

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION No. 4583 OF 2018

ORDER:

This petition is filed under Section 482 of the Code of Criminal Procedure (for short, 'Cr.P.C.') to quash the order dated 20-03-2018 in Criminal Revision Petition No. 240 of 2017 on the file of the Court of XV Additional Sessions Judge, Ranga Reddy District at Kukatpally (for short, 'the Court below'), whereby it confirmed the order dated 11-10-2017 in Criminal M.P.No. 2893 of 2017 in C.C.No. 243 of 2014 on the file of the Court of IV Special Metropolitan Magistrate, Cyberabad, Kukatpally (for short, 'the trial Court'), filed seeking permission to record evidence by video conferencing.

2. The petitioner, having lost her claim before both the Courts below, approached this Court under Section 482 of Cr.P.C. The petitioner is arrayed as second witness in the list of witnesses annexed to the charge sheet. The consistent case of the petitioner, who is no other than mother of the *de facto* complainant in C.C.No. 243 of 2014 on the file of the trial Court, is that her daughter (L.W.1), after lodging report, left for United States of America for her higher studies and that after filing charge sheet, the prosecution filed Criminal M.P.No. 2893 of 2017 in C.C.No. 243 of 2014 on the file of the trial Court, seeking permission to examine L.W.1 through video conferencing/Skype as she could not get leave to come down to India to lead evidence in the above case. The trial Court by order dated 11-10-2017 dismissed the above miscellaneous petition. Feeling aggrieved, the petitioner preferred revision on the file of the Court below. The Court below by the impugned order confirmed the order passed by the trial Court holding that Section 273 of Cr.P.C. does not provide for taking of evidence by video conferencing and further, the provision mandates

that evidence shall be taken in the presence of accused. Aggrieved thereby, the present petition is filed.

3. During hearing, learned counsel for the petitioner reiterated the grounds urged in the petition and placed reliance on ***Sirangai Shoba @ Shoba Munnuri Vs. Sirangi Muralidhar Rao***¹, wherein this Court in an identical situation permitted recording of evidence by Skype on the ground that the witness was at USA and not able to appear before the Court personally to record her evidence.

4. The undisputed fact is that L.W.1 is at USA and the reason for claiming the present relief is her inability to come down to India and appear before the trial Court as she could not get leave in the middle of the academic year. In such case, Courts can permit parties to examine and record testimony of any witness either by videoconferencing or by Skype. The Apex Court in ***Grid Corporation of Orissa Limited Vs. AES Corporation***² had an occasion to deal with recording of evidence by video conferencing and held that when an effective consultation can be achieved by resort to electronic media and remote conferencing, it is not necessary that the two persons required to act in consultation with each other and must necessarily sit together at one place unless it is the requirement of law or of the ruling contract between the parties. In ***SIL Import, USA Vs. Exim Aides Exporters, Bangalore***³, the Apex Court held that technological advancement like facsimile, internet, e-mail, etc. were in swift progress even before the Bill for the Amendment Act was discussed by Parliament. So when Parliament contemplated notice in writing to be given, Courts cannot overlook the fact that Parliament was aware of modern devices and equipment already in vogue.

¹ 2017 (5) ALT 475

² 2002 AIR (SC) 3435

³ (1999) 4 SCC 567

5. As far back as in the year 2003 in the case of ***Maharashtra Vs. Dr. Praful B. Desai***⁴, the Supreme Court in the context of the Criminal Procedure, where it is mandated that evidence shall be taken in the presence of the accused, interpreted the term 'presence' not to mean actual physical presence in Court. The Supreme Court noticing the technologic advancements held that presence could be through video conferencing. The Apex Court in the above judgment noted the advancement in science and technology and the fact that the law was ever developing and evolving and was to be utilized for the purposes of quicker dispensation of justice. The Apex Court held that

"Advances in science and technology have now, so to say, shrunk the world. They now enable one to see and hear events, taking place far away, as they are actually taking place. 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 and ease as if he is present. In fact he/she is present before one on a screen. Except for touching, one can see, hear and observe as if the party is in the same room. In video conferencing, both parties are in the presence of each other. The demeanour of the witness can be observed. In fact, the facility to playback would enable better observation of demeanour. The deposition of the witness can be heard and reheard. The facility of playback would give an added advantage whilst cross-examining the witness. The witness can be confronted with documents or other material or statement in the same manner as if he/she was in Court."

The above judgment has also been followed by various High Courts. In fact, the facility of video conferencing has been utilized for the purposes of recording testimony of witnesses and the said facility has shown its merit. Not only has the evidence being recorded expeditiously, experience has shown that it has facilitated not only the witness but also the lawyers as well as the Court.

6. Applying the law declared by the Apex Court in ***Dr. Praful B. Desai*** (*supra*), I deem it appropriate to permit the proposed witness to be examined by

⁴ (2003) 4 SCC 601

video conferencing instead of Skype. The trial Court did not record any specific reason and dismissed the petition which is erroneously upheld by the Court below. Consequently, the order passed by the trial Court and confirmed by the Court below is liable to be set aside.

7. The criminal petition is allowed setting aside the order passed by the trial Court and confirmed by the Court below while permitting the trial Court to record evidence of proposed witness *i.e.* L.W.1 by video conferencing strictly following the guidelines issued by the Apex Court in ***Dr. Praful B. Desai*** (*supra*). Pending miscellaneous petitions, if any, in this criminal petition shall stand closed in consequence.

Date: 05-06-2018.
JSK

M.SATYANARAYANA MURTHY, J.

