

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

1. **CRM-M-30911-2017**
Date of Decision:13.02.2020.

KANWAL RAJ SACHDEVA Petitioner

Versus

STATE OF PUNJAB Respondent
2. **CRM-M-10492-2018**

STATE OF PUNJAB Petitioner

Versus

JYOTI AND OTHERS Respondents

CORAM: HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr.B.D.Sharma, Advocate for the petitioner in CRM-M-30911 of 2017 and for the respondent No.3 in CRM-M-10492 of 2018
Mr. Sidakmeet Singh Sandhu, Asstt. A.G. Punjab.
for petitioner in CRM-M-10492 of 2018.
Mr.Sandeep Arora, Advocate for respondent No.1 and 2
in CRM-M-10492 of 2018.

JAISHREE THAKUR, J.(ORAL)

1. These two petitions have been filed seeking to challenge the order passed by the Judicial Magistrate First Class, Jalandhar dated 06.06.2017 whereby the application filed on behalf of the prosecution for examining Ms.Upasna, one of the witnesses, through video conferencing has been declined. Aggrieved against the said order, the State being the Prosecutor as well as the complainant have preferred these two petitions under Section 482 Cr.P.C.

2. Brief facts of the case are that an FIR No.08 dated 26.05.2012 came to be registered under Section 406, 498-A at Police Station NRI Jalandhar City, District Jalandhar by Kanwal Raj Sachdeva s/o Sh.Tilak Raj Sachdeva stating that his daughter Upasna had been married to one Rocky Bhalla on 23.11.2009 according to the Hindu rights and ceremonies. She had been tortured by her in-laws on account of insufficient dowry and that she was compelled to bring more dowry than what had been given. There are also allegations that the dowry/ Stridhan articles that had been given at the time of marriage, were misappropriated by the family members of her husband. During the pendency of the trial before the Judicial Magistrate First Class, Jalandhar, an application was filed to summon Ms.Upasna as witness which application was allowed. However, since Ms.Upasna was a resident of Australia and was unable to visit India, an application was preferred seeking liberty for her to appear as witness through video conferencing which stands rejected.

3. Learned counsel appearing on behalf of the complainant Kanwal Raj Sachdeva would contend that the order as passed by the Judicial Magistrate First Class, Jalandhar would not be sustainable in the light of the judgement rendered in **State of Maharashtra Vs. Dr.Praful B. Desai and another, 2003(2) RCR (Criminal) 770** wherein, the Supreme Court in a particular matter had permitted recording of evidence by way of video conferencing. It is also submitted that the principle as settled has also been followed by our own High Court. It is argued that no prejudice would be caused to the respondents herein since ample opportunity would be allowed to the respondents-accused to cross examine the witness apart from putting any document to her that they

choose to do so. A similar argument has been raised by the State counsel in the petition.

4. *Per contra* learned counsel on behalf of the respondents-accused would argue that the witnesses ought to be present in person so that there is an ample opportunity is there to the respondents herein to cross examine her, while further arguing that she was never cited as a witness at the first instance and also that no adequate reason have been given in the petition for her non appearance as a witness in person.

5. I have heard learned counsel for the parties and have also perused the case file as well as the judgement relied upon. Admittedly, the complaint had been filed by the father of the said witness Ms.Upasna with allegations that she had been tortured in her matrimonial house by her in-laws and that there was a demand of dowry apart from misappropriation of the Stridhan articles given. The said witness is not currently in India and the reason given for her not being able to travel is that she is awaiting her permanent residence status, apart from citing a reason that she would be put to big inconvenience and great expenditure in case she is directed to be present in person.

6. The law regarding summoning of a witness and allowing the said witness to give evidence by way of video conferencing has been gone into by the Supreme Court in State of Maharashtra Vs. Dr.Praful B. Desai and another(supra) wherein it has been held that the physical presence of a witness for the purpose of examination would not be necessary in all cases. Para 19 of the said judgement is reproduced as under:-

