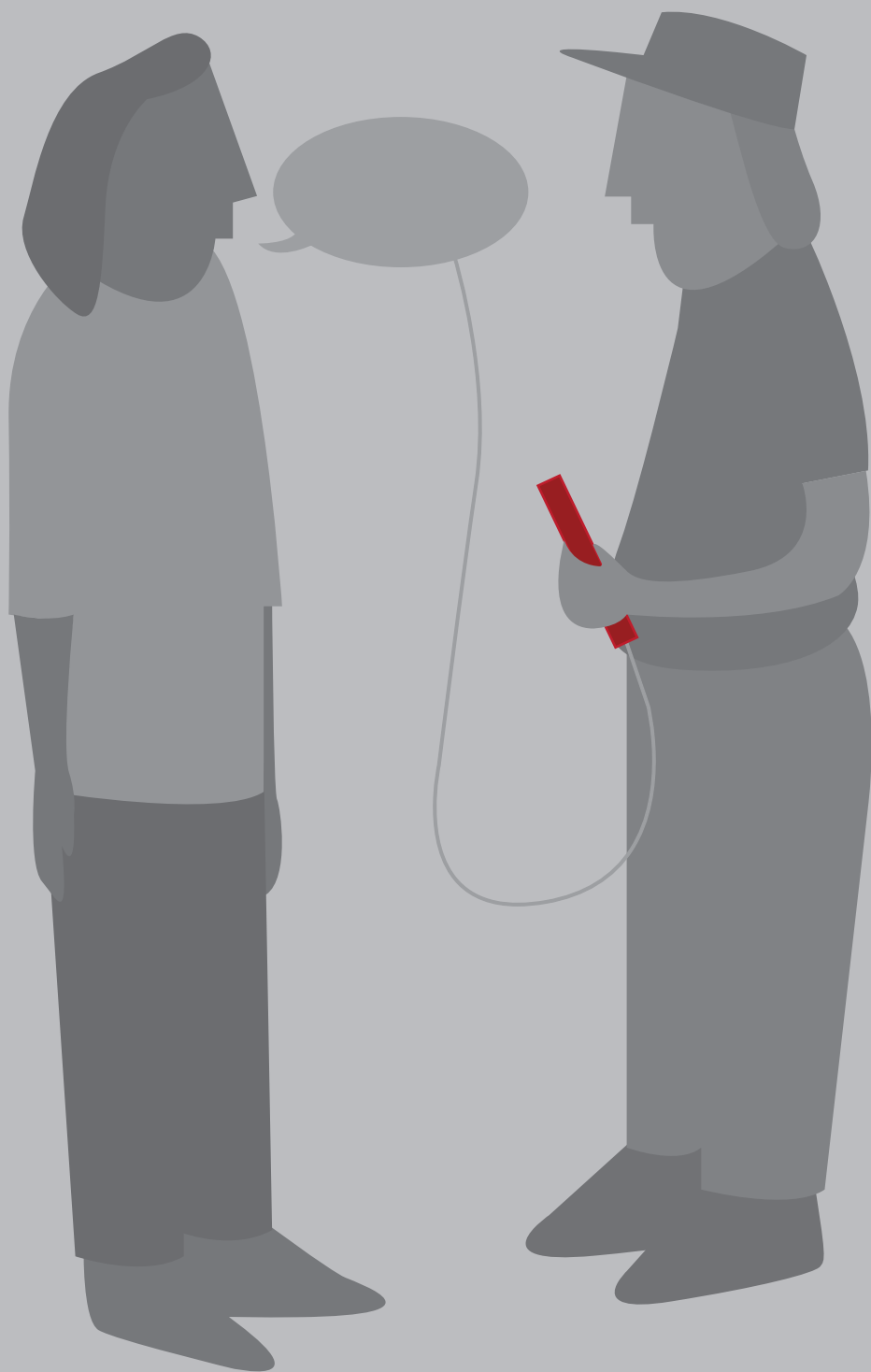






RITESH SINHA VS. STATE OF UTTAR PRADESH & ANR.

(2019) 8 SCC 1, AIR 2019 SC 3592

2019

Case Status

**NOT
OVERRULED**

Compelling an accused to give their voice sample was held not to violate the privacy rights of an individual.

Case Type

**CRIMINAL
APPEAL**

Constitutional
Provision(s)

**ARTICLES
20,21,142**

Bench
Strength

3

JUDGES

1 opinion by

Chief Justice R. Gogoi on behalf of
Justice D. Gupta,
Justice S. Khanna and himself.

Number of
Opinion(s)

1/0

OPINIONS DISSENT

“the fundamental right to privacy cannot be construed as absolute and [sic] must bow down to compelling public interest... 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.”

This case was referred to the present Bench after a two Judge Bench returned a split verdict. The issue in discussion was whether a court could give orders compelling an accused to record his voice sample, in the absence of any specific enabling provision in the Code of Criminal Procedure Code, 1973 (CrPC), and given the right against self-incrimination incorporated in Article 20(3) of the Constitution.

