

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 20..08..2019
CORAM

The Honourable Mr Justice M.M.SUNDRESH
and
The Honourable Mr Justice M.NIRMAL KUMAR

Criminal Original Petition No.22795 of 2019

In RE

Sessions Judge,
Mahalir Neethimandram,
Chennai

... Petitioner

Reference made by the learned Sessions Judge, Mahila Court, Chennai vide his letter in Dis.No.6015/2018 dated 27.03.2018 under Section 395 (2) of Cr.P.C. seeking answer as to the competence of jurisdiction of the trial court in recording the evidence of a witness, residing outside India, through video conference

For State	: Mrs.L.Srilekha, Public Prosecutor (Mahila Court, Chennai)
For Accused	: Mr.B.Dhamodaran
For De Facto Complainant/Victim	Mr.G.Kalyan Jhabakah for M/s.Surana & Surana

ORDER

[Order of the court was made by Justice M.M.SUNDRESH]

This matter stands posted pursuant to the communication sent by the Sessions Judge, Mahila Court, Chennai, to the Office of the Registrar General, High Court of Madras in D.No.6015 / 2018 dated 27.03.2018.

2. Heard both sides.

3. The learned counsel for the accused has got no objection to order for recording evidence of the victim (L.W.1) through video conferencing.

4. The reference has been sought for by the learned trial Judge by extensively quoting a decision of the High Court of Calcutta in *Sujay Mitra v. State of West Bengal*, reported in CDJ 2015 Cal HC 429 while seeking appropriate appropriate direction as to whether the de-facto complainant (L.W.1) can be permitted to depose through video conferencing from Germany.

5. In this connection, we would like to place on record a recent pronouncement of the Hon'ble Apex Court dealing with the similar issue. While taking note of Sections 273, 284 and 285 of Cr.P.C., the Hon'ble Apex Court in *Manju Devi v. State of Rajasthan*, (2019) 6 SCC 203 was pleased to hold as follows:-

14. In the given set of facts and circumstances, where the witness Dr I. Yusuf is residing in Nigeria, for the purpose of recording of his statement, the trial court could have unquestionably taken recourse to the provisions of Sections 284 and 285 CrPC so as to avoid the delay in the matter and inconvenience to the parties and the witness. Sections 284 and 285 CrPC read as under:

"284. When attendance of witness may be dispensed with and commission issued.—(1) Whenever, in the course of any inquiry, trial or other proceeding under this Code, it appears to a Court or Magistrate that the examination of a witness is necessary for the ends of justice, and that the attendance of such witness cannot be procured without an amount of delay, expense or inconvenience which, under the circumstances of the case, would be unreasonable, the Court or Magistrate may dispense with such attendance and may issue a commission for the examination of the witness in accordance with the provisions of this Chapter;

Provided that where the examination of the President or the Vice-President of India or the Governor of a State or the Administrator of a Union Territory as a witness is necessary for the ends of justice, a commission shall be issued for the examination of such a witness.

(2) The Court may, when issuing a commission for the examination of a witness for the prosecution direct that such amount as the Court considers reasonable to meet the expenses of the accused, including the pleader's fees, be paid by the prosecution.

285. Commission to whom to be issued.—(1) If the witness is within the territories to which this Code extends, the commission shall be directed to the Chief Metropolitan Magistrate or Chief Judicial Magistrate, as the case may be, within whose local jurisdiction the witness is to be found.

(2) If the witness is in India, but in a State or an area to which this Code does not extend, the commission shall be directed to such Court or officer as the Central Government may, by notification specify in this behalf.

(3) If the witness is in a country or place outside India and arrangements have been made by the Central Government with the Government of such country or place for taking the evidence of witnesses in relation to criminal matters, the commission shall be issued in such form, directed to such Court or officer, and sent to such authority for transmission as the Central Government may, by notification prescribe in this behalf."

14.1. On the question of inconvenience likely to be caused in the event of summoning of the said witness from Nigeria, noticeable it is that the appellant made a prayer that the doctor concerned being not available in the country, the order may be passed for taking his evidence by issuing commission under Sections 284 and 285 CrPC. The appellant stated in the application, inter alia, as under:

"That however witness is residing in foreign and post-mortem was

conducted also there, hence witness should be summoned through High Commission of Nigeria or order may be passed of taking evidence record on commission after issuing commission under Sections 284 and 285 CrPC through videoconferencing in case of not coming from foreign."

