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* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ CRL. REF. 2/2019

COURT ON ITS OWN MOTION

..... Petitioner

Through Ms.Rebecca John, senior counsel as
amicus curiae with Mr.Harsh Bora
and Ms.Pravita Kashyap, Advocates.

versus

STATE

..... Respondent

Through Mr.Rahul Mehra, standing counsel
(Crl.) for the State with Chaitanya
Gosain, Advocate for the State and SI
Ranbeer Singh, PS S.J.Enclave.
Mr.T.P.Singh, Sr.Central Govt.
Counsel for UOI/MHA.
Mr.Sumer Sethi and Ms.Dolly
Sharma, Advocates for DSLSA.
Ms.Yanmi Phazang, Legal
Supervisor, Rape Crisis Cell, DCW.

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Date of Decision: 28th February, 2020.

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

JUDGMENT

MANMOHAN, J: (Oral)

1. The subject-matter of the present Criminal Reference is reproduced below:

"There is no law/guidelines by which the court can seek intervention/involvement of the MHA and/or concerned Embassy/High Commission/Consulate for making necessary arrangements for recording of testimony of the victims/witnesses

who are foreign nationals in cases of sexual assault even when the victim is very much available and has offered to get her testimony recorded. There is an urgent need to redress the issue so that the cases involving victims, who are foreign nationals, do not result in imminent acquittal for want of recording of testimony of the victim/witnesses and further that the case does not remain pending in the system inordinately.”

2. It was brought to our attention that on 11th February, 2009, the Ministry of Home Affairs (hereinafter referred to as ‘the MHA’) issued the ‘Comprehensive Guidelines Regarding service of summons/notices/judicial process on persons residing abroad’ (‘2009 Guidelines’) that laid down the procedure for the service of summons on witnesses residing abroad, for the purpose of recording their evidence. These guidelines of 2009 clarified that the MHA on behalf of the Central Government had entered into reciprocal arrangements with foreign governments for service of summons/warrants/judicial processes, as required under Section 105 of the Code of Criminal Procedure. The reciprocal arrangements were in the form of Mutual Legal Assistance Treaties (‘MLAT’) with other countries.
3. During the pendency of the present proceedings, the MHA revised and updated its 2009 Guidelines with a view to comprehensively codify guidelines covering a gamut of issues including issuance of Letters Rogatory, mutual legal assistance requests, service of summons, notices, judicial processes including request for video conferencing, protection and preservation of data and extradition requests.
4. The comprehensive and updated Guidelines on Mutual Legal Assistance in Criminal Matters (the ‘MHA Guidelines, 2019’) was approved

by the Ministry of Home Affairs and have also been placed before this Court.

5. Vide order dated 29th November, 2019, this Court took on record the detailed report handed over by the learned Amicus Curiae and extracted salient features of the said report. The Union of India and the Government of NCT of Delhi were directed to file a response to the report of the learned Amicus Curiae.

6. The Union of India (through the Ministry of Home Affairs) has filed its response on 17th January, 2020 endorsing the comments of the learned Amicus Curiae.

7. The Delhi Police has also filed a status report dated 11th February, 2020 through the learned Standing Counsel (Criminal). The Report submitted by the learned Amicus Curiae had recommended that the Investigating Officer should collect relevant personal information, including passport and visa details of the witness residing abroad so that the process is immediately commenced for the issuance of summons to such witness as per the MHA Guidelines, 2019 and trial is set into motion. In paragraph 4 of the status report filed by the Delhi Police, it is stated that instructions have been issued by the DCP, Legal Cell, Police Headquarters, Delhi, vide No.762-90/Court Cell (DA-I)/PHQ dated 20th January, 2020 to all supervisory and Investigating Officers to ensure strict compliance with the suggestions of the learned Amicus Curiae, incorporated in the order of this Court dated 29th November, 2019.

