

(2013) 12 AHC CK 0183

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 7035 (M/S) of 2013

Haseen Siddiqui @ Jahangir

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 02-12-2013

Acts Referred:

Citation : (2013) 11 ADJ 497 : (2014) 1 ALJ 543 : (2014) 84 ALLCC 591 :
(2014) CriLJ 1207 : (2014) 2 RCR(Criminal) 226

Hon'ble Judges : Arvind Kumar Tripathi, J

Bench : Single Bench

Advocate : R.P. Misra II, for the Appellant;

Judgement

Arvind Kumar Tripathi (II), J.—This writ petition has been filed by Haseen Siddiqui @ Jahangir for issuing a writ or direction in the nature of certiorari quashing the administrative order dated 22.4.2013 passed by Sessions Judge, Lucknow as well as order dated 15.7.2013. Heard Mr. R.P. Mishra, learned counsel for petitioner and learned AGA.

2. It has been mentioned in the memo of petition that trial of the case was going on in the said Court after petitioners arrest on 29.11.2012 by A.T.S. U.P. Lucknow till 17.5.2013 when Learned A.C.J.M. VIII ordered for holding the trial of the petitioner's case in jail premises instead of its regular sitting at Civil Court, Lucknow. This order was passed in compliance to the Administrative Order of Sessions Judge, Lucknow dated 24.4.2013. Order passed by Learned ACJM VIII was challenged by the petitioner in CrI. Revision No. 313/13 but in vain and petition u/s 482 Cr.P.C. also met the same fate. This Hon'ble Court while disposing off the petition u/s 482 Cr.P.C. has observed that order dated 17.5.2013 passed by ACJM VIII, Lucknow (Annexure 2) was based on administrative order dated 24.4.2013 for holding trial in jail premises, hence petition u/s 482 Cr.P.C. is not maintainable. There is no allegation of any terrorist activities against petitioner and he is being prosecuted for simply obtaining a Passport fraudulently and for similar act co-accused Mirza Arif Beg has been

sentenced for 5 years only in a separate trial on 14.8.2013. The petitioner is neither a hard core criminal nor terrorist. His name does not find place in the list of 22 criminals having terrorist activities submitted by A.T.S. authorities to Session Judge, Lucknow and case of those 22 Criminals is being tried in jail premises. Sessions Judge, Lucknow has passed the order in CrI. Revision No. 313/13 based on CI. No. 13/2008 (Admn.) dated May 19, 2008.

3. It was submitted by learned counsel for the petitioner that Section 9 and 9A Criminal Procedure Code prescribes sitting of the Courts of Session Judge and Section 11 of Criminal Procedure Code prescribes the place of sitting of Court of Magistrate. The circular letter dated May 19, 2008 has been issued for place of sitting of Courts of Sessions and not for Courts of Magistrate. Only State Government can change the place of sitting in respect of Magistrate Court and thus Sessions Judge, Lucknow was not empowered to pass the impugned order dated 24.4.2013 for shifting of place of trial from Civil Court to jail premises and administrative order dated 24.4.2013 is illegal and void and thus the order dated 17.5.2013 passed by ACJM towards an order dated July 15, 2013 passed by Sessions Judge are violative of the provisions of Section 11 of Code of Criminal Procedure and are illegal.

For ready reference Circular Letter No. 13/2008 Admin(G) Dated 19.5.2008, is reproduced below.

From: By Registered Post/E-Mail

Virendra Kumar Dixit, HJS,

Registrar General,

High Court of Judicature at

Allahabad.

To,

All the District Judges,

Subordinate to the High Court of Judicature at

Allahabad.

Circular Letter No. 13/2008 Admin (G): Dated 19.5.2008

Subject: Trial of hardened criminal inside the jail premises.

