

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Proceedings through Video Conferencing****Criminal Revision No. 125 of 2021**

Ravi Shankar Shriniwas Dinavahi (wrongly mentioned in order dated 06.11.19) S/o D. Venkat Rao aged about 35 years R/o 317, West Side Drive - Unit 203, Gaithersburg MD 20878 United States of America

----Applicant**Versus**

1. State of Chhattisgarh through Station House Officer, Police of Police Station Mahila Thana, Bilaspur, District Bilaspur CG
2. Meher Nidhi Vedarvyu W/o Shri Ravi Shankar Srinivas Dinavahi R/o VN Rao Mahamaya Vihar Warehouse Road, Bilaspur, Tehsil and District Bilaspur, CG
3. Dhruv Saket S/o Shri Ravi Shankar Shriniwas Dinavahi aged about 6 years minor through Guardian Mother Meher Nidhi Vedarvyu, Present Address V. N. Rao Mahamaya Vihar, Warehouse Road, Bilaspur Tahsil and District Bilaspur CG

----Non-applicants

For Applicant	: Shri K.A. Ansari, Sr. Adv. with Shri Aman Ansari, Adv.
For non-applicant No. 1	: Shri Wasim Miyan, Panel Lawyer.
For non-applicants No. 2 and 3	: Shri V.V.S. Murthy, Sr. Adv. with Shri Atanu Ghosh, Adv.

Hon'ble Shri Justice N.K. Chandravanshi**Order on Board****29-7-2021**

1. This criminal revision has been preferred by the applicant being aggrieved by the order dated 23-1-2021 passed by the learned Principal Judge, Family Court, Bilaspur in M.J.C. No. 1087/2019 whereby the application filed by the applicant under Section 126 (2) of the Criminal Procedure Code, 1973 (in short, 'Cr.P.C.') has been dismissed for non-appearance in person of the applicant.

2. Brief facts pertaining to this revision are that non-applicants No. 2 and 3 filed an application under Section 125 of the Cr.P.C. against the applicant which was registered as Misc. Criminal Case No. 64/2019. Despite service of notice, the applicant did not appear before the learned Family Court, therefore, ex-parte

order dated 15-10-2019 was passed against the applicant and he was ordered to pay monthly maintenance of Rs. 2 lacs per month to non-applicant No. 2/wife and Rs. 1.50 lac per month to non-applicant No. 3/son, total Rs. 3.50 lacs. Thereafter, the applicant filed an application under Section 126(2) of the Cr.P.C. on 5-11-2019 before the Family Court, Bilaspur which was registered as M.J.C. No. 1087/2019. This case was registered with condition that in future dates of hearing, the applicant would have to appear personally and no further proceedings will be conducted in his absence. Despite the direction of learned Family Court, the applicant was unable to appear in person because he is living in United States of America (in short 'USA'). Therefore, on 23-1-2021 an application was filed by the informer of applicant that USA is highly affected country from Covid 19 pandemic, new mutation is spreading, it has been advised to avoid international travelling and international flights have been suspended, therefore, personal appearance of the applicant may be substituted through virtual appearance. But learned Principal Judge, Family Court, Bilaspur observing that under Family Court's Act, personal appearance of both parties is necessary for conciliation/ mediation and despite giving many opportunities, the applicant did not appear in person, it seems that he is not interested in this case, dismissed the further proceedings of the case in absence of the applicant vide impugned order dated 23-1-2021. This order has given rise to the present criminal revision.

3. Learned Sr. counsel appearing for the applicant submits that in Misc. Criminal Case No. 64/2019, ex-parte order was passed granting huge maintenance amount against the applicant. The application under Section 126(2) of the Cr.P.C. was filed, within the prescribed period, to set aside the order and for grant of opportunity of hearing to the applicant. The applicant was residing in USA. The USA was highly affected country by Covid 19 pandemic. At the time of hearing of this case, new mutation was spreading. It was advised to avoid international traveling and

international flights were suspended. In this situation, it was not possible for the applicant to come to India. Therefore, the application was filed on behalf of the applicant seeking to record his appearance through video conferencing and exemption from personal appearance for next date i.e. 23-1-2021. It was also requested that personal appearance of applicant may be substituted through virtual appearance. He further submits that Hon'ble Supreme Court and many High Courts have held in catena of judgments and even law has been enacted that personal appearance of party/witnesses can be substituted and proceedings may be conducted through virtual/ video conferencing. Despite this legal proposition, learned Family Court without considering the prevailing facts situation for his non-appearance in person, rejected his application. To support his contention, he placed reliance on the decision of Hyderabad High Court in **Sirangai Shoba alias Shoba Munnuri -v- Sirangi Muralidhar Rao** (AIR 2017 Hyderabad 88). Therefore, the order impugned is erroneous, perverse and is not sustainable in the eye of law.

