conversion so made were carried out in an illegal way and further observed that *"the case diary do not indicate as to whether complete due and proper procedure has been followed with regard to the telephone tapping in this case in terms of the provisions of section 5(2) of the Indian Telegraph Act, 1885, Rule 419 of the Telegraph rules and the principles laid down by the Supreme Court."*

7. The submission on behalf of the petitioner is that the learned Special Judge, while dismissing the petition of CBI, clearly overlooked the provisions

of Section 5(2) of the Indian Telegraph Act R/w Section 419-A of Indian Telegraph Rules Amendment in 2007, which authorize Law Enforcement Agencies to seek for the legal interception of Telephonic conversions in connection with offences of serious nature. The Indian Telegraph amendment rules further provides that all requests for such interceptions would only be consider after due examination/screening by the reviewing committee as set up under the provision of said rules, headed by the Cabinet Secretary, Government of India, considering of Secretary to Government of India, Department of Telecommunications.

8. Mr. Haloi, learned Special Public Prosecutor, CBI submitted that out of 13 numbers of letter of permission for interceptions, 08 permissions granted by Indian Home Secretary to the Government of India and 05 permission issued by the Worthy Director CBI after duly examining the request and considering the fact that interceptions were sought in the interest of public order and safety and to prevent incitement to the commission of an offence. The said permissions were considered under the provisions of Indian Telegraph Rules Amendment in 2007, introduced by GSR. 193 of 1st March'2007. Thus, due procedure prescribed by law was fully complied with while intercepting Tele conversion of phone number of the accused persons.

9. Mr. Haloi further submitted that while passing the order, the learned Special Judge had relied on the judgment of Hon'ble Bombay High Court in case of **Vinit Kumar vs. CBI**, whereby the order for destruction of record of interceptions was passed, but the learned Special Judge failed to consider the fact that the said judgment is different and also not relevant in the present

case and cannot bind on the learned Special Judge, CBI, Guwahati.

10. Mr. Haloi further submitted that in the instant case, there is a demand for bribe by Shri Swetabh Suman, Commissioner of Income Tax (Audit), Guwahati with an additional charge of CIT (Appeal), Jorhat, through Shri Ramesh Goenka, Advocate and Tax consultant, Shri Amit Goenka, Advocate and Tax consultant, Guwahati from Shri Suresh Agarwala, Director of M/s Win Power Infra Pvt. Ltd., Jorhat for showing undue favour to Shri Suresh Agarwala by passing favourable order in an appeal No. CIT (A), Jorhat/10027/2017-18, arising out of assessment done in respect of M/s Win Power Infra Pvt. Ltd.

11. He further submitted that the aforesaid demand of bribe amount of Rs. 50 Lakhs by the accused- Shri Swetabh Suman, CIT (Appeal) and the subsequent negotiated bribe amount settled at Rs. 40 Lakhs, which is mentioned in the FIR, and the details of handing over the bribe money is in the form of detailed recorded telephonic conversation between Shri Swetabh Suman and Shri Ramesh Goenka and vice versa and also conversations in between other accused persons involved in the said criminal conspiracy from the time of demand of the bribe till the time of recovery of bribe money etc., were recorded by telephonic conversations. As there is no eye witness to prove the demand of bribe money from M/s Win Power Infra Pvt. Ltd., the intercepted conversations of these accused persons taken as per provision of Rule 419-A of Indian Telegraph Rules Amendment in 2007. Accordingly, the permissions were also received from the competent authority and hence, it is required to take the voice samples to compare the same with the questioned

voice samples as this is very vital evidence which will prove the case beyond reasonable doubt in the interest of justice.

12. Accordingly, on being highly aggrieved and dissatisfied with the order dated 28.02.2020 passed by the learned Special Judge, CBI, ACB, Guwahati, in case No. RC-05(A)/2018, the petitioner/CBI preferred the present criminal petition for setting aside and quashing of the order passed by the learned Special Judge, Guwahati.

13. Mr. Haloi further submitted that the learned Special Judge, CBI, Guwahati passed the impugned order mechanically and has rejected the petition summarily without going into the merit of the prayer and as such, the order is liable to be set aside and quashed. He further submitted that the drawing of voice samples of the accused persons is very much necessary for proper investigation of the matter and to compare the same with recorded voice of the accused persons which is fair and reasonable having due regard to the mandate of Article 21 of the Constitution of India, but the learned Special Judge did not consider all these aspects of the case and rejected the prayer of the petitioner which was bad in law and liable to be set aside and quashed. The learned Special Judge failed to appreciate the fact that the voice samples are very vital evidence to prove the case as in such type of cases other corroborative evidence are rare. Accordingly, Mr. Haloi, submitted that it is a fit case wherein the Judgment and order passed by the learned Special Judge, CBI is liable to be set aside and quashed.

14. On the other hand, the learned counsels appearing on behalf of all the

respondents have raised the following issues at the time of argument:

- (i) **That the interceptions were done illegally within 05.04.2018 to 09.04.2018.**
- (ii) **There is no question of public safety or public emergency to intercept the telephonic conversation as required under Section 5 (2) of the Indian Telegraph Act.**

15. It is submitted by the learned counsels representing the respondents that the telephonic conversations of the accused persons, which have been intercepted, do not fall within the ambit of the criteria of public emergency and/or the interest of the public safety as laid down by the Hon'ble Apex Court. In this context, they relied on a decision of Hon'ble Apex Court passed in the case of **Peoples Union for Civil Liberty Vs. Union of India & Ors. [(1997) 1 SCC 301]**, wherein it has been held that no interception of Telegraph can be done beyond the purview of the exceptions provided by Section 5(2) of the Indian Telegraph Act, 1885 and without adhering to the rules framed thereunder and as there were no rules framed by then Central Government and it would have taken some time by the Central Government to frame the rules for interception of Telegraph.

