Reserved on : 07.06.2024
Pronounced on : 25.06.2024

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IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 25TH DAY OF JUNE, 2024

BEFORE

THE HON'BLE MR. JUSTICE M. NAGAPRASANNA

CRIMINAL PETITION No.12056 OF 2022

BETWEEN:

MR. ARAVINDA
S/O CHANDRASHEKAR REDDY
AGED ABOUT 26 YEARS
AURURU VILLAGE, CHIKKABALLAPURA TQ.,
CHIKKABALLAPURA
PIN – 560 101
(ACCUSED IS IN JUDICIAL CUSTODY)

... PETITIONER

(BY SRI K.B.K.SWAMY, ADVOCATE)

AND:

1 . STATE OF KARNATAKA THROUGH
GUDIBANDE POLICE STATION
REPRESENTED BY
STATE PUBLIC PROSECUTOR
HIGH COURT OF KARNATAKA
BENGALURU – 560 010.

2 . SMT. MANJULAMMA
W/O A.C.RAMANJINEYA
AGED ABOUT 45 YEARS

R/O AVALNAGENAHALLI VILLAGE
CHIKKABALLAPURA TALUK
PIN – 560 101.

... RESPONDENTS

(BY SRI THEJESH P., HCGP FOR R-1;
SRI S.R.SREEPRASAD, ADVOCATE FOR R-2)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF CR.P.C., PRAYING TO SET ASIDE THE ORDER DATED 02.12.2022 IN SPL.S.C.NO.46/2021 PENDING ON THE FILE OF THE 1st ADDITIONAL DISTRICT AND SESSIONS JUDGE, CHIKKABALLAPURA REGISTERED FOR THE OFFENCE P/U/S.3(1)(r), 3(1)(s), 3(1)(w), 3(2)(va) AND 3(2)(v) OF SC/ST (POA) 2015 AND SEC.143, 147, 148, 149, 447, 302, 307, 324, 114, 109, 120-B OF IPC.

THIS CRIMINAL PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 07.06.2024, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING:-

ORDER

The petitioner/accused No.3 is knocking at the doors this Court calling in question an order dated 02-12-2022 passed by the 1st Additional District and Sessions Judge, Chikkaballapur in Spl.S.C.No.46 of 2021 arising out of crime in Crime No.43 of 2021 registered for offences punishable under Sections 114, 143, 147, 148, 149, 302, 307, 324, 447, 109 and 120B of the IPC and Section 3(1)(r), 3(1)(s), 3(1)(w), 3(2)(v), 3(2)(va) of the SC & ST

(Prevention of Atrocities) Amendment Act, 2015 ('the Act' for short).

2. Heard Sri K.B.K. Swamy, learned counsel for the petitioner, Sri P. Thejesh, learned High Court Government Pleader for respondent No.1 and Sri S.R. Sreeprasad, learned counsel appearing for respondent No.2.

3. The facts, in brief, germane are as follows:-

A complaint comes to be registered on 22-03-2021 by the 2nd respondent/complainant alleging that she was a grantee of 2 acres 15 guntas of land in Sy.No.280 of Avalnagenahalli Village, Chikkaballapura Taluk and the adjoining area of 3 acres on the eastern side is said to be reserved for a graveyard. It is the allegation that the present petitioner has encroached upon the portion of the said grave yard and has fenced the same which is objected to by the husband of the complainant. In this regard a civil suit comes to be filed by the sons of one Girgi Venkata Reddy in O.S.No.6 of 2011 and the said suit is pending consideration. On

22-03-2021 at about 5.30 p.m. there appears to be an assault by several persons upon the husband of the complainant who succumbed to the injuries. This forms the fulcrum of crime including murder and attempt to murder with all other allegations, as well as offences punishable under the Act.

4. The Police conduct investigation and file a charge against 11 persons and dropped 3 persons from the array of accused, on the score that their presence in the scene of crime was not proved. The trial then commenced. The prosecution examined CW-1 to CW-7 as PW-1 to PW-7. The de-facto complainant was also examined as PW-1 and about 15 documents were marked as Exs.P1 to P15. PW-1 was subjected to cross-examination by the accused. During the course of cross-examination, accused No.3, the present petitioner places a request to the concerned Court to permit him to confront PW-1 by playing a video footage. Accordingly a certificate under Section 65B of the Evidence Act was also submitted to the Court with regard to the genuinity of the video footage. It is the case of the petitioner that the prosecution had drawn up the charge that the injured was brought to the hospital from the scene of crime

on 22-03-2021. The contention of the prosecution is that the husband of the complainant was brought dead to the hospital. The video footage, according to the petitioner, had something different which would completely demolish the case of the prosecution, as he was not brought dead. It is the further case of the petitioner that certain statements in the presence of the Police Officers were recorded by the media who were present there, to cover the news of the alleged incident. The aforesaid video containing the statement of the injured was widely circulated in various social media platforms including whatsapp. In that background the accused intended to confront the injured witness PW-1 by playing the said video footage. It is, therefore, the request was placed before the concerned Court. That having been turned down is what has driven the petitioner to this Ccourt in the subject petition.

