

"CR"

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE V.G.ARUN

WEDNESDAY, THE 18TH DAY OF DECEMBER 2024 / 27TH AGRAHAYANA, 1946

CRL.MC NO. 10447 OF 2024

CRIME NO.RC 9(E)/2014/CB/2014 OF CENTRAL BUREAU OF
INVESTIGATION, THIRUVANANTHAPURAM,
AGAINST THE ORDER DATED 23.11.2024 IN CRMP 781/24 IN CC
NO.1 OF 2016 OF SPE/CBI COURT, THIRUVANANTHAPURAM

PETITIONER:

ALEX C JOSEPH,
AGED 60 YEARS
S/O C A JOSEPH, PRESENTLY RESIDING AT D-27, SOUTH
EXTENSION, PART II, NEW DELHI, PERMANENTLY
RESIDING AT CHEKKATTU HOUSE, THADIYOOR P.O.,
THIRUVALLA, PATHANAMTHITTA, PIN - 689545

BY ADVS.
S.RAJEEV
V.VINAY
M.S.ANEER
SARATH K.P.
K.S.KIRAN KRISHNAN

RESPONDENTS:

1 STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR,HIGH COURT OF
KERALA, PIN - 682031



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- 2 CENTRAL BEREAU OF INVESTIGATION ,
 REPRESENTED BY ITS STANDING COUNSEL, CBI HIGH
 COURT OF KERALA, (CR NO 2228/2011 OF PALARIVATTOM
 POLICE STATION, SUBSEQUENTLY RE-REGISTERED AS RC
 9(E)/2014/CBI/SCB/TVPM) , PIN - 682017

- 3 REGISTRAR GENERAL,
 HIGH COURT OF KERALA, ERNAKULAM -682031, IS SOU
 MOTU [IMPLEADED AS R3 AS PER THE ORDER DATED
 10/12/2024] .

BY ADV SREELAL N.WARRIER, SPL.PUBLIC PROSECUTOR,
CENTRAL BUREAU OF INVESTIGATION (CBI)

OTHER PRESENT:

DSGI IN CHARGE T.C.KRISHNA. SRI.
C.S. HRITHWIK, SR.PP.
SR. ADV. B.G. HARINDRANATH FOR AMICUS CURIAE.
SRI. SREELAL N. WARRIER SC FOR CBI.

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 12.12.2024, THE COURT ON 18.12.2024 PASSED THE
FOLLOWING:



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“CR”

V.G.ARUN, J

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Crl.M.C.No.10447 of 2024

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Dated this the 18th day of December, 2024

ORDER

Petitioner is the accused in C.C.No.1 of 2016 pending before the Court of Special Judge, CBI, Thiruvananthapuram. During trial, a petition was filed seeking permission for the Senior Counsel appearing for the petitioner to conduct cross-examination of the prosecution witnesses through video conferencing. Permission was sought citing health reasons and the counsel's inability to travel up to Thiruvananthapuram. The learned Sessions Judge having rejected the petition, this Crl.M.C is filed.

2. Learned counsel for the petitioner contended that, Electronic Video Linkage Rules for Courts (Kerala), 2021 ('the Rules' for short) is intended to enable, among other things,



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cross-examination through video conferencing also. In support of the argument, attention is drawn to the definitions of the words 'Advocate', 'Court Point', 'Court User,' 'Remote Point', 'Remote User' and 'Required Person' in Rule 2, the Principles laid down in Rule 3, the procedure for Examination of Persons contained in Rule 8 as well as Rule 10, intended to ensure seamless electronic video linkage. Relying on the Apex Court decision in **State of Maharashtra v. Praful B.Desai** [(2003) 4 SCC 601], it is contended that courts should accept and adopt the changes brought about with the progress in technology.

3. Learned Standing Counsel for the CBI submitted that examination of the two witnesses, for the cross-examination of whom permission was sought, is over. It is further submitted that, if at all permission to conduct cross-examination through video conferencing is granted, it should be ensured that a responsible lawyer, capable of aiding the court and answering queries, is physically present during the cross-examination.



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4. The short and interesting question arising for consideration is whether, cross-examination of witnesses present in court can be done from a remote point. In order to answer the question, it is essential to understand the meaning of the following expressions, as defined in Rule 2;

"**(a) 'Advocate'** means an advocate entered in any roll under the provisions of the Advocates Act, 1961 (Act 25 of 1961) and shall also include Government Pteaders/Advocates and officers of the prosecuting agencies.

(e) 'Court Point' means the courtroom or other place where the Court sits or the place where the Commissioner or an inquiring officer holds proceedings pursuant to the directions of the Court.

(f) 'Court User' means a user participating in the Court proceedings through Electronic Video Linkage at a Court Point.

(i) 'Electronic Video Linkage' means a connection enabling a Person to communicate audio-visually from a Remote point and Court point.

(l) 'Live Link' means a live television link, audio-video electronic means or other arrangements whereby a witness, a required person or any other person is permitted to remain present, while physically absent from the Courtroom but is nevertheless virtually present in the Courtroom by remote communication using technology to give evidence and be cross-examined.