14.2. The aforesaid relevant submissions of the appellant have also been ignored by the trial court as also by the High Court. For the purpose of dealing with such a prayer of the appellant the trial court could have, rather ought to have, taken guidance from the decisions of this Court including that in *State of Maharashtra v. Praful B. Desai* [*State of Maharashtra v. Praful B. Desai*, (2003) 4 SCC 601 : 2003 SCC (Cri) 815] where this Court approved of the process of recording the evidence of a witness in the criminal trial through videoconferencing when the witness was found residing/situate in the United States of America but whose evidence was essential for the case set up by the prosecution. This Court observed, inter alia, as under: (SCC p. 613, para 20)

"20. Recording the evidence by videoconferencing also satisfies the object of providing, in Section 273, that evidence be recorded in the presence of the accused. The accused and his pleader can see the witness as clearly as if the witness was actually sitting before them. In fact the accused may be able to see the witness better than he may have been able to if he was sitting in the dock in a crowded courtroom. They can observe his or her demeanour. In fact the facility to playback would enable better observation of demeanour. They can hear and rehear the deposition of the witness. The accused would be able to instruct his pleader immediately and thus cross-examination of the witness is as effective if not better. 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. All these objects would be fully met when evidence is recorded by videoconferencing. Thus no prejudice, of whatsoever nature, is caused to the accused. Of course, as set out hereinafter, evidence by videoconferencing has to be on some conditions."

14.3. Thereafter, with reference to Sections 284 and 285 CrPC, this Court further observed that: (Praful B. Desai case [State of Maharashtra v. Praful B. Desai, (2003) 4 SCC 601 : 2003 SCC (Cri) 815] , SCC pp. 614-15, para 22)

"22. ... Thus in cases where the witness is necessary for the ends of justice and the attendance of such witness cannot be procured without an amount of delay, expense or inconvenience which, under the circumstances of the case would be unreasonable, the court may dispense with such attendance and issue a commission for examination of the witness. ... Normally a commission would involve recording 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 videoconferencing in the town/city where the court is. Thus 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 the evidence by way of videoconferencing."

14.4. In the present case too, where the witness Dr I. Yusuf is residing in Nigeria, in order to avoid inconvenience to the witness as also to the parties, issuing of commission and recording his evidence through videoconferencing appears to be a viable alternative; and the trial court needs to take all the requisite steps so as to ensure that his evidence comes on record with least inconvenience and/or burden to the parties and the witness.

15. In the given set of facts and circumstances, we are clearly of the view that the trial court disposed of the application under Section 311 CrPC on entirely irrelevant considerations and the High Court also failed to exercise its jurisdiction under Section 482 CrPC while overlooking and ignoring the material and relevant aspects of the case. In our view, the said application under Section 311 CrPC deserves to be allowed.

16. It goes without saying that we have not made any comments on the merits of the case; and the trial court would be expected to deal with the matter in accordance with law after assessment of the evidence brought on record.

6. Thus, the law on the subject has been crystallized by the decision cited supra. In such view of the matter, there may not be any difficulty for the trial court to record the evidence of the victim / de facto complainant (L.W.1), who is a German citizen, through video conferencing. The manner in which such permission will have to be given can be determined by the trial court itself in the light of the decision cited supra and by also taking note of the right of the accused.

In the result, this criminal original petition is disposed of accordingly by permitting the trial court to record the evidence of L.W.1 through video conferencing. We expect the trial court to complete the process of recording the evidence of L.W.1 in the presence of the accused and his counsel and make all endeavor to conclude the examination, both the chief and cross examination, on a single day. The trial court is at liberty to fix a date for recording the evidence of L.W.1 through video conferencing.

s/d-
Assistant Registrar (CS VIII)

True Copy

Sub-Assistant Registrar

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To

1.The Sessions Judge, Mahila Court, Chennai.

2.The Public Prosecutor, Mahila Court, Chennai.

Crl.O.P.No.22795 of 2019

SP(26/08/2019)