16. It is further submitted by the learned counsels for the respondents that the Central Government by its Notification dated 01.03.2007, GSR 193(E), framed the rules for interception of Telegraph under Section 7(2)(b) of the Indian Telegraph Rules, 1985 as was mandated by the Hon'ble Apex Court and therefore, the Mandamus in the case of **PUCL** (supra) having run its course,

the said Rules which has been incorporated as Rule 419 A of the Indian Telegraph Rules, 1951 to occupy the field.

17. In that context, the relied on a decision of Hon'ble Apex Court passed in the case of **Hukam Chand Shyam Lal Vs. UOI & Ors. [(1976) 2 SCC 1228]** and basically emphasised on paragraph No. 13 of the judgment, which reads as under:

"13. Section 5(1), if properly construed, does not confer unguided & unbridled power on the Central Govt./State Govt./Specially Authorised Officer to take possession of any telegraph. Firstly, the occurrence of a 'public emergency' is the sine qua non for the exercise of power under this section. As a preliminary step to the exercise of further jurisdiction under this section the Govt. or the authority concerned must record its satisfaction as to the existence of such an emergency. Further, the existence of the emergency which is a pre-requisite for the exercise of power under this section, must be a 'public emergency' and not any other kind of emergency. The expression 'public emergency' has not been defined in the statute, but contours broadly delineating its scope and features are discernible from the section which has to read as a whole. In sub- section (1) the phrase 'occurrence of any public emergency' is connected with and is immediately followed by the phrase 'or in the interests of the public safety'. These two phrases appear to take colour from each other. In the first part of sub-s. (2) these two phrases again occur in association with each other, & the context further clarifies, with amplification, that a 'public emergency' within the contemplation of this section is one which raises problems concerning the interest of the public safety, the sovereignty and integrity of India, the security of the State, friendly relations with foreign States or public order or the prevention of incitement to the commission of an offence. It is in the context of these matters that appropriate authority has to form an opinion with regard to the occurrence of a 'public emergency' with a view to taking further action under this section. Economic emergency is not one of those matters expressly mentioned in the statute. Mere 'economic emergency' as the High Court calls it-may not necessarily amount to a 'public emergency' & justify action under this section unless it raises problems relating to the matters indicated in the section."

18. The learned counsels for the respondents further stressed on Section 5 of The Indian Telegraph Act, 1885, wherein it is provided that on the occurrence of public emergency, or in the interest of the public safety, the Central Government or a State Government or any officers specially authorized in this behalf by the Central Government or a State Government may, if satisfied that it is necessary or expedient to do so in the interest of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States or public order or for preventing incitement to the commission of an offence, for the reasons to be recorded in writing, by order, direct that any message or class of messages to or from any person or class of persons, or relating to any particular subject, brought for transmission by or transmitted or received by any telegraph, shall not be transmitted, or shall be intercepted or detained, or shall be disclosed to the Government making the order or an officer thereof mentioned in the order. They further stressed on the point that as per Section 5 (2) of the Indian Telegraph Act, 1985, it permits the interception of messages in accordance with the provisions of the said Section in case of occurrence of any public emergency or in the interest of public safety. Unless the public emergency has occurred or the interest of the public safety demands, the authorities have no jurisdiction to exercise the powers under the said Section. Public emergency would mean the prevailing of a sudden condition or state of affairs affecting the public at large calling for immediate action. The expression "public safety" means the state or condition of freedom from danger or risk for the people at large. When either of these two conditions are not in existence, the Central Government or a State Government or the authorized officer cannot resort to

telephonic tapping even though there is satisfaction that it is necessary or expedient so to do for interest of sovereignty and integrity of India etc. **[PUCL Vs. U.O.I., (1997) 1 SCC 301]**.

19. The learned counsel for the respondents also relied on the decision of Hon'ble Apex Court in **Vinit Kumar Vs. Central Bureau of Investigation & Ors. [2019 SCC OnLine Bom 3155]** which also speaks about the public safety and emergency and paragraph No. 13 of the said judgment reads as under, as emphasized:

"13. In view of the aforesaid clear and emphatic pronunciation of law on the subject by the Nine Judge Constitution Bench in [K. S. Puttaswami](#) (supra), it is no longer res-integra that :-

(a) The right to privacy is recognized by the Nine Judge Bench as inherent fundamental right having protection as an intrinsic part of the right to life and personal liberty under [Article 21](#) and as a part of the freedom guaranteed by Part III of the Constitution which is subject to specified restrictions;

(b) Any infringement of the right to privacy by State Authorities will have to meet the following four tests based on the "Principle of proportionality and legitimacy" :

- 1. The action must be sanctioned by law;*
- 2. The proposed action must be necessary in a democratic society for a legitimate aim;*
- 3. The extent of such interference must be proportionate to the need for such interference;*
- 4. There must be procedural guarantees against abuse of such interference.*

(c) All earlier judgments suggesting to the contrary, are no longer binding precedents. The matters of infraction of the fundamental right to privacy would now have to necessarily satisfy the aforesaid tests, and cannot be dealt with on the basis of the overruled judgments

in M.P.Sharma (supra) or Kharak Singh (supra) or based thereon or on the same line of reasoning like R. M. Malkani (supra)."

20. It is further submitted by the learned counsels appearing for the respondents that the telephonic conversation is an important facet of a man's private life. Right to privacy would certainly include telephone conversation in the privacy of one's home or office. Thus, the telephone tapping will infringe the right of a person under Article 21 of the Constitution of India unless it is permitted under the procedure and established law.