19. At this stage we must deal with a submission made by Mr Sundaram. It was submitted that video-conferencing could not be allowed as the rights of an accused, under [Article 21](#) of the Constitution of India, cannot be subjected to a procedure involving "virtual reality". Such an argument displays ignorance of the concept of virtual reality and also of video conferencing. Virtual reality is a state where one is made to feel, hear or imagine what does not really exists. In virtual reality one can be made to feel cold when one is sitting in a hot room, one can be made to hear the sound of ocean when one is sitting in the mountains, one can be made to imagine that he is taking part in a Grand Prix race whilst one is relaxing on one sofa etc. Video conferencing has nothing to do with virtual reality. Advances in science and technology have now, so to say, shrunk the world. They now enable one to see and hear events, taking place far away, as they are actually taking place. To take an example today one does not need to go to South Africa to watch World Cup matches. One can watch the game, live as it is going on, on one's TV. If a person is sitting in the stadium and watching the match, the match is being played in his sight/presence and he/she is in the presence of the players. When a person is sitting in his drawing-room and watching the match on TV, it cannot be said that he is in presence of the players but at the same time, in a broad sense, it can be said that the match is being played in his presence. Both, the person sitting in the stadium and the person in the drawing-room, are watching what is actually happening as it is happening. This is not virtual reality, it is actual reality. One is actually seeing and hearing what is happening.

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 he is present before you i.e. in your presence. In fact he/she is present before you on a screen. Except for touching, one can see, hear and observe as if the party is in the same room. In video conferencing both parties are in presence of each other. The submissions of Respondents counsel are akin to an argument that a person seeing through binoculars or telescope is not actually seeing what is happening. It is akin to submitting that a person seen through binoculars or telescope is not in the "presence" of the person observing. Thus it is clear that so long as the Accused and/or his pleader are present when evidence is recorded by video conferencing that evidence is being recorded in the "presence" of the accused and would thus fully meet the requirements of [Section 273, Criminal Procedure Code](#). Recording of such evidence would be as per "procedure established by law".

Recording of evidence by video conferencing also satisfies the object of providing, in [Section 273](#), that evidence be recorded in the presence of the Accused. The Accused and his pleader can see the witness as clearly as if the witness was actually sitting before them. In fact the Accused may be able to see the witness better than he may have been able to if he was sitting in the dock in a crowded Court room. They can observe his or her demeanour. In fact the facility to play back would enable better observation of demeanour. They can hear and rehear the deposition of the witness. The Accused would be able to instruct his pleader

immediately and thus cross-examination of the witness is as effective, if not better. The facility of play back would give an added advantage whilst cross-examining the witness. The witness can be confronted with documents or other material or statement in the same manner as if he/she was in Court. All these objects would be fully met when evidence is recorded by video conferencing. Thus no prejudice, of whatsoever nature, is caused to the Accused. Of course, as set out hereinafter, evidence by video conferencing has to be on some conditions.

Reliance was then placed on [Sections 274](#) and [275](#) of the Criminal Procedure Code which require that evidence be taken down in writing by the Magistrate himself or by his dictation in open Court. It was submitted that video conferencing would have to take place in the studio of VSNL. It was submitted that that this would violate the right of the Accused to have the evidence recorded by the Magistrate or under his dictation in open Court. The advancement of science and technology is such that now it is possible to set up video conferencing equipment in the Court itself. In that case evidence would be recorded by the Magistrate or under his dictation in open Court. If that is done then the requirements of these Sections would be fully met. To this method there is however a draw back. As the witness is now in Court there may be difficulties if he commits contempt of Court or perjures himself and it is immediately noticed that he has perjured himself. Therefore as a matter of prudence evidence by video-conferencing in open Court should be only if the witness is in a country which has an extradition treaty with India and under whose laws contempt of Court and perjury are also punishable.”

7. Relying upon the judgement and the law as settled this Court finds that the JMIC, Jalandhar clearly erred in dismissing the application permitting evidence of the witness to be recorded through video conferencing. The impugned order is thus set aside and the application filed by complainant Kanwal Raj Sachdeva for examination of Ms.Upasna through video conferencing is hereby allowed. Needless to say the accused-respondents herein would be allowed all adequate opportunity to cross examine the witness.

8. While allowing the said petition it is worthwhile to note that the judgement rendered by the Supreme Court in Sujay Mitra Vs. State of West Bengal, 2015 (32) RCR (Criminal) 623 has laid down the procedure to be adopted while recording the statement of the witness through video conferencing. The same procedure would be followed in the instant case.

Both the petitions stands allowed. The trial Court would take necessary steps to summon the witness and record here statement.

A photocopy of this order be placed on the file of other connected case.

(JAISHREE THAKUR)
JUDGE

13.02.2020
raman

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