

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (Crl.) No(s).9859/2022
(Arising out of impugned final judgment and order dated 10-05-2022
in CRR No. 1340/2022 passed by the High Court of Calcutta Circuit
Bench at Jalpaiguri)

ANISH LOHARUKA

Petitioner(s)

VERSUS

THE STATE OF WEST BENGAL

Respondent(s)

(IA No. 142884/2022 - EXEMPTION FROM FILING C/C OF THE IMPUGNED
JUDGMENT)

WITH

W.P.(Crl.) No. 425/2022 (X)

(IA No. 96449/2024 - APPLICATION FOR PERMISSION

IA No. 170416/2023 - EXEMPTION FROM FILING O.T.)

Date : 05-08-2024 These matters were called on for hearing today.

CORAM :

HON'BLE MRS. JUSTICE B.V. NAGARATHNA

HON'BLE MR. JUSTICE NONGMEIKAPAM KOTISWAR SINGH

For PARTY (s)

Ms. Meenakshi Arora, Sr. Adv.

Ms. Neema, Adv.

Ms. Nanakey Kalra, Adv.

Mr. Manish Kumar Gupta, AOR

Mr. Siddhartha Dave, Sr. Adv.

Ms. Pallavi Pratap, AOR

Mr. Rajib Mullick, Adv.

Mr. Huzefa Ahmad, Sr. Adv.

Ms. Astha Sharma, AOR

Ms. Mantika Haryani, Adv.

Ms. Ripul Swati Kumari, Adv.

Ms. Rashmi Singh, Adv.

Ms. Muskan Surana, Adv.

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

SLP(Crl.) No.9859/2022

We have heard learned senior counsel for the

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petitioner and learned senior counsel for the respondent-State.

During the course of submissions, our attention was drawn to the decision of this Court in *P. Gopalkrishnan v. State of Kerala* reported in (2020) 9 SCC 161. The fundamental rights of the accused under Article 21 of the Constitution of India vis-a-vis a fair trial and the right to privacy of the victim both under Article 14 as well as Article 21 of the Constitution of India have been balanced by this Court in the said judgment. The pertinent questions which were raised in the said case could be usefully extracted from paragraphs 1 and 2 of the judgment, which read as under:

“The 8th accused, aggrieved by the rejection of his application CrI.M.P. No. 49/2018 in C.P. No. 16/2017 of the Judicial First Class Magistrate, Angamaly, for a direction to furnish a cloned copy of the contents and the transcript of a memory card produced by the prosecution, has approached this Court.

2. The crux of the prosecution case, as is available from the records, is as follows: The 8th accused is well known and popular cine artist. The defacto complainant (victim) is also a well known actress in Malayalam film industry. It is alleged that the petitioner herein maintained enmity towards the defacto complainant, believing her to be responsible for the break down of his matrimonial relationship. To retaliate, he allegedly conspired with the first accused to abduct the victim, to sexually abuse her, to record the acts of sexual abuse and to black mail

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her using the video graphed materials. In prosecution of the above conspiracy, the first accused allegedly solicited the assistance of accused Nos. 2 to 6 and on 17/2/2017, while the victim was proceeding in a car along the National Highway, she was intercepted by accused Nos. 1 to 6. They abducted her to Ernakulam and on the way she was sexually abused inside the vehicle and the acts of sexual violence involving the first accused and the victim were video graphed by the first accused on his mobile phone. The victim was abandoned thereafter. The data in the mobile phone was allegedly transferred by the first accused to a memory card. In the meanwhile, the incident was reported by the victim to the Nedumbassery police, who registered Crime No. 297/2017 and investigation commenced. On getting information about the registration of the crime, the first accused entrusted the memory card to CW44, who later produced it before the Judicial Magistrate."

In the succeeding paragraphs, this Court ultimately held in paragraph '50' as under:

"50. In conclusion, we hold that the contents of the memory card/pen-drive being electronic record must be regarded as a document. If the prosecution is relying on the same, ordinarily, the accused must be given a cloned copy thereof to enable him/her to present an effective defence during the trial. However, in cases involving issues such as of privacy of the complainant/witness or his/her identity, the Court may be justified in providing only inspection thereof to the accused and his/her lawyer or expert for presenting effective defence during the trial. The court may issue suitable directions to balance the

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interests of both sides.”

In furtherance of the said contents of paragraph ‘50’ of the aforesaid judgment and bearing in mind the rights of the accused, in paragraph ‘49’ it has been observed as under:

“49. If the accused or his lawyer himself, additionally, intends to inspect the contents of the memory card/pen-drive in question, he can request the Magistrate to provide him inspection in court, if necessary, even for more than once along with his lawyer and IT expert to enable him to effectively defend himself during the trial. If such an application is filed, the Magistrate must consider the same appropriately and exercise judicious discretion with objectivity while ensuring that it is not an attempt by the accused to protract the trial. While allowing the accused and his lawyer or authorised IT expert, all care must be taken that they do not carry any devices much less electronic devices, including mobile phone which may have the capability of copying or transferring the electronic record thereof or mutating the contents of the memory card/pen-drive in any manner. Such multipronged approach may subserve the ends of justice and also effectuate the right of accused to a fair trial guaranteed under Article 21 of the Constitution.”

We have perused the impugned order. The High Court has squarely relied upon the aforesaid judgment and has issued the following directions:

- a) Legible copies of documents shall be supplied to the accused which were directed to be supplied on 11.04.2022 and did not have any scope of disclosing

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the identity of the minor victim.

- b) Copies of documents, if any, available in the electronic medium, which do not have any scope to disclose the identity of the minor victim would also be supplied to the accused, if the learned Court find that copying the drive would not damage the original.
- c) The accused would be permitted to inspect the electronic evidence along with his learned advocate and I.T. expert, if he chooses to engages such an expert for such purpose.
- d) After supply of such copies and/or inspection of documents as referred to above, the learned Trial Court shall fix a date for consideration of charge and proceed thereafter."

On a reading of these directions in light of the submissions made by learned counsel for the respective parties, we find that the High Court has balanced the rights of the petitioner-accused as well as the rights of the minor victim in the context of a free and fair trial as far as the petitioner-accused is concerned and the right to privacy and right to equality and equal protection of the law as far as the minor victim is concerned.

In the circumstances, the impugned order would not call for any modification as such.

However, it is necessary to bear in mind what has been also stated by this Court in *P. Gopalakrishnan* in paragraph '50'. That the Court could issue suitable directions to balance the interest on both sides. Having regard to the facts of this case, the Sessions Court could

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always issue ancillary and incidental directions with regard to making available the documents for the purpose of inspection of the petitioner-accused, during the course of the trial and as and when requested by the petitioner.

The Special Leave Petition is hence, disposed of in the aforesaid terms.

Pending application(s), if any, shall stand disposed of.

W.P.(Crl.) No. 425/2022

Learned senior counsel Ms. Meenakshi Arora sought permission to withdraw this writ petition.

Her submission is placed on record.

The Writ Petition is dismissed as withdrawn.

(RADHA SHARMA)
ASTT. REGISTRAR-cum-PS

(MALEKAR NAGARAJ)
COURT MASTER (NSH)