21. They further emphasized on paragraph No. 18 of the of the decision of Hon'ble Apex Court in the case of **PUCL** (supra) which reads as under:

"18. The right of privacy – by itself – has not been identified under the Constitution. As a concept it may be too broad and moralistic to define it judicially. Whether right to privacy can be claimed or has been infringed in a given case would depend on the facts of the said case. But the right to hold a telephone conversation in the privacy of one's home or office without interference can certainly be claimed as "right to privacy". Conversations on the telephone are often of an intimate and confidential character. Telephone conversation is a part of modern man's life. It is considered so important that more and more people are carrying mobile telephone instruments in their pockets. Telephone conversation is an important facet of a man's private life. Right to privacy would certainly include telephone conversation in the privacy of one's home or office. Telephone-tapping would, thus, infract Article 21 of the Constitution of India unless it is permitted under the procedure established by law."

(iii) Order of interception of message was not there while passing the order by the learned Special Judge and subsequently the orders were passed by the Director of Home Ministry.

22. The learned counsels representing the respondents submitted that the learned Special Judge, CBI had rightly dismissed the petition of the present petitioner/CBI as they failed to place any materials on record before the learned Court below to satisfy that the intercepted telephonic conversation have been intercepted in accordance with procedure established by law. By filing the subsequent affidavit, the petitioner side brought on record certain orders allegedly passed by the competent authority under Rule 419 (A) of the Telegraph Rules, 1951 to argue that the telephonic conversation was tapped as per law. However, it is submitted that the approval in case of respondent No. 1 was given only on 13.04.2018, though he was taken into custody of CBI on 12.04.2018 itself and was in custody of CBI during the period of interception by CBI. The permission of Secretary, Ministry of Home Affairs, Government of India, as claimed by the CBI to have been obtained, was never put before the Review Committee and was never approved by the Review Committee and in absence of the same, the CBI could not have taken up the interception of Telegraph of respondent No. 1. The learned Special Judge, CBI has correctly considered the issue of admissibility of illegally intercepted Telegraph in evidence to reject the contention of CBI that it should be permitted by the learned Trial Court to lead the illegally intercepted Telegraph in evidence.

23. The learned counsels for the respondents further submitted that in a criminal trial, the admissibility of intercepted Telegraph as evidence, there are specific rules as being the procedural safeguards which must mandatorily be complied with (Rule 419 A of Indian Telegraph Rules, 1951) and without which the intercepted Telegraph if done illegally and unlawfully cannot be allowed to

be admissible as evidence being hit by the ratio of the Nine Judge Constitution Bench judgment in case of **K.S. Puttaswami & Anr. Vs. Union of India & Ors. [(2017) 10 SCC 1]**, which is squarely applicable and will override the law as laid in Pooranmal case and the fundamental rights of the respondents cannot be infringed otherwise than due process of law.

24. The learned counsels appearing on behalf of respondent Nos. 5 & 6 further submitted that surprisingly the petitioner/CBI has arrayed the respondent No. 5- Shri Suresh Kr. Agarwalla and respondent No. 6- Shri Pranjal Sharma, as necessary parties in the instant criminal petition in absence of transcript of conversation of alleged accused No. 5 & 6, recorded during investigation. Admittedly, when the CBI has not taped/recorded any telephonic conversation/transcripts of respondent Nos. 5 & 6, irrespective of the fact either 'legally' or 'illegally' as such taking of voice sample for identification of voice through the use of spectrographic method does not arise at all. The Voice Sample is a method through which recording of voice is taken from the accused for the purpose of comparing the other recorded speech or conversation obtained during investigation, as such, in absence of transcript of conversation, taking of Voice Sample is only a futile exercise and harassment to the accused persons, not to speak about the abuse of process of law. The respondent Nos. 5 & 6 are unnecessarily being dragged in this criminal petition. Therefore, the instant criminal petition is not maintainable against respondent Nos. 5 & 6.

25. Further it is submitted by the learned counsels for the respondents that the law as it is by Rule 419 A of the Indian Telegraph Rules, 1951 mandates

that the intercepted material (during the first 7 days) are to be mandatorily destroyed by intercepting agency if permission to intercept the Telegraph as granted under sub-rule 2 of Rule 419 A of the Indian Telegraph Rules, 1951 by the Secretary concerned is not approved by the Standing Review Committee under sub-rules 16 & 17 of rule 419 A of the Indian Telegraph Rules, 1951. It is the case of the CBI that the permission for interception of Telegraph as was granted by the Secretary, Ministry of Home Affairs, Govt. of India was not approved by the Review Committee, and thus the said intercepted material stood mandatorily destroyed and is presumed not to be in existence, and therefore, something that is not in existence cannot be led in evidence, or be proved before the learned Trial Court by the CBI. In this context, they relied on a decision of Hon'ble Delhi High Court in case of **Jatinder Pal Singh Vs. CBI (Crl. M.C. No. 3118/2012, dated 17.01.2022)** has held that illegally intercepted Telegraph would not be admissible as evidence, and would have to be mandatorily destroyed.

26. Further it is submitted that while passing the order dated 28.02.2020 by the learned Special Judge there was no orders of interception of the telephonic conversation of the phone numbers of the accused respondents in the Case Diary at the time of passing the order by the learned Special Judge. More so, in the interception order, there is no format and content of all the orders which are same irrespective of whether it was passed by the Director, CBI or Union Home Secretary except phone numbers and date. None of the orders bears the official seal or signatures nor those were passed in any official letter pads. None of the orders have been issued in the name of any particular person. All the interception orders are general orders not addressed to any particular

person.

27. Further it is submitted that Sub-rule (8) of the Rule 419-A of the Rules obligates the Central Government or State Government, as the case may be, to constitute a Review Committee. According to Sub-rule (9) of Rule 419-A of the Rules, the Review Committee, within a period of sixty days from the issue of directions, shall *suo moto* make necessary enquiries and investigations and record its findings as to whether the directions issued under sub-rule (1) are in accordance with the provisions of sub-section (2) of the Section 5 of the Act. If the Review Committee is of the opinion that the directions are not in accordance with the provisions referred to above, it may set aside the directions and order for destruction of the copies of the intercepted message or class of messages.

