

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A. BADHARUDEEN

FRIDAY, THE 3RD DAY OF MARCH 2023 / 12TH PHALGUNA, 1944

CRL.MC NO. 1465 OF 2023

AGAINST THE ORDER IN CRL.M.P.NO.18/2023 DATED 13.01.2023 IN

CC 3/2012 OF SPECIAL JUDGE (SPE/CBI) II, EKM

PETITIONER/ACCUSED:

GOPAL.C.
AGED 40 YEARS
S/O.CHIDAMBARAM, 22/35, PALLAVAN STREET,
KANCHEEPURAM, TAMIL NADU, PIN - 631501.

BY ADVS.
VINOD VALLIKAPPAN
S.SUMITHA

RESPONDENT/STATE & COMPLAINANT:

CENTRAL BUREAU OF INVESTIGATION
REPRESENTED BY THE PROSECUTOR, ANTI-CORRUPTION
BUREAU, COCHIN - 682011.

BY ADV S.MANU
SENIOR PUBLIC PROSECUTOR SMT.REKHA.K

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON
24.02.2023, THE COURT ON 03.03.2023 PASSED THE FOLLOWING:

“C.R”

A. BADHARUDEEN, J.

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Crl.M.C.No.1465 of 2023
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Dated this the 3rd day of March, 2023

O R D E R

This petition has been filed under Section 482 of the Code of Criminal Procedure and the petitioner is the sole accused in C.C.No.3/2012 pending before the Special Judge (SPE/CBI)-II, Ernakulam. The petitioner impugns order in Crl.M.P.No.18/2023 in C.C.No.3/2012 sprang up from the common order in Crl.M.P.Nos.18 and 19 of 2023 dated 13.01.2023.

2. Heard the learned counsel for the petitioner as well as the learned Deputy Solicitor General of India ('DSGI' for short hereinafter).

3. Summary of the factual events. Public Prosecutor (CBI)

had filed Crl.M.P.Nos.18 and 19 of 2023 before the Special Court and sought examination of the defacto complainant in C.C.No.3/2012 by name Sujesh.P.S, who is the first witness (CW1) in the case, through video linkage on the ground that the first witness has been working in Dubai and his presence for examination could not be secured without delay or expenses. Similarly, the Public Prosecutor (CBI) also filed Crl.M.P.No.19/2023 to examine CW16 through video linkage.

4. The petitioner herein objected Crl.M.P.No.18/2023, where examination of CW1 was sought for through video linkage, while not raising any objection in Crl.M.P.No.19/2023, where CW16 was sought to be examined through video linkage. The objection raised by the petitioner herein before the Special Court was that the accused would be denied and estopped from effectively cross examining CW1, if he could not be examined by securing his physical presence. Further the demeanour and

approach of the witness during cross examination were vital and therefore, examination of CW1 in physical form is essential to protect the interest of the accused and to properly defend the case.

5. The learned Special Judge appraised the contentions in view of the objection raised by the petitioner herein regarding examination of CW1 through video linkage. The learned Special Judge found that in the advanced era of technology, a witness could effectively be cross examined even through video linkage and in order to ensure such facility, the Electronic Video Linkage Rules for Courts (Kerala), 2021 was enacted. Accordingly, the objection raised by the petitioner herein was negated and finally the Special Court allowed examination of CW1 through video linkage facility.

6. The learned counsel for the petitioner herein, who challenged the order passed by the learned Special Judge in Crl.M.P.No.18/2023, reiterated the contentions raised before the Special Court mainly on the submission that an effective cross

examination of CW1 would be possible only when physical examination would be permitted and the right of the accused to cross examine the witness effectively, would be curtailed by opting the mode of video linkage and the same is detrimental to the interest of the accused.

7. Whereas the learned DSGI zealously opposed this contention and argued that if the apprehension of the petitioner holding the view that effective cross examination will be possible only through physical examination, is appreciated, the very purpose of enactment of Electronic Video Linkage Rules for Courts (Kerala), 2021 would become ineffective and, therefore, the prayer could not be allowed. According to him, the learned Special Judge, rightly negatived the contention in this regard. It is also pointed out by the learned DSGI that cross examination of a witness either through video linkage or through physical mode, would be equally effective and there is no need to discriminate the proceedings in

any manner and to make the rules inoperative.

