

Mahadev Vs. The State Of Karnataka

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Court : Karnataka Kalaburagi

Decided On : Aug-11-2023

Judge : Venkatesh Naik T

Appeal No. : CRL.P 200953/2023

Appellant : Mahadev

Respondent : The State Of Karnataka

Judgement :

- 1 - NC:

2023. KHC-K:6386 CRL.P No.200953 of 2023 R IN THE HIGH COURT OF KARNATAKA KALABURAGI BENCH DATED THIS THE11H DAY OF AUGUST, 2023 BEFORE THE HON'BLE MR. JUSTICE VENKATESH NAIK T. CRIMINAL PETITION NO.200953/2023 BETWEEN: MAHADEV S/O. SHIVAPPA NAVARAJ AGE:

66. YEARS, OCC: RTD. EMPLOYEE R/O. COURT COLONY, VIJAYAPUR DIST. VIJAYAPURA PETITIONER (BY SRI GANESH NAIK, ADVOCATE) AND: THE STATE OF KARNATAKA THROUGH JALANAGAR POLICE STATION VIJAYAPURA, DIST. VIJAYAPURA ITS REPRESENTED BY ADDL. SPP HIGH COURT OF KARNATAKA AT KALABURAGI BENCH KALABURAGI58510 RESPONDENT (BY SRI GURURAJ V. HASILKAR, HCGP) - 2 - NC:

2023. KHC-K:6386 CRL.P No.200953 of 2023 THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF CR.P.C., PRAYING TO QUASH AND SET ASIDE THE IMPUGNED

ORDER

DATED 05.06.2023, PASSED ON APPLICATION FILED UNDER SECTION 311 OF CR.P.C., BY THE III ADDL. SENIOR CIVIL JUDGE AND JMFC AT VIJAYAPUR IN C.C. No.94/2017. THIS PETITION, COMING ON FOR ADMISSION, THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

1 Heard learned counsel for petitioner and learned High Court Government Pleader for respondent-State.

2. For the sake of convenience, parties are referred to as per their ranking before the trial Court. The petitioner is accused and respondent is complainant - State.

3. The accused has filed this petition under Section 482 of Cr.P.C., praying to quash the order dated 05.06.2023 passed by the III Additional Senior Civil Judge and J.M.F.C., Vijayapur in C.C. No.94/2017, wherein the - 3 - NC:

2023. KHC-K:6386 CRL.P No.200953 of 2023 learned Additional Senior Civil Judge and J.M.F.C., Vijayapura allowed the application filed by accused under Section 311 of Cr.P.C., and recalled PW5 to tender cross-examination through video conferencing.

4. The brief facts of the case: On 27.06.2017 at about 01:15 p.m., PW5 - the Presiding Officer i.e., Principal Civil Judge and JMFC, Vijayapura was giving dictation to her Stenographer in O.S. No.160/2005, at that time, accused entered her Chamber, took quarrel with her in respect of not signing of GIS bill, abused her, insisted to sign on GIS bill, made criminal intimidation, while discharging public duty. On the basis of complainant - respondent, Police registered case, investigated matter and filed charge-sheet. The Magistrate took cognizance of offence and framed charge against accused. The prosecution to prove its case, in all examined PW.1 to PW.5. At this juncture the accused filed an appeal before

trial Court for recall of - 4 - NC:

2023. KHC-K:6386 CRL.P No.200953 of 2023 PW5. But, trial Court allowed application in part and recalled PW5 to tender for cross-examination through video conferencing. Aggrieved by the said order, the accused has filed this petition under Section 482 of Cr.P.C., 5. It is contended by the petitioner that he had filed an application under Section 311 of Cr.P.C., before the trial Court praying to recall PW5 for further cross- examination and also prayed to recall PW5 for cross-examination before Court in-person, but while allowing application the trial Court has not applied liberal approach and recalled PW5 for the purpose of cross-examination in- person before Court and it ordered for recalling PW5 for the purpose of cross-examination through video conferencing only, which is not permissible in law. It is contended that in order to facilitate petitioner to put forth the fact under lacuna during cross-examination it is required to keep present PW5 in-person before Court only.-. 5 - NC:

2023. KHC-K:6386 CRL.P No.200953 of 2023 6. Learned High Court Government Pleader contended that the trial Court has rightly recalled PW5 for cross-examination through video conferencing facility, which is also a recognized mode and hence no grounds are made out to allow the petition.

