

SC 128 OF 2013

Order no. 105 Dated 18.09.2017

Today is fixed for hearing and passing order, in respect of the letter submitted by the Ld. District and Sessions Judge, Darjeeling dated 11th September, 2017.

Accused 1) Keshav Raj Pokhrel, 2) Arun Moktan, 3) Tenzing Khambachay (Sherpa), 4) Kamal Sinha, 5) Puran Thami, 6) Keshar Rai, 7) Dawa Sangey Sherpa, 8) Suraj Singh, 9) Kismat Chhettri, 10) Alok Kantamoni Thulung, 11) Sanjoy Tamang, 12) Bhanu Rai, 13) Amol Lama, 14) Nagendra Pradhan, 15) Sona Sherpa, 16) Rabin Subba, 17) Dinesh Gurung @ Karate Kaila 18) Anita Lakhandri, 19) Sandhya Gurung, 20) Kabita Dahal, 21) Miss. Urmila Rumba, 22) Goutam Tamang, 23) Ranjit Rai, 24) Sudesh Rai Majhi, 25) Khagen Tamang, 26) Ruden Sada Lepcha 27) Harka Bahadur Chettri, 28) Edwin Sanchabir Subba, 29) Jiten Tamang, 30) Smt. Asha Gurung, 31) Pemba Tshering Ola, 32) Roshan Giri, 33) Binay Tamang, 34) Sushma Rai, 35) Dinesh Theeng, 36) Devendra Sharma, 37) Dipen Malay, 38) Tilak Rai, 39) Babita Ganguly, 40) Naresh Rai, 41) Prabin Subba, 42) Sunil Rai, 43) Subhash Tamang, 44) Pradeep @ Bhupendra Pradhan, 45) Prasant Chhettri @ Yogen, 46) Col. Ramesh Allay and 47) Ashis Tamang are absent.

Ld. Advocates for the above named accused persons filed three petitions under section 317 Cr.P.C., praying for permission to represent the accused persons, by them, after serving the copy to the ld. Spl. P.P.

Ld. Spl. P.P on behalf of State is present by filing hazira.

Ld. Lawyer for the accused persons have prayed in unison, that, as per the direction of the Hon'ble Supreme Court in Transfer Petition (Criminal) no. 238 of 2017, facilities needed to be set up at Darjeeling as well as in this court, for video conferencing the trial of the instant case. But as the Ld. District Judge, Darjeeling has expressed certain difficulties in setting of the video conferencing facility at Darjeeling, necessary orders may be passed.

Ld. Spl. P.P has also supported the above contention with a further prayer that such facility may be set up without much delay in view of the Hon'ble Calcutta High Court's direction, for an early trial.

Heard. Perused. Considered.

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A brief recital of the history of the instant case, becomes necessary while passing the instant order. The deceased Madan Tamang, had been allegedly hacked to death, by the accused persons, facing trial in this case, on 21st May, 2010. Thereafter, the CID, West Bengal after the investigation, submitted charge sheet against 30 accused persons of this case and further investigation was re-ordered by the then Government of West Bengal, when the case was handed over to the CBI, who then, after investigation submitted charge sheet against one accused person, in addition to the 30 accused persons charge sheeted earlier. Thereafter, the wife of the deceased, Bharati Tamang, then preferred a writ petition being no. WP 159 of 2012 and the Hon'ble Supreme Court transferred the case from the court of the Sessions Judge, Darjeeling to the file of the instant court along with the record and material objects. The Hon'ble Supreme Court further directed that the investigation be carried out under the personal supervision of Mr. Rajib Singh, Joint Director, CBI and to submit a comprehensive report, before the instant court as well as the Hon'ble Supreme Court and also directed this court to commence trial immediately, on receipt of such comprehensive report and also provided liberty to this court to approach the Hon'ble Supreme Court to ensure the compliance of the directions passed by the Hon'ble Supreme Court.

Thereafter the CBI submitted a comprehensive report with charge-sheet, against further 23 accused persons. During the pendency of the instant case the Hon'ble Calcutta High Court in W.P. 15306(W) of 2017, directed this court to expedite the hearing of the case and to complete the framing of charge by the 17th August, 2017. In compliance to the above direction this court, had vide order dated 17.8.2017 discharged the accused Bimal Gurung and directed to frame charges against the remaining 47 accused persons. But, vide order dated 23.8.2017, the Hon'ble Apex Court's order in Transfer Petition (Criminal) no. 238 of 2017 had been served and on the basis of which vide order dated 28.8.2017 the Ld. District and Sessions Judge, Darjeeling had been apprised of the same for improving the existing video conferencing facility at Darjeeling, for the purpose of the trial of the instant case. But the Ld. District & Sessions Judge, Darjeeling vide letter dated 11th day of September, 2017, expressed his inability to do so. A copy of the letter dated 11th day of September, 2017 sent by the Ld. District & Sessions Judge, Darjeeling needs to be reproduced for proper appreciation.

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“OFFICE OF THE DISTRICT JUDGE, DARJEELING.

No 1659/E

Dated 11th day of September, 2017

From : The District Judge,
Darjeeling

To : The Ld. Chief Judge,
City Sessions Court,
Calcutta

Reference : Your Honour's Office Letter no. 4559-S, dated
28.08.2017 and Order No. 103, dated 28.08.2017
Passed in S.C no. 128 of 2013

Respected Sir,

With reference to above as well as guideline of Hon'ble Apex court passed in Transfer Petition (Criminal) no. 238 of 2017, your honour has been pleased to intimate regarding the urgency of holding trial by video conferencing and to provide facility of bigger monitor screen, speaker facilities for clarity of vocals and also providing high resolution camera in the existing video conference system available in the court of Darjeeling as early as possible so that a date may be fixed for framing of charge.

