

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRM-M-31024-2019

Date of Decision:-24.7.2019

AMARJIT SINGH VIRK

... PETITIONER

Versus

STATE OF PUNJAB AND ORS

... RESPONDENTS

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present:- Mr. A.D.S. Jatana, Advocate
for the petitioner.

GURVINDER SINGH GILL, J. (Oral)

1. The petitioner has approached this Court seeking setting aside of order dated 22.5.2019 (Annexure P-15) whereby the trial Court has granted further opportunity to the prosecution to lead evidence.
2. I have heard learned counsel for the petitioner and have also perused the documents annexed with the petition. The petitioner has been facing trial in respect of offence punishable under Sections 420/120-B in the Court of learned Chief Judicial Magistrate, SAS Nagar, Mohali wherein charges were framed against the accused on 16.4.2012. Some relevant facts may be noticed as follow:-

1.10.2014: An application moved by prosecution seeking permission to examine complainant Jiwan Singh Virk and witness Harpreet Singh Virk through video conferencing was

allowed, subject to approval of High Court and procedure directed to be followed.

2.6.2017 : The trial Court adjourned the matter to 4.7.2017 for enabling cross-examination of the witnesses through video conferencing.

19.7.2017 : The learned Trial Court closed the evidence of prosecution by order as all the PWs could not be examined despite several adjournments.

18.1.2019 : Although a revision petition had been filed by State in Court of Sessions challenging closure of evidence but another petition was also filed in this Court by complainant seeking same relief by way of filing CRM-M-29274-2017. This Court vide order dated 18.1.2019 disposed of the aforesaid petition, in view of statement made on behalf of learned counsel for the accused that they have no objection in acceptance of a revision petition which had been filed by the prosecution before the Sessions Court. This Court directed the Revisional Court to dispose of the revision petition in view of the statement made by learned counsel for accused and to grant **‘effective opportunity’** for recording remaining evidence of the prosecution.

4.2.2019 : In view of order dated 18.1.2019 passed by this Court, the learned Additional Sessions Judge, Mohali accepted the

revision petition on 4.2.2019 and set aside the order dated 19.7.2017 vide which the evidence of prosecution had been closed by order. The trial Court was directed to grant one ‘**effective opportunity**’ for recording evidence of the prosecution.

7.2.2019 : Pursuant to aforesaid order dated 4.2.2019, the learned Judicial Magistrate Ist Class, SAS Nagar, Mohali vide his order dated 7.2.2019 issued directions for doing the needful for getting the statement of PWs recorded through video conferencing. The relevant extract reads as follows:-

“It is made here clear that the prosecution also comply with all the necessary formalities in respect of Video Conferencing for the purpose of recording the statement of the complainant. Criminal Ahlmad is also directed to issue the process immediately as the entire process will take about 3 months. Further it is made clear here that prosecution after obtaining the order of the Court shall proceed in the Indian Embassy as required under the Law. The service of the complainant be effected through Office of Home Ministry, Government of India. So accordingly the case is adjourned to 22.5.2019. Remaining PWs be also summoned for date fixed.”

22.5.2019 : Although 2 PWs were present on the said date, who were duly examined but video conferencing with the PW residing abroad could not be held as necessary formalities for holding the video conferencing could not be completed. The Trial Court in its order dated 22.5.2019 observed that in these circumstances, it could not be held that an '**effective opportunity**' had been afforded to the prosecution. While observing that several formalities and procedures are involved for organizing video conferencing with a witness who is residing overseas, the matter was thus adjourned to 22.8.2019, while directing the service of complainant to be effected through office of Home Ministry, Government of India.

3. The learned counsel for the petitioner has submitted that the aforesaid order dated 22.5.2019 cannot sustain as the same is virtually in violation of order passed by this Court on 18.1.2019 and that since sufficient opportunity after passing of order dated 18.1.2019 had already been afforded to the prosecution, there was no occasion for the Trial Court for adjourning the matter to 22.8.2019 so as to afford prosecution with more time for leading its evidence.
4. I have considered the aforesaid submissions. Since video conferencing could not be held on 22.5.2019 as the formalities required for organizing the same could not be completed as the witnesses are residing in United Kingdom, this Court does not find any infirmity in order dated 22.5.2019

passed by learned Judicial Magistrate Ist Class, SAS Nagar, Mohali and the said order cannot be said to have been passed in violation of order dated 18.1.2019 passed by this Court as it will not be appropriate to hold that prosecution has been given '**effective opportunity**' for leading its evidence. The petition, as such is dismissed.

5. The trial Court is directed to take up the matter with the concerned quarters effectively so that the needful for arranging the video conferencing is done at the earliest. The Director Prosecution and Litigation and Additional Chief Secretary, Home, Punjab are also directed to look into the matter and to ensure that necessary steps are taken immediately for arranging video conferencing with the witnesses residing abroad in the present case so that trial is not unnecessarily delayed which has already been pending since last more than 10 years. In case, necessary steps are not taken effectively which could result in closure of evidence of prosecution, liability for inaction shall be fastened and Additional Chief Secretary, Home, Punjab shall ensure that departmental action is taken against all those who are found responsible.

(GURVINDER SINGH GILL)
JUDGE

24.7.2019
Gaurav Sorot

Whether reasoned / speaking?	Yes / No
Whether reportable?	Yes / No