7. Admittedly, the application filed under Section 311 of Cr.P.C., cannot be dismissed and it has to be allowed frequently, thus, the Court has to follow liberal approach.

8. On perusal of charge-sheet material the allegation made against accused is in respect of Sections 353, 448, 504 and 506 of IPC. Records reveal that chief-examination of PW5 has been completed and at the stage of cross-examination of PW5, accused filed an application under Section 311 of Cr.P.C., for recall of PW5 for the purpose of cross-examination in-person before the Court, but the trial Court has rejected the same, on the ground that PW5 being a Judicial Officer working in Bangalore City, - 6 - NC:

2023. KHC-K:6386 CRL.P No.200953 of 2023 it is not possible for the Officer to travel all the way from Bangalore to Vijayapura. Thus, invoked the video

conferencing facility for cross-examination of PW5.

9. Recording of evidence by video conferencing is permissible. A proviso was inserted to Sub-Section (1) to Section 275 of Code of Criminal Procedure, 1973, by Act 5 of 2009 (Code of Criminal Procedure amendment) Act, 2008, which runs as follows:

"Provided that evidence of a witness under this Sub-Section may also be recorded by Audio-Video Electronic means in the presence of the Advocate of the person accused of the offence". Therefore, the trial Court in order to save the Court time as well as PW5, adopted new scientific method, to mitigate the work load of Courts. Further, if PW5 cross- examined through virtual mode, it does not affect rights of accused.-. 7 - NC:

2023. KHC-K:6386 CRL.P No.200953 of 2023 10. On perusal of the notification issued by this Court in HCC No.18/2020 dated 09.06.2020 regarding rules of video conferencing for Courts, at Chapter-III, the proceedings for video conferencing has been contemplated in the following manner:

"8. Examination of persons 8.1 Any person being examined, including a witness shall, before being examined through video conferencing, produce and file proof of identity by submitting an identity document issued or duly recognized by the Government of India, State Government, Union Territory, or in the absence of such a document, an affidavit attested by any of the authorities referred to in Section 139 of the CPC or Section 297 of the Cr PC, as the case maybe. The affidavit will inter alia state that the person, who is shown to be the party to the proceedings or as a witness, is the same person, who is to depose at the virtual hearing. A copy of the proof of identity or affidavit, as the case may be, will be made available to the opposite party. 8.2 The person being examined will ordinarily be examined during the working hours of the - 8 - NC:

2023. KHC-K:6386 CRL.P No.200953 of 2023 concerned Court or at such time as the Court may deem fit. The oath will be administered to the person being examined by the Coordinator at the Court Point. 8.3 Where the person being examined, or the accused to be tried, is in custody, the statement or, as the case

may be, the testimony, may be recorded through video conferencing. The Court shall provide adequate opportunity to the under-trial prisoner to consult in privacy with their counsel before, during and after the video conferencing. 8.4 Subject to the provisions for examination of witnesses contained in the Evidence Act, before the examination of the witness, the documents, if any, sought to be relied upon shall be transmitted by the applicant to the witness, so that the witness acquires familiarity with the said documents. The applicant will file an acknowledgment with the Court in this behalf. 8.5 If a person is examined with reference to a particular document then the summons to witness must be accompanied by a duly - 9 - NC:

2023. KHC-K:6386 CRL.P No.200953 of 2023 certified photocopy of the document. The original document should be exhibited at the Court Point in accordance with the deposition of the concerned person being examined. 8.6 The Court would be at liberty to record the demeanour of the person being examined. 8.7 The Court will note the objections raised during the deposition of the person being examined and rule on them. 8.8 The Court shall obtain the signature of the person being examined on the transcript once the examination is concluded. The signed transcript will form part of the record of the judicial proceedings. The signature on the transcript of the person being examined shall be obtained in either of the following ways:

8. 8.1 If digital signatures are available at both the concerned Court Point and Remote Point, the soft copy of the transcript digitally signed by the presiding Judge at the Court Point shall be sent by the official e-mail to the Remote Point where a print out of the same will be taken and signed by the person being examined. A scanned copy of the transcript digitally signed - 10 - NC:

