

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

**CR-7393-2018 (O&M)
Decided on:-17.11.2022**

Smt. Shikha

....Petitioner

vs.

Sanjay Kumar

....Respondent.

CORAM:HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Gobind Dhanda, Advocate,
for the petitioner.

Mr. A.S. Salar, Advocate,
for the respondent.

HARKESH MANUJA J. (Oral)

By way of present petition, challenge has been made to an order dated 12.10.2018 passed by the court of Additional Sessions Judge, Panchkula, whereby an application filed at the instance of petitioner-wife for permitting her cross-examination to be carried out through video conferencing, has been declined.

Facts leading to the present case are that the marriage between the parties to the present litigation took place in April, 1988. On a petition filed under Section 13 of the Hindu Marriage Act, at the instance of respondent-husband, a decree for dissolution of marriage was granted by the learned Additional District Judge, Panchkula vide judgment dated 13.10.2008 with the direction to deduct 40% salary of the respondent-husband as maintenance towards petitioner-wife and her son. The said order was challenged by the respondent-husband before this Court to a limited

extent regarding grant of maintenance to the petitioner-wife.

Vide order dated 16.03.2016, this Court remanded the matter to the trial court with liberty to the petitioner-wife to move an application under Section 25 of the Hindu Marriage Act for determination of permanent alimony. Accordingly, an application dated 27.05.2017 (Annexure P-2) was filed at the instance of petitioner-wife in this regard. At the stage, when the evidence of the petitioner-wife was to be recorded, she moved an application seeking permission to get herself examined as witness through video conferencing. It was mentioned in the application that the petitioner-wife was pursuing Accounting and Pay Roll Course in an Evergreen College in Toronto, Canada and she was on her study Visa. It was also stated that her son, namely, Aryaman was also pursuing his studies and as such, she was not in a position to visit India for the purpose of recording of her evidence. The aforesaid prayer was strongly opposed by respondent-husband. The trial court vide its order dated 12.10.2018, declined the prayer made by the petitioner-wife, on the ground that the petitioner-wife went abroad on the basis of misrepresentation, which was against law. In addition, it was also recorded that number of documents were required to be put to the petitioner-wife in her cross-examination, which would create great difficulty to cross-examine her through video conferencing.

Impugning the order dated 12.10.2018 passed by the learned trial court, learned counsel for the petitioner submits that the petitioner in order to enable herself to earn her livelihood, was pursuing Accounting and Pay Roll Course in an Evergreen College in Toronto, Canada and for the said purpose, she was in Canada, besides even for the purpose of getting her son educated. He further submits that she was not paid even a single penny

after, the date of passing of the order dated 16.03.2016 by this Court, vide which, she was asked to move an application for grant of permanent alimony before the court below.

Learned counsel for the petitioner further submits that there would be no impediment in the cross-examination of petitioner through the process of video conferencing as adequate and sufficient guidelines have already been laid down by this Court in case titled as “Parminder Singh vs. Sukhminder Singh and others” 2015(8) RCR (Civil)160. Para 4 of the aforesaid judgment is relevant, which is reproduced as hereunder for reference:-

“4. If witness is in foreign country, advancements in communication technology make possible for the Courts to avail of the facility of examination through video conferencing. The care that should be taken is that the presence of a party as a witness in foreign country must be in a secure place and that the questions posed and answers to be elicited shall be done without any props or devices to respond which will undermine the integrity of the deposition. The plaintiff is at liberty to approach for assistance of the Indian Consulate in the foreign country and seek for permission for any secure place for giving evidence at a pre-determined time, which shall be the Court hours. If such a facility is not available in the Embassy, any other place which can assure the integrity of evidence in a foreign country may be secured and the information given to the Court.”

Accordingly, learned counsel for the petitioner prays that the petitioner may be permitted to be cross-examined through the process of video conferencing.

On the other hand, learned counsel for the respondent-husband

submits that as the petitioner-wife was living abroad in an illegal capacity, as such, the process of law should not come to her rescue. He also submits that through the process of video conferencing, the court will not be able to assess and notice the demeanor of the petitioner-wife while appearing as witness.

I have heard learned counsel for the parties as well as gone through the record and I find substance in the submissions made on behalf of the petitioner.

Even, this Court in exercise of its powers under Articles 225 and 227 of the Constitution of India has promulgated the Rules, so as to consolidate, unify and streamline the procedure relating to the use of video conferencing for courts, which have been published vide notification/correction dated 10.12.2021, even enabling the examination of any party/witness through video conferencing. The aforesaid Rules also provide for requirement of proof of identity of the person, who is to appear at the virtual hearing as a witness. Entire procedure in this regard has been laid down under Rules 8 and 9 of Chapter III thereof, which is reproduced hereunder:-

“8. Examination of persons

8.1 Any person being examined, including a witness shall, before being examined through video conferencing, produce and file proof of identity by submitting an identity document issued or duly recognized by the Government of India, State Government, Union Territory, or in the absence of such a document, an affidavit attested by any of the authorities referred to in Section 139 of the CPC or Section 297 of the CrPC, as the case maybe. The affidavit will inter alia state that the person, who is shown to be the party to the proceedings or as a witness, is the same person, who is to depose at the virtual hearing. A copy of the proof of identity or affidavit, as the case may be, will be made available to

the opposite party.

8.2 The person being examined will ordinarily be examined during the working hours of the concerned Court or at such time as the Court may deem fit. The oath will be administered to the person being examined by the Coordinator at the Court Point.

8.3 Where the person being examined, or the accused to be tried, is in custody, the statement or, as the case may be, the testimony, may be recorded through video conferencing. The Court shall provide adequate opportunity to the under-trial prisoner to consult in privacy with their counsel before, during and after the video conferencing.

