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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **CRL.M.C. 2674/2016**

**VINEET TEWARI**

..... Petitioner

Represented by: Mr. Nikhil Borwankar and Mr.  
Pankaj Sharma, Advocates.

versus

**CENTRAL BUREAU OF INVESTIGATION**

..... Respondent

Represented by: Ms. Rajdipa Behura, Spl. PP  
with Ms. Garima Singh Yadav,  
Advocate.

**CORAM:**

**HON'BLE MS. JUSTICE MUKTA GUPTA**

**ORDER**

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**29.07.2016**

**Crl. M.A. No. 11446/2016 (Exemption)**

Allowed, subject to all just exceptions.

**CRL.M.C. 2674/2016 and Crl. M.A. No. 11445/2016 (Stay)**

1. By the present petition under Section 482 Cr.P.C. the petitioner challenges the order dated 6<sup>th</sup> April, 2016 passed by the learned Special Judge in SC No.06/2013 titled as 'CBI vs. L.K. Kaul & Ors.' dismissing his application requiring the personal presence of the Investigating Officer PW-35 Rai Satyender Prasad. The reasoning of the learned Special Judge in dismissing the application of the petitioner is as under:

*"12. I have gone through the rival contentions. Perusal of the record reveals that the examination-in-chief of IO was completed on 27.03.2015 on which date, his cross examination was deferred on the request of Sh. Kapil Yadav, Advocate, as he submitted that the main counsel Sh. K.K. Manan was not available on that day and he needed*

*some time to cross examine the said witness. Even on that day, the witness stated that he was very old, aged above 75 years, suffering from various ailments including heart and kidney and one attendant was required for journey and he had come to the Court with great difficulty. Thereafter, the matter was adjourned for cross examination of the said witness on 09.04.15 and 10.04.2015. On 09.04.15, the IO PW-35 was still present, but his cross examination could not be carried out in view of the order of the Hon'ble High Court dated 08.04.2015.*

*13. Thereafter in view of the order dated 10.09.2015 of the Hon'ble High Court passed in Crl.M.C.81/2012 & Crl.M.A. Nos. 315/2012, 5016/2015 titled Vineet Tiwari vs. CBI/State, which is reproduced as under:*

*On the last date of hearing, this Court directed the Trial Court to file the report that as per the prosecution how many witnesses have been examined and how many witnesses are left to be examined. In pursuance of the same, the report has been filed. As per the report, PW-35 is under cross-examination and one more witness PW-36 is to be examined.*

*Keeping in view the fact that the present is an old matter, the Trial Court is expected to continue the trial of the case on day-to-day basis.*

*Re-notify on 6<sup>th</sup> October, 2015.*

*14. In view of the directions of the Hon'ble High Court directing this Court to hold the trial on day to day basis and also the fact that this case was one of the oldest case pending in this Court, the matter was listed for cross examination of IO PW-35 for 22.09.15 and 23.09.15.*

*15. On 22.09.15, a fax message was received from the IO dated 17.09.15 in which he stated that he is suffering from*

*multiple ailments, chronic kidney disease Stage-IV, acute anemia, cardiac complications, therefore he is not in a position at all to undertake travel as per the medical advice and medical papers and discharge summary from Tata Main Hospital, Jamshedpur. The HIO also made a separate statement on oath that he will not be in a position to appear in the Court for almost one month due to his frail health. Thereafter, the matter could be taken up on 19.10.15, on which date also it was apprised to the Court by the prosecution that condition of IO was not good, he was unable to walk and he was not in a position to undertake travel, as per the medical advice given to him and one medical document was also filed seeking a month's time.*

