

HON'BLE SRI JUSTICE R. RAGHUNANDAN RAO

CRIMINAL PETITION No.2837 of 2022

ORDER:

The petitioner herein had filed M.C.No.191 of 2014 before the XIV Additional District Judge-Cum-Additional Family Court, Vijayawada for payment of maintenance by the 2nd respondent-husband herein.

2. In the course of the trial of the case, the respondent had filed Crl.M.P.No.76 of 2022 under Section 275(1) Cr.P.C and 285(3) of Cr.P.C to permit the respondent to mark documents and to depose before the Court of Trial via Skype or Blue Jeans or any other alternative electronic media and for costs. This application was allowed by the trial Court by an order dated 31.03.2021 with certain conditions.

3. Aggrieved by the said order, the petitioner has approached this Court by way of the present criminal petition.

4. Sri Akhil Krishnan learned counsel, appearing for Sri K.Nithin Krishna would submit that the application itself was not maintainable before the trial Court as the provisions of Section 275(1) of Cr.P.C and 285(3) of Cr.P.C are not applicable to the relief sought by the respondent. He submits that the provisions of Section 275(1) of Cr.P.C providing for examination

of a witness through video conference relates to trials conducted in warrant cases and the same is not permissible for the present case which is at best a summons case. He would submit that Section 285(3) of Cr.P.C also does not apply to the present case as the said provision only provides for examination of witness through a commission in a foreign country and the same cannot be taken as a provision permitting evidence to be recorded through virtual conference.

5. Smt.K.Sesha Rajyam, learned Senior counsel appearing on behalf of Smt.Hima Bindu learned counsel for the respondent would submit that the application would be covered by the provisions of Section 273 of Cr.P.C and mere mentioning of a wrong provision in the order would not invalidate the order. She submits that Section 273 of Cr.P.C only stipulates that evidence taken during the course of trial should be in the presence of the accused and there is no restriction as to where the evidence can be recorded. She would further rely upon a Judgment of the Hon'ble Supreme Court in the case of **State of Maharashtra vs Dr Praful B.Desai**¹. She contends, on the basis of the above Judgment, that recording of evidence by way of

¹ (2003) 4 Supreme Court Cases 601

video conferencing is permissible and does not in any manner violate any of the provisions of the Cr.P.C.

6. Smt.K.Sesha Rajyam, learned Senior counsel would also point out that the petitioner herself had sought recording of evidence via electronic means and cannot turn around and object to such an application being made by the respondent herein. Sri Akhil Krishnan learned counsel for the respondent submits that the attempt to record evidence in that manner was supplemented by the petitioner being examined physically.

7. The observations of the Hon'ble Supreme Court in paragraph No.20 of the Judgment cited above, bears repetition.

“Recording of evidence by video-conferencing 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 Court room. They can observe his or her demeanour. In fact the facility to play back 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 play back 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 video conferencing. Thus no prejudice, of whatsoever nature, is caused to the Accused. Of course, as set out hereinafter, evidence by video conferencing has to be on some conditions.”

8. In the present case the witness proposed to be examined is the respondent in the maintenance case. In the circumstances, there are no merits in the present application and it is dismissed accordingly.

9. Sri Akhil Krishnan, learned counsel for the petitioner would submit that the right of cross examination of the petitioner has been forfeited by the trial Court, during the pendency of the present petition. If an order has been passed, the same shall be disregarded and the trial Court shall afford an opportunity of cross examination to the petitioner as and when the respondent makes necessary arrangements in terms of the order for being examined through video conference. For this purpose, the respondent shall be given two weeks from today to comply with the directions of the trial Court in CrI.M.P.No.76 of 2022.

As a sequel, pending miscellaneous petitions, if any, shall stand closed.

20.10.2022
RJS

R. RAGHUNANDAN RAO, J.

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