28. The learned counsel appearing on behalf of the respondent Nos. 3 & 4 also relied on the decision of Hon'ble Rajasthan High Court, which was reported in **2023 SCC OnLine Raj 1108 (Shashikant Joshi Vs. State of Rajasthan & Ors.)**, wherein also, the judgment of the Hon'ble Supreme Court in the case **PUCL** (supra) was relied upon and in paragraph No. 13 of the said judgment, it is held that in pursuance of certain directions in **PUCL** (supra) rules were suitably amended to provide for procedural safeguards for protection of the right to privacy. Accordingly, Rule 419A was enacted by Telegraph Amendment Rules, 2007 in the Indian Telegraph rules, 1951 and if the authorities failed to record any reason in writing for the requirement of tapping of the conversation under sub-section (2) of Section 5, such orders suffers from arbitrariness and violates the constitutional right of the petitioner.

29. Reliance is also placed in the case of **Kranti Associates Private Limited & Anr. Vs. Masood Ahmed Khan & Ors. [(2010) 9 SCC 496]**, wherein it has been observed by the Hon'ble Supreme Court that the principle of natural justice by judicial, quasi-judicial and even by administrative bodies must record reasons in support of its conclusions. Paragraph No. 47 of the said judgment reads as under:

"47. Summarizing the above discussion, this Court holds:

(a) In India the judicial trend has always been to record reasons, even in administrative decisions, if such decisions affect anyone prejudicially.

(b) A quasi-judicial authority must record reasons in support of its conclusions.

(c) Insistence on recording of reasons is meant to serve the wider principle of justice that justice must not only be done it must also appear to be done as well.

(d) Recording of reasons also operates as a valid restraint on any possible arbitrary exercise of judicial and quasi-judicial or even administrative power.

(e) Reasons reassure that discretion has been exercised by the decision maker on relevant grounds and by disregarding extraneous considerations.

(f) Reasons have virtually become as indispensable a component of a decision making process as observing principles of natural justice by judicial, quasi-judicial and even by administrative bodies.

(g) Reasons facilitate the process of judicial review by superior Courts.

(h) The ongoing judicial trend in all countries committed to rule of law and constitutional governance is in favour of reasoned decisions based on relevant facts. This is virtually the life blood of judicial decision making justifying the principle that reason is the soul of justice.

(i) Judicial or even quasi-judicial opinions these days can be as

different as the judges and authorities who deliver them. All these decisions serve one common purpose which is to demonstrate by reason that the relevant factors have been objectively considered. This is important for sustaining the litigants' faith in the justice delivery system.

(j) Insistence on reason is a requirement for both judicial accountability and transparency.

(k) If a Judge or a quasi-judicial authority is not candid enough about his/her decision making process then it is impossible to know whether the person deciding is faithful to the doctrine of precedent or to principles of incrementalism.

(l) Reasons in support of decisions must be cogent, clear and succinct. A pretence of reasons or 'rubber-stamp reasons' is not to be equated with a valid decision making process.

(m) It cannot be doubted that transparency is the sine qua non of restraint on abuse of judicial powers. Transparency in decision making not only makes the judges and decision makers less prone to errors but also makes them subject to broader scrutiny. (See David Shapiro in Defence of Judicial Candor (1987) 100 Harward Law Review 731-737).

(n) Since the requirement to record reasons emanates from the broad doctrine of fairness in decision making, the said requirement is now virtually a component of human rights and was considered part of Strasbourg Jurisprudence. See (1994) 19 EHRR 553, at 562 para 29 and Anya vs. University of Oxford, 2001 EWCA Civ 405, wherein the Court referred to [Article 6](#) of European Convention of Human Rights which requires,

"adequate and intelligent reasons must be given for judicial decisions".

(o) In all common law jurisdictions judgments play a vital role in setting up precedents for the future. Therefore, for development of law, requirement of giving reasons for the decision is of the essence and is virtually a part of "due process".

30. Regarding the issue of maintainability, it is submitted by Mr. Srivastava, learned counsel for the respondent No. 1, that it is a second revision petition

by the CBI for the same cause of action between the same parties as CBI had earlier on 01.06.2018 moved a revision petition, being Crl. Rev. Petn. No. 195/2018, against the order dated 19.04.2018, passed by the learned Special Judge, CBI, Guwahati whereby the prayer for taking Voice Sample of the respondents was rejected. During the pendency of the said criminal revision petition before this Court, the CBI again filed another application before the learned Special Judge, CBI on 15.10.2019, being Application No. 993/2019, wherein some relief was sought for by the CBI and the earlier revision petition was withdrawn which was accordingly disposed of on withdrawal vide order dated 07.11.2019, passed by this Court. More so, the earlier Crl. Rev. Petn. No. 195/2018 was withdrawn with a declaration that the CBI is not going to pursue the matter anymore and accordingly, the said revision petition was disposed of on withdrawal. It is further submitted by Mr. Srivastava that once the criminal revision petition was dismissed by this Court, even on withdrawal, the jurisdiction of this Court, which is only a statutory jurisdiction, cannot be invoked again when the Hon'ble Apex Court has held that even extra-ordinary writ jurisdiction under Article 226 & 227 of the Constitution cannot be invoked if an earlier lis among the same parties and on the same cause of action was dismissed by the Court without the leave to reagitate the issues. In this regard, reliance is placed on **Sarguja Transport Service Vs. State Transport Appellate Tribunal, M.P., Gwalior, AIR 1987 SC 88.**

31. Mr. Srivastava further submitted that the object of the revisional jurisdiction is to set right "a patent defect" or "an error of jurisdiction or law" or "the perversity" which crept in during the proceedings and it was thus incumbent upon the CBI to state as to what was the patent defect in the

impugned order or what was the error of jurisdiction or what was the perversity in the order passed by the learned Special Judge, CBI.

