

MHAH070000101991

**ORDER BELOW EXH.347 IN SESSIONS CASE NO.08/2000**

The special public prosecutor has filed this application asking for appointment of Court Commission for the purpose of recording the evidence of Hon'ble M. A. Sayid, President of State Human Rights Commission (the designation as mentioned in his application) who at presently is residing at Mumbai. Previously witness summons were issued to him. In reply, he informed that due to the heavy work of the office, he could not attend the court for evidence. Therefore, the prosecutor is asking for appointment of any Metropolitan Magistrate as a court commissioner for recording his evidence under the provisions of 285(1) of Cr.P.C.. It may direct to the court commissioner that he should record the evidence in respect of a confessional statement of accused which was recorded by this witness in Cr. No.73/1990 of Sangamner City Police Station.

2. The counsel for accused filed say to this application with the submissions that now the facility of recording the evidence by Video Conferencing. So, it is more convenient for all the parties and also to the court to record the evidence of this witness by Video Conferencing mode. If the court thinks of granting commission for recording the evidence, then each accused required to pay

Rs.10,000/- for attending the commission for cross examination purpose.

3. Heard both counsels. The counsel for accused submitted that it is difficult for them to attend the place of commission at Bombay. It is unnecessary expenses of the accused who are suffering with the trial since last more than 30 years. Almost all the evidence is already recorded and over in this case. Except the evidence as asked by the prosecution. If the State is ready to pay the amount, then they are ready to attend the court commission to avail their valuable right of cross examining the witness. The special prosecutor while countering this submission has submitted that the State is not ready to pay his fees after appointing him as a special public prosecutor, how he will give consent for paying the expenses of the accused for attending the commission.

4. After considering this submission, I consider the situation in this case. The matter is recently transferred to this court before three four months back. As submitted by the counsel for accused that almost entire evidence is over in this case. However, the special prosecutor is asking for the evidence on the confession statement of the accused which was recorded by the then Judicial Magistrate Shri. M. A. Sayid. It is also a fact that original confessional statement is missing in this case. However, xerox copy of it, is there in the record. Earlier when my predecessor court issued witness summons to the in-

charge president Shri. Sayid Saheb, at that time his office through the Registrar, Human Rights Commission informed that considering the age of Shri. Sayid Saheb and due to Covid out break, it is advisable that the court may record the evidence through Video Conferencing. This court has received this letter on 29/03/2021. Along with this fact, I also noticed that the file of this matter is bulky one which is not practicable to carrying through the court staff to Mumbai for the purpose of recording evidence. After considering these facts, I am also of the view that recording of evidence of Shri. Sayid Saheb in this case through Video Conferencing is convenient and proper for early disposal of this case. It is therefore, directed to the special prosecutor to arrange the copies of relevant documents to the witness for his reference prior fixing the date of recording his evidence through video conferencing. He should also convey the date and fix the time for recording his evidence. He should also making aware to the witness about it, so that he can conveniently arrange himself and prepare for giving evidence through video conferencing in this case. Hence, I passed the following order.

ORDER

1. Application is partly allowed.
2. The special prosecutor is directed to arrange for recording of evidence of this witness Shri. M. A. Sayid Saheb through video conferencing.
3. Prior fixing the date he should arrange for providing the copies of necessary and relevant documents to the witness

for his preparation on or before next date fixed in this case. Thereafter, the date with the consent of the witness as well as the counsel for accused will be fixed for recording the evidence.

4. He should inform the compliance to this court as early as possible before next date.

Date :- 25/02/2022.

(Prashant Kulkarni)
Additional Sessions Judge,
Sangamner.