*16. Thereafter on 17.11.15, again a request was received on behalf of the IO stating that he was extremely ill, suffering from various ailments and therefore he was unable to take onerous journey of 1300 kms. from Jamshedpur to Delhi, however he stated that he was ready to co-operate in the matter, if the proceedings can be done through video conferencing. The Ld. defence counsel present on that day Sh. Nishant Rana was asked regarding the same, to which he submitted that he had no objection. Accordingly, the matter was listed for cross examination of the IO through video conferencing on 03.12.15. As stated above, infact the cross-examination of IO was carried out by defence through video conferencing to their satisfaction on 03.12.15, 17.12.15, 15.03.16, and 31.03.2016 and all the documents which the defence wanted to confront to the said witness during cross examination was sent to the IO through CBI in order to facilitate the cross examination of IO. On the last date of hearing, i.e. on 31.03.2016 the IO was specifically asked regarding the request of Ld. defence counsel to be physically present in the Court, the answer given by him in the open Court during vide conferencing proceedings are reproduced as under:*

*PW-35 has been asked today in the Court itself*

*in room no.16, video conferencing room, THC in the presence of Ld. defence counsels and Ld. Spl. Public Prosecutor for CBI, whether he could come in the Court for his deposition personally on being provided with air expenses as also one personal assistant to be provided by the CBI to appear before this Court and back to his home, to which the witness has flatly refused by stating that his medical condition is very precarious which does not allow him to travel and in fact, he cannot even walk 10-12 paces at a stretch after which there occurs a severe pain in his chest as there are stunts in his heart, he is also suffering from severe B.P and other debilitating ailments. Therefore, he has categorically refused the request of Ld. defence counsel for his physical appearance in the Court for his remaining cross examination.*

*Further the relevant scanned admission/discharge documents submitted by the prosecution are also reproduced as under:*

*17. From the perusal of the said documents it is apparent that the IO is suffering from various diseases including the problems of chronic kidney disease Stage-V, chronic anemia, history of cardiac ailment and other associated diseases for which he has been repeatedly hospitalised. It has also been revealed that he is admitted in the hospital on 13.01.16 with the history of shortness of breath and epistaxis which from Google Search reveals that same is defined as acute haemorrhage from the nostril/nasal cavity, which may be from various reasons.*

*18. From the discharge summary of this witness dated 22.1.16, he has been diagnosed with CKD Stage-V, which in common parlance would be chronic kidney disease Stage-V, post PTCA which as per the definition from the internet would be Percutaneous Transluminal Coronary Angioplasty, which is a minimally invasive procedure to*

*open up blocked coronary arteries, allowing blood to circulate unobstructed to the heart muscle, whereas Epistaxis is nasal bleeding and ACS is Acute Coronary Syndrome which covers a range of disorders including heart attack and unstable angina. The underline problem is a sudden reduction of blood flow to the part of heart muscle. The said discharge summary is also accompanied by number of lab reports. From the perusal of the same it appears that the said witness is not in a position to travel which has also been certified by the doctor in the certificate dated 12.2.16 that he is not fit for journey and is advised strict bed rest as his symptoms may aggravate anytime and anywhere.*

*19. Therefore, it appears that the witness is not malingering or is not trying to avoid his appearance in the court, rather he is fully co-operating in his testimony which is being recoded through video conferencing. The witness had been earlier appearing when he was medically fit, now since he has fallen ill, he cannot be forced to appear physically, as he would be the best person to know his medical condition. The accused cannot substitute the opinion of his own doctor to the opinion and the medical documents relied upon by the witness. It is for the Court to see whether the witness is malingering or feigning illness in order to avoid his appearance in Court. In any case, this court cannot put the life of the witness in danger taking into account his precarious medical condition just because the accused things otherwise.*

*20. It appears from the above discussion taking into account the entirety of the matter that accused wants to delay the trial of the present case by procrastinating the matter by taking all sort of pleas. The present case is almost 33 years old and is at the fag end of the trial, the last witness is being cross examined, who appears to be medically unfit to travel and to be physically present in the Court. In the present virtual world, the physical presence of*

*the witness is even otherwise is not much desired in case the evidence can be recorded through the virtual devices.*

