

HONOURABLE SRI JUSTICE P. KESHA VA RAO

CRIMINAL REVISION CASE No.923 of 2017

ORDER

Heard the learned counsel for the petitioners as well as the respondents.

The present criminal revision case is filed questioning the orders passed in CrI.M.P.No.1678 of 2016 dated 20.02.2017 in C.C.No. 75 of 2016 on the file of the Court of the II Additional Judicial First Class Magistrate, Tadepalligudem, West Godavari District.

The brief facts of the case are that the first petitioner herein is the de facto complainant. It is her case that on 04.01.2013 her marriage was performed with the second respondent herein, as per the Hindu Rites and Customs. Prior to her marriage, her parents gave Rs.5 lakhs, 30 sovereigns of gold as dowry as per marriage agreement to the second respondent and his parents i.e. the respondents 3 and 4. After marriage, the second respondent taken the first petitioner to different places such as Hyderabad, Bombay, Madras, Bangalore and Visakhapatnam for office work and kept her in restaurants and lodges for about 45 days. Thereafter, he took the first petitioner to Chirala. The second respondent was not doing any job and she was harassed by beating and demanding to bring additional dowry of Rs.10 lakhs. If the said demanded amount is not paid, the respondents 2 to 4 threatened that they will kill the first petitioner. Therefore, the first petitioner filed a complaint. Pursuant to the said complaint, crime

was registered vide Crime No.255 of 2013 under Sections 406 IPC and Sections 3 and 4 of Dowry Prohibition Act of Chebrole Police Station. After investigation, the charge sheet was filed for the offences under Sections 498-A, 406 IPC and Sections 3 and 4 of Dowry Prohibition Act. The Court below, took cognizance of the offences and numbered the case as C.C.No.75 of 2016. During the pendency of the said calendar case, the State of Andhra Pradesh represented by the Public Prosecutor filed a petition in CrI.M.P.No.1678 of 2016 under Section 273 Cr.P.C. seeking permission to adduce evidence of the first petitioner through video conferencing or skype, in the interest of justice. The Court below by orders dated 20.02.2017, dismissed the petition. Aggrieved by the same, the present criminal revision case is filed.

Learned counsel appearing for the petitioners would submit that the first petitioner passed B.Tech. from J.N.T.U. Kakinada and due to harassment meted to her, she could not pursue her career for two years. Thereafter, she went to U.S.A. in the month of December, 2015 and joined in M.S. Course in Silicon University, California and completed two semesters. She said that she will come within six months subject to availability of permission from University and Government. However, the learned counsel further submitted that due to the present situation in U.S.A. and since the University authorities are not permitting the first petitioner to come to India, she is not in a position to come back. Therefore, a petition was filed seeking permission to adduce evidence through video conference or skype. The Court below, after hearing, was pleased to dismiss the petition by holding that since the prosecution has

stated that the de facto complainant will come back to India within six months, the petition was dismissed.

To support his contention, the learned counsel appearing for the petitioners has relied on a decision of this Court reported in **SIRANGAI SHOBA v. SIRANGI MURALIDHAR RAO**¹ wherein it is held as under:

“The landmark expression of the Apex Court in 2003 in *State of Maharashtra Vs. Dr. Praful B. Desai*, on the scope of its permissibility and person need not physically present, by considering the scope of [Section 273 CrPC](#), speaks that in cases where the attendance of a witness cannot be procured without an amount of delay, expense or inconvenience, the Court could consider issuing a commission to record evidence by way of video conferencing. Normally a commission would involve recording of evidence at the place where the witness is. However, advancement in science and technology has now made it possible to record such evidence by way of video conferencing in the town/city where the Court is.

The Apex Court in *Dr. Praful B. Desai* supra by rejecting all arguments and objections about inferior video quality, disruption of link and other technical problems and of rights of the accused under [Article 21](#) could not be subjected to a procedure involving virtual reality, holding in answer to all the queries that- by now science and technology has progressed enough to not worry about video image/audio interruptions or disruptions and video conferencing has nothing to do with virtual reality and gave the example of the telecast of the cricket World Cup of it could not be said those who watched the World Cup on television were witnessing virtual reality as they were not in the stadium where the match was taking place. This is not virtual reality, it is actual reality.

