

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE DR. JUSTICE KAUSER EDAPPAGATH

MONDAY, THE 7TH DAY OF FEBRUARY 2022 / 18TH MAGHA, 1943

CRL.MC NO. 3970 OF 2021

AGAINST THE ORDER IN CRL.MISCELLANEOUS PETITION NO.974/2021

IN SC 245/2020 OF SESSIONS COURT,PATHANAMTHITTA

PETITIONER/COMPLAINANT:

THE STATE OF KERALA
REPRESENTED BY THE DEPUTY SUPERINTENDENT OF
POLICE, ADOOR, REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY ADVS.

SHRI.P.NARAYANAN, ADDL.PUBLIC PROSECUTOR
SRI GRASHIOUS KURIAKOSE-ADGP

RESPONDENT/RESPONDENT/ACCUSED:

NOWFAL
AGED 29 YEARS
S/O. WAHID, PANAYKKAL CHIRAYIL HOUSE, NEAR
PANAYKKAL TEMPLE, CHELAPPURAM JUNCTION,
KAYAMKULAM, P.O, KEERIKKADU VILLAGE,
KARTHIKAPPALLY TALUK, PIN CODE - 690516.

BY ADV G.PRIYADARSAN THAMPI

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 20.01.2022, THE COURT ON 07.02.2022 PASSED THE FOLLOWING:

O R D E R

Dated this the 7th day of February, 2022

The order declining a request made by the prosecution to video-record the court proceedings relating to the offences under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, (for short, the SC/ST Act) is under challenge in this CrI.M.C.

2. The petitioner is the State and the respondent is the accused in SC No.245/2020 on the file of the Sessions Court, Pathanamthitta. The offences alleged are punishable under Sections 366, 342, 354, 354A, 354B, 376 of IPC and S.3(1)(w) and 3(2)(v) of the SC/ST Act.

3. The petitioner/State filed a petition, supported by the affidavit of the victim, at the Court below as CrI.M.C.No.974/2021 u/s 15A(10) of the SC/ST Act seeking an order for video recording of the entire trial proceedings of the Sessions Case. The Court below after hearing both sides dismissed the said petition as per Annexure A order dated 16/7/2021, which is impugned herein.

4. I have heard Sri.Grashious Kuriakose, the learned Additional Director General of Prosecution.

5. In the objection statement filed by the respondent/accused at the Court below, it was contended that though the victim has right to request the Court for video recording the trial of the case, since the offence alleged is inclusive of Section 376 of IPC as well, it is not proper to do so. The Court below dismissed the petition holding that it is not usual to video-record the court proceedings, such a recording is unnecessary and it is likely to create confusion at the time of final hearing. The Court below further held that video recording of the Court proceedings and its preservation would hamper the normal course of functioning of the Court. It was held that since the offences alleged involve Section 376 of IPC as well, the trial has to be conducted *in camera* and, therefore, such a request cannot be allowed. There are no facilities in the Court to video-record the proceedings, it was observed.

6. When the above Cr1.M.C came up for hearing, I called for a report from the Director, IT, High Court of Kerala as to the

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availability of video recording facility in the video conferencing unit installed at the Court below. The Director, IT submitted a detailed report. It is reported that the video conference equipment is functioning in the Court hall of the Court below and the video recording is possible using the said equipment. It is also reported that the technical team eCourt Project, Pathanamthitta in consultation with the technical team, Kerala Prisons, who provided Video Conferencing Unit, have conducted the recording on trial basis and the recording feature was found working.

7. Sri.Grashious Kuriakose, the learned Additional Director General of Prosecution, submitted that provision in Section 15A(10) of the SC/ST Act is mandatory that all the proceedings under the Act shall be video recorded and if a petition is moved by the victim or prosecution with the prayer to video-record the court proceedings, the Court is bound to allow it. The Court below committed illegality by dismissing the petition, submitted the learned Additional Director General of Prosecution.

8. The SC/ST Act has been enacted by the Parliament to effectuate a salutary public purpose of achieving the fulfilment of

constitutional rights of the Scheduled Castes and Scheduled Tribes. S.15A which comes under Chapter IVA of the SC/ST Act titled "Rights of Victims and Witnesses", was introduced by way of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2015, which came into effect on 26th January, 2016. The statement of objects and reasons that accompanied the insertion of Chapter IVA reads as follows:

"(h) to insert a new Chapter IVA relating to "Rights of Victims and Witnesses" to impose certain duties and responsibilities upon the State for making necessary arrangements for protection of victims, their dependents and witnesses against any kind of intimidation, coercion or inducement or violence or threats of violence".