8. While appraising the rival contentions on the issue, Rules 7 and 8 of the Electronic Video Linkage Rules for Courts (Kerala), 2021 notified as on 28.05.2023, assumes significance. Rule 7 provides the mode of service of summons in relation to witnesses proposed to be examined or heard through electronic video linkage and Rule 8 deals with examination of persons. As per Rule 8(25) it has been provided that the examination through Electronic Video Linkage shall be treated as substantive compliance of the provisions of the Code of Criminal Procedure 1973 (Act 2 of 1974), Code of Civil Procedure, 1908 (Act 5 of 1908), Criminal Rules of Practice, Kerala, Civil Rules of Practice, Kerala or any other law which requires personal appearance of parties, witnesses or any other Required Person for the purpose of any enquiry, trial or any other proceedings in or in relation to the Subordinate Courts or Tribunals.

9. Similarly, Rule 8(23) provides that when a Required Person is unable to reach the Court point or the Remote Point due to sickness or physical infirmity or due to any genuine reason which the court may decide, or the presence of the Required Person cannot be secured without undue delay or expenses, the Court may authorise the conduct of the proceedings through Electronic Video Linkage from the place where the Required Person is situated. In such circumstances, the Court may direct the use of portable Video system. The authority for the same shall be given by the Court to the concerned Co-ordinator or any other person deemed fit by the Court. Thus going by Rule 8(23), it has been stipulated that for any genuine reason which the court may decide or the presence of the Required Person cannot be secured without undue delay or expenses, the Court may authorise the conduct of the proceedings through Electronic Video Linkage from the place where the Required Person is situated. In the present case, which has been

pending for the last 11 years, in order to facilitate trial of the matter without being stalled further, the learned Public Prosecutor (CBI) filed Crl.M.P.No.18/2023 highlighting the reasons precisely stated in Rule 8(23) and, accordingly, the Special Court allowed the petition, so as to avoid further delay in examining the crucial witness.

10. Since the purpose of enactment of Electronic Video Linkage Rules for Courts (Kerala), 2021 itself is to examine the witnesses whose presence could not be secured without undue delay or expenses and for other reasons stated in Rule 8(23), a person who has been employed in Dubai whose presence could not be secured without delay and also without spending travelling and other expenses when allowed to be examined through video linkage, in terms of the rules, in such a case the petitioner has no right to say that cross examination by video linkage is not effective and as good as physical mode and, therefore, such examination

should not be permitted. In fact, the examination of the witness either through physical mode or through video linkage, the same makes no difference as far as the right of the accused to cross examine the witness is concerned. However, the intention of the petitioner securing physical presence of the witness for examination may be one with ulterior motive, which I am not inclined to discuss in detail. That apart, it is worthwhile to note that the framers of the Rules even visualised the argument of this nature while implementing the Rules and they vigilantly implemented Rule 8(24) and the said provision provides that subject to the orders of the Court, if any party or his authorised 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 his own cost. If so, the dread persuasion of the petitioner could be addressed by resorting to Rule 8(24), subject to the orders of the Court.

11. It is pertinent to note that, if the submissions of the learned counsel for the petitioner is accepted, the same is akin to make the Electronic Video Linkage Rules for Courts (Kerala), 2021 redundant. The principles governing interpretation do not permit interpretation of a provision of law or an enactment to make the same as redundant.

12. Epitomizing the discussion, it is held that the learned Special Judge rightly allowed the petition with a view to secure examination of CW1, whose presence could not be secured without undue delay or expenses, through video linkage and with *bona fide* intention to dispose of a case of the year 2012, pending for the last 11 years, without further delay. Therefore, the order impugned does not suffer from any infirmity or requires any interference and the order impugned is liable to be confirmed.

13. Accordingly the petition fails and is dismissed.

The interim order granted in this matter stands vacated and

the Special Judge can go on with examination of CW1 through video linkage facility.

rtr/

Sd/-
(A. BADHARUDEEN, JUDGE)

APPENDIX OF CRL.MC 1465/2023

PETITIONER'S ANNEXURES

- Annexure-A1 A TRUE COPY OF THE PETITION FILED BY THE RESPONDENT DATED 12.01.2023 AS NUMBERED AS CRL.M.P.NO.18 OF 2023 IN C.C.NO.03 OF 2012.
- Annexure-A2 A TRUE COPY OF THE OBJECTION DATED 13.01.2023 IN CRL.M.P.NO.18/2023 IN C.C.NO.3 OF 2012.
- Annexure-A3 CERTIFIED COPY OF THE ORDER DATED 13.1.2023 IN CRL.M.P.NOS.18/2023 AND 19/2023 IN C.C.NO.3/2012 OF THE SPECIAL JUDGE(SPE/CBI)-II, ERNAKULAM.