



CIVIL

Compelling Voice Samples In Domestic Violence Cases: Bombay High Court Clarifies Legal Position

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Introduction

In a noteworthy decision that advances the use of electronic evidence in quasi-criminal proceedings, the Bombay High Court (Aurangabad Bench) held that a wife can be compelled to furnish her voice sample for forensic examination in proceedings under the Protection of Women from Domestic Violence Act, 2005 ("PWDVA"). The Court allowed the husband's writ petition challenging a Magistrate's refusal to direct such a voice sample, and emphasized that the Magistrate has adequate procedural authority under Section 28(2) of the PWDVA.

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Background of the Case

The case stemmed from a matrimonial dispute between the petitioner-husband and respondent-wife, who got married on 05.05.2009 and have a son from the marriage. Both parties are employed as teachers and reside separately following domestic discord.

The wife initiated proceedings under Sections 12, 18, 19, 20, and 22 of the PWDVA (Criminal M.A. No. 75 of 2013) against her husband and in-laws. In response, the husband raised a defence alleging that the wife was in an extra-marital relationship with another man. To substantiate this claim, the husband produced audio recordings allegedly containing conversations between the wife and the alleged paramour. These recordings were stored in a memory card and a compact disc.

Procedural History

During the pendency of the domestic violence proceedings initiated by the wife under the Protection of Women from Domestic Violence Act, 2005, the husband sought to rely on audio recordings that he claimed captured conversations between the wife and her alleged paramour. These recordings were extracted from a mobile phone and stored on a memory card and a compact disc. To support the authenticity and relevance of the recordings, the husband submitted a transcript of the conversation, a digital forensic report, and a certificate under Section 65B of the Indian Evidence Act.

In 2018, the husband moved an application before the Judicial Magistrate First Class at Parner, requesting verification of the contents of the compact disc against the transcript. The Magistrate allowed the request. The wife challenged this order before the Bombay High Court by filing Criminal Writ Petition No. 354 of 2018. However, her petition was dismissed by the High Court on 24.06.2019.

Later, the husband sought a further direction from the Magistrate to compel the wife to provide her voice sample so that it could be submitted to a forensic laboratory for comparison with the voice in the recordings. The wife opposed the request, arguing that it was unnecessary and legally impermissible. The Magistrate also rejected the husband's application, leading him to file Criminal Writ Petition No. 1782 of 2024 before the High Court challenging that refusal.

Issues Before the Court

The principal legal question before the Court was:

Whether, in proceedings under the PWDVA, a party (in this case, the Respondent-wife) can be compelled to provide her voice sample for forensic verification of audio recordings forming part of the evidentiary record?

Court's Findings

1. In allowing the writ petition, Justice Shailesh P. Brahma delivered a detailed judgment addressing the legal and evidentiary issues surrounding the request for a voice sample in domestic violence proceedings.
2. The Court first clarified that proceedings under the Protection of Women from Domestic Violence Act, 2005 (PWDVA) are quasi-civil and quasi-criminal in nature. Therefore, the parties involved cannot be treated as an informant and an accused in the strict sense of criminal jurisprudence. In this context, the Court held that the constitutional protection against self-incrimination under Article 20(3) of the Constitution of India was not applicable to the Respondent-wife, as she was not an accused facing criminal prosecution.
3. The Court emphasized that Section 28(2) of the PWDVA empowers a Magistrate to lay down his or her own procedure for dealing with applications under Section 12 and sub-section (2) of Section 23. This procedural flexibility includes the power to direct a party to furnish a voice sample when it is necessary to verify the authenticity of electronic evidence placed on record.
4. Justice Brahma further held that the audio recordings submitted by the husband, though derived from a memory card and compact disc, were supported by a certified transcript, a certificate under Section 65B of the Indian Evidence Act, and a digital forensic report confirming the integrity of the files. The Court concluded that this constituted prima facie material with probative value, and objections regarding the absence of the original recording device (such as the mobile phone) would go to the weight of the evidence not its admissibility.
5. Respondent's argument that a family court had previously rejected the allegation of an extra-marital affair was also dismissed. The Court noted that the present audio evidence and expert testimony were not before the family court in the earlier matrimonial proceedings, and therefore the domestic violence court was not precluded from independently examining the issue based on the new material.
6. The Court relied on binding precedent from the Supreme Court in *Ritesh Sinha v. State of Uttar Pradesh*^[1], which held that a Magistrate has the power to direct an individual to provide a voice sample for forensic analysis, even in the absence of an express statutory provision in the Code of Criminal Procedure. It also referred to persuasive authority from the Gujarat High Court in *Jil w/o Priyanka Choksi v. State of Gujarat*^[2], which upheld similar procedural powers in domestic violence cases.
7. Accordingly, the High Court held that the rejection of the application seeking a voice sample was legally unsustainable and procedurally flawed. It concluded that compelling the Respondent-wife to provide her voice sample for forensic comparison was justified and necessary for a fair adjudication of the matter.

The Court therefore passed the following operative directions:

- The writ petition was allowed.
- The order passed by the Judicial Magistrate First Class, Parner, on 14 February 2024, rejecting the application for a voice sample, was quashed and set aside.
- The Respondent-wife was directed to furnish her voice sample within three weeks, which shall be immediately referred to a forensic laboratory for verification.
- The Petitioner-husband shall bear the expenses of the forensic process.
- Rule was made absolute in the above terms.

Conclusion

This judgment represents a critical development in the evolving interface between family law, domestic violence jurisprudence, and electronic evidence. It affirms the wide procedural latitude available to Magistrates under Section 28(2) of the PWDVA and reiterates that forensic verification of audio recordings is permissible and appropriate in such proceedings. The decision also highlights that rights under Article 20(3) are not applicable to respondents in domestic violence matters, and that technological evidence can be central to establishing or refuting key allegations like extra-marital relationships.

For more details, write to us at: contact@indialaw.in

^[1] AIR 2019 SC 3592

^[2] 2024 ALL MR (Cri) 128