4. On the other hand, learned Sr. Counsel appearing for the non-applicants No. 2 and 3 submits that since beginning of the case filed by the non-applicants No. 2 and 3 under Section 125 of the Cr.P.C., attitude of the applicant is not cooperative. Despite service of notice, knowingly, he did not appear before the Family Court and as soon as ex-parte order was passed, he filed an application under Section 126(2) of the Cr.P.C. In this case also, he did not appear in person. He further submits that on earlier dates of these cases, neither Covid 19 pandemic started nor flights were suspended, despite that, the applicant did not appear before the Court to avoid maintenance to the non-applicants No. 2 and 3. This attitude of the applicant disentitles him to get any relief because despite order of the Court and even being a highly paid person, he has not paid even a single penny to the non-applicants No. 2 and 3 who are his wife and son respectively. If

any relief is granted to the applicant, he may be directed to comply with the order dated 15-10-2019.

5. I have heard learned counsel for both the parties at length and perused the documents filed with the revision petition as well as the order impugned with utmost circumspection.

6. A perusal of record shows that ex-parte order dated 15-10-2019 was passed by the Family Court, Bilaspur against the applicant in Misc. Criminal Case No. 64/2019. Thereafter, on 5-11-2019, the application under Section 126(2) of the Cr.P.C. was filed on behalf of the applicant within the period prescribed under sub-section (2) of Section 126 of the Cr.P.C. The order impugned dated 23-1-2021 shows that informer on behalf of the applicant filed an application to record his personal appearance through video conferencing but learned Family Court dismissed the proceedings due to his non-appearance in person.

7. In these days of virtual technology, various modes have been adopted by courts in furtherance of judicial proceedings. Hon'ble Supreme Court has also directed to adopt these technologies. Various High Courts have also issued directions in this regard.

8. In case of **Sirangai Shoba alias Shoba Munnuri** (supra), the Hyderabad High Court referring various judgments of Hon'ble Supreme Court and High Courts has held in para 22, 24 to 26 and 57 as under :-

“22. From the above, there is no manner of doubt to hold that presence of parties and witnesses in civil matters from Orders 26, 18 & 16 of the Code of Civil Procedure, for short CPC does not mean actual physical presence either in the Court or before officer of the court like in case Advocate is appointed to record evidence, particularly in matrimonial matters where one party elsewhere to say abroad and other somewhere within India.

24. Recording of evidence by video/audio/ tele-conferencing or internet conferencing is thus legally permissible in both civil and criminal matters and even in matrimonial matters.

25. In fact to overcome any difficulty of understanding the existing provisions supra of Cr.P.C., a proviso was inserted to sub-section (1) to Section 275 of Cr.P.C. by Act 5 of 2009 (the Code of Criminal Procedure (Amendment) Act, 2008) which reads as follows:

“Provided that evidence of a witness under this sub-section may also be recorded by audio-video electronic means in the presence of the advocate of the person accused of the offence. It is leave about recording of evidence on commission as per Section 285 Cr.P.C. with same analogy, for Commissioner is Officer of Court on being appointed for purpose of recording evidence of such witness.”

26. From the aforesaid provision, it is to gather including for civil matters that the evidence of a witness may be recorded by audio-video electronic means to say even by internet technology as once same is statutorily permissible in criminal proceedings, equally and undoubtedly permissible in all civil matters.

57. Having regard to the above, examination of witnesses and recording of evidence by commissioner contemplated by Order XVIII Rule 4 C.P.C from the words witness in attendance are to be understood as person being present and it need not be physical presence thus, recording of evidence through audio, video link or through internet by Skype or similar technological device is permissible complying the words in attendance.”

9. In case of **In Re- guidelines for Court functioning through Video Conferencing during Covid – 19 Pandemic** [(2020) 6 SCC 686], Hon'ble Supreme Court has held as under :-

“3. Modern technology has enabled courts to enhance the quality and effectiveness of the administration of justice. Technology has facilitated advances in speed, accessibility and connectivity which enable the dispensation of justice to take place in diverse settings and situations without compromising the core legal principles of adjudication. The Indian courts have been proactive in embracing advancement in technology in judicial proceedings. The Indian judiciary has incorporated Information and Communication Technology systems through the e-Courts Integrated Mission Mode Project (e-Courts Project) as part of the National e-Governance Plan (NeGP). The robust infrastructure in place has reduced conventional impediments and legal uncertainty surrounding the use of virtual courts. ICT enabled infrastructure is available across all courts including the district judiciary which constitutes the initial interface of the court system with the citizen.