8. In response to the learned Amicus Curiae's suggestion that necessary amendments be made to the Delhi Criminal Courts (Payments of Expenses to Complainant and Witnesses) Rules, 2015, to incorporate the costs and payments for transmission of summons, notices and judicial processes, payments to witnesses including expert witnesses etc., the Government of NCT of Delhi has placed on record a letter dated 23rd January, 2020 issued by the Principal Secretary (Law, Justice and LA). By way of this letter, it has been brought to this Court's notice that since the Delhi Criminal Courts (Payments of Expenses to Complainant and Witnesses) Rules, 2015, have been notified on the basis of a set of rules forwarded by this Court vide letter 8256/Rules/DHC/2013 dated 18th March, 2013, this Court has been requested to take necessary action for amending the rules and to forward the recommendations/set of rules to the Department of Law, Justice and LA, for compliance.

Directions to the Government of NCT of Delhi

9. The learned Amicus Curiae proposes that the following amendment be made to the Delhi Criminal Courts (Payments of Expenses to Complainant and Witnesses) Rules, 2015:-

“Chapter 5

Payment of expenses in cases of persons residing abroad

16. The expenses for service of summons, notices and judicial processes, on persons residing abroad, and for recording of statement or collecting of evidence through video-conferencing:-

The actual expenses for service of summons, notices and judicial

processes, on persons residing abroad, expenses sufficient to defray the cost of travelling of the witness within the territory of the Requested Country to a point where evidence is to be recorded through video-conferencing, the cost of establishing the live video-conferencing link, the remuneration of interpreters/translators provided by the Requested Country, expenses of preparing soft copies, certified copies of the relevant evidence and documents by the Coordinator at the Requested Country to the Court, and such other ancillary expenses as may arise, shall be paid on receipt of such demand for payment from the Requested Country, as applicable under the provisions of the Mutual Legal Assistance Treaty, or any other bilateral or multilateral treaty, or any other international instrument existing between India and the Requested Country, as the case may be.”

10. The above proposed amendment may be placed before the Rules Committee of this Court for consideration, and if approved, be forwarded to the Principal Secretary (Law, Justice & LA), Government of NCT of Delhi, for necessary compliance.

Video-Conferencing Guidelines

11. This Court has also issued guidelines laying down the procedure to be followed for Video Conferencing titled as ‘Video Conferencing Guidelines Issued by the High Court of Delhi: Guidelines for the Conduct of Court Proceedings between Courts and Remote Sites’, which were subsequently incorporated as Annexure B to the Delhi High Court (Original Side) Rules,

2018, and are applicable to both civil and criminal cases.

12. Having gone through the Report of the learned Amicus Curiae, and the need to ensure that the Video-Conferencing Guidelines issued by this Court are in conformity with the MHA Guidelines, 2019, we deem it appropriate to issue the following directions:

Directions for the High Court of Delhi

1. Replace existing Rule 3.4(i) with 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 the Consulate/Embassy of India,*
- b) *duly certified Notary Public/Oath Commissioner*

Notwithstanding the above, in criminal cases, the Coordinator at the remote point shall be appointed by the Competent Authority in the Requested Country in terms of paragraph 4.9 of the MHA Guidelines, 2019, and may be any of the following:

- a) *the Central Authority of Requested Country,*
- b) *if the law of Requested Country permits, the official of Consulate/Embassy of India.”*

2. Incorporate the following as Rule 6.12:-

“6.12. In criminal cases, all relevant documents sought to be put to the witness by the Prosecution/Complainant and the Defence, must be scanned, identified and numbered, and

translated into a language that the witness is familiar with (if required). The same should be sent to the Coordinator in the Requested Country prior to the hearing, under strict instructions of confidentiality”

13. The above proposed amendments may be placed before the Information Technology Committee of this Court, for consideration.

Practice Directions for all Trial Courts

14. This Court is of the view that certain practice directions may also be issued to all criminal courts in order to streamline the procedure for service of summons, notices, and judicial processes, on witnesses residing abroad, and for recording their evidence through video-conferencing.

