

HONOURABLE SRI JUSTICE M. SATYANARAYANA MURTHY

Crl.P.No.8290 of 2018

ORDER

This petition is filed under Section 482 of Cr.P.C., to quash the order dated 08.05.2018 passed in Crl.M.P.No.15 of 2018 in C.C.No.896 of 2015 by the XXI Metropolitan Magistrate, Cyberabad, Medchal, Ranga Reddy District, dismissing the petition filed under Section 284(1) Cr.P.C. for recording evidence of de-facto complainant through video conference or by the mode of skype in the light of the judgment of the Apex Court in **State of Maharashtra vs. Praful B. Desai**¹.

2. It is alleged in the petition that on the complaint filed by petitioner/de-facto complainant against A1 to A4, which is the subject matter of Cr.No.843 of 2014 registered for the offence under Section 498-A IPC and under Sections 3 and 4 of Dowry Prohibition Act, the police filed a final report and closed the case due to lack of evidence. Thereafter, the petitioner filed a protest petition and after considering the said petition, the Magistrate issued summons to A2 and A3 by splitting up the case against A4 and A5 as they are residing at United States of America and subsequently, charges were framed. Now, the case is coming up for the evidence of de-facto complainant. It is stated that since the petitioner is working as Software Engineer from February, 2012 in USA and her HIB visa is

¹ 2003(1) ALD CrI.848 SC

currently under process before the concerned Embassy, she is not in a position to move from the country and therefore, she requested to record her evidence by video conference or skype.

3. Respondents 2 and 3/A2 and A3 filed counter denying the material allegations, *inter alia*, contending that the petition is not maintainable either in law or on facts and that though the petitioner pleaded that her HIB visa is under process before the concerned Embassy and filed a letter on 02.01.2018, she failed to file any document to prove the same and that the petition is filed only to drag on the proceedings and requested to dismiss the petition.

4. The Court below dismissed the petition on the ground that she did not produce any proof that her HIB visa is under process before the Embassy concerned and the Rules will not permit her to move. Questioning the said order of dismissal, the present petition is filed on various grounds.

5. The main contention of petitioner is that the evidence can be permitted to record by video conference or skype in view of the law laid down by the Courts. But the Court below has committed an error in dismissing the petition.

6. During hearing, learned counsel for petitioner, while reiterating the contentions urged in the petition, has drawn the attention of this Court to the judgment of this Court in Crl.P.No.4583 of 2018 dated

05.06.2018, based on which, he requested to pass appropriate order.

7. Whereas the counsel for respondents 2 and 3 has disputed the right of petitioner to record evidence by video conference as the Court is required to record evidence in the presence of the accused, and if, for any reason, she was examined by video conference or skype, it does not amount to examine the witness in the presence of accused and requested to dismiss the petition.

8. Undisputedly, the petitioner is working as Software Engineer in Citadel Information Services INC2, Tower Center, BLVD, 19th Floor, East Brunswick, New Jersey. But C.G.No.896 of 2015 is pending before the XXI Metropolitan Magistrate, Cyberabad at Medchal, Ranga Reddy District. The only apprehension of petitioner is that in case she left USA when HIB visa is under process, it is difficult to her to get visa as the Rules therein will not permit her to get HIB visa and that if the Court compelled her to appear before the Court to record her evidence, she will not only loose her employment, but action will be initiated against her for various offences covered by laws of USA. The only objection raised by the counsel for respondents is that the petitioner did not produce any evidence to prove that her HIB visa is under process. But, they did not dispute her stay at USA on employment. In such case, the Court can record evidence by video conference. This Court in

Crl.P.No.4583 of 2018 by considering the judgment of this Court in **Sirangai Shoba @ Shoba Munnuri v. Sirangi Muralidhar Rao**² held that 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, was permitted. In the present case, the undisputed fact is that the petitioner is at USA in connection with her employment and the reason for claiming the relief in the present petition is that her inability to come out from USA to appear before the Court as she could not move from the country due to pending process of HIB visa. In such case, the Court can permit the parties to examine and record her evidence through video conference or by skype.

