

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.08.2017

CORAM:

THE HONOURABLE MR. JUSTICE **R. SURESH KUMAR**

Criminal Revision Case No.808 of 2017

Sushmitha Sen
...Petitioner

/vs/

1. State Rep. By
Department of Customs
Chennai-600 001.

2. Haren Choksey,
Prop. Of M/s.Jai Matha Enterprises,
Krishna Vila, Linking Road,
Santa Cruz (W), Mumbai-400 054.

...Respondents

Prayer: Criminal Revision Case is filed under Section 397 read with 401 of Cr.P.C to call for the records pertaining to M.P.No.1066 of 2017 in EOCC No.118 of 2011 pending before the file of learned Additional Chief Metropolitan Magistrate (EO-I) Chennai and thereby set aside the order passed in Criminal M.P.No.1066 of 2017 dated 20.04.2017.

For Petitioner

:: Mr.Satish Parasaran
Senior Counsel

For 1st Respondent

:: Mr. N.P.Kumar,
Special Public Prosecutor
(Central Government)

For 2nd Respondent

:: Mr.Diwakar R.Singh for
Mr. B.Manoharan

ORDER

This revision case has been filed against the order passed by the learned Additional Chief Metropolitan Magistrate (E.O.I) Egmore, Chennai-8, in CrI.M.P.No.1066 of 2017 in EOCC No.118 of 2011 dated 20.04.2017.

2. The short facts which led to this revision are that the petitioner is one of the witnesses i.e. PW7 in the aforesaid case in EOCC No.118 of 2011. She came up for giving evidence to the Court below on 18th January, 2017 and on that day, the examination-in-chief was over. However, for want of time, the cross-examination of the petitioner was not taken and therefore, the case was adjourned for cross-examination.

3. However, subsequently, the petitioner was not able to appear before the Court below for cross-examination. The reason being, according to the petitioner, that she is a cine-actress and also she was having commitment both in India and abroad on her professional work, for which, she alleged that, contracts have been entered into between the petitioner and the commercial companies/professionals and also the petitioner is having two minor daughters and no elder

member is available in her family to look after them and also the petitioner is a permanent resident of Mumbai. For all these reasons, the petitioner is not able to come over to Chennai to give evidence.

4. In view of the said position, as the petitioner was not able to come to Chennai to give evidence, the petitioner moved before the trial Court by filing a petition under Section 284 of Cr.P.C. In the said petition, permission was sought for, from the trial Court, for giving her evidence (cross-examination) through Video Conference. The said petition was opposed on the accused side. Therefore, the learned Judge, after having considered the rival claim made by the parties and on merits of the issue, has ultimately rejected the said petition filed by the petitioner, by order dated 20.04.2017. Aggrieved by the said order, the present revision has been filed.

5. Mr. Sathish Parasaran, learned Senior Counsel appearing for the petitioner by relying upon the averments made by the petitioner in the affidavit as well as the additional affidavit filed by her, has submitted that the petitioner's mother has become sick and she was affected by an acute 'ischemic stroke' recently in May, 2017. In the result, she was not in a position to look after the minor girl children of

the petitioner and in order to nurture them, the petitioner is struggling a lot. She has already given commitments for shooting and other commercial ventures both in the country as well as abroad. Therefore, if the petitioner is permitted to give evidence through video conference, no prejudice would be caused to the respondents.

6.Learned Senior Counsel has relied upon the following averments made at para-4 of the additional affidavit -

"I state that I have been arrayed by the 1st respondent as a Prosecution Witness in the above case and I was summoned by the Learned Additional Chief Metropolitan Magistrate (E.O.I), Egmore, Chennai to appear in person on 18.01.2017 and depose evidence. Accordingly, I appeared in person on the specified date to tender evidence. However, I could reach the court hall only after facing great difficulty on account of a huge crowd having gathered along with media personnel and reporters. The attendant police officers were not able to control the crowd and as a result, my physical safety and person integrity were at risk. In fact, I lost a few of my personal belongings in the pandemonium immediately outside the court premises, which lasted for about an hour."

He would submit that there is no guarantee for her safety and protection because of unpleasant and in-secured atmosphere and the

same thing would happen once again if the petitioner comes to Court for giving evidence.

7.By citing these reasons, the learned Senior Counsel would submit that the Court below did not consider all these reasons. Learned Senior Counsel would also submit that there is no justifiable reason given for rejecting the plea of the petitioner by the trial Court and therefore, the said order has to be set aside and the present revision petition has to be allowed. Learned Senior Counsel would also submit that in view of the impugned order, the trial Court subsequently issued bailable warrant against the petitioner and because of which, the petitioner in every moment is facing threat. Therefore, indulgence of this Court in the impugned order is very much required in the facts and circumstances of the case.

