



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A. BADHARUDEEN

FRIDAY, THE 8TH DAY OF NOVEMBER 2024 / 17TH KARTHIKA, 1946

CRL.REV.PET NO. 1218 OF 2024

AGAINST THE ORDER DATED 30.09.2024 IN CRL.M.P. NO.210/2024 IN S.C. NO.303

OF 2021 OF FAST TRACK SPECIAL COURT, ADOOR

REVISION PETITIONERS/PETITIONER IN CRL.M.P./ACCUSED IN SC:

AJI

AGED 47 YEARS

S/O. SATHY AMMA, AJI BHAVANAM, MANTHUKA, KULANADA VILLAGE,
PATHANAMTHITTA, PIN - 689503

BY ADV RESMI NANDANAN

RESPONDENTS/RESPONDENT IN CRL.M.P./COMPLAINANT IN S.C.:

STATE OF KERALA

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

SR PP - RENJIT GEORGE

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON
08.11.2024, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**“C.R”****ORDER****Dated this the 8th day of November, 2024**

This Criminal Revision Petition has been filed under Sections 438 and 442 of the Bharatiya Nagarik Suraksha Sanhita, 2023, to set aside the order dated 30.09.2024 CrI.M.P. No.210/2024 in S.C. No.303/2021 on the files of the Fast Track Special Court, Adoor. The revision petitioner herein is the accused in the above case.

2. Heard the learned counsel for the revision petitioner as well as the learned Public Prosecutor, at the time of admission. Perused the order impugned and relevant materials available.

3. In this matter, CrI.M.P No.210/2024 has been filed by the petitioner, who is the accused in S.C. No.303/2021 before the trial court, where the prosecution alleges commission of offences punishable under Sections 447 and 354 of IPC and under Sections 8 read with 7 and



12 read with 11(i) of the Protection of Children from Sexual Offences Act and sought for the relief to view the pendrive containing CCTV visuals on 13.03.2021 and 14.03.2021. In fact, copy of the same was produced in this crime as directed by this Court as per the order dated 24.06.2022 in W.P.(CrI). No.366/2022. The learned Special Public Prosecutor appeared before the Special Court and opposed the application, mainly contending that original CCTV visuals are with the petitioner and examination of the pendrive is not necessary.

4. While addressing the challenge and dismissing the petition, the learned Special Judge observed in paragraph No.7 of the order as under:

Thus, the pendrive produced before Judicial 1st Class Magistrate Court-1, Adoor, which is a copy taken from the DVR of CCTV at the house of the accused, and the pendrive produced before this court in this case, which is a copy taken from the pendrive before Judicial 1st Class Magistrate Court-1, Adoor, contain only the



CCTV visuals dated 14.03.2021 and both those pendrives did not contain the CCTV visuals dated 13.03.2021, the date on which first incident took place. According to petitioner, the CCTV at his house has coverage almost all over his compound. But, as per the prosecution records, the second incident at 7.00 am on 14.03.2021 took place at the courtyard of the house of CW1, which is out of coverage of the CCTV camera at the house of the petitioner. Hence, the examination of pendrive concerned, which is not accompanied with certificate U/S.65B(4) of the Indian Evidence Act, will not serve any purpose, This point is found against petitioner.

5. Now, the grievance advanced by the learned counsel for the petitioner is that, the allegations against the petitioner are false and earlier, another case was registered vide S.C. No.715/2018 on the files of the Sessions Court, Thiruvananthapuram at the instance of the same defacto complainant, which ended in acquittal. Accordingly, she pressed for the relief sought for.



6. The learned Public Prosecutor opposed interference in the impugned order and submitted that the original CCTV visuals are with the petitioner and therefore examination of the pendrive is not necessary.

7. On perusal of the order impugned, it was observed by the learned Special Judge that, the pendrive did not contain the CCTV visuals on 13.03.2021, but the same contains visuals on 14.03.2021. The learned Special Judge found that, the incident at 7.00 am on 14.03.2021 took place at the courtyard of the house of CW1, which is out of coverage area of the CCTV camera of the house of petitioner. Hence, examination of the pendrive concerned was not necessary.

8. Thus, the question arises is whether the Special Judge is justified in denying the petition filed by the petitioner to view the CCTV visuals, which are part of prosecution records, for which access to the accused is part of fair trial? Adverting the grounds stated by the petitioner, the minimum prayer sought for by the



petitioner is to view the CCTV visuals, to defend the case. The right of the accused to defend a case is a salutary right and therefore the accused has a right of access to the documents including digital documents (excluding the same contains privacy of the victim as held in ***Gopalakrishnan @ Dileep v. State of Kerala*** [AIR 1996 SC 1393]). Thus, such a right could not be denied and such denial is not fair trial. But, admissibility of the CCTV footage produced in pendrive, without certificate under Section 65B of the Evidence Act, can be decided by the learned Special Judge, on merits following the law on the point. Viewing so, the stand taken by the learned Special Judge denying the same is not justifiable and the same requires interference.

9. Therefore, the order impugned stands set aside and the learned Special Judge is directed to permit the petitioner and his counsel to view the CCTV visuals available on 13.03.2021 and 14.03.2021, if the same also are available, by fixing a time before just the start of trial



or during trial, so as to defend the case by the petitioner, without fail.

In the result, this revision petition stands allowed as indicated above.

**Sd/-
A. BADHARUDEEN
JUDGE**

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APPENDIX OF CRL.REV.PET 1218/2024

PETITIONER ANNEXURES

**Annexure A1 A TRUE COPY OF THE JUDGMENT DATED 24.06.2024
IN WP. (CRL) NO.366/2022**

**Annexure A2 THE FREE COPY OF THE ORDER DATED 30.09.2024 IN
CRL.M.P. NO.210/2024**