(m) 'Remote Point' means a place where any person or persons are required to be present or appears, through a video link.



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(n)'Remote User' means a user participating in Court proceedings through Electronic Video Linkage at a Remote Point.

(o) 'Required Person' includes;

- (i) the person who is to be examined;
- (ii) the person in whose presence certain proceedings are to be recorded or conducted;
- (iii) an Advocate or a party in person who intends to examine a witness;
- (iv) any person who is required to make submissions before the Court;
- (v) any other person who is permitted by the Court to appear through Electronic Video Linkage."

5. A conjoint reading of the above expressions reveals that, an Advocate, who intends to examine a witness, can be permitted to be virtually present in the court room by remote communication using technology. Going by Rule 3(1), Electronic Video Linkage facilities can be used at all stages of judicial proceedings. As per sub-rule (2) of Rule 3, all proceedings conducted in a court by way of Electronic Video Linkage shall be deemed to be judicial proceedings and all the courtesies and



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protocols applicable to the court shall apply to the virtual proceedings. Yet another aspect of importance is that, while Rule 5 mandates the presence of co-ordinators at the Remote Point, when a witness or person accused of an offence is examined, Rule 10(1) makes it clear that presence of a co-ordinator shall not be necessary at the Remote Point where arguments are addressed by the Advocate or required person. There is no provision in the Rules enabling examination of witnesses by a counsel sitting at a Remote Point. Moreover, as per Rule 6(1), only parties to the proceedings or witnesses can move application seeking conduct of the proceedings through Electronic Video Linkage. This obvious omission should not result in the denial of permission to examine witnesses by the counsel sitting at a remote point, as that would impede the accused's right to avail the services of a counsel of his choice.

6. The very objective behind introduction of the Electronic Video Linkage Rules is to make courts more accessible and the proceedings, more expeditious. In this context, it may be



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worthwhile to read the following observations of the Apex Court in **Sarvesh Mathur v. Registrar General High Court of Punjab and Haryana** [ILR 2023 (4) Kerala 451].

"16. Above all, it must be noted that technology plays an essential role in securing access to courtrooms and as a result, access to justice for citizens across the country. Lawyers and litigants using electronic gadgets to access files and legal materials cannot be asked to turn the clock back and only refer to paper books. In the march of technology, the Courts cannot remain tech averse. Placing fetters on hybrid hearings, like mandating an age criteria, requiring prior application, and frequent denial of access to virtual participants has the direct effect of discouraging lawyers and litigants to use technology. Not only does this affect the efficiency and access to courts, but it also sends out the misguided message that access to courts can be restricted at whim to those who seek justice.

17. The use of technology by the Bar and the Bench is no longer an option but a necessity. Members of the Bench, the Bar and the litigants must aid each other to create a technologically adept and friendly environment. The above directions must be implemented by all concerned stakeholders in letter and in spirit."



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7.As rightly observed by the Supreme Court in **State of Maharashtra v. Praful B.Desai** (supra), 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. Being so, when a witness present in court is examined by video conferencing, it amounts to recording of evidence in the 'presence' of the accused, thereby meeting the requirements of Section 273 of Cr.P.C (Section 308 of BNSS).

8. As mentioned earlier, Rule 10 enables Advocates to address arguments from a Remote Point, without the presence of the co-ordinator. If arguments can be advanced from a Remote Point without the co-ordinator being present, conduct of cross-examination can also be permitted. Grant of such permission will be in the interest of justice and would ensure expeditious disposal of cases, by avoiding unnecessary adjournments. Needless to say, permission to conduct cross-



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examination through video conferencing need not be granted as a right. On the other hand, if valid reasons are stated for seeking such permission, absence of a specific provision in the Rules should not be a fetter. While granting permission, court can insist that all requisite facilities should be available at the remote point and a competent advocate, well-versed with the facts of the case, present in the court for the entire duration of the cross-examination.

9. The Registrar General may make available a copy of this judgment to the Rules Committee, so as to consider whether the Electronic Video Linkage Rules for Courts (Kerala),2021, need to be amended by incorporating a provision, enabling the court concerned to permit cross-examination of witnesses from a Remote Point.

In the result, the Crl.M.C is allowed and the impugned order is quashed. If permission is sought for cross-examination of the remaining prosecution witnesses through



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video conferencing, the trial court shall decide the petition, taking guidance from the observations and findings in this order.

sd/-

V.G.ARUN, JUDGE

sj



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APPENDIX OF CRL.MC 10447/2024

PETITIONER ANNEXURES

- Annexure-I** A TRUE COPY OF THE APPLICATION
SUBMITTED BY THE PETITIONER BEFORE THE
SPECIAL JUDGE, CBI THIRUVANANTHAPURAM,
WHICH WAS NUMBERED AS CRL M P NO
781/2024 IN CC NO 1/2016.
- Annexure-II** AN ACCUSED COPY OF THE ORDER DATED
23.11.2024 IN CRL MP NO 781/2024 IN CC
NO 1/2016.