5. The learned counsel appearing for the petitioner Sri K.B.K.Swamy would vehemently contend that in a criminal trial the accused must be provided all opportunity to defend his case. It is his case that complete set of Call Detail Records (CDR) which was filed with the supplementary charge sheet is not provided to the

accused in its entirety and the examination of the video footage in confrontation with PW-1 would demolish the case of the prosecution in its entirety. It is trial for murder or attempt to murder as the case would be, and since the offence is punishable with 10 years and beyond, the Court ought to have permitted confrontation of video footage.

6. Per-contra, the learned counsel appearing for the 2nd respondent/complainant would vehemently refute the submissions to contend that some statements given by the persons around the scene of crime to the media cannot mean that they would become prior statements of any of the witnesses. Therefore, those statements cannot be made use of by the accused to confront the prosecution witness. Only those prior statements and the statement of witnesses appended to the charge sheet or the supplementary charge sheet would be made available to the accused. He would seek dismissal of the petition by placing reliance upon judgment of

the Apex Court in the case of ***STATE (NCT OF DELHI) v. MUKESH***[1].

7. In reply to the said contentions, the learned counsel for the petitioner submits that the aforesaid judgment is inapplicable to the facts of the case. It is his case that it was not a prior statement, as the statement had been made by a witness in a television interview after filing of the charge sheet. In the case at hand, it is in the scene of crime certain statements are made. He would seek to place reliance upon judgments of the Apex Court and that of High Court of Rajasthan in the cases of (i) ***SHAMSHER SINGH VERMA v. STATE OF HARYANA***[2], (ii) ***R.M. MALKANI v. STATE OF MAHARASHTRA***[3] *and (iii)* ***INDER CHAND v. STATE OF RAJASTHAN***[4].

8. I have given my anxious consideration to the submissions made by the respective learned counsel and have perused the material on record.

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[1] *(2014) 15 SCC 661*
[2] *(2016) 15 SCC 485*
[3] *(1973) 1 SCC 471*
[4] *1994 SCC OnLine Raj 298*

9. The afore-narrated facts are not in dispute. The petitioner/accused No.3 getting embroiled in the above said proceedings is again a matter of record. What has driven the petitioner to this Court, in the subject petition, is an order passed by the learned Special Judge on 02-12-2022. Since the order has generated the present *lis*, I deem it appropriate to notice it. It reads as follows:-

"1ನೇ ಹೆಚ್ಚುವರಿ ಜಿಲ್ಲಾ ಮತ್ತು ಸತ್ರ ನ್ಯಾಯಲಯ, ಚಿಕ್ಕಬಳ್ಳಾಪುರ
ವಿಶೇಷ ಸತ್ರ ಪ್ರಕರಣ ಸಂಖ್ಯೆ 46/2021

ಸಾಕ್ಷಿಗೆ ತೆಲುಗು ಮಾತ್ರ ಬರುತ್ತಿದ್ದರಿಂದ ವಕೀಲರಾದ ಸಿ.ಎಂ.ವೆಂಕಟಲಕ್ಷ್ಮಮ್ಮ KAR-445/1994 ರವರನ್ನು ಸಾಕ್ಷಿ ವಿಚಾರಣೆಯಲ್ಲಿ ಕನ್ನಡಕ್ಕೆ ತರ್ಜುಮೆ ಮಾಡಲು ನೇಮಿಸಿಕೊಂಡಿರುತ್ತದೆ. ಸದರಿ ವಕೀಲರು ನ್ಯಾಯಾಲಯದಲ್ಲಿ ಹಾಜರಿರುತ್ತಾರೆ. ಸದರಿ ತರ್ಜುಮೆದಾರರಿಗೆ ಪ್ರಮಾಣ ವಚನ ಬೋಧಿಸಲಾಯಿತು.

ದಿನಾಂಕ: 02.12.2022 ರಂದು ಸಾಕ್ಷಿಯನ್ನು ಪುನ: ಕರೆಯಿಸಿ ಪ್ರಮಾಣ ಮಾಡಿಸಿತು.