9. S.15A of the SC/ST Act contains important provisions that safeguards the rights of the victims of caste based atrocities and witnesses. It makes sure that the victims of atrocities are treated with fairness, respect and dignity. Sub-section (10) of S.15A specifically says that all proceedings relating to the offences under this Act shall be video recorded. It comes under the Chapter "Rights of the Victims and Witnesses". Thus, the term "all the proceedings" found in Sub-section (10) includes court proceedings as well. Sub-section (10) of S.15A of the SC/ST Act

confers statutory right on the victim to get all the proceedings relating to the offences under the Act to be video recorded. The rejection of the request of the victim/prosecution to video-record the court proceedings would go against the legislative mandate which specifies the rights of the victim and witnesses.

10. One of the reasons shown by the Court below to reject the application is that since the offences alleged involve Section 376 of IPC as well, the trial has to be conducted *in camera*. The Court has also raised security concerns stating that there are no adequate facilities at the court for keeping such records and, thus, there is a possibility of leaking out the same.

11. Sub-section (2) of S.327 of Cr.P.C, which provides that trial of rape or an offence u/s 376 of IPC shall be conducted *in camera*, is intended to protect the anonymity of the victim. Sub-section (10) of S.15A is also intended to protect the interest of the victim. As such, if a victim makes a request to video-record the court proceedings relating to the offences under SC/ST Act invoking Sub-section (10) of Section 15A, it cannot be turned down on the ground that the offences charged against the

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accused involve sexual offences fall under Section 327(2) of Cr.P.C. as well. The anonymity of the victim in such cases can be adequately protected and safeguarded in the recordings via dummy names, face masking or pixelation as and when directed by the Court. The recording shall be maintained for usage by the Court and the appellate Court and access to the recording need not be given to the victim or the accused unless specifically ordered by the Court.

12. The Government of Kerala recently passed Electronic Video Linkage Rules for Courts (Kerala), 2021. Rule 8(17) and (18) deals with audio video recording of Court proceedings. It reads as follows:

"8. Examination of Person:

xxx

17. The audio-video recording of the persons examined shall be preserved. The encrypted master copy with hash value shall be retained by the Court as part of the records.

18. The recorded data should be secured by administrative password and shall be retrieved only when the Court orders its retrieval. The administrative password shall remain with the Registrar (Recruitment & Computerization) or any other person authorised by the Chief Justice in the case of the High Court and with

the Presiding Officer in all other cases.”

The above mentioned rules provide adequate measures to secure the recorded data by administrative password. The video recording can be stored with administrative password in the VC system available in the Court room itself. The administrative password will be within the exclusive knowledge of the Judge concerned only. Moreover, security can be ensured by restricting the access to the recorded data only to the Judge concerned. The victim or the accused will have access only by the specific order of the Court in appropriate cases.

13. We are living in a digital era. The globalization, new communication system and digital technology have made dramatic changes in the way we are living. The Apex Court of India has pro-actively adopted technology to make the judicial process more accessible, transparent and simple. It has taken up and implemented the E-courts Mission Mode Project for universal computerisation of Courts in the entire courts across the country. In Kerala, we have already initiated online filing of cases. During the peak pandemic period, the technology based solutions were adopted to facilitate access to justice and the entire courts in the

country functioned through virtual platform. On the judicial side, recent judgments of the Apex Court also indicates the willingness of the Indian Judiciary to adapt to technology for the advancement of justice. In ***Krishna Veni Nagam v. Harish Nagam*** [(2017) 4 SCC 150], the Apex Court had taken into consideration technological developments to regulate the use of video conferencing for certain categories of cases. In ***Pradyuman Bisht v. Union of India And Others*** (2017 SCC onLine 1710), the Apex Court directed the Government to install CCTV cameras in all subordinate courts as well as Tribunals. In ***Swapnil Tripathi v. Supreme Court of India*** [2018 (4) KLT Online 2046 (SC)], the Apex Court upheld the plea for live streaming of its proceedings observing that the use of technology is to virtually expand the Court beyond the four walls of the Court room. It was held that live streaming proceedings is part of the access to justice under Article 21 of the Constitution of India. The impugned order is against the spirit of the directive of the Apex Court that the judiciary must keep pace with emerging trends of technology.

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In the light of the above findings, the impugned order cannot be sustained. Accordingly, it is set aside and the petition filed by the prosecution as Crl.M.C.No.974/2021 stands allowed. The Court below shall video-record the entire Court proceedings in SC No.245/2020 in the light of the observations and directions made in this order. The Crl.M.C. is disposed of as above.

Sd/-

DR. KAUSER EDAPPAGATH

JUDGE

Rp

Cr1.M.C.No.3970/2021

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APPENDIX OF CRL.MC 3970/2021

PETITIONER ANNEXURES

Annexure A

THE CERTIFIED COPY OF THE ORDER DATED
16.07.2021 IN CRIMINAL MISCELLANEOUS
PETITION NO. 974/2021 IN S.C NO.245/2020
IN THE COURT OF SESSIONS JUDGE.
PATHANAMTHITTA.