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ITEM NO.30

Court 2 (Video Conferencing)

SECTION II-C

**S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS**

Petition(s) for Special Leave to Appeal (Cr1.) No(s).2302/2017

**(Arising out of impugned final judgment and order dated 26-06-2014
in CRLA No. 404/2009 26-06-2014 in ST No. 8/2009 passed by the)
SHAFHI MOHAMMAD Petitioner(s)**

VERSUS

STATE OF HIMACHAL PRADESH

Respondent(s)

**(IA No. 4230/2017 - CONDONATION OF DELAY IN FILING
IA No. 4958/2017 - EXEMPTION FROM FILING C/C OF THE IMPUGNED
JUDGMENT
IA No. 144046/2018 - GRANT OF BAIL)**

WITH

Diary No(s). 19045/2020 (II-B)

**(IA No. 91242/2020 - CONDONATION OF DELAY IN FILING
IA No. 91238/2020 - EXEMPTION FROM FILING C/C OF THE IMPUGNED
JUDGMENT
IA No. 91243/2020 - PERMISSION TO FILE ADDITIONAL
DOCUMENTS/FACTS/ANNEXURES)**

**MA 267/2017 in SLP(Cr1) No. 657/2017 (II-B)
(IA No. 57504/2017 - MODIFICATION OF COURT ORDER)**

Date : 18-11-2021 These matters were called on for hearing today.

CORAM :

**HON'BLE MR. JUSTICE UDAY UMESH LALIT
HON'BLE MR. JUSTICE S. RAVINDRA BHAT**

Counsel for the Parties:

**Dr. Arun Mohan, Sr. Adv.
Amicus Curiae**

**Mr. Sajay Parikh, Sr. Adv.
Amicus Curiae**

**Mr. Jayant Bhushan, Sr. Adv.
Amicus Curiae**

**Ms. Aishwarya Bhati, ASG
Mr. Rajat Nair, Adv.
Mr. Shirin Khajuria, Adv.**

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Mr. Amit Sharma, Adv.
Ms. Ruchi Kohli, Adv.
Mr. B. V. Balaram Das, AOR

Ms. Aishwarya Bhati, ASG
Mr. V.D. Makhija, Sr. Adv.
Mr. T.A. Khan, Adv.
Mr. Vikash Vansal, Adv.
Mr. Rajat air, Adv.
Mr. B.V. Balaram Das, AOR

Mr. Abhinav Mukerji, AOR
Ms. Pratishtha Vij, Adv.
Ms. Bihu Sharma, Adv.
Mr. Akshay C. Shrivastava, Adv.

Ms. E. R. Sumathy, AOR
Ms. S. Spandana Reddy, Adv.
Mr. Nishant Bhardwaj, Adv.

Ms. Deepanwita Priyanka, Adv.
Mr. Aniruddha P. Mayee, AOR

Ms. Uttara Babbar, AOR
Mr. Manan Bansal, Adv.

Dr. Monika Gusain, AOR

UPON hearing the counsel, the Court made the following
O R D E R

1. Pursuant to the order dated 24.08.2021 passed by this Court, comprehensive responses on behalf of the Union of India as well as Delhi Police have been placed on record.
2. According to the response of Delhi Police, an App has been developed and I.Os. from 15 Police Stations under South Delhi District, as a pilot project, have been capturing photos/ videos and uploading the same by way of crime scene photography/ videography. The response further indicates that the use of technology in having the crime scene photographed/ videographed is to the satisfaction of Delhi Police.

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3. The affidavit filed on behalf of Union of India states that in the meeting of COB held on 05.08.2021, Delhi Police had informed that all technical issues relating to the Mobile App which was used by way of Pilot Project in South Delhi District were addressed to the satisfaction of the NCRB whereafter the Mobile App was being implemented through five I.Os. each from 15 Police Stations since from 2021.

The affidavit further states that an Online Workshop was organized which was attended by CCTN Schemes of Haryana, Delhi, Himachal Pradesh, Uttar Pradesh, Maharashtra, Madhya Pradesh, Gujarat and Chandigarh; that the State Governments of Delhi, Himachal Pradesh, Maharashtra and Haryana are in the process of procuring servers of the required specifications while Government of Madhya Pradesh has already procured the server and deployment of the Mobile App in testing environment has been under progress; that the Government of Gujarat has developed its own Mobile App which does not require any server and the data is deployed in the cloud.

4. These developments are undoubtedly encouraging and will go a long way in utilizing technology in investigation into crimes and specially in having the crime scene photographed/ videographed.

5. It must be stated here that all these technological innovations for use in investigation must ensure:

(a) that the capturing of the crime scene through

photographs/ WWW.LIVELAW.IN videographs and its uploading through the App is completely tamper-free and fully encrypted;

(b) that the capturing of the photographs/ videography and uploading the same through App must be contemporaneous and to the extent possible, must also come with GPS locations.

These parameters will ensure that the material collected and uploaded could be intrinsically trustworthy as evidence in a criminal trial.

6. However, before we come to any firm conclusion, we would like the prototype implemented by Delhi Police in 15 Police Stations of South Delhi District to be tested by Experts. If the Mobile App so developed is found to be foolproof and reliable by the Experts, their report will be of great assistance to the Court before any directions are passed.

7. We therefore direct:

- (1) At least three High Ranking Officials in Police, preferably from National Police Academy be associated as Experts with such testing.
- (2) These Experts are at liberty to engage the services of any Cyber-crime Experts or those who are well versed in internet and virtual platforms.
- (3) They may also associate the services of Dr. Arun Mohan, learned Senior Advocate who has been assisting this Court

as Amicus Curiae.

- (4) After considering the Mobile App so developed and testing whether the photographs/videography captured and uploaded are completely tamper-free and could possibly be relied upon as evidence in criminal trial, the Experts may give their views by way of a Report.

8. It must be stated here that in the Chief Justices' Conference, a Committee headed by Hon'ble Mr. Justice Rajesh Bindal was constituted on 28.07.2018 to frame draft rules to serve as a model for adoption by High Courts. Though the Committee was constituted to consider issues in the context of certification under Section 65 of the Indian Evidence Act, the Committee had suggested draft rules for reception, retrieval, authentication and preservation of electronic evidence.

Said report shall also be considered by the aforesaid Experts to see whether any protocols can be devised for capturing, uploading and preserving such crime scene photographs/ videography.

9. Dr. Arun Mohan, learned Amicus Curiae invited our attention to Page 51 of his submissions dealing with the issue of "Back Office (in each State) - to Support and Guide". The Experts may consider said issue as well.

10. Let comprehensive report in that behalf be placed on record within six weeks from today.

11. List this matter on 18.01.2022.

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M.A. No.267 of 2017 in SLP (Cr1) No.657 of 2017

12. Pursuant to the order dated 24.08.2021 passed by this Court, the note submitted by Mr. Sanjay Parikh, learned Senior Advocate, appointed by this Court as Amicus Curiae, has been considered in the Ministry of Home Affairs. The response has been filed on behalf the Union of India.

13. This matter shall also be considered along with SLP (Cr1.) No.2302 of 2017 (SHAFHI MOHAMMAD v. State of Himachal Pradesh)

(INDU MARWAH)
COURT MASTER (SH)

(VIRENDER SINGH)
BRANCH OFFICER