ಮುಂದುವರೆದ ಪಾಟೀ ಸವಾಲು: 3ನೇ ಆರೋಪಿ ಪರ ಶ್ರೀ.ಕೆ.ಬಿ.ಕೆ ವಕೀಲರಿದ

3ನೇ ಆರೋಪಿ ಪರ ವಕೀಲರಾದ ಶ್ರೀ.ಕೆ.ಬಿ.ಕೆ.ವಕೀಲರು ಈ ದಿನ ಕಲಂ 207 ಸಿ.ಆರ್.ಪಿ.ಸಿ ಅಡಿಯಲ್ಲಿ ಅರ್ಜಿಯನ್ನು ಸಲ್ಲಿಸಿ ಈ ಪ್ರಕರಣದಲ್ಲಿ ಹಾಜರಿಸಿದ ಡಿಜಿಟಲ್ ಸಾಕ್ಷ್ಯವನ್ನು ನೀಡುವಂತೆ ಅಭಿಯೋಜನೆಗೆ ನಿರ್ದೇಶನ ನೀಡುವಂತೆ ಕೋರಿರುತ್ತಾರೆ. ಸದರಿ 3ನೇ ಆರೋಪಿ ಪರ ಶ್ರೀ.ಕೆ.ಬಿ.ಕೆ.ವಕೀಲರು ಈ ಪ್ರಕರಣದಲ್ಲಿ ಸಿ.ಡಿ.ಆರ್ ಡಿಟೈಲ್ಸ್ ಹೊಂದಿರುವ ಡಿ.ವಿ.ಡಿ.ಯನ್ನು ತಮಗೆ ನೀಡಿಲ್ಲವೆಂದು, ಸದರಿ ಸಿ.ಡಿ.ಆರ್ ಡಿಟೈಲ್ಸ್ ಇಲ್ಲದ ಪಕ್ಷದಲ್ಲಿ ಸಾಕ್ಷಿಯ ಮುಂದುವರೆದ ಪಾಟೀ ಸವಾಲನ್ನು ಮಾಡಲು ಆಗುವುದಿಲ್ಲವೆಂದು ಹೇಳಿರುತ್ತಾರೆ. ಕಡತವನ್ನು ಪರಿಶೀಲಿಸಲಾಗಿ ದಿ: 03.11.2022 ರಂದು 3ನೇ ಆರೋಪಿ ಪರ ವಕೀಲರು ಡಿ.ವಿ.ಡಿ.ಗಳನ್ನು ನೀಡುವಂತೆ ಮೆಮೋವನ್ನು ಸಲ್ಲಿಸಿದ್ದು, ಅದರಂತೆ ಅಭಿಯೋಜನೆಗೆ ಡಿ.ವಿ.ಡಿ.ಗಳನ್ನು ಆರೋಪಿತರಿಗೆ ನೀಡುವಂತೆ ಆದೇಶಿಸಲಾಗಿತ್ತು. ಅದರಂತೆ ಎರಡು ಡಿ.ವಿ.ಡಿ.ಗಳನ್ನು 3 ಮತ್ತು 8ನೇ ಆರೋಪಿತರ ಪರ ವಕೀಲರಿಗೆ ನೀಡಲಾಗಿತ್ತು. ದಿ: 04.11.2022 ರಂದು ಹೆಚ್ಚುವರಿ ದೋಷರೋಪಣಾ ಪಟ್ಟಿಯಲ್ಲಿ ಐಟಂ ನಂ 22 ರಲ್ಲಿ ಕಾಣಿಸಿದ ಡಿ.ವಿ.ಡಿ.ಯನ್ನು ನೀಡಿಲ್ಲವೆಂದು ಮೇಮೊ ಸಲ್ಲಿಸಿ ನ್ಯಾಯಾಲಯಕ್ಕೆ ತಿಳಿಸಿದ್ದು, ಈ ಪ್ರಕರಣದಲ್ಲಿ ಸದರಿ ಡಿ.ವಿ.ಡಿ.ಯ ಒಂದು ಪ್ರತಿಯನ್ನು ಮಾತ್ರ ಹೆಚ್ಚುವರಿ ದೋಷರೋಪಣಾ ಪಟ್ಟಯಲ್ಲಿ ಅಳವಡಿಸಿದ್ದರಿಂದ ದಿ: 05.11.2022 ರಂದು ತನಿಖಾಧಿಕಾರಿಗಳ ಹಾಜರಾತಿಗೆ ನಿರ್ದೇಶನ ನೀಡಲಾಗಿತ್ತು. ಅದರಂತೆ ಸದರಿ ತನಿಖಾಧಿಕಾರಿಯು ನ್ಯಾಯಾಲಯದಲ್ಲಿ ಹಾಜರಿದ್ದು, ಆರೋಪಿತರ ಸಿ.ಡಿ.ಆರ್ ಡಿಟೈಲ್ಸ್ ಬಗ್ಗೆ ಒಂದು ಡಿ.ವಿ.ಡಿ. ಮಾತ್ರ ಇರುವುದಾಗಿ ಅದನ್ನು ನ್ಯಾಯಾಲಯಕ್ಕೆ ಹಾಜರುಪಡಿಸಿರುತ್ತೆವೆಂದು ಹೇಳಿರುತ್ತಾರೆ. ಆದ್ದರಿಂದ