32. Relying on the decision of Hon'ble Supreme Court passed in **Ritesh Sinha** (supra), it is submitted by Mr. Srivastava that there was no law to require accused to provide Voice Sample and if the accused did not want to give Voice Sample, he or she cannot be forced by the learned Magistrate to provide the same and to fill the legislative gap, the Hon'ble Apex Court abled the Magistrate to direct the accused to provide the Voice Sample if so satisfied and thus the judgment dealt with only the jurisdiction to direct to provide Voice Sample and not the merits of the case as to whether the Magistrate can exercise the jurisdiction or not.

33. Learned counsels for the respondents further relied on a decision of this Court passed in the case of **Pallab Das Vs. Central Bureau of Investigation & Ors. (Crl. Rev. Pet. No. 386 of 2009), decided on 10.08.2012**), and emphasized on paragraph Nos. 50, 51 & 57 of the judgment, wherein it has been held that judicial intervention in exercise of revisional jurisdiction is founded on the doctrine of *ex debito justitiae* to correct a manifest illegality and error of procedure resulting in gross and flagrant miscarriage of justice. The jurisdiction, as the precedential enjoinder mandate, is not exercisable to correct a view of a subordinate court based on a perceived erroneous appreciation of evidence suggesting different deductions.

34. The learned counsels for the respondents also relied on a decision of

Hon'ble Supreme Court passed in the case of **Kishan Rao Vs. Shankargouda (Criminal Appeal No. 803 of 2018)**, decided on **02.07.2018**.

35. Per contra, it is submitted by Mr. Haloi, learned Special Public Prosecutor, CBI that while passing the order by the authority concerned, there is no need of elaborate discussion of the reasons while making the order. Rather such an elaborate discussion may affect the privacy of the party. In that context, he also cited a decision of the Hon'ble Delhi High Court passed in **W.P.(CRL) No. 1147/2020 (Santosh Kumar Vs. Union of India & Anr.)** and basically relied on paragraph No. 44 of the said judgment, which reads as under:

"44. The disclosure of elaborate reasons for interception orders would be against the modified disclosure requirements of procedural fairness which have been universally deemed acceptable for the protection of other facets of public including the source of information leading to the detection of crime or other wrong doing, sensitive intelligence information and other information supplied in confidence for the purpose of government or discharge of certain public functions. Furthermore, the Rule 419 A of the Telegraph Rules provide for extreme secrecy, utmost care and precaution in the matter of interception as it affects privacy."

36. Mr. Haloi further submitted that in the present petition, the matters pertain to corruption which is dangerous for public safety since economic crimes ultimately affect the economic safety of the entire country and it is citizen.

37. Mr. Haloi further relied on another decision of Madras High Court passed in **W.P. Nos. 5466, 5470 of 2020, W.M.P. Nos. 6391, 6394, 6396 and 6397 of 2020 (Sanjay Bhandari & Ors. Vs. The Secretary of**

Government. of India & Ors.), dated 23.11.2020, and emphasized on paragraph No. 14 of the judgment, which reads as under:

"14. That apart, in view of the above discussion the first respondent passed the orders for detection, prevention, investigation and prosecution of corrupt activities of the petitioners herein in accordance with the provision under Section 5(2) of the Indian Telegraph Act, 1885. Thereafter, the Court finds no violation of Section 5(2) of the Telegraph Act and also it would not amount to violation of the right to privacy under Article 21 and freedom of speech and expression guaranteed under Article 19(1) and 19(2) of the Constitution of India. Therefore, these writ petitions are devoid of merits."

38. Mr. Haloi, learned Standing Counsel, CBI also relied on another decision of the Hon'ble Delhi High Court passed in **Crl. M. C. No. 1534/2018, dated 07.12.2023 (Sanjiv Kumar Vs. The State of Govt. of NCT of Delhi)** and accordingly submitted that in the instant case, the prosecution has complied with the provision of Telegraph Act and obtained necessary authorization to intercept the phone of the respondents and therefore, the judgment of **PUCL** (supra) and **Jatinder Pal Singh** (supra) will not be applicable in the present case.

39. Accordingly, Mr. Haloi submitted that while dismissing the petition, the learned Special Judge overlooked the provision of Section 5(2) of the Indian Telegraph Act and Rule 419A of the Indian Telegraph Rules, amended in the year 2007, which authorized the law and the enforcement agencies to seek for legal interception of the telephonic conversations in connection with the offence of serious nature and here in the instant case also, out of 13 numbers of letter of permission for interception, 8 numbers of permissions were granted

by the Home Secretary to the Government of India and 5 numbers of permissions issued by the Director, CBI after duly examining the request and considering the fact that the interceptions were sought in the interest of public order and safety and to prevent incitement to the commission of an offence. Hence, Mr. Haloi submitted that in such nature of cases, the voice sample is very vital evidence to prove the case and in such type of cases, other corroborative evidence are rare and therefore, the order passed by the learned Special Judge, CBI is liable to be set aside and quashed.

40. In this context, the learned counsels for the respondents submitted that the cases relied by the CBI are general cases related to P.C. Act and not related to phone tapping under the Indian Telegraph Act except **Sanjay Bhandari's** case and therefore these cases are not relevant in the present case. Further it is submitted that the case of **Ritesh Sinha** (supra) is not applicable in this case and facts of the case of **Ritesh Sinha** (supra) is totally different from the present fact of the case.

41. I have considered the rival submissions put forwarded by the learned counsels appearing on behalf of the parties and also perused the materials available on record.

42. It is the case of the petitioner/CBI that after the dismissal of the prayer for recording of the voice samples of the present respondents by the learned Special Judge on 28.02.2020, one revision petition was filed before this Court, but subsequently the same was withdrawn on 07.11.2019 and another application was preferred before the learned Special Judge, CBI for permission

to obtain voice samples of the accused persons. But the learned Special Judge, CBI overlooked the provision of Section 5(2) of the Indian Telegraph Act *read with* Section 419A of the Indian Telegraph Rules (amended in 2007) which authorizes the law enforcement agency to seek for legal interception of telephonic conversation in connection with the offences of serious in nature. It is further the case of the petitioner/CBI that the Indian Telegraph Amendment Rules provide that all the request for such interception would only be considered after due examination/ screening by the Review Committee as setup under the provision of the said Rules, headed by the Cabinet Secretary, Government of India, considering of Secretary to Government of India, Department of Telecommunications. But, without considering the fact, the learned Special Judge arbitrarily rejected the prayer for recording of the voice samples of the present petitioners.