4. The use of technology found judicial recognition in precedent of this Court in *State of Maharashtra v. Praful B. Desai* [(2003) 4 SCC 601]. This Court held that the term “evidence” includes electronic evidence and that video conferencing may be used to record evidence. It observed that developments in technology have opened up the possibility of virtual courts which are similar to physical courts. The Court held :

“19. 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. ... 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 the presence of each other. ... Recording of such evidence would be as per “procedure established by law.”

10. In above case, Hon'ble Supreme Court has issued various directions pertaining to proceedings of courts in these Covid 19 pandemic days. In para 6.v, Hon'ble Supreme Court has directed that 'the District Courts in each State shall adopt the mode of Video Conferencing prescribed by the concerned High Court.'

11. The High Court of Chhattisgarh has enacted “Rules for Video Conferencing for Courts of the Chhattisgarh State” to streamline the procedure relating to use of video conferencing, which has been published in Chhattisgarh Rajpatra, dated 31st July, 2020 and applicable from 27th June, 2020. Following rules of above Rules are relevant and quoted below :-

“Chapter II – General Principles

3. General Principles Governing Video Conferencing

(i) Video conferencing facilities can be used at all stages of judicial proceedings and proceedings conducted by the Court and all Judicial Proceedings, Viz. Lok Adalat, Mediation etc.

(ii) All proceedings conducted by a Court by way of video conferencing shall be judicial proceedings and all the courtesies and protocols applicable to a physical Court shall apply to these virtual proceedings. The protocol provided in Schedule I shall be adhered to for proceedings conducted by way of video conferencing.

Chapter III - Procedure for Video Conferencing

6. Application for Appearance, Evidence and Submission by Video Conferencing:

6.1 Any party to the proceeding or witness, save and except where proceedings are initiated at the instance of the Court, may move a request for video conferencing. A party or witness seeking a video conferencing proceeding shall do so by making a request in the form prescribed in Schedule II.

6.2 Any proposal to move a request to for video conferencing should first be discussed with the other party or parties to the proceeding, except where not possible or inappropriate, for example in cases such as urgent applications.

6.3 On receipt of such a request and upon hearing all concerned persons, the Court will pass an appropriate order after ascertaining that the application is not filed with an intention to impede a fair trial or to delay the proceedings.

6.4 While allowing a request for video conferencing, the Court may also fix the schedule for convening the video conferencing.

6.5 In case the video conferencing event is convened for making oral submissions, the order may require the Advocate or party in person to submit written arguments and precedents, if any, in advance on the official email ID of the concerned Court.

6.6 Costs, if directed to be paid, shall be deposited within the prescribed time, commencing from the date on which the order convening proceedings through video conferencing is received.”

12. Rules regarding service of summons, examination of persons, exhibiting or showing documents to witness or accused

at a remote point, etc. have also been incorporated in these rules.

13. Above judicial pronouncement and rules framed by the High Court of Chhattisgarh clearly state that video conferencing facilities can be used at all stages of judicial proceedings and proceedings conducted by the Court. Personal appearance of a party in a case is also a part of judicial proceeding, therefore, personal appearance could be substituted through Video Conferencing. Various other proceedings may also be conducted by virtual mode so that goal of speedy justice can be achieved. In these pandemic days, physical appearance in the Courts has been restricted and proceedings of the courts are being conducted through Video Conferencing. Looking to above legal propositions, Covid 19 pandemic days and also that applicant is residing in USA, learned Family Court ought to have permitted the applicant to record his appearance through Video Conferencing and his personal appearance could have been substituted through virtual appearance, but without considering properly the application filed by the applicant in this behalf, learned Family Court dismissed his application under Section 126(2) of the Cr.P.C. and therefore, in my view, it has committed error in rejecting above application due to his non-appearance in person. Therefore, the matter requires to be remanded to the Family Court for re-consideration and proper adjudication.

14. Accordingly, the order dated 23-1-2021 passed by the Principal Judge, Family Court, Bilaspur in M.J.C. No. 1087/2019, whereby proceedings of the application under Section 126(2) of Cr.P.C. have been dismissed, is set aside. The matter is remanded back to the Family Court, Bilaspur with a direction to restore the case M.J.C. No. 1087/2019 to its original file, re-consider the application dated 23-1-2021 "seeking appearance through Video Conferencing and exemption from personal appearance for the next date i.e. 23-1-2021" and decide the same afresh in accordance with law".

15. Applicant is directed to cooperate with the Court in adjudicating the case. In case of failure to do so by the applicant or his conduct is not cooperative, then the Family Court can proceed further as per law without being affected by this order. Both the parties are directed to appear on 2-9-2021 either in person or through next friend/counsel before the Family Court so that case may be decided expeditiously.

Sd/-

**N.K. Chandravanshi
Judge**

Pathak/-