ಅಭಿಯೋಜನೆಗೆ ಹಾಗೂ ಆರೋಪಿತರ ಪರ ವಕೀಲರಿಗೆ ಸದರಿ ಹೆಚ್ಚುವರಿ ದೋಷರೋಪಣಾ ಪಟ್ಟಿಯಲ್ಲಿ ನೀಡಿದ ಡಿ.ವಿ.ಡಿ.ಯ ಪ್ರತಿಗಳನ್ನು ನೀಡುವಂತೆ ಕಚೇರಿಗೆ ಆದೇಶವನ್ನು ನೀಡಲಾಗಿತ್ತು. ಅಲ್ಲದೆ ಡಿ.ವಿ.ಡಿ.ಯ ಪ್ರತಿಗಳನ್ನು ಪಡೆಯುವ ಸಲುವಾಗಿ ಡಿ.ವಿ.ಡಿ.ಯನ್ನು ನೀಡುವಂತೆ ಆರೋಪಿತರ ಪರ ವಕೀಲರಿಗೆ ಹಾಗೂ ಅಭಿಯೋಜನೆಗೆ ಮೌಖಿಕವಾಗಿ ನಿರ್ದೇಶನ ನೀಡಲಾಗಿತ್ತು.

ಈಗ ಸಲ್ಲಿಸಿದ ಅರ್ಜಿಯಲ್ಲಿ ಸದರಿ 10ನೇ ಆರೋಪಿ ಪರ ವಕೀಲರು ಸದರಿ ಡಿ.ವಿ.ಡಿ.ಯ ಪ್ರತಿಗಾಗಿ ಡಿ.ವಿ.ಡಿ. ಹಾಜರಿಸಿದ್ದರೆಂದು ಅದನ್ನು ಸದರಿ ಪ್ರತಿಗಾಗಿ ನೀಡಿದ ಅರ್ಜಿಯನ್ನು ಕಚೇರಿಯು ತಿರಸ್ಕರಿಸಿರುತ್ತಾರೆಂದು ನ್ಯಾಯಾಲಯದ ಗಮನಕ್ಕೆ ತಂದಿರುತ್ತಾರೆ. ಆರೋಪಿತರು ಡಿ.ವಿ.ಡಿ. ಹಾಜರಿಸಿದಲ್ಲಿ, ಡಿ.ವಿ.ಡಿ. ಪ್ರತಿ ನೀಡುವಂತೆ ಕಛೇರಿಗೆ ನಿರ್ದೇಶನ ನೀಡಲಾಯಿತು.

ಪ್ರಾಸಾ-1 ರವರು ನ್ಯಾಯಾಲಯದಲ್ಲಿ ಹಾಜರಿರುತ್ತಾರೆ. ಸದರಿ ಹೆಚ್ಚುವರಿ ದೋಷರೋಪಣಾ ಪಟ್ಟಿಯೊಂದಿಗೆ ಹಾಜರುಪಡಿಸಿದ ಡಿ.ವಿ.ಡಿ.ಯು ಆರೋಪಿತರ ಕಾಲ್ ಡಿಟೈಲ್ಸ್ ಬಗ್ಗೆ ಇರುವ ಡಿ.ವಿ.ಡಿ. ಎಂದು ತನಿಖಾಧಿಕಾರಿಯು ಈಗಾಗಲೇ ನ್ಯಾಯಾಲಯದ ಗಮನಕ್ಕೆ ತಂದಿರುವುದರಿಂದ, ಸದರಿ ಆರೋಪಿಯ ಸಿ.ಡಿ.ಆರ್. ಡಿಟೈಲ್ಸ್ ಬಗ್ಗೆ ಪ್ರಸ್ತುತ ಸಾಕ್ಷಿ ಪ್ರಾಸಾ-1 ರವರಿಗೆ ಯಾವುದೇ ಸಂಬಂಧ ಇಲ್ಲದೆ ಇರುವುದರಿಂದ ಹಾಗೂ ಸದರಿ ಸಾಕ್ಷಿ ತನ್ನ ಸಾಕ್ಷಿ ವಿಚಾರಣೆಯಲ್ಲಿ ತಾನು ಫೋನ್ ಉಪಯೋಗಿಸಿದ ಬಗ್ಗೆ ಹೇಳದೆ ಇರುವುದರಿಂದ ಸದರಿ ಸಿ.ಡಿ.ಆರ್. ಡಿಟೈಲ್ಸ್ ಸಾಕ್ಷಿಯ ಮುಂದುವರೆದ ಪಾಟೀ ಸವಾಲಿಗೆ ಸಮಂಜಸವಲ್ಲವೆಂದು ನ್ಯಾಯಾಲಯವು ತೀರ್ಮಾನಕ್ಕೆ ಬಂದಿರುತ್ತದೆ.