43. On the other hand, it is the case of the respondents that the entire interceptions were done illegally within 05.04.2018 to 09.04.2018. Further it is the case of the respondent that there is no question of public safety or public emergency to intercept the telephonic conversation as required under Section 5(2) of the Indian Telegraph Act. As per the respondents, the telephonic conversation of the accused persons, which have been intercepted, do not fall within the ambit of criteria of public emergency and/or the interest of the public safety as laid down by the Hon'ble Apex Court in the case of **PUCL** (supra). The judgment of the Apex Court in **PUCL** (supra) was mainly stressed by the learned counsels for the respondents, wherein it has been held that no interception of the telegraph can be done beyond the purview of the exceptions provided by Section 5(2) of the Indian Telegraph Act, 1885 and

without adhering to the rules framed thereunder and as there were no rules framed by then Central Government, it would have taken some time by the Central Government to frame the rules for interception of Telegraph.

44. For ready reference, Section 5(2) of the Indian Telegraph Act, 1885 is extracted hereinbelow:

"5. Power for Government to take possession of licensed telegraphs and to order interception of messages.

...

(2) On the occurrence of any public emergency, or in the interest of the public safety, the Central Government or a State Government or any officer specially authorized in this behalf by the Central Government or a State Government may, if satisfied that it is necessary or expedient so to do in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States or public order or for preventing incitement to the commission of an offence, for reasons to be recorded in writing, by order, direct that any message or class of messages to or from any person or class of persons, or relating to any particular subject, brought for transmission by or transmitted or received by any telegraph, shall not be transmitted, or shall be intercepted or detained, or shall be disclosed to the Government making the order or an officer thereof mentioned in the order:

Provided that press messages intended to be published in India of correspondents accredited to the Central Government or a State Government shall not be intercepted or detained, unless their transmission has been prohibited under this sub-section."

45. In connection with the applicability of Section 5(2) of the Indian Telegraph Act, the learned counsels for the respondents also relied on various decisions, as referred above, wherein it is provided that unless public emergency has occurred or the interest of the public safety demands, the authorities have no jurisdiction to exercise power under the said Section.

Public emergency would mean the prevailing of a sudden condition or state of affairs affecting the public at large calling for immediate action. The expression "public safety" means the state or condition of freedom from danger or risk for the people at large.

46. Further it is the case of the respondents that the telephonic conversation is an important facet of a man's private life. Right to privacy would certainly include telephone conversation in the privacy of one's home or office. Thus, the telephone tapping will infringe the right of a person under Article 21 of the Constitution of India unless it is permitted under the procedure and established law. But, here in the instant case, the order of interception of the messages was not there while passing the order by the learned Special Judge and subsequently the orders were passed by the Director of Home Ministry. Thus, it is submitted by the respondents side that the petitioner/CBI failed to place any material on record before the learned Court below to satisfy that the intercepted telephonic conversation have been intercepted in accordance with procedure established by law. More so, it is the claim of the respondents that in the interception order, there is no format and content of all the orders which are same irrespective of whether it was passed by the Director, CBI or Union Home Secretary except phone numbers and date. Further, none of the orders bears the official seal or signatures nor those were passed in any official letter pads. None of the orders have been issued in the name of any particular person. All the interception orders are general orders not addressed to any particular person. Thus, the orders for interceptions which were produced by the CBI are not the order which were illegally passed in accordance with the established law. More so, those were not placed before the Review Committee

as required under Rule 419A of the Indian Telegraph Rules, 1951 which obligates the Central Government or the State Government as the case may be to constitute a Review Committee.

47. The amended provision of Rule 419A of the Indian Telegraph Rules provides as under:

"419-A. (1) Directions for interception of any message or class of messages under sub-section (2) of Section 5 of the Indian Telegraph Act, 1885 (hereinafter referred to as the said (Act)) shall not be issued except by an order made by the Secretary to the Government of India in the Ministry of Home Affairs in the case of Government of India and by the Secretary to the State Government in-charge of the Home Department in the case of a State Government. In unavoidable circumstances, such order may be made by an officer, not below the rank of a Joint Secretary to the Government of India, who has been duly authorized by the Union Home Secretary or the State Home Secretary, as the case may be:

Provided that in emergent cases—

*(i) in remote areas, where obtaining of prior directions for interception of messages or class of messages is not feasible; or
(ii) for operational reasons, where obtaining of prior directions for interception of message or class of messages is not feasible;*

the required interception of any message or class of messages shall be carried out with the prior approval of the Head or the second senior most officer of the authorized security i.e. Law Enforcement Agency at the Central Level and the officers authorised in this behalf, not below the rank of Inspector General of Police at the state level but the concerned competent authority shall be informed of such interceptions by the approving authority within three working days and that such

interceptions shall be got confirmed by the concerned competent authority within a period of seven working days. If the confirmation from the competent authority is not received within the stipulated seven days, such interception shall cease and the same message or class of messages shall not be intercepted thereafter without the prior approval of the Union Home Secretary or the State Home Secretary, as the case may be."

48. Further, Rule 419 (17) (18) provides as under:

"419. (17) The Review Committee shall meet at least once in two months and record its findings whether the directions issued under sub-rule (1) are in accordance with the provisions of sub-section (2) of Section 5 of the said Act. When the Review Committee is of the opinion that the directions are not in accordance with the provisions referred to above it may set aside the directions and orders for destruction of the copies of the intercepted message or class of messages.