8.4 Subject to the provisions for examination of witnesses contained in the Evidence Act, before the examination of the witness, the documents, if any, sought to be relied upon shall be transmitted by the applicant to the witness, so that the witness acquires familiarity with the said documents. The applicant will file an acknowledgement with the Court in this behalf.

8.5 If a person is examined with reference to a particular document then the summons to witness must be accompanied by a duly certified photocopy of the document. The original document should be exhibited at the Court Point in accordance with the deposition of the concerned person being examined.

8.6 The Court would be at liberty to record the demeanour of the person being examined.

8.7 The Court will note the objections raised during the deposition of the person being examined and rule on them.

8.8 The Court shall obtain the signature of the person being examined on the transcript once the examination is concluded. The signed transcript will form Vol.-V Chp.-1-H - 6 - part of the record of the judicial proceedings. The signature on the transcript of the person being examined shall be obtained in either of the following ways:

8.8.1 If digital signatures are available at both the concerned Court Point and Remote Point, the soft copy of the transcript digitally signed by the presiding Judge at the Court Point shall be sent by the official email to the Remote Point where a print out of the same will be taken and signed by the person being examined. A scanned copy of the transcript digitally signed by the Coordinator at the Remote Point would be transmitted by

official email of the Court Point. The hard copy of the signed transcript will be dispatched after the testimony is over, preferably within three days by the Coordinator at the Remote Point to the Court Point by recognized courier/ registered speed post.

8.8.2 If digital signature are not available, the printout of the transcript shall be signed by the presiding Judge and the representative of the parties, if any, at the Court Point and shall be sent in non-editable scanned format to the official email account of the Remote Point, where a printout of the same will be taken and signed by the person examined and countersigned by the Coordinator at the Remote Point. A non-editable scanned format of the transcript so signed shall be sent by the Coordinator of the Remote Point to the official email account of the Court Point, where a print out of the same will be taken and shall be made a part of the judicial record. The Hard copy would also be dispatched preferably within three days by the Coordinator at the Remote Point to the Court Point by recognized courier/ registered speed post.

8.9 An audio-visual recording of the examination of person examined shall be preserved. An encrypted master copy with hash value shall be retained as a part of the record.

8.10 The Court may, at the request of a person to be examined, or on its own motion, taking into account the best interests of the person to be examined, direct appropriate measures to protect the privacy of the person examined bearing in mind aspects such as age, gender, physical condition and recognized customs and practices.

8.11 The Coordinator at the Remote Point shall ensure that no person is present at the Remote Point, save and except the person being examined and those whose presence is deemed administratively necessary by the Coordinator for the proceedings to continue.

8.12 The Court may also impose such other conditions as are necessary in a given set of facts for effective recording of the examination (especially to ensure compliance with Rule 5.6.4)

8.13 The examination Shall, as far as practicable, proceed without interruption or the grant of unnecessary adjournments. However, the Court or the Commissioner as the case may be, will be at liberty to determine whether an adjournment should be granted, and if so, on what terms.

8.14 *The Court shall be guided by the provisions of the CPC and Chapter XXIII, Part B of the CrPC, the Evidence Act and the IT Act while examining a person through video conferencing.*

8.15 *Where a Required Person is not capable of reaching the Court Point or the Remote Point due to sickness or physical infirmity, or presence of the required person cannot be secured without undue delay or expense, the Court may authorize the conduct of video conferencing from the place at which such person is located. In such circumstances the Court may direct the use of portable video conferencing system. Authority in this behalf may be given to the concerned Coordinator and/or any person deemed fit by the Court.*

8.16 *Subject to such orders as the Court may pass, in case any party or person authorized by the party is desirous of being physically present at the Remote Vol.-V Chp.-1-H - 7 - Point at the time of recording of the testimony, such a party shall make its own arrangement for appearance/representation at the Remote Point.*

9. Exhibiting or Showing Documents to Witness or Accused at a Remote Point:-

If in the course of examination of a person at a Remote Point by video conferencing, it is necessary to show a document to the person, the Court may permit the document to be shown in the following manner:

9.1 *If the document is at the Court Point, by transmitting a copy or image of the document to the Remote Point electronically, including through a document visualizer; or*

9.2 *If the document is at the Remote Point, by putting it to the person and transmitting a copy/image of the same to the Court Point electronically including through a document visualizer. The hard copy of the document counter signed by the witness and the Coordinator at the Remote Point shall be dispatched thereafter to the Court Point via authorized courier/ registered speed post or any other authorized means such as special messenger etc.”*

Besides it, examination/cross-examination of a witness through video conferencing has also found favour with this Court having been expounded upon vide aforesaid judgment in Parminder Singh's case (supra).

Further more, the procedural aspects in conjunction with the latest technology have to be used in such a manner, so as to help the parties to avail their remedies in the most efficient and effective manner, rather than curtailing their rights based on hyper-technical approach. Further more, it would also ensure expeditious disposal of the proceedings including, avoid the burden of unnecessary expenses relating to the visit of petitioner, if any. Still further, the validity of the plea raised by the respondent regarding the petitioner having visited Canada in an illegal manner, can't be determined under these proceedings and thus, have no bearing on the controversy in question, which only relates to the prayer made by the petitioner for being cross-examined through video conferencing.

In view of the aforesaid discussion, I find merit in the present revision petition, consequently, the same is allowed and the impugned order dated 12.10.2018 is hereby set aside. The trial court shall allow the petitioner-wife to appear as witness for the purpose of her cross-examination through video conferencing by following the procedure laid down under the aforesaid High Court Rules and orders.

Pending application(s), if any, shall also stand disposed of.

(HARKESH MANUJA)
JUDGE

17.11.2022
sonika

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