ಈ ಹಂತದಲ್ಲಿ 3ನೇ ಆರೋಪಿ ಪರ ವಕೀಲರು ಪಾಟೀ ಸವಾಲನ್ನು ಮುಂದುವರೆಸುತ್ತೇನೆಂದು ಹೇಳಿರುತ್ತಾರೆ.

ಸಹಿ/-2/12/2022
(ಶಿವಪ್ರಸಾದ್.ಕೆ.ಬಿ.)
1ನೇ ಹೆಚ್ಚುವರಿ ಜಿಲ್ಲಾ ಮತ್ತು ಸತ್ರ ನ್ಯಾಯಧೀಶರು,
ಚಿಕ್ಕಬಳ್ಳಾಪುರ."

"ಮುಂದುವರೆದ ಪಾಟೀ ಸವಾಲು: 3ನೇ ಆರೋಪಿ ಪರ ಶ್ರೀ.ಕೆ.ಬಿ.ಕೆ ವಕೀಲರಿಂದ

83) ಪ್ರಶ್ನೆ: ಅಮರನಾರಾಯಣಚಾರಿ ರವರ ಜಮೀನಿನಲ್ಲಿ ಬೀನ್ಸ್ ಬೆಳೆಯನ್ನು ಕೀಳಲು ಪಾರ್ವತಮ್ಮರವರೊಂದಿಗೆ ನರಸಮ್ಮ, ಅಶ್ವಥಮ್ಮ, ಸಾವಿತ್ರಮ್ಮ ರವರು ಕೆಲಸ ಮಾಡಲು ಬಂದಿದ್ದರು?

ಈ ಸಾಕ್ಷಿಯ ಸಾಕ್ಷ್ಯ ವಿಚಾರಣೆಯ ಪ್ಯಾರಾ ನಂ: 36 ರಲ್ಲಿ ಸಾಕ್ಷಿಗೆ ಅಮರನಾರಾಯಣಚಾರಿ ರವರ ಅಕ್ಕ ಪಾರ್ವತಮ್ಮ ಹಾಗೂ ಎರಡು, ಮೂರು ಜನ ಕೂಲಿಗೆ ಬಂದಿದ್ದರೆಂದು ಘಟನೆ ನಡೆಯುವ ಸಮಯದಲ್ಲಿ ಪಾರ್ವತಮ್ಮ ಹಾಗೂ ಎರಡು, ಮೂರು ಹೆಣ್ಣು ಮಕ್ಕಳು ಬಂದಿದ್ದರೆಂದು ಪ್ರಶ್ನೆಯನ್ನು ಕೇಳಿದಾಗ ಸಾಕ್ಷಿಯು ತನಗೆ ಗೊತ್ತಿಲ್ಲ, ತಾನು ನೋಡಲಿಲ್ಲ ಹಾಗೂ ತಮ್ಮ ತೋಟದ ಒಳಗೆ ಬಂದಿರಲಿಲ್ಲವೆಂದು ಹೇಳಿದ್ದರು. ಈಗ ಸದರಿ ಪ್ರಶ್ನೆಯನ್ನು ಪುನ: ಸಾಕ್ಷಿಗೆ ಕೇಳುತ್ತಿದ್ದರಿಂದ ಸದರಿ ಪ್ರಶ್ನೆಯನ್ನು ಸಾಕ್ಷಿಗೆ ಪುನ: ಕೇಳಲು ನ್ಯಾಯಾಲಯವು ಅನುಮತಿಯನ್ನು ನಿರಾಕರಿಸಿದೆ.

ಈ ಹಂತದಲ್ಲಿ 3ನೇ ಆರೋಪಿ ಪರ ವಕೀಲರು ಒಂದು ಕಪ್ಪು ಬಣ್ಣದ ಸ್ಯಾನ್ ಡಿಸ್ಕ್ ಅಲ್ಟ್ರಾ ಯು.ಎಸ್.ಬಿ. 3.0, 32 ಜಿ.ಬಿ ಪೆನ್ ಡ್ರೈವ್ ಹಾಗೂ 9ನೇ ಆರೋಪಿಯ ಕಲಂ 65(ಬಿ) ಭಾರತೀಯ ಸಾಕ್ಷಿಯ ಅಧಿನಿಯಮದಡಿಯ ಪ್ರಮಾಣ ಪತ್ರವನ್ನು ಹಾಜರುಪಡಿಸಿ ಸದರಿ ಪೆನ್ ಡ್ರೈವ್ ನ್ನು