8.Mr.Diwakar R.Singh, the learned counsel appearing for the second respondent would submit that on 18.01.2017, the petitioner attended the Court below only in the Afternoon Session. Therefore, with the available time, the prosecution's chief examination was taken and thereafter, as there was no time available, the defence side could not be in a position to cross-examine the petitioner. Therefore, the case was adjourned to some other day. The learned counsel would

submit that thereafter the petitioner has not chosen to appear before the trial Court and therefore, the petitioner's seeking indulgence of the trial Court by filing a petition under Section 284 Cr.P.C., was opposed by the second respondent and the trial Court after having considered the same in proper perspective, has rejected the petition.

9.Learned counsel for the second respondent would also submit that the reasons cited both in the petition affidavit and additional affidavit filed by the petitioner herein, would not be plausible reasons to consider the request of the petitioner for dispensing with her personal presence before the trial Court for giving evidence and to permit her to give evidence through video-conferencing.

10.Learned counsel for the second respondent would also submit, even though the petitioner has expressed so much of pre-occupation and engagement because of her position, the second respondent would be in a position to complete the cross-examination of the petitioner within one day itself. Therefore, if the petitioner is able to appear before the Court below at least for one day and if enough time is given to the second respondent by the trial Court for her cross examination, certainly the second respondent side would complete the task on that day itself. Therefore, even for her presence

for one day before the trial Court, the petitioner cannot express any reservation. Therefore, on that ground, the present revision has to be rejected and the petitioner may be directed to appear before the trial Court in a particular day/given day for giving evidence.

11.I have also heard Mr.N.P.Kumar, the learned Special Public Prosecutor for the first respondent.

12.Though some reasons have been given on behalf of the petitioner that because of her professional commitments as she has to go to various foreign countries and because of the said pre-occupation, she could not be in a position to come over to Chennai for giving evidence in the case before the Court below at least for the next couple of months, this Court finds from the very additional affidavit filed by the petitioner that, in spite of her busy schedule and professional commitments, number of days are still available in the next month i.e. September, 2017 and therefore, it cannot be said that the petitioner is not in a position to spare even one day to give evidence at the Court and even if such plea is raised that cannot be an acceptable one.

13.More over, giving evidence before the Court of law cannot be

dispensed with for this kind of personal reasons, whoever may be the witness. Except for medical reasons normally the Court will not accept any other reasons for being absent in the court proceedings especially if ample chances are given to the person/witness to appear before the Court.

14. Here, the case on hand before the trial Court is pending for a long time and several years have gone by and therefore, unless and until, all the witnesses are examined, the trial cannot be completed. Therefore, for want of the petitioner's evidence, the Court cannot wait for endlessly. More over, even the family commitments which have been alleged in the petition and in the additional affidavit, it is quite common for any citizen of this country. Therefore, for the said reasons, this Court cannot show any leniency towards the petitioner and therefore, on that ground also the petitioner cannot take any advantage or seek any special privilege from this Court. In view of the above stated facts and circumstances of the case, this Court is not inclined to accede the prayer sought for in this revision case. Therefore, the said prayer is hereby rejected.

15. However, it is to be taken into account that the petitioner is a film actress and therefore, it is quite natural that, whenever such

film personalities come to the public place, there will be a unusual crowd and unless and until, a secured atmosphere is ensured, it is very difficult for a cine-actress like the petitioner to have a comfortable and free access in a court premises.

16. In view of the specific averments having been made in para-4 of the additional affidavit filed by the petitioner, which has already been extracted hereinabove, this Court feels that, when the petitioner is appearing before the trial Court for giving evidence, proper security arrangements be made to ensure smooth conducting of the trial on the particular day when the petitioner was present.

17. In the result, the following orders are passed in this Criminal Revision case:

(i) the impugned order is sustainable and therefore, no interference can be shown in the order passed by the trial Court. Accordingly, the revision case fails.

(ii) considering the facts and circumstances of the case, the petitioner is directed to appear before the trial Court on 18.09.2017 (Monday) for the purpose of giving evidence.

(iii) on the said date, after taking up regular calling and emergent work, the learned Judge shall take up this matter and immediately proceed to take evidence (cross-examination of the petitioner) and the same shall be completed on that day itself as it has been assured by the learned counsel for the second respondent that the cross-examination will be completed on that day itself.

(iv) On the said day, i.e. 18.09.2017, the concerned jurisdictional police shall give adequate protection for her presence as well as her belongings and in this regard, learned counsel for the petitioner can be consulted as to the time of appearance of the petitioner before the trial Court and any other requirements. In other words, the concerned jurisdictional Police has to ensure full safety and security of the petitioner during the day when she appears before the trial court for giving evidence.

(v) In view of this order, the warrant issued against the petitioner shall stand cancelled.

(vi) A copy of this order shall also be communicated to the learned Additional Public

Prosecutor and to the jurisdictional Deputy
Commissioner of Police, Chennai.

18. With these directions, the Criminal Revision Petition is
disposed of.

16.08.2017

Index : Yes/No

Internet : Yes/No

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To

1. State Rep. By
Department of Customs
Chennai-600 001.

2. The Public Prosecutor,
High Court, Chennai. सत्यमेव जयते

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R. SURESH KUMAR, J

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