2023. KHC-K:6386 CRL.P No.200953 of 2023 by the Coordinator at the Remote Point would be transmitted by official email of the Court Point. The hard copy of the signed transcript will be dispatched after the testimony is over, preferably within three days by the Coordinator at the Remote Point to the Court Point by recognised courier/registered speed post. 8.8.2 If digital signatures are not available, the printout of the transcript shall be signed by the presiding Judge and the representative of the parties, if any, at the Court Point and shall be sent in non-

editable scanned format to the official email account of the Remote Point, where a printout of the same will be taken and signed by the person examined and countersigned by the Coordinator at the Remote Point. A non-editable scanned format of the transcript so signed shall be sent by the Coordinator of the Remote Point to the official email account of the Court Point, where a print out of the same will be taken and shall be made a part of the judicial record. The hard copy would also be dispatched preferably within three days by the Coordinator at the Remote Point to the Court Point by recognised courier/registered speed post.-. 11 - NC:

2023. KHC-K:6386 CRL.P No.200953 of 2023 8.9 An audio-visual recording of the examination of person examined shall be preserved. An encrypted master copy with hash value shall be retained as a part of the record. 8.10 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 the privacy of the person examined bearing in mind aspects such as age, gender, physical condition and recognized customs and practices. 8.11 The Coordinator at the Remote Point shall ensure that no person is present at the Remote Point, save and except the person being examined and those whose presence is deemed administratively necessary by the Coordinator for the proceedings to continue. 8.12 The Court may also impose such other conditions as are necessary in a given set of facts for effective recording of the examination (especially to ensure compliance with Rule 5.6.4).-.

12 - NC:

2023. KHC-K:6386 CRL.P No.200953 of 2023 8.13 The examination shall, as far as practicable, proceed without interruption or the grant of unnecessary adjournments. However, the Court or the Commissioner as the case may be, will be at liberty to determine whether an adjournment should be granted, and if so, on what terms. 8.14 The Court shall be guided by the provisions of the CPC and Chapter XXIII, Part B of the Cr PC, the Evidence Act and the IT Act while examining a person through video conferencing. 8.15 Where a Required Person is not capable of reaching the Court Point or the Remote Point due to sickness or physical infirmity, or presence of the required person cannot be secured without undue delay or expense, the Court may authorize the conduct of video conferencing from the place at which such person is located. In such

circumstances the Court may direct the use of portable video conferencing systems. Authority in this behalf may be given to the concerned Coordinator and/or any person deemed fit by the Court.-. 13 - NC:

2023. KHC-K:6386 CRL.P No.200953 of 2023 8.16 Subject to such orders as the Court may pass, in case any party or person authorized by the party is desirous of being physically present at the Remote Point at the time of recording of the testimony, such a party shall make its own arrangement for appearance/representation at the Remote Point.

11. Whereas in the instant case, petitioner in order to confront some of the documents to PW5 intends PW5 to be present before Court. As per the video conferencing rules, if in the course of examination of person at a remote point by video conferencing it is necessary to show a document to the person and the Court may permit the documents to be shown in the following manner:

"9. Exhibiting or Showing Documents to Witness or Accused at a Remote Point. If in the course of examination of a person at a Remote Point by video conferencing, it is necessary to show a document to the person, the Court may permit the document to be shown in the following manner: - 14 - NC:

2023. KHC-K:6386 CRL.P No.200953 of 2023 9.1 If the document is at the Court Point, by transmitting a copy or image of the document to the Remote Point electronically, including through a document visualizer; or 9.2 If the document is at the Remote Point, by putting it to the person and transmitting a copy/image of the same to the Court Point electronically including through a document visualizer. The hard copy of the document counter signed by the witness and the Coordinator at the Remote Point shall be dispatched thereafter to the Court Point via authorized courier/registered speed post.

12. Therefore, in view of the procedures laid down in the aforesaid rules and in the facts and circumstances of the present case, recording of evidence of PW5 through video conferencing is permissible, in view of proviso to Sub-Section (1) to Section 275 of Cr.P.C., (Amendment) Act, 2008. Thus accused fails to establish that PW5 should be appeared in-person for cross-examination before the Court,

thus, PW5 may be examined through video conferencing. Hence, looking into any angle the trial Court - 15 - NC:

2023. KHC-K:6386 CRL.P No.200953 of 2023 has rightly ordered for evidence of PW5 through video conferencing. Hence, there is no merit in the contention of the petitioner. Accordingly, petition is dismissed. Sd/- JUDGE SBS List No.:

1. SI No.:

2.

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