ಕಂಪ್ಯೂಟರ್ ಮೂಲಕ ಅಳವಡಿಸಿ ಸಾಕ್ಷಿಗೆ ತೋರಿಸಿ ಪಾಟೀ ಸವಾಲು ಮಾಡಬೇಕಾಗಿದೆ ಎಂದು ಕೋರುತ್ತಾರೆ. ವಿಶೇಷ ಸರ್ಕಾರಿ ಅಭಿಯೋಜಕರು ಸದರಿ ಪೆನ್ ಡ್ರೈವ್‌ನಲ್ಲಿ ಇರುವುದೆಂದು ಹೇಳಲಾದ ವಿಡಿಯೋ ಚಿತ್ರಿಕರಣವು, ಮಾದ್ಯವದವರ ವಿಡಿಯೋ ಚಿತ್ರಿಕರಣವಾಗಿರುವುದರಿಂದ ಅದು ಸಾಕ್ಷಿಯು ***Previous statement ಆಗಿಲ್ಲವೆಂದು ಹಾಗೂ ಮಿಡಿಯಾ ಟ್ರೈಯಲ್ ನ್ಯಾಯಾಲಯದಲ್ಲಿ ಸ್ವೀಕಾರರ್ಹವಲ್ಲವೆಂದು ತಕರಾರು ಎತ್ತಿರುತ್ತಾರೆ. ಪರಿಶೀಲಿಸಲಾಗಿ ಸದರಿ 9ನೇ ಆರೋಪಿಯ ಕಲಂ 65(ಬಿ) ಭಾರತೀಯ ಸಾಕ್ಷಿಯ ಅಧಿನಿಯಮದಡಿಯ ಪ್ರಮಾಣ ಪತ್ರವನ್ನು ಪರಿಶೀಲಿಸಿದಾಗ ಸದರಿ 3ನೇ ಆರೋಪಿ ಪರ ವಕೀಲರು ಹಾಜರುಪಡಿಸಿದ ಪೆನ್ ಡ್ರೈವ್ ನಲ್ಲಿ ಮಾದ್ಯಮದವರ ವಿಡಿಯೋ ಚಿತ್ರಿಕರಣ ಇದೆ ಎಂದು ಹೇಳಲಾಗಿದ್ದು, ಅದನ್ನು ಮೊಬೈಲ್ ನಲ್ಲಿ ಡೌನ್ ಲೋಡ್ ಮಾಡಿ ಪೆನ್ ಡ್ರೈವ್‌ಗೆ ವರ್ಗಾಯಿಸಿರುತ್ತೆನೆಂದು ಹೇಳಿರುತ್ತಾರೆ. ಸದರಿ ಮಾದ್ಯಮದ ವಿಡಿಯೋ ಚಿತ್ರಿಕರಣವು ಸಾಕ್ಷಿಯ Previous statement ಅಡಿಯಲ್ಲಿ ಬರುವುದಿಲ್ಲವಾದ್ದರಿಂದ, ಸದರಿ ಪೆನ್ ಡ್ರೈವ್ ನ್ನು ಕಂಪ್ಯೂಟರ್ ಗೆ ಅಳವಡಿಸಿ ಸಾಕ್ಷಿಗೆ ಪಾಟೀ ಸವಾಲು ಮಾಡಬೇಕೆಂಬ 3ನೇ ಆರೋಪಿ ಪರ ಮನವಿಯನ್ನು ತಿರಸ್ಕರಿಸಿದೆ.***

ಸದರಿ 9ನೇ ಆರೋಪಿಯ ಪ್ರಮಾಣ ಪತ್ರ ಹಾಗೂ ಪೆನ್ ಡ್ರೈವ್‌ನ್ನು ನ್ಯಾಯಾಲಯದ Safe custody ಯಲ್ಲಿ ಇಡಲು ಆದೇಶಿಸಲಾಗಿದೆ.

ಈ ಹಂತದಲ್ಲಿ 3ನೇ ಆರೋಪಿ ಪರ ವಕೀಲರು ಸದರಿ ಆದೇಶದ ಬಗ್ಗೆ ಮೇಲ್ಮನವಿ ಸಲ್ಲಿಸುವುದಾಗಿ ಹೇಳಿ 10 ದಿವಸಗಳ ಸಮಯಕಾಶವನ್ನು ಕೋರುತ್ತಾರೆ. ನ್ಯಾಯದ ದೃಷ್ಟಿಯಿಂದ ಆರು ದಿನಗಳ ಸಮಯಕಾಶ ನೀಡುವುದು ಸಮಂಜಸವೆಂದು ತೀರ್ಮಾನಿಸಿ ಪ್ರಕರಣವನ್ನು ದಿ: ***08.12.2022*** *ರಂದು ಮುಂದುವರೆದ ಪಾಟೀ ಸವಾಲಿಗೆ ಪ್ರಕರಣ ಮುಂದುಡಲಾಯಿತು.*

(ದಿನಾಂಕ: 02.12.2022 ರಂದು ತೆರೆದ ನ್ಯಾಯಾಲಯದಲ್ಲಿ ನನ್ನ ಉಕ್ತಲೇಖನದಂತೆ ಬೆರಳಚ್ಚು ಮಾಡಿಸಲಾಯಿತು)

ಓದಿ ಹೇ ಕೇ ಸರಿ ಇದೆ
ಸಹಿ/– 2/12/2022
(ಶಿವಪ್ರಸಾದ್.ಕೆ.ಬಿ.)
1ನೇ ಹೆಚ್ಚುವರಿ ಜಿಲ್ಲಾ ಮತ್ತು ಸತ್ರ ನ್ಯಾಯಾಧೀಶರು,
ಚಿಕ್ಕಬಳ್ಳಾಪುರ."