The Court considered whether compelling an accused to give his voice sample in the course of an investigation was prohibited under Article 20(3) or violated his right to privacy, and answered it in the negative. It relied on the *ratio* in *State of Bombay vs. Kathi Kalu Oghad* (AIR 1961 SC 1808) and held that Article 20(3) did not prohibit compelling the accused to record his voice sample

because it did not by itself tend to incriminate the accused. The Court further referred to *Gobind vs. State of Madhya Pradesh and Anr.* ((1975) 2 SCC 148) and *K.S. Puttaswamy and Anr. vs. Union of India and Ors.*((2017) 10 SCC 1) to note that the right to privacy could be curtailed on the basis of compelling public interest.

After examining the relevant provisions of the CrPC and 87th Report of the Law Commission of India, the Court noted that there was a lacuna in the law regarding recording of voice samples as there were no statutory provisions specifically empowering a court to give such orders. The Court applied the principles of *ejusdem generis* and imminent necessity and adopted the rule propounded by Lord Denning of finding the

words to give ‘force and life’ to a statute. The Court therefore read into the CrPC an empowering provision allowing a Judicial Magistrate to give orders to record a voice sample from a person undergoing an investigation.

Facts

An FIR was filed against the Appellant, Ritesh Sinha and his associate, alleging that he was involved in collection of monies from different people on the promise of jobs in the police. The associate was arrested and a mobile phone was seized from him. In order to verify whether the conversations recorded on the phone were between the associate and the Appellant, the Investigating Authority filed an application before the Chief Judicial Magistrate, Saharanpur (CJM) requesting the court to summon the Appellant for giving his voice sample. This order of the CJM was challenged by the Appellant under Section 482 of the CrPC before the High Court of Allahabad, which dismissed the appeal. The matter came before the two Judge Bench of the Supreme Court, which gave a split opinion, and referred the matter to a three Judge Bench.

Issues

- A) Whether Article 20(3) of the Constitution extended to protecting an accused from being compelled to give his voice sample during the course of investigation into an offence; and
- B) Whether in the absence of any provision in the CrPC, a Magistrate could authorize the investigating agency to record the voice sample of the person accused of an offence.

Decision

The Court noted that the two Judge Bench was in agreement while deciding the first issue and had referred to the rule laid down in *State of Bombay vs. Kathi Kalu Oghad* (AIR 1961 SC 1808). *Kathi Kalu* which dealt with the issue of determining the culpability of the accused by comparing the writing sample of the accused with the other writings in light of the prohibition under Article 20(3), and held that “the prohibition contemplated by the constitutional provision contained in Article 20(3) would come in only in cases of testimony of an Accused which are self-incriminatory or of a character which has the tendency of incriminating the Accused himself” and “does not say that an Accused person shall not be compelled to be a witness.” The Court further noted that compelling an accused to furnish a specimen of their handwriting or finger impression did not incriminate the accused as they “belong to the third degree of material evidence which is outside the limit of ‘testimony’” and “are only materials for comparison in order to lend assurance to the Court that its inference based on other pieces of evidence is reliable”. Based on this decision, the Court held that Article 20(3) did not prohibit compelling the accused to record his voice sample.

While determining the second issue, the Court referred to amendments in Sections 53, 53A and 311-A of the Code of Criminal Procedure by Act No. 25 of 2005 and the 87th Report of the Law Commission of India, which discussed a similar issue in the context of Identification of Prisoners Act, 1920 to note that there were no specific statutory provision in India which gave power to a police officer or a court to require an accused to furnish a specimen of his voice.

The Court observed that the Legislature may have justified reasons to remain silent, despite express reminders to fill this gap in the statute, but “such (a) void must be filled up not only on the principle of ejusdem generis but on the principle of imminent necessity with a call to the Legislature to act promptly in the matter”. The Court adopted the view enunciated by Lord Denning in *Seaford Court Estates Ltd. vs. Asher* ((1949) 2 ALL ER 155, 164), that “When a defect appears a Judge cannot simply fold his hands and blame the draftsman. He must set to work on the constructive task of finding the intention of Parliament -- and then he must supplement the written words so as to give 'force and life' to the intention of legislature”, and held that “until explicit provisions are engrafted in the CrPC by the 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”, while exercising its power under Article 142.

Further, the Court considered whether compelling an accused to give a voice sample would violate his right to privacy. It referred to its opinion in *Modern Dental College and Research Centre and Ors. vs. State of Madhya Pradesh and Ors.* ((2016) 7 SCC 353), *Gobind vs. State of Madhya Pradesh and Anr.* ((1975) 2 SCC 148) and *K.S. Puttaswamy and Anr. vs. Union of India and Ors.* ((2017) 10 SCC 1) to reiterate that “the fundamental right to privacy cannot be construed as absolute and but must bow down to compelling public interest.” However, the Court noted that this point had not been argued before them and therefore did not deliberate it extensively.