Further in a civil case in *Twentieth Century Fox Film Corp. Vs. NRI Film Production Associates (P) Ltd.* - it was held by the High Court of Karnataka in a matrimonial matter that, hearing suit and examination of witnesses and recording of evidence by commissioner are once contemplated by [Order 18 Rule-4 CPC](#), the words Witness in attendance are to be understood as person being present and it need not be by physical presence. Thus, recording of evidence through Audio, Video link is permissible complying with the words, in attendance. It would be a live communication between the two ends. Everything, including the visual would be recorded at both ends. This would then be available for viewing by the Court. Also the recording would be at both ends. This also minimizes and or almost eliminates the possibility of loss of material recorded. Also if an officer of the Court is present at the other end i.e. in USA in the same room of witness, the possibility of his being promoted would be eliminated. The officer of the Court can also administer oath.

There are Safeguards provided therein for the precautions to be taken in recording such evidence, viz.,

1. Before a witness is examined in terms of the Audio-Video Link, witness is to file an affidavit or an undertaking duly verified before a notary or a Judge that the person who is shown as the witness is the same person as who is going to depose on the screen. A copy is to be made available to the other side. (Identification affidavit).
2. The person who examines the witness on the screen is also to file an affidavit/undertaking before examining the witness with a copy to the other side with regard to identification.
3. The witness has to be examined during working hours of Indian Courts. Oath is to be administered through the media.

¹ 2017(5) ALT-475

4. The witness should not plead any inconvenience on account of time different between India and USA.

5. Before examination of the witness, a set of plaint, written statement and other documents must be sent to the witness so that the witness has acquaintance with the documents and an acknowledgement is to be filed before the Court in this regard.

6. Learned Judge is to record such remarks as is material regarding the demur of the witness while on the screen.

7. Learned Judge must note the objections raised during recording of witness and to decide the same at the time of arguments.

8. After recording the evidence, the same is to be sent to the witness and his signature is to be obtained in the presence of a Notary Public and thereafter it forms part of the record of the suit proceedings.

9. The visual is to be recorded and the record would be at both ends. The witness also is to be alone at the time of visual conference and notary is to certificate to this effect.

10. The learned Judge may also impose such other conditions as are necessary in a given set of facts.

11. The expenses and the arrangements are to be borne by the applicant who wants this facility

In Amitabh Bagchi Vs. Ena Bagchi the Calcutta High Court held including with reference to [Sections 65A](#) & B of the Evidence Act as follows:

It is to be remembered that by virtue of an amendment and insertion of [Sections 65A](#) and [65B](#) of the Evidence Act a special provision as to evidence relating to electronic record and admissibility of electronic records has been introduced with effect from 17th October, 2000. Consequential amendments are also made therein.

From the above, coming back to facts, for there is no foundation to say the request to record evidence through Skype technology is a device to avoid facing the criminal case allegedly filed against him and so far as the apprehensions as to demeanor and possibility of prompting or tutoring can be taken care of with necessary precautions, the reconciliation also can be done if need be by use of Skype technology, there are no grounds to interfere with the impugned order of the lower Court permitting the recording of evidence of the party- witness abroad through Advocate Commissioner and by use of Skype technology, but for to give necessary directions of the precautions required to be taken to ease out the apprehensions of the other side in giving disposal of the revision petition.

In the result, the revision petition is disposed of with the following directions for the precautions to be taken for recording and in the course of recording evidence through Skype technology.

1. The audio and visual shall be recorded at both the ends through the Skype technology/audio and video conferencing that is from Khammam Town of the Telangana State, India at the premises of NIC in the Collectorate, Khammam Town and from the New Jersey of USA in the venue to be fixed by the officer to be nominated for the same Indian High Commissioner.

2. The officer of the Indian High Commission to be nominated by the Indian High Commissioner from USA in the venue to be fixed for said recording shall be paid a lumpsum amount of Rs. 20,000/- as honorarium by the petitioner.

3. The petitioner by virtue of this order approach the Indian High Commissioner from USA for said purposes supra and fix the venue and date for recording the evidence.

4. The parties are to be permitted in the course of recording evidence to be represented by legal practitioners at the premises of NIC in the Collectorate, Khammam Town, who can bring mobile device or other gadgets and make available the Skype facility for the

Court/its officer-the Advocate Commissioner to interact with the Petitioner/witness staying abroad supra and record the consent to proceed with the matter of recording evidence thereafter as expeditiously as possible and only after taking of oath through media as per the provisions of the [Oaths Act, 1969](#).