1. For the purpose of service of summons/notices/judicial processes on persons residing abroad, the Trial Courts must follow the procedure as laid out in the MHA Guidelines, 2019. The designated Central Authority in India is the Ministry of Home Affairs, and not the Ministry of External Affairs or any Indian Embassy or Consulate abroad.
2. It is clarified, however, that the Ministry of Home Affairs does not facilitate the execution of non-bailable warrants of arrest on an individual residing abroad. Such requests are in the nature of extradition proceedings and ought to be forwarded to the Ministry of External Affairs, CPV Division, Patiala House Annexe, Tilak Marg, New Delhi – 110001. Reference may be made to Part VII of the MHA Guidelines, 2019.

3. For service of summons/notices/judicial processes on persons residing abroad, Trial Courts should ensure compliance of Figure 4.6 of the MHA Guidelines, 2019, under its sign and seal. Trial Courts should additionally comply with the requirements of the checklist contained in Figure 4.3.
4. At the time of issuance of summons on a person residing abroad, the order of the Trial Court should also indicate whether evidence is to be recorded through video-conferencing.
5. It must be borne in mind that the MHA requires a minimum of ten weeks for the purpose of transmission of summons/notices/judicial processes on persons residing abroad. The process of establishing video-conferencing links between the Court and the Requested Country can begin only after service is completed. Trial Courts should therefore fix date(s) for recording of evidence, at least 12-13 weeks after its order issuing summons to the said witness.
Trial Courts should separately fix an intermediate date between the date of issuance of summons and the date of recording of evidence, to seek confirmation from the prosecuting agency about the service of summons, and to additionally seek details/information regarding the technical coordinator in the Requested Country, along with the details of the technical link for conducting video-conferencing on the date(s) fixed.
6. Based on the information received on the intermediate date, the Trial Court should direct its own Coordinator to forthwith establish contact with its counterpart in the Requested Country, conduct a mock test of the video-conferencing link prior to the date of recording of evidence, and

submit a report in this regard at least three days prior to the date fixed for recording of evidence. On the receipt of the report from Court Coordinator, the documents relied upon by the prosecution and the Defence should be identified, scanned, and numbered, and sent to the Coordinator in the Requested Country, under strict instructions of confidentiality. An identical set of the above documents should be made a part of the Court record.

7. Due to the time taken and the costs involved in summoning witnesses residing abroad and setting up video-conferencing facilities, besides the involvement of bilateral agencies in both countries, Trial Courts should ensure that the date(s) fixed for recording of evidence through video-conferencing are utilised productively. If for some reason the Presiding Judge is unable to hold Court on the date(s) fixed, s/he should ensure, as far as possible, that the evidence is recorded by the Link Judge.

Directions to the Delhi Police

15. We have also gone through the status report filed on behalf of the Delhi Police dated 11th February, 2020. In view of Paragraph 4 of the status report, no further orders or directions are required to be issued to them with regard to collection of personal information of the witness residing abroad. However, the Investigating Officer of the case must ensure that information regarding service of summons and details pertaining to video-conferencing links are provided to the Trial Court after obtaining the same from the MHA.

Directions for Training

16. We are also of the view that training sessions for judicial officers, technical staff, and police officials must be conducted to familiarize them with the procedures contained in the MHA Guidelines, 2019, the Video-Conferencing Guidelines issued by the High Court of Delhi, and the Delhi Criminal Courts (Payment of Expenses to Complainant and Witnesses) Rules, 2015.

17. The learned Amicus Curiae has further submitted that a copy of the MHA Guidelines, 2019, must be uploaded on the websites of this Court as well as of the District Courts. We accordingly direct the same.

18. Registry is directed that a copy of this order and the earlier order dated 29th November, 2019, be circulated to the courts below.

19. In view of the above, no further orders are called for in the present matter and the Registry is directed not to list the same any further.

MANMOHAN, J

SANGITA DHINGRA SEHGAL, J

FEBRUARY 28, 2020
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