In this regard, I may be permitted to draw your kind attention upon the following issues :-

- 1) At present, the internet connectivity is not available at Darjeeling due to some political agitation as well as interference thereto from the State Govt.'s end.
- 2) The video conference room which exists in annexe building of Darjeeling court complex is measuring 20.4 ft. X 10.8 ft. on the first floor of a separate building opposite of the main gate of the court building.

In my view, the space available in the said room is not sufficient to accommodate 50 heads (47 accused persons + 3 technical knowhow persons at least).

Accordingly, I would like to inform that maximum number of 20 heads can hardly be accommodated in that room .

- 3) It would not be out of the place to mention that lease line which is linked with the video conference room is not at all stable and as a result of which, picture quality and clarity of sounds gets affected off and on.

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- 4) *It is also drawn to your honour's kind notice that uninterrupted power supply is not available in the video conference room. The generator connection is not provided to the video conference room, as per existing infrastructure and the UPS having 1 KVA capacity supply for the video conference may have the back up for a period of only 60 minutes and not beyond that.*
- 5) *It is also brought to the notice of Id. Court that no other alternative accommodation is available in Darjeeling court building where 50 number of persons can be provided or accommodated for the purpose of video conference trial.*
- 6) *It is reported from the Nezarath Department, Darjeeling court that this office does not have source of allotment of fund to provide bigger monitor screen, speaker facilities for clarity of vocals and high resolution camera as well as additional lease line at any alternative space or in the existing accommodation.*
- 7) *It is also drawn to your notice that the video conference room is under contemplation of thorough repair for which an administrative approval has been received from the Govt. of West Bengal, Judicial Department vide its office letter no. 405-J/F/JD/P/2B-15/2015 dated 15.5.2017 and allotment has been provided to the tune of Rs. 7,14,635/- and for the work of repair, tender has already been given by the PWD authority and if the repair work starts that will be an obstruction in the continuance of trial as proposed by the Hon'ble court.*

Another aspect is very pertinent to bring on record that the video conference system has been provided under the guideline as well as financing of e-court project of the Hon'ble Supreme Court of India being monitored by the Hon'ble court of Calcutta. So, if any upgradation of the system as regards to installation of bigger monitor, high quality speaker for better clarity of sound and high resolution camera is required to be put in, then funding is required by allotment from the Hon'ble court as well as approval is required from that end.

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A physical inspection may be done from your honour's end, through your honour's representative to justify the issues as brought to your honour's notice in this communication.

These are all about the details of the video conference room and its infrastructure facilities which is available in the present situation at Darjeeling court.

*Yours faithfully,
S/d-
(P.K. Bhattacharjee)
District Judge, Darjeeling."*

Therefore, from the above letter it transpires that the main acceptable reasons for his inability to provide video conferencing facility to hold trial of the instant case is due to lack of space in the video conferencing room and there being no other alternative accommodation and the lack of internet connectivity. But it is not clear as to why the court room of the Sessions Judge, Darjeeling would not be able to accommodate 50 persons including the accused persons and technicians because the Hon'ble Supreme Court in the above mentioned Transfer Petition had insisted on the trial being completed mainly by video conferencing, which could include not only the presence of the accused persons but also the examination of the witnesses and only those witnesses and accused persons who would have to come down to Kolkata and that also with the prior intimation from this court. Therefore, the video conferencing facility needed to be set up in a proper court room and the existing video conferencing room would not suffice, for the purpose of the video conferencing trial. Within the same infrastructure that is available at Darjeeling Courts, the video conferencing facility has been set up in the court room of the Chief Judge, City Sessions Court, Calcutta and it is not understandable why the same could not be done in the court room of the Sessions Judge, Darjeeling. Perhaps a few extra lighting options may be required, considering the darkness prevailing in the court rooms of Darjeeling. In any case if any improvement for better clarification of visuals and vocals are required the PWD, IT at Writers' Buildings could be approached and there is no reason why such prayer could not be accommodated, considering that this is in compliance of the solemn

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order of the Hon'ble Supreme Court. Therefore, the Id. District & Sessions Judge, Darjeeling is requested to oversee the formation of the video conferencing facility at Darjeeling, so that the trial of the instant case could commence at once, as desired by the Hon'ble Supreme Court and the Hon'ble High Court, Calcutta.

The Id. District & Sessions Judge, Darjeeling has also mentioned that the lack of internet connectivity and the erratic power supply for the inability to conduct trial by video conferencing. Erratic power supply, is something which all of us are accustomed with and which is also a temporary feature and therefore such erratic power supply should not be a cause of concern and therefore this is something we have to live with and moreover drastic improvements are not possible overnight. With regard to the lack of internet connectivity, it is surely a big hindrance as video conferencing is not possible if there is no internet connectivity.

But as stated above, this trial by video conferencing is being done as per the solemn direction of the Hon'ble Supreme Court and therefore the District Magistrate, Darjeeling, be requested to look into the matter so that internet connectivity is not only restored to the Darjeeling Courts or in the alternative the restoration of the internet connectivity be restored, at least on the days when the trials are held and such dates could be obtained from the District & Sessions Judge, Darjeeling.

The Ld. District & Sessions Judge, Darjeeling is therefore requested to submit a report with regard to the developments as mentioned above by 24/10/2017, as annual vacation intervenes.

Copy of this order be sent to the Ld. District & Sessions Judge, Darjeeling as well as the District Magistrate, Darjeeling for information and necessary action.

D/C. by me.

Sd./-

Chief Judge,
City Sessions Court, Calcutta.

Sd./-

Chief Judge,
City Sessions Court, Calcutta.