9. The Apex Court in **Grid Corporation of Orissa Limited v. AES Corporation**³ 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**⁴, the Apex Court held that technological advancement like facsimile, internet, e-mail, etc. were

² 2017(5) ALT 475

³ 2002 AIR (SC) 3435

⁴ (1999) 4 SCC 567

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.

10. As far back as in the year 2003 in the case of **Dr. Praful B. Desai**, referred supra, 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 as under:

"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 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.

11. In the recent judgment, the Apex Court in **Krishna Veni Nagam Vs. Harish Nagam**⁵, had an occasion to deal with the similar situation of recording evidence by video conference or skype, and on the basis of the guidelines issued by the Apex Court, though reviewed to certain extent by the Full Bench, the High Court framed certain guidelines for recording of evidence by video conference or skype, which are extracted hereunder:

1. **“GENERAL:**

1) *In these guidelines, reference to the 'court point' means the Courtroom or other place where the Court is sitting or the place where Commissioner appointed by the Court to record the evidence by video conference is sitting and the 'remote point' is the place where the person to be examined via video conference is located, for example, a prison.*

2) *Person to be examined includes a person whose deposition*

⁵ (2017) 4 SCC 150

or statement is required to be recorded or in whose presence certain proceedings are to be recorded.

3) Wherever possible, proceedings by way of video conference shall be conducted as judicial proceedings and the same courtesies and protocols will be observed. All relevant statutory provisions applicable to judicial proceedings including the provisions of the Information Technology Act, 2000 and the Indian Evidence Act, 1872 shall apply to the recording of evidence by video conference.

4) Video conferencing facilities can be used in all matters including remands, bail applications and in civil and criminal trials where a witness is located intrastate, interstate, or overseas. However, these guidelines will not apply to proceedings under Section 164 of Cr.P.C.

5) The guidelines applicable to a Court will mutatis mutandis apply to a Local Commissioner appointed by the Court to record the evidence.

2. APPEARANCE BY VIDEO CONFERENCE:

A Court may either suo moto or on application of a party or a witness, direct by a reasoned order that any person shall appear before it or give evidence or make submissions to the Court through video conference.

3. PREPARATORY ARRANGEMENTS FOR VIDEO CONFERENCE.

- 1) There shall be Coordinators both at the court point as well as at the remote point.*
- 2) In the High Court, Registrar (LT-cum-Central Project Coordinator) shall be the coordinator at the court point.*
- 3) In the District Courts, official-in-charge of the Video Conferencing Facility (holding the post of Senior Assistant/Senior Personal Assistant/District System Administrator or above) nominated by the District Judge shall be the coordinator at the court point.*
- 4) The Coordinator at the remote point may be any of the following:-*

- i. Where the person to be examined is overseas, the Court may specify the coordinator out of the following:
 - (a) The official of Consulate/Embassy of India,
 - (b) Duly certified Notary Public/ Oath Commissioner,
 - ii. Where the person to be examined is in another State/U.T, a judicial Magistrate as may be deputed by the District Judge concerned.
 - iii. Where the person to be examined is in custody, the concerned Jail Superintendent or any other responsible official deputed by him,
 - iv. Where the person to be examined is in a hospital, public or private, whether run by the Central Government, the State Government, local bodies or any other person, the Medical Superintendent or In-charge of the said hospital or any other responsible official deputed by him,
 - v. Where the person to be examined is a juvenile or a child who is an inmate of an Observation Home/Special Home/Children's Home/ Shelter Home, the Superintendent/Officer In-charge of that Home or any other responsible official deputed by him,
 - vi. Where the person to be examined is in women rescue homes, the Superintendent / Officer In-charge of the women rescue homes or any other responsible official deputed by him/her.
 - vii. Wherever a coordinator is to be appointed at the remote point under Clause 3(4) Sub-Clause (ii); (iii), (iv), (v) & (vi), the Court concerned will make formal request through the District Judge concerned to concerned official.
 - viii. In case of any other person, as may be ordered by the Court.
- 5) The coordinators at both the points shall ensure that the minimum requirements as mentioned in the Guidelines No.4 are in position at the court point and the remote point and shall conduct a test between both the points well in advance, to resolve any technical problem so that the proceedings are conducted without interruption.
 - 6) It shall be ensured by the coordinator at the remote point that:-