5. Before the witness is being examined in terms of the Skype technology, the witness has to file an affidavit with an undertaking of not using any pre-recorded versions to prompt him therefrom or taking any assistance of another for prompting while giving evidence, got the pleadings and documents of the case with him to refer if other side require or Court/Advocate Commissioner permit during evidence and wont allow any other person during course of deposition but for the one to operate the phone or other electronic device/gadgets with internet facility of Skype technology duly verified before a notary or the officer of the Indian High Commission to be nominated by the Indian High Commissioner from USA that the person who is shown as the witness is the same person who is going to depose on the screen without any prompting. The officer of the Indian High Commission to be nominated by the Indian High Commissioner from USA at the venue of recording evidence shall also ensure the above during course of recording evidence and not to allow any device or person to prompt the witness.

6. By using the Skype technology, the Petitioner/witness staying abroad can not only be easily identified by the Court/its officer- the Advocate Commissioner from the above, but also be ascertained by enquiring about the identity with proof with reference to the affidavit of identity that to be filed supra and can verify the same from assistance of opposite party or the Counsel or representative of opposite party present.

7. The witness has to be examined preferably during working hours of Indian Courts. Oath is to be administered through the media.

8. The Court/its officer-the Advocate Commissioner is to record such remarks as is material regarding the demur of the witness while on the screen and during course of evidence of the witness, including to note any objections raised during recording evidence of witness and to decide the same later.

9. After recording the evidence, the witness has to state that the contents are true and he authorises his representative or Advocate on his behalf to sign on the deposition and he is not going to dispute its correctness or authenticity at any time later to make it forms part of the record of the proceedings. Besides that he shall retrieve copy of deposition from other end recording device and sign and submit to the trial Court later through his counsel.

10. The Court/its officer-the Advocate Commissioner may also impose such other conditions as are necessary in a given set of facts and circumstances.

Learned counsel appearing for the respondents 2 to 4 supported the impugned order by submitting that the first petitioner herself, informed that she will come back within six months.

From the material available on record and particularly from the impugned order, it is revealed that the petitioners have stated that the first petitioner will come back to India within six months subject to availability of permission from the University or Government. As submitted by the learned counsel for the petitioners that since the first petitioner could not get any permission, it is not possible for the first petitioner to come to India.

In such circumstances, the only course left open to the prosecution is to file a petition seeking permission of the Court to examine the first petitioner through video conferencing or skype.

In fact, in *State of Maharashtra Vs. Dr. Praful B. Desai*, the Apex Court, was pleased to consider the scope of Section 273 Cr.P.C. and held that in cases where the attendance of a witness cannot be procured without any amount of delay, expense or inconvenience, the Court consider issuing a commission to record evidence by way of video conferencing. Video conferencing is an advancement in science and technology which permits one to see, hear and talk with someone far away with the same facility as if he is present before you, that is, in your presence. Therefore, recording of evidence by video conferencing or skype also satisfies the object of providing, in Section 273 Cr.P.C. that evidence be recorded in the presence of the accused. As such, there is no bar for examination of the witness by way of video conferencing/skype, it being an electronic method.

Coming to the facts of the case, the Court below simply dismissed the petition on the ground that the petitioner submitted that she will come back within six months. However, due to change in the circumstances, it is not possible for the first petitioner to come back and give evidence. Therefore, there is no irregularity or illegality for examining the first petitioner through video conferencing or skype. As such, this Court is of the opinion that the first petitioner can be examined through video conferencing or skype, in the interest of justice.

In the result, the criminal revision case is allowed setting aside the orders passed in CrI.M.P.No.1678 of 2016 dated 20.02.2017 in C.C.No. 75 of 2016 on the file of the Court of the II Additional Judicial First Class Magistrate, Tadepalligudem, West Godavari District. It is needless to observe that the precautions as indicated supra while recording the evidence through video conferencing or skype shall be followed.

Miscellaneous petitions, if any, pending in this criminal revision case shall stand closed.

Date:18.06.2018
Ccm

P. KESHA VA RAO,J



HONOURABLE SRI JUSTICE P. KESHAVA RAO



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