Sir,

In a reference having been made by a District and Sessions Judge to the Hon''ble Court seeking permission for trial of the notorious hardened under trial prisoners inside the jail precincts on request of the Senior Prosecuting Officer based on the direction of the Senior Superintendent of Police and the District-Magistrate, upon consideration, the Hon''ble Court has resolved that a direction be issued to all the

District and Sessions Judges that on such request being received by them they are supposed to take decision in their discretion in the matter in consonance with the provision made in Section 9(6) of the Criminal Procedure Code as amended by U.P. Act 1 of 1984 which provides that where it appears expedient to do so for consideration of internal security or public order, the Court of Sessions may hold it's sitting in a particular case at any place in the sessions division without consent of the prosecution and the accused and only in case of their being not convinced of there being any security threat involved, should they refer the matter to the Hon"ble Court for consideration and decision.

Therefore, I am directed to request you to kindly make strict compliance of the above directions of the Hon"ble Court and to bring the contents of this circular letter to all the Judicial Officers working under your administrative control.

Yours faithfully

(V.K. Dixit)

Registrar General

No. /2008: Dated: 2008

Copy forwarded to:

1. Registrar, Lucknow Bench, Lucknow for information.
2. P.S. to all the Hon"ble Judges at Allahabad and also at Lucknow Bench, Lucknow to place the Circular letter before their Lordships for kind perusal.
3. Director, Judicial Training & Research Institute, Gomti Nagar, Lucknow.
4. All the Judicial Officers posted in the Registry in Allahabad High Court and Lucknow Bench.

Registrar General

4. A perusal of the circular letter mentioned above makes it clear that this has been issued in consonance of Section 9(6) of Criminal Procedure Code, and is meant for sitting of Court of Session. It is not meant for Court of Magistrate.

5. While interpreting any circular it has to be born in mind that any circular can only be issued in consonance of the provision of law. No circular can be issued dealing with a subject which is not permitted by law.

6. According to Section 11(1) of Code of Criminal Procedure, State Government may after consultation with the High Court, notify the place of sitting of Judicial Magistrates. Session Judge cannot shift the place of sitting of a Judicial Magistrate, in view of this, the administrative order passed by Session Judge, Lucknow is not in consonance of either Section 9(6) of Code of Criminal Procedure and above circular and is liable to be quashed and is hereby quashed.

7. The consideration of internal security and public order has to be given more

importance, while dealing with the administration of justice at Sessions level. Law is its wisdom declares that the rights of the public shall not be wholly sacrificed in order that an individual benefit may be preserved to the accused. One such, method is trial by video conferencing. Apex Court has, while dealing with the constitutionality and validity of video conferencing vis-a-vis right of accused under Sections 267 and 273 of Code of Criminal Procedure held that recording of evidence by video conferencing fully satisfies object of Section 273 Cr.P.C. and services of video-conferencing system could be adopted in order to render justice of parties.

8. Apex Court has in the Case of *The State of Maharashtra and P.C. Singh Vs. Dr. Praful B. Desai and Another*, held that:

12. Consideration the question on the basis of Criminal Procedure Code, we are of the view that the High Court has failed to read Section 273 property. One does not have to consider dictionary meanings when a plain reading of the provision brings out what was intended. Section 273 reads as follows:

Section 273: Evidence to be taken in presence of accused. Except as otherwise expressly provided, all evidence taken in the course of the trial or other proceeding shall be taken in the presence of the accused, or, when his personal attendance is dispensed with, in the presence of his pleader.

Explanation: In this section, "accused" includes a person in relation to whom any proceeding under Chapter VIII has been commenced under this Code.

Thus Section 273 provides for dispensation from personal attendance. In such cases evidence can be recorded in the presence of the pleader. The presence of the pleader is thus deemed to be presence of the Accused. Thus Section 273 contemplates constructive presence. This shows that actual physical presence is not a must. This indicates that the terms "presence", as used in this Section, is not used in the sense of actual physical presence. A plain reading of Section 273 does not support the restrictive meaning sought to be placed by the Respondent on the word "presence". One must also take note of the definition of the term "Evidence" as defined in the Indian Evidence Act. Section 3 of the Indian Evidence Act reads as follows:

Evidence--Evidence means and includes--

(1) all statements which the Court permits or requires to be made before it by witnesses, in relation to matters, of fact under inquiry; such statements are called oral evidence.