- (i) *The person to be examined or heard is available and ready at the room earmarked for the video conference at least 30 minutes before the schedule time.*
 - (ii) *No other recording device is permitted except the one installed in the video conferencing room.*
 - (iii) *Entry into the video conference room is regulated.*
7. *It shall be ensured by the coordinator at the court point that the coordinator at the remote point has certified copies or soft copies of all or any part of the court record in a sealed cover directed by the Court sufficiently in advance of the scheduled video conference.*
8. *The court shall order the coordinator at the remote point or at the court point where it is more convenient, to provide:-*
- (i) *a translator in case the person to be examined is not conversant with Court language;*
 - (ii) *an expert in sign language in case the person to be examined is speech and/or hearing impaired;*
 - (iii) *for reading of documents in case the person to be examined is visually challenged;*
 - (iv) *an interpreter or special educator, as the case may be, in case the person to be examined is temporarily or permanently mentally or physically disabled.*

4. MINIMUM REQUISITES FOR VIDEO CONFERENCE

- 1) *A desktop or laptop with internet connectivity and printer*
- 2) *Device ensuring uninterrupted power supply*
- 3) *Videocamera*
- 4) *Microphones and speakers*
- 5) *Display unit*
- 6) *Document visualize*
- 7) *Comfortable sitting arrangements ensuring privacy*
- 8) *Adequate lighting*
- 9) *Insulations as far as possible / proper acoustics*
- 10) *Digital signatures from licensed certifying authorities for the coordinators at the court point and at the remote point.*

5. COST OF VIDEO CONFERENCING:

- 1) *In criminal cases, the expenses of the video conference facility including expenses of preparing soft copies/certified copies of the court record for sending to the coordinator at the remote point and fee payable to translator/interpreter/special educator, as the case may be, and to the coordinator at the remote point shall be borne by such party as the court directs taking into account the Criminal Rules of Practice and Circular orders 1990.*
- 2) *In civil cases, as general rule, the party making the request for recording evidence by video conference shall bear the expenses.*
- 3) *In other cases, the court may make an order as to expenses as it considers appropriate taking into account rules/instructions regarding payment of expenses to complainant and witnesses as may be prevalent from time to time.*

6. PROCEDURES GENERALLY:

- 1) *The identity of the person to be examined shall be confirmed by the court with the assistance of the coordinator at remote point at the time of recording of the evidence*
- 2) *In civil cases, party requesting for recording statement of the person to be examined by video conferencing shall confirm to the court location of the person, his willingness to be examined by video conferencing, place and facility of such video conferencing.*
- 3) *In criminal cases, where the person to be examined is a prosecution witness or court witness, the prosecution and where person to be examined is a defence witness, the defence counsel will confirm to the court his location, willingness to be examined by video conferencing, place and facility of such video conferencing.*
- 4) *In case person to be examined is an accused, prosecution will confirm his location at remote point.*
- 5) *Video conference shall ordinarily take place during the court hours. However, the Court may pass suitable directions with regard to timings of the video conferencing as the circumstances may dictate.*