*21. Therefore, the net result of the above discussions, the present application has only been moved to delay the trial and the same is sheer abuse of process of law. The Court cannot be made a instrument to harass the witness, who is already suffering from umpteen ailments. As a consequence, the present application has no merits and the same is dismissed with cost of Rs.10,000/-."*

2. Before this Court learned counsel for the petitioner raised two arguments, firstly that the procedure for examination of the witness through Skype is illegal. He submits that he has now received a letter addressed by CMM to Special Judge stating that there is no official order for allowing video conferencing through Skype. Thus he should use his existing facility in the video conferencing room available in Tis Hazari Complex. Secondly it is causing lot of difficulty as there are interruptions and each question is required to be repeated four to five times and the petitioner cannot effectively cross-examine the Investigating Officer without his personal presence. Even if the witness comes for two days, the petitioner is ready to bear the cost of his travel.

3. In RC No.1/1983 CBI/SIU-I/ND, charge-sheet was filed in the year 1984 and during trial out of the 116 witnesses CBI finally examined 36 witnesses of which PW-35 the investigating officer Rai Satyender Prasad is under cross-examination. PW-35 appeared before the Court on various dates, however when he was to appear for cross-examination on 17<sup>th</sup> November, 2015 a request was received from PW-35 that he was extremely ill suffering from various ailments and unable to undertake the journey from

Jamshedpur to Delhi, he however stated that he may be examined through video-conferencing or teleconferencing. A report was called from the learned CMM and it was directed that PW-35 should be brought to the Ranchi office of CBI, which was around 130 kms away from Jamshedpur and where video-conferencing facility was available in CBI office. Since PW-35 is serious, unwell and NIC could not make video-conferencing facility at Jamshedpur, PW-35 was cross-examined on 3<sup>rd</sup> & 17<sup>th</sup> December, 2015, 15<sup>th</sup> and 31<sup>st</sup> March 2016 by Skype at his end and the learned Special Judge used the video-conferencing facility at Tis Hazari where after the petitioner filed the application resulting in passing of the impugned order.

4. In the decision reported as JT 2003 (3) SC 382 The State of Maharashtra v. Dr. Praful B. Desai the Supreme Court countering the contention that examination through video conferencing curtails the right of an accused held that video-conferencing is an advancement in science and technology which permits one to see, hear and talk with someone far away, with the same facility and ease as if in your presence. It was held that when evidence is recorded by video-conferencing, that evidence is being recorded in the ‘presence’ of the accused and thus fulfils the requirements of Section 273 Cr.P.C. and recording of such evidence would be as per “procedure established by law”. While noting video conferencing as a mode of examination, the Supreme Court did not in any way restrict that video conferencing was to take place in a particular manner. Thus if with advancement of technology, examination of witness can be through Skype the same would be permissible.

5. The contention of learned counsel for the petitioner that in view of the letter of the Chief Metropolitan Magistrate to Special Judge dated 9<sup>th</sup> March,

2016 examination through Skype is illegal, deserves to be rejected for the reason the learned CMM only pointed out that he had no official order for allowing video conferencing through Skype and there was an existing facility available in the video conferencing room for video conferencing.

6. Learned counsel for CBI submits that whenever examination of the witness takes place, the learned Special Judge is in the video conferencing room at Tis Hazari and PW-35 on Skype in the presence of an officer of CBI.

7. Medical record of the witness PW-35 has been placed on record which shows that he is suffering from high blood pressure, anaemia, cardiac problems and acute kidney disease due to which he is undergoing dialysis as well. Further he underwent a surgery and is presently aged 75 years.

8. In view of the medical condition of PW-35, the decision of the learned Special Judge not to call him in person repeatedly for cross-examination which could be through video conferencing/Skype cannot be faulted.

9. I find no error in the impugned order. Petition and application are dismissed.

**MUKTA GUPTA, J.**

**JULY 29, 2016**  
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