(2) all documents including electronic records produced for the inspection of the Court;

such documents are called documentary evidence.

Thus evidence can be both oral and documentary and electronic records can be produced as evidence. This means that evidence, even in criminal matters, can

also be by way of electronic records. This would include video-conferencing.

14. It must also be remembered that the Criminal Procedure Code is an ongoing statute. The principles of interpreting an ongoing statute have been very succinctly set out by the leading jurist Francis Bennion in his commentaries titled "Statutory Interpretation", 2nd Edition page 617:

It is presumed the Parliament intends the Court to apply to an ongoing Act a construction that continuously updates its wordings to allow for changes sine the Act was initially framed. While it remains law, it has to be treated as always speaking. This means that in its application on any day, the language of the Act though necessarily embedded in its own time, is nevertheless to be construed in accordance with the need to treat it as a current law.

.....

In construing an ongoing Act, the interpreter is to presume that Parliament intended the Act to be applied at any future time in such a way as to give effect to the original intention. Accordingly, the interpreter is to make allowances for any relevant changes that have occurred since the Act's passing, in law, in social conditions, technology, the meaning of words and other matters.That today's construction involves the supposition that Parliament was catering long ago for a state of affairs that did not then exist is no argument against that construction. Parliament, in the wording of an enactment, is expected to anticipate temporal developments. The drafter will foresee the future and allow for it in the wording.

.....

An enactment of former days is thus to be read today, in the light of dynamic processing received over the years, with such modification of the current meaning of its language as will now give effect to the original legislative intention. The reality and effect of dynamic processing provides the gradual adjustment. It is constituted by judicial interpretation, year in and year, out. It also comprises processing by executive officials.

18. Thus the law is well-settled. The doctrine "Contemporary exposition est (sic) fortissime has no application when interpreting a provision of an ongoing statute/ act like the Criminal Procedure Code.

19. At this stage we must deal with a submission made by Mr. Sundaram. It was submitted that video-conferencing could not be allowed as the rights of an accused, under Article 21 of the Constitution of India, cannot be subjected to a procedure involving "virtual reality". Such an argument displays ignorance of the concept of virtual reality and also of video conferencing. Virtual reality is a state where one is made to feel, hear or imagine what does not really exists. In virtual reality one can be made to feel cold when one is sitting in a hot room, one can be made to hear the sound of ocean when one is sitting in the mountains, one can be made to imaging that he is taking part in a Grand Prix race whilst one is

relaxing on one sofa etc. Video conferencing has nothing to do with virtual reality. Advances in science and technology have now, so to say, shrunk the world. They now enable one to see and hear events, taking place far away, as they are actually taking place. To take an example today one does not need to go to South Africa to watch World Cup matches. One can watch the game, live as it is going on, on one's TV. If a person is sitting in the stadium and watching the match, the match is being played in his sight/presence and he/she is in the presence of the players. When a person is sitting in his drawing-room and watching the match on TV, it cannot be said that he is in presence of the players but at the same time, in a broad sense, it can be said that the match is being played in his presence. Both, the person sitting in the stadium and the person in the drawing-room, are watching what is actually happening as it is happening. This is not virtual reality, it is actual reality. One is actually seeing and hearing what is happening. Video conferencing is an advancement in science and technology which permits one to see, hear and talk with someone far away, with the same facility and ease as if he is present before you i.e. in your presence. In fact he/she is present before you on a screen. Except for touching one can see, hear and observe as if the party is in the same room. In video conferencing both parties are in presence of each other. The submissions of Respondents counsel are akin to an argument that a person seeing through binoculars or telescope is not actually seeing what is happening. It is akin to submitting that a person seen through binoculars or telescope is not in the "presence" of the person observing. Thus it is clear that so long as the Accused and/or his pleader are present when evidence is recorded by video conferencing that evidence is being recorded in the "presence" of the accused and would thus fully need the requirements of Section 273, Criminal Procedure Code. Recording of such evidence would be as per "procedure established by law".