(18) Records pertaining to such directions for interception and of intercepted messages shall be destroyed by the relevant competent authority and the authorized security and Law Enforcement Agencies every six months unless these are, or likely to be, required for functional requirements."

49. Here in the instant case, it is seen that the order of interception was passed by the competent authority, i.e. the Director of CBI or Union Home Secretary, along with telephone numbers. As per Rule 419A of the Indian Telegraph Rules (Amended Rules), it authorizes the law enforcement agency to seek for legal interception of telephone conversation in connection with the offence of serious in nature. Further, as per the amended Rules, all the request for such interceptions would only be considered after due examination/screening by the Reviewing Committee as set up under the provision of said rules, headed by the Cabinet Secretary, Government of India,

considering of Secretary to Government of India, Department of Telecommunications. Here in the instant case, it is seen that the order of interception, which were produced by the CBI, were passed by the Indian Home Secretary to the Government of India and the Director, CBI after due examination of the request for interceptions of the conversations of the present respondents considering the nature of the offence.

50. However, it is submitted by the learned counsels for the respondents that the orders were not placed before the learned Special Judge at the time of passing the impugned order whereby the prayer for recording of voice sample was rejected by the learned Special Judge. But, from the charge-sheet of the case, it is seen that the order of interception of the telephonic conversation is very much mentioned in the charge-sheet with the telephone numbers and the date of their interception by the CBI. It was the duty of the Special Judge to consider those materials in the Case Diary or the documents submitted and if the same were not there asked the CBI to produce the same and if they failed to produce, it would have been reflected in the impugned order.

51. Coming to the issue raised by the learned counsel for the respondents with regard to “public safety” and “public emergency” which is mandatorily required for interception of any telegraph or telephonic conversation as provided under Section 5(2) of the Indian Telegraph Act, it is the case of the respondents side that in the present case there is no any such public emergency or public safety for interception of telephonic conversations of the respondent and there is no material to show that any public emergency or public safety arises for which it was necessary for interception of the

telephonic messages. But, the present case is a case of corruption and the same are the economic and organized crimes and the conspiracy are hatched in most secretive manners. The impact of corruption on public safety cannot be gainsaid in the present times and considering this aspect of the case, the screening/review committee had passed the order for intercepting the telephonic messages of the present respondents after satisfying all the materials placed before the committee.

52. In the case as relied by the CBI/petitioner in **W.P. Nos. 5466, 5470 of 2020, W.M.P. Nos. 6391, 6394, 6396 and 6397 of 2020 (Sanjay Bhandari & Ors. Vs. The Secretary of Government. of India & Ors.), dated 23.11.2020**, the Hon'ble Madras High Court has held in paragraph No. 14 of the judgment as under:

"14. That apart, in view of the above discussion the first respondent passed the orders for detection, prevention, investigation and prosecution of corrupt activities of the petitioners herein in accordance with the provision under Section 5(2) of the Indian Telegraph Act, 1885. Therefore, this Court finds no violation of Section 5(2) of the Telegraph Act and also it would not amount to violation of the right to privacy under Article 21 and freedom of speech and expression guaranteed under Article 19(1) and 19(2) of the Constitution of India. Therefore, these writ petitions are devoid of merits."

53. Though the present case is not directly involved with the public safety or public emergency, but the nature of the case directly affects the economy of the society wherein the public money is involved. And, as per the Charge-Sheet, during investigation there was a recovery of Rs. 40 Lakhs from the accused- Ramesh Goenka. The plea of prejudice by the respondents will not

sustain if they were asked to give voice sample and it would be open for the respondents to take all objections with regard to legality of the interceptions at the stage of trial. Furthermore, from the discussions made above, it is seen that the interception orders were passed by the competent authority for intercepting the messages/telephonic conversations of the respondents and from the nature of the case, it is also seen that it is the only evidence for the petitioner/CBI to substantiate their claim as all the conversations were made over telephone amongst the respondents. Further it is seen that all the interceptions have been done in accordance with law as provided under the Telegraph Act. It is also seen that all the interceptions orders were passed by the competent authority who were also the members of the review committee and hence, it cannot be held that there was no compliance of Section 5(2) of the Indian Telegraph Act.

54. The Hon'ble Apex Court in the case of **Ritesh Sinha** (supra) has held that the fundamental right to privacy is subject to public interest and therefore not absolute. Accordingly, in exercise of his jurisdiction under Article 142 of the Constitution of India, the Supreme Court held that till exclusive provision are made in the Cr.P.C. by the Parliament, the Magistrate would have the power to order the person to give his voice sample for the purpose of investigation of a crime.

55. It is the admitted position that as per Section 5(2) of the Indian Telegraph Act, an order of interception can be issued either in case of "public emergency" or for the interest of the "public safety" as per law laid down by the Hon'ble Supreme Court in case of **PUCL** (supra). But, considering the

peculiar circumstances and the nature of the case, the interceptions can also be allowed in such a nature of case, though it is not directly associated with the public emergency or the public safety. But, as discussed above, the money which is involved and subject matter of this case is the public money and which otherwise will affect the entire society at large. Further, in any event, it will be open for the respondents to raise objection with regard to non-compliance of statutory proviso for interceptions of the telephonic calls/telephonic messages at an appropriate stage or at the time of trial. Allowing the prayer for recording of voice sample cannot be held to be non justifiable, rather not allowing will cause prejudice to the prosecution as the voice sample or intercepted messages are the primary evidence for the CBI to substantiate their plea. The respondents may challenge the legality or evidentiary value of the intercepted message at the appropriate stage of trial if such justified reasons appears to them from the evidence which may come in their favour at that time.