- 6) *The record of proceedings including transcription of statement shall be prepared at the court point under supervision of the court and accordingly authenticated. The soft copy of the transcript digitally signed by the coordinator at the court point shall be sent by e-mail through NIC or any other Indian service provider to the remote point where printout of the same will be taken and signed by the deponent. A scanned copy of the statement digitally signed by coordinator at the remote point would be sent by e-mail through NIC or any other Indian service provider to the court point. The hard copy would also be sent subsequently, preferably within three days of the recording, by the coordinator at the remote point to the court point by courier/mail.*
- 7) *The court may, at the request of a person to be examined, or on its own motion, taking into account the best interests of the person to be examined, direct appropriate measures to protect his privacy keeping in mind his age, gender and physical condition.*
- 8) *Where a party or a lawyer requests that in the course of video conferencing some privileged communication may have to take place, Court will pass appropriate directions in that regard.*
- 9) ***The audio-visual shall be recorded at the court point. An encrypted master copy with hash value shall be retained in the court as part of the record. Another copy shall also be stored at any other safe location for backup in the event of any emergency. Transcript of the evidence recorded by the Court shall be given to the parties as per applicable rules. A party may be allowed to view the master copy of the audio video recording retained in the Court on application which shall be decided by the Court consistent with furthering the interests of justice.***
- 10) *The coordinator at the remote point shall be paid such amount as honorarium as may be decided by the Court in consultation with the parties.*

11) *In case any party or his/her authorized person is desirous of being physically present at the remote point at the time of recording of the evidence, it shall be open for such party to make arrangements at party's own costs including for appearance/representation at the remote point subject to orders to the contrary by the Court.*

7) PUTTING DOCUMENTS TO A PERSON AT REMOTE POINT:

If in the course of examination of a person at a remote point by video conference, it is necessary to put a document to him, the court may permit the document to be put in the following manner:

- 1) *If the document is at the court point, by transmitting a copy of it to the remote point electronically including through a document visualize and the copy so transmitted being then put to the person;*
- 2) *If the document is at the remote point, by putting it to the person and transmitting a copy of it to the court point electronically including through a document visualize. The hard copy would also be sent subsequently to the court point by courier/mail.*

8. PERSONS UNCONNECTED WITH THE CASE:

- 1) *Third parties may not be allowed to be present during video conferencing subject to orders to the contrary, if any, by the Court.*
- 2) *Where, for any reason, a person unconnected with the case is present at the remote point, then that person shall be identified by the coordinator at the remote point at the start of the proceedings and the purpose for his being present explained to the court.*

9. CONDUCT OF PROCEEDINGS:

- 1) *Establishment and disconnection of links between the court point and the remote point would be regulated by orders of the court.*
- 2) *The court shall satisfy itself that the person to be examined at*

the remote point can be seen and heard clearly and similarly that the person to be examined at the remote point can clearly see and hear the court.

10. CAMERAS:

- 1) *The Court shall at all times have the ability to control the camera view at the remote point so that there is an unobstructed view of all the persons present in the room.*
- 2) *The court shall have a clear image of each deponent to the extent possible so that the demeanour of such person may be observed.*

11. RESIDUARY CLAUSE:

Such matters with respect to which no express provision has been made in these guidelines shall be decided by the Court consistent with furthering the interests of justice.”

12. In view of the guidelines framed by this Court in pursuance of the direction issued by the Apex Court in **Krishna Veni's** case, referred supra, the evidence of witness can be recorded by video conference strictly adhering to the guidelines issued by this Court. The Court below did not take into consideration the guidelines issued by the Apex Court and the guidelines framed by this Court and the law declared by various Courts, referred supra, and committed error in dismissing the petition. Hence, the order passed by the Court below is hereby set aside, directing the XXI Metropolitan Magistrate, Cyberabad, Medchal, Ranga Reddy District, to record the evidence of petitioner by video conference or

skype strictly adhering to the guidelines issued by this Court as referred above.

13. With the above direction, the Criminal Petition is allowed, setting aside the order dated 08.05.2018 passed in Crl.M.P.No.15 of 2018 in C.C.No.896 of 2015 by the XXI Metropolitan Magistrate, Cyberabad at Medchal, Ranga Reddy District. Miscellaneous petitions, if any, pending in this petition, shall stand closed.

M. SATYANARAYANA MURTHY, J

27th August, 2018

sj