Recording the evidence by video conferencing also satisfies the object of providing, in Section 273, that evidence be recorded in the presence of the Accused. The Accused and his pleader can see the witness as clearly as if the witness was actually sitting before them. In fact the Accused may be able to see the witness better than he may have been able to if he was sitting in the dock in a crowded Court room. They can observe his or her demeanor. In fact the facility to play back would enable better observation of demeanor. They can hear and rehear the deposition of the witness. The Accused would be able to instruct his pleader immediately and thus cross-examination of the witness is as effective if not better. The facility of play back would give an added advantage whilst cross-examining the witness. The witness can be confronted with documents or other material or statement in the same manner as if he/she was in Court. All these objects would be fully met when evidence is recorded by video conferencing. Thus no prejudice, of whatsoever nature, is caused to the Accused. Of course, as set out hereinafter, evidence by Video Conferencing has to be on some conditions.

Reliance was then placed on Sections 274 and 275 of the Criminal Procedure Code which require that evidence be taken down in writing by the Magistrate

himself or by his dictation in open Court. It was submitted that video conferencing would have to take place in the studio of VSNL. It was submitted that that this would violate the right of the Accused to have the evidence recorded by the Magistrate or under his dictation in open Court. The advancement of science and technology is such that now it is possible to set up video conferencing equipment in the Court itself. In that case evidence would be recorded by the Magistrate or under his dictation in open Court. If that is done then the requirements of these Sections would be fully met. To this method there is however a draw back. As the witness is now in Court there may be difficulties if he commits Contempt of Court or perjures himself and it is immediately noticed that he has perjured himself. Therefore as a matter of prudence evidence by videoconferencing in open Court should be only if the witness is in a country which has an extradition treaty with India and under whose laws Contempt of Court and perjury are also punishable.

9. In the case of Abdul Karim Telgi @ Lala @ Karim Lala, Abdul Wahid and Jacob Chackoo @ Thomas Vs. State, , Apex Court has held that;

8. The main stay of the learned Counsel for the petitioners is that the statutory provisions have to be followed by the Courts in the trial of criminal case proceedings. He vehemently argues that the Hon"ble Apex Court, in the case of The State of Maharashtra and P.C. Singh Vs. Dr. Praful B. Desai and Another, , has dealt with only the recording of evidence of witnesses through video conferencing system and the said principle is not applicable to the present case, as, by seeing the accused in the screen, the criminal Court proceedings could not be effective. The relevant portion of the said decision is culled out thus:

19. ...Video-conferencing is an advancement in science and technology which permits one to see, hear and talk with someone far away, with the same facility and case as if he is present before you i.e., in your presence. In fact, he/she is present before you on a screen. Except for touching, one can see, hear and observe as if the party is in the same room. In videoconferencing, both parties are in the presence of each other. The submissions of the respondents" counsel are akin to an argument that a person seeing through binoculars or telescope is not actually seeing what is happening. It is akin to submitting that a person seen through binoculars or telescope is not in the "presence" of the person observing. Thus, it is clear that so long as the accused and/or his pleader are present when is recorded by video-conferencing that evidence is being recorded in the "presence" of the accused and would thus fully meet the requirements of Section 273 of the Criminal Procedure Code. Recording of such evidence would be as per "procedure" established by law.

9. In the above said decision, it was also observed that the recording of evidence by videoconferencing also satisfies the object of Section 273; that evidence be recorded in the presence of the accused and the accused and his pleader can see the witness as clearly as if the witness was actually sitting before them and, that, in fact, the accused may be able to see the witnesses better than he may have

been able to, if he was sitting in the dock in a crowded Courtroom and that they can observe his or her demeanor.

10. The above said observations would clear the doubt in the minds of the accused. While video conferencing system is employed for the trial proceedings, the accused in the jail would be seeing the demeanor of the witnesses and their manner of deposing before the Court and simultaneously it is possible for the individuals, who are present in the Court, namely, the Presiding Officer, the witnesses and the counsel, to see the accused in the screen and observe them.

11. The further contention of the learned Counsel for the petitioners is that if the accused are unable to witness the process of rendering oral accounts by the witnesses, the requirements u/s 273 Cr.P.C. would be defeated. He also cites another decision of the Apex Court in *Sakshi Vs. Union of India (UOI) and Others*, , the operative portion of which goes thus:

31. The whole inquiry before a Court being to elicit the truth, it is absolutely necessary that the victim or the witnesses are able to depose about the entire incident in a free atmosphere without any embarrassment. Section 273 Cr.P.C. merely requires the evidence to be taken in the presence of the accused. The Section, however, does not say that the evidence should be recorded in such a manner that the accused should have full view of the victim or the witnesses. Recording of evidence by way of video-conferencing vis-a-vis Section 273 Cr.P.C. has been held to be permissible in a recent decision of this Court in *The State of Maharashtra and P.C. Singh Vs. Dr. Praful B. Desai and Another*, . There is major difference between substantive provisions defining crimes and providing punishment for the same and procedural enactment laying down the procedure of trial of such offences. Rules of procedure are handmaiden of justice and are meant to advance and not to obstruct the cause of justice. It is, therefore, permissible for the Court to expand or enlarge the meanings of such provisions in order to elicit the truth and do justice with the parties.

12. At this juncture, it is profitable to furnish Section 273 Cr.P.C., which reads as under:

273. Evidence to be taken in presence of accused.-Except as otherwise expressly provided, all evidence taken in the course of the trial or other proceeding shall be taken in the presence of the accused, or, when his personal attendance is dispensed with, in the presence of his pleader.

17. The Hon"ble Supreme Court was of the firm view that the fundamental right available to an under-trial prisoner under Article 21 is not an absolute one, which is circumscribed by the rules and regulations in the Prison Manual of respective States. Applying those principles to the case on hand, it has to be held herein that even though the provision for personal appearance of the accused is incorporated in the statutes, the right of the accused, being not absolute, using video conferencing system could not be held to be a violation of the provisions.

10. Apex Court has in the case of Rajesh Ranjan Yadav @ Pappu Yadav Vs. CBI through its Director, , held that:

7. We have also carefully gone through the appellant's medical papers that have been produced before us in Court. We are of the opinion that they do not as of now justify his release on bail even on medical grounds the more so as all facilities are being made available to him by the jail authorities. We accordingly dismiss the application but while doing so issue the following directions:

(1) Every effort will be made to provide Video Conference Facilities to the appellant but in the light of Sections 273 and 317 of the Cr.P.C., the trial will go on to its conclusion even if they are not available;

(2) that in the event that the video conference facilities are available, the appellant would be allowed access to his lawyers through the aforesaid facility in addition for one hour on each day that the final arguments in the trial proceed.

11. The above excerpts of the decisions of Apex Court and Madras High Court pave the way of new technology of trial by vide conferencing. Use of this technology will save much time and will ease the burden on State exchequer. The time, and man power consumed in producing the accused in custody before a Court of another district from a Jail of another district can be saved. The risk of escaping of accuseds in transit will be significantly reduced. If this, technology is used for producing of accused before Court, thus this technology can be used for recording of statement of witnesses out side the District.

12. With these observations writ petition is disposed of and the administrative order No. 115/2013 passed by Sessions Judge, Lucknow dated 22.4.2013 and order dated 17.5.2013 passed by ACJM Court No. 32, Lucknow are quashed. Sessions Judge Lucknow may pass fresh orders for trial of petitioner and similarly placed accuseds through video conferencing. This will also take care of internal security and public order.