(Emphasis added)

The order is passed rejecting the application of the petitioner to play the video footage on the ground that it would not amount to a previous statement. This rejection is now claimed to be contrary to law. What is necessary to be filed along with the electronic evidence under Section 65B of the Evidence Act is an affidavit and that is complied with. What the petitioner is asking to be produced is a video footage of injured arriving at the Government hospital where both the media and Police Officers were present and certain questions were asked and those questions that were asked were circulated everywhere. It is that video footage that the petitioner is asking to be played for being confronted to the witness PW-1. Since it was involving PWs-2 to 4 who gave their statements in the premises of Government hospital, Chikkaballapur may be to the media, that would somewhat bordering upon a previous statement. Therefore, if the order that is passed that it is not a previous statement and only previous statements should be permitted, runs counter to the spirit of criminal trial. It is trite that any trial is a journey towards discovery of truth. Truth by all means should be permitted to be discovered.

10. It becomes apposite to refer to the judgments relied on by the learned counsel for the petitioner rendered by the Apex Court and that of the High Court of Rajasthan in somewhat similar circumstances. In ***SHAMSHER SINGH VERMA***'s case (*supra*) the Apex Court has held as follows:

"*….   ….   ….*

__16.__ We are not inclined to go into the truthfulness of the conversation sought to be proved by the defence but, in the facts and circumstances of the case, as discussed above, we are of the view that the courts below have erred in law in not allowing the application of the defence to get played the compact disc relating to conversation between father of the victim and son and wife of the appellant regarding alleged property dispute. ***In our opinion, the courts below have erred in law in rejecting the application to play the compact disc in question to enable the Public Prosecutor to admit or deny, and to get it sent to the forensic science laboratory, by the defence. The appellant is in jail and there appears to be no intention on his part to unnecessarily linger the trial, particularly when the prosecution witnesses have been examined.***"

(Emphasis supplied)

The Apex Court in the case of ***R.M.MALKANI*** (*supra*) has held as follows:

"*….   ….   ….*

__22.__ In Presidential Election case, questions were put to a witness Jagat Narain that he had tried to dissuade the petitioner from filing an election petition. The witness denied those suggestions. The election petitioner had recorded on tape the conversation that had taken place between the witness and the petitioner. Objection was taken to admissibility of tape recorded conversation. The Court admitted the tape recorded conversation. In Presidential Election case, the denial of the witness was being controverted, challenged and confronted with his earlier statement. Under Section 146 of the Evidence Act questions might be put to the witness to test the veracity of the witness. Again under Section 153 of the Evidence Act a witness might be contradicted when he denied any question tending to impeach his impartiality. ***This is because the previous statement is furnished by the tape recorded conversation.***

The tape itself becomes the primary and direct evidence of what has been said and recorded.

23. Tape recorded conversation is admissible provided first the conversation is relevant to the matters in issue; secondly, there is identification of the voice; and, thirdly, the accuracy of the tape recorded conversation is proved by eliminating the possibility of erasing the tape record. A contemporaneous tape record of a relevant conversation is a relevant fact and is admissible under Section 8 of the Evidence Act*. It is res gestae. It is also comparable to a photograph of a relevant incident. The tape recorded conversation is therefore a relevant fact and is admissible under Section 7 of the Evidence Act. The conversation between Dr Motwani and the appellant in the present case is relevant to the matter in issue. There is no dispute about the identification of the voices. There is no controversy about any portion of the conversation being erased or mutilated. The appellant was given full opportunity to test the genuineness of the tape recorded conversation. The tape recorded conversation is admissible in evidence."*

(Emphasis supplied)

The Apex Court holds that a tape recorded conversation is admissible, provided the conversation is relevant to the matter in issue. The learned single Judge of the High Court of Rajasthan in the case of ***INDER CHAND*** (*supra*) while dealing with the same issue following the judgment in ***R.M. MALKANI*** of the Apex Court has held as follows:

"…. …. ….