56. Coming to the interceptions of messages for the respondent Nos. 5 & 6, it is submitted by their learned engaged counsel that the respondent Nos. 5 & 6 cannot be roped in the instant case for the absence of transcript of conversation of alleged accused No. 5 & 6, recorded during investigation. The admitted position being that the CBI did not tap/record any telephonic conversation/ transcripts of respondent Nos. 5 & 6, irrespective of the fact either legally or illegally, the taking of voice sample for identification of voice through the use of spectrographic method does not arise at all. As such, the respondent Nos. 5 & 6 are unnecessarily being dragged in this criminal petition and accordingly it is submitted that the instant criminal petition is not

maintainable against respondent Nos. 5 & 6.

57. Mr. Haloi, learned Special Public Prosecutor, CBI admitted the fact that the earlier petition was filed praying for obtaining the voice samples mainly for the accused persons, namely, Swetabh Suman, Ramesh Goenka, Pranjal Sarmah and Pratab Das. But the culpability surfaces during investigation against the respondent Nos. 5 & 6, namely, Pranjal Sarmah and Suresh Kumar Agarwalla, and accordingly, the application was made for recording of voice sample of these 2 (two) respondents. From the charge-sheet and the order of intercepted messages also, it is seen that the order of interception of messages were passed against the respondents, namely, Ramesh Goenka, Amit Goenka, Swetabh Suman, Pratap Das & Balraj Dayma. But there were no intercepted messages of the respondent Nos. 5 & 6 for comparing their voice samples with the intercepted messages. However, from the submissions made by the learned Special Public Prosecutor, CBI, it is seen that at the time of filing the earlier application before the learned Special Judge, CBI the transcript voice messages were not available of the respondent Nos. 5 & 6 as during the investigation only, their involvement in the alleged offence has came out and hence, the prayer for recording of their voice sample was made before the learned Special Judge, CBI. It is an admitted fact that the intercepted messages of the respondent Nos. 5 & 6 were not available for comparing with the voice sample as prayed for by the CBI for recording of the voice samples and without any transcribed voice messages, it may not be possible for the CBI to compare the voice sample of the respondent Nos. 5 & 6. However, in the subsequent development, if the CBI has been able to intercept any such voice messages or has come across any such recordings of

the respondent Nos. 5 & 6, the same may be compared with the voice sample to be recorded of the respondent Nos. 5 & 6. Hence, there cannot be any justified reason to reject the prayer for voice sample of respondent Nos. 5 & 6 as prayed by the CBI. However, at the stage of trial, if the CBI fails to adduce evidence of any such matching of voice so recorded, their exercise would fail.

58. Coming to the issue raised by the learned counsels for the respondents regarding the maintainability of the present petition, it is seen that the present petition is filed after the withdrawal of the earlier revision petition filed before this Court which was numbered as Crl. Rev. P. No. 195/2018 and the same was withdrawn on 07.11.2019 with a declaration that the CBI is not going to pursue the matter anymore and on that basis, the revision petition was disposed of on withdrawal. In this context, Mr. Srivastava, learned counsel for the respondent No. 1, also submitted that even if the revision petition was dismissed on withdrawal, the jurisdiction of this Court cannot be invoked again and it has been held by the Hon'ble Apex court that even extra-ordinary writ jurisdiction under Articles 226 & 227 of the Constitution cannot be invoked if an earlier lis among the same parties and on the same cause of action was dismissed by the Court without the leave to reagitate the issues. In this regard, reliance is placed on **Sarguja Transport Service Vs. State Transport Appellate Tribunal, M.P., Gwalior, AIR 1987 SC 88**. Further, it is submitted by Mr. Srivastava, learned counsel for the respondent No. 1, that the object of the revisional jurisdiction is to set right "a patent defect" or "an error of jurisdiction or law" or "the perversity" which crept in during the proceedings and it was thus incumbent upon the CBI to state as to what was the patent defect in the impugned order or what was the error of jurisdiction

or what was the perversity in the order passed by the learned Special Judge, CBI.

59. But, here in the instant case, it is seen that though the earlier revision petition was withdrawn by CBI with a declaration that the said revision petition will not be pursued by the CBI, but the same was not dismissed on merit and it was disposed simply on withdrawal by the CBI. Thus, it cannot be out rightly held that the subsequent or the present revision petition is not maintainable only for the reason of withdrawal of the earlier revision petition without leave for filing a fresh revision petition and only for that reason, the entire criminal petition cannot be dismissed on the point of maintainability on this sole ground. It is a fact that the revision petition is to be filed if there is any patent defect or jurisdictional error or any perversity was done while passing the order. But, here in the instant case, it is seen that the earlier revision petition was dismissed only on withdrawal without going into the merit of the case as during the pendency of that Revision, the decision of Apex court in **Ritesh Sinha's** case (supra) was delivered and CBI in order to pursue the prayer of voice recording sample before the Special Judge, CBI withdraw the revision and on the said prayer being rejected by the Special Judge, CBI vide impugned order, has preferred this instant revision.

60. So, from the entire discussions made above and also considering the nature and gravity of the offence and further considering the fact that the recording of the voice sample may be the only evidence for the CBI to substantiate its case, this Court is of the opinion that the petitioner/CBI has made out a case calling for the interference by this Court of the impugned

order dated 28.02.2020 passed by the learned Special Judge, CBI, Guwahati, Assam in CBI Case No. RC-05(A)/2018/CBI/ACB /Guwahati.

61. In view of the foregoing discussion and reasons arrived, there appears merit for consideration and accordingly the same is allowed. Consequently, the impugned order dated 28.02.2020 passed by the learned Special Judge, CBI, Guwahati, Assam in CBI Case No. RC-05(A)/2018/CBI/ACB/Guwahati, is hereby set aside and quashed. The petitioner/CBI is hereby allowed to proceed with the collection of the voice samples of the accused/respondents in accordance with law.

62. Considering the long pendency of this case, the learned Special Judge, CBI, Guwahati is hereby expected to proceed with the instant case and to dispose of the matter as expeditiously as possible.

63. In terms of above, this criminal petition stands disposed of.

JUDGE

Comparing Assistant