11. In my humble opinion, a tape-record of a relevant conversation is a relevant fact and is admissible under Sec. 7 of the Evidence Act. The manner and mode

> ***of its proof and the use thereof in a trial is a matter of detail and it can be used for the purpose of confronting a witness with his earlier tape recorded statements. It may also be legitimately used for the purpose of shaking the credit of a witness. In the present case, when PW 5 Chhaganlal refused to hear his previous tape recorded statement, learned Additional Sessions Judge ought to have allowed the defence counsel to put question and in case, he admits after hearing the tape-recorded conversation then he ought to have allowed the defence counsel to confront PW 5 Chhaganlal with his earlier tape recorded conversation****. In case, he refused to hear the tape-recorded conversation then learned Additional Sessions Judge ought to have taken the step for identification of the tape voice of PW 5 Chhaganlal, inasmuch as, when the voice is denied by the alleged maker i.e. PW 5 Chhaganlal, a comparison of his voice becomes inevitable and proper identification of his voice must be proved by a competent expert witness."*

(Emphasis supplied)

The High Court of Rajasthan holds, a tape recorded conversation is a relevant fact and should be made admissible. The manner and its mode of its proof is a matter of evidence in the trial. Mere production of any electronic evidence would not amount to its proof which has to be nonetheless proved after its production.

11. In the light of the judgments quoted *supra*, as also the unequivocal fact that PW-2 to PW-4 were examined and they had given statements which are important to the case of the petitioner, the said electronic statement on the pretext of it not being a

previous statement, in the considered view of the Court, cannot be denied. Acceptance or otherwise, proving or otherwise is a matter of evidence. *Withholding of evidence in defence would undoubtedly defeat the voyage towards discovery of truth in a criminal trial*.

12. The learned counsel for the 2nd respondent/complainant has placed heavy reliance upon the judgment in the case of ***MUKESH*** (*supra*). The Apex Court in the said judgment has held as follows:

"*…. …. ….*

> ***10.*** *Having carefully considered the submissions made on behalf of the respective parties, we are inclined to hold that, from the scheme of the Code of Criminal Procedure and the Evidence Act, it appears that the investigation and the materials collected by the prosecution prior to the filing of the charge-sheet under Section 161 of the Code, are material for the purposes of Section 145 of the Evidence Act, 1872. The expression "previous statements made" used in Section 145 of the Evidence Act, cannot, in our view, be extended to include statements made by a witness, after the filing of the charge-sheet. In our view, Section 146 of the Evidence Act also does not contemplate such a situation and the intention behind the provisions of Section 146 appears to be to confront a witness with other questions, which are of general nature, which could shake his credibility and also be used to test his veracity. The aforesaid expression must, therefore, be confined to statements made by a witness before the police during investigation and not thereafter.*

> ***11.*** *Coupled with the above is the fact that the statement made is not a statement before the police authorities, as contemplated under Section 161 of the Code. It is not that electronic evidence may not be admitted by way of evidence since specific provision has been made for the same under Section 161 of the Code, as amended, but the question is whether the same can be used, as indicated in Section 161, for the purposes of the investigation. If one were to read the proviso to sub-section (3) of Section 161 of the Code, which was inserted with effect from 31-12-2009, it will be clear that the statements made to the police officer under Section 161 of the Code may also be recorded by audio-video electronic means, but the same does not indicate a statement made before any other authority, which can be used for the purposes of Section 145 of the Evidence Act."*

In the case before the Apex Court the previous statement was one that was projected to be a television interview by one of the witnesses long after filing of the charge sheet. Therefore, it would not amount to a previous statement. What the petitioner in the case at hand is asking is not a statement made after filing of the charge sheet or the supplementary charge sheet. What he is asking is a statement on the day of the crime; the statement given to the press in the presence of Police. Therefore, the said judgment is distinguishable, on the facts obtaining in the case at hand, without much *ado*.

13. It is a settled principle that every criminal trial is a journey or a voyage towards discovery of truth, as conviction alone is not the object of criminal trial. It is to reach to the truth and it is its object. It is an undeniable fact that a fair investigation followed by a fair trial is the very heart and soul of Article 21 of the Constitution of India, a right to life. It is also not the duty of the prosecution to merely secure conviction of the accused at all costs. Certain facts, documents or evidence may not be produced by the prosecution and placed along with the charge sheet or a supplementary charge sheet. But, there would be certain evidence that would become necessary for the defence to prove its innocence. This is one such case. Therefore, the order of the concerned Court holding that it would not be a previous statement and the DVD/DVR/video footage cannot be permitted to be played, is rendered unsustainable. If it leads to discovery of truth and the discovery of truth leads to innocence of the accused, it should be permitted to come on record.

14. For the aforesaid reasons, the following:

<u>O R D E R</u>

(i) Criminal Petition is allowed.

(ii) The order dated 02-12-2022 passed by the 1st Additional District and Sessions Judge at Chikkaballapur in Spl.S.C.No.46 of 2021 is set aside.

(iii) The 1st Additional District and Sessions Judge, Chikkaballapur is directed to permit playing of the video footage for confrontation to the witness in accordance with law, after all necessary parameters in law being followed. This by no means would be a ruse to the accused to drag on the proceedings. The examination and cross-examination on the basis of the video footage should be completed on a solitary day that the concerned Court would fix.

Sd